

Bill 45
Ms Graham

BILL 45

2003

FAMILY LAW ACT

(Assented to , 2003)

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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) “applicant” means a person who brings an application under this Act;
- (b) “birth” means birth as defined in the *Vital Statistics Act* and includes a stillbirth as defined in that Act;
- (c) “child”, except in Part 1 and Division 3 of Part 3, means a person who is under the age of 18 years;
- (d) “contact order” means an order made under section 35;
- (e) “court” means a court designated under section 3;

- (f) “Director” means a Director appointed under the *Income and Employment Supports Act*;
- (g) “father” means
 - (i) unless subclause (ii) or (iii) applies, the biological father of a child, including a male person described in section 12(2),
 - (ii) in the case of an adopted child, a male person who adopts the child, or
 - (iii) a male person described in section 12(3);
- (h) “grandparent” means the parent of a person’s father or mother;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (j) “mother” means
 - (i) unless subclause (ii) or (iii) applies, the person who gives birth to a child,
 - (ii) in the case of an adopted child, a female person who adopts the child, or
 - (iii) a female person described in section 11(6);
- (k) “parent” means the father or mother of a child;
- (l) “parenting order” means an order made under section 32;
- (m) “party” means a party as defined in the regulations;
- (n) “person standing in the place of a parent” means a person described in section 49;
- (o) “relationship of interdependence” means a relationship of interdependence as defined in the *Adult Interdependent Relationships Act*;
- (p) “respondent” means a person against whom proceedings are brought under this Act.

Crown is bound

2 The Crown is bound by this Act.

Designation of court

3 The Minister may designate, generally or specifically, a court or courts in Alberta for the purposes of proceedings under this Act.

Duty of lawyer

4(1) Every lawyer who acts on behalf of a party in an application under this Act has a duty

- (a) to discuss with the party alternative methods of resolving the matters that are the subject of the application, and
- (b) to inform the party of the mediation facilities and other family justice services known to the lawyer that might assist the parties in resolving those matters.

(2) Subject to the regulations, every application presented to the court by a lawyer pursuant to this Act must contain a statement signed by the lawyer certifying that the lawyer has complied with subsection (1).

Part 1 Establishing Parentage

Application of Part

5 This Part does not apply to an application under section 13 of the *Child Welfare Act*.

Parent of child

6 Unless another enactment provides otherwise, a person who is a parent of a child under this Act is a parent of that child for all purposes of the law of Alberta.

Presumption of parentage

7(1) For all purposes of the law of Alberta, unless the contrary is proven on a balance of probabilities, a male person is presumed to be the biological father of a child in any of the following circumstances:

- (a) the male person was the spouse of the mother of the child at the time of the birth of the child;
- (b) the male person was the spouse of the mother of the child and the marriage was terminated by
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child;
- (c) the male person became the spouse of the mother of the child after the birth of the child and has acknowledged that he is the father of the child;
- (d) the male person cohabited with the mother of the child for at least 12 consecutive months
 - (i) immediately before the child was born, or
 - (ii) during which the child was born or immediately after the child was born and has acknowledged that he is the father of the child;
- (e) the male person cohabited with the mother of the child for at least 12 consecutive months and the period of cohabitation ended less than 300 days before the birth of the child;
- (f) the male 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 or territory other than Alberta;
- (g) the male person has been found by a court of competent jurisdiction in Canada to be the father of the child for any purpose.

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

Declaration of parentage

8(1) The following persons may apply to the court for a declaration that a female person named in the application is the mother of a child or a male person named in the application is the father of a child:

- (a) a person claiming to be the mother or father of the child;
- (b) the child;
- (c) a parent of the child, if the child is under the age of 18 years;
- (d) a guardian of the child;
- (e) a person who has the care and control of the child;
- (f) the Director.

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

(3) In making a declaration of parentage, the court shall have regard to any subsisting presumption of parentage under section 7.

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

(5) Subject to the regulations, a declaration under this section applies for all purposes of the law of Alberta.

New evidence

9(1) Where

- (a) a declaration of parentage has been made or an application for a declaration of parentage has been dismissed, and
- (b) evidence of a substantial nature becomes available that was not available at the previous hearing,

the court may, on application by a person referred to in section 8(1), confirm a declaration, set aside a declaration or make a new declaration of parentage.

(2) A person may not bring an application under this section without the leave of the court.

(3) Notice of an application under this section shall be given to the persons referred to in section 10.

(4) The setting aside of a declaration of parentage under subsection (1) does not affect

- (a) any rights and duties that have been exercised and observed, or
- (b) any interests in property that have been distributed as a result of the declaration before it is set aside.

Notice of application

10 Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application for a declaration of parentage and are entitled to be heard on the application:

- (a) the person claimed to be the child, if the child is 12 years of age or older;
- (b) each guardian of the person claimed to be the child;
- (c) a person who has the care and control of the person claimed to be the child;
- (d) any person claiming or alleged to be a parent.

Surrogacy

11(1) In this section,

- (a) “genetic donor” means a female person who provides genetic material that is fertilized and implanted in the uterus of a gestational carrier;
- (b) “gestational carrier” means a female person in whose uterus the genetic material of a genetic donor is implanted.

(2) A genetic donor who resides in Alberta may apply to the court for an order declaring the genetic donor to be the mother of a child who is born to a gestational carrier.

(3) An application under subsection (2) may not be made more than 14 days after the date of the child's birth or such longer period as the court allows.

(4) The gestational carrier and any other guardian of the person claimed to be the child must, in accordance with the regulations, be served with notice of an application under subsection (2).

(5) If

- (a) the court is satisfied that the child resulted from the fertilization of the genetic donor's genetic material, and
- (b) the gestational carrier consents, in the form prescribed by the regulations, to the application,

the court shall make an order declaring the genetic donor to be the sole mother of the child.

(6) A genetic donor who is declared to be the sole mother of the child under subsection (5) is deemed to be the mother at and from the time of the birth of the child.

(7) Any agreement under which a gestational carrier agrees to give birth to a child for the purpose of relinquishing that child to a genetic donor

- (a) is not enforceable, and
- (b) may not be used as evidence of consent of the gestational carrier under subsection (5)(b).

Artificial insemination

12(1) In this section, "artificial insemination" includes the fertilization by a male person's semen of a female person's ovum outside of her uterus and subsequent implantation of the fertilized ovum in her uterus.

(2) A male person whose semen is used to artificially inseminate a female person is the father of the resulting child if he was the spouse of or in a relationship of interdependence of some permanence with the female person when she was inseminated,

even if his semen was mixed with the semen of another male person.

(3) A male person who was the spouse of or in a relationship of interdependence of some permanence with a female person at the time she was artificially inseminated with the semen of another male person is the father of the resulting child if he consented in advance of the insemination to being a parent of the resulting child.

(4) A male person whose semen is used to artificially inseminate a female person who is neither his spouse nor a person with whom he is in a relationship of interdependence of some permanence is not the father of the resulting child and acquires no parental or guardianship rights or responsibilities of any kind as a result of the use of his semen.

Evidence not admissible

13 Evidence given in an application under this Part or Part 3 that tends to show that the person giving evidence had sexual intercourse with any person is not admissible in evidence against the person giving evidence in any other action to which that person is a party.

Blood tests, etc.

14(1) On the request of a party to an application under this Part or on its own motion, the court may make an order granting leave to obtain blood tests, DNA 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 appropriate.

(3) No test shall be performed on a person without the 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 person's guardian.

(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 on behalf of the child without prejudice to the child in future proceedings.

Part 2 Guardianship, Parenting and Contact Orders and Access Enforcement

Definitions

15 In this Part,

- (a) “guardianship order” means an order made under section 22;
- (b) “place of residence”, in respect of a child, means the place where a child is living, either temporarily or permanently;
- (c) “proposed guardian” means a person who applies or on whose behalf someone else applies for an order appointing the person as a guardian of a child;
- (d) “trusteeship order” means an order made under section 26.

Notice of application

16 Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application under this Part and are entitled to be heard on the application:

- (a) each guardian of the child;
- (b) in the case of an application under Division 1 or 3, the child, if the child is 12 years of age or older;
- (c) in the case of an application for a guardianship order, each proposed guardian;
- (d) in the case of an application for a trusteeship order, the Public Trustee;
- (e) any other person whom the court considers appropriate.

Best interests of the child

17(1) In all proceedings under this Part, the court shall take into consideration only the best interests of the child.

(2) In determining what is in the best interests of a child, the court shall

- (a) ensure the greatest possible protection of the child's physical, psychological and emotional safety, and
- (b) consider all the child's needs and circumstances, including
 - (i) the child's physical, psychological and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development,
 - (ii) the history of care for the child,
 - (iii) the child's cultural, linguistic, religious and spiritual upbringing and heritage,
 - (iv) the child's views and preferences, to the extent that those can reasonably be ascertained,
 - (v) any plans proposed for the child's care and upbringing,
 - (vi) any family violence, including its impact on
 - (A) the safety of the child and other family members,
 - (B) the child's general well-being,
 - (C) the ability of the person who engaged in the family violence to care for and meet the needs of the child, and
 - (D) the appropriateness of making an order that would require the guardians to co-operate on issues affecting the child,
 - (vii) the nature, strength and stability of the relationship

- (A) between the child and each person residing in the child's household and any other significant person in the child's life, and
 - (B) between the child and each person in respect of whom an order under this Part would apply,
- (viii) the ability and willingness of each person in respect of whom an order under this Part would apply
- (A) to care for and meet the needs of the child, and
 - (B) to communicate and co-operate on issues affecting the child,
- (ix) the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian,
- (x) the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship, and
- (xi) any civil or criminal proceedings that are relevant to the safety or well-being of the child.

(3) In this section, "family violence" includes behaviour by a family member causing or attempting to cause physical harm to the child or another family member, or causing the child or another family member to reasonably fear for his or her safety or that of another person, but does not include acts of self-protection or protection of another person.

(4) For the purpose of subsection (2)(b)(vi), the presence of family violence is established on a balance of probabilities.

Division 1 Guardianship

Children subject to guardianship

18 Every child is subject to guardianship except a child who becomes a spouse or adult interdependent partner.

Joint guardians

19(1) Unless the court orders otherwise, the joint guardians of a child are

- (a) the mother, and
- (b) subject to subsection (2), the father.

(2) A father referred to in section 1(g)(i) or (iii) is a guardian of the child only if

- (a) the father was the spouse of the mother of the child at the time of the birth of the child,
- (b) the father was the spouse of the mother of the child and the marriage was terminated by
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child,
- (c) the father became the spouse of the mother of the child after the birth of the child and has acknowledged that he is the father of the child,
- (d) the father cohabited with the mother of the child for at least 12 consecutive months
 - (i) immediately before the child was born, or
 - (ii) during which the child was born or immediately after the child was born and has acknowledged that he is the father of the child,

or

- (e) the father cohabited with the mother of the child for at least 12 consecutive months and the period of cohabitation ended less than 300 days before the birth of the child.

Powers, responsibilities and entitlements of guardianship

20(1) A guardian shall exercise the powers, responsibilities and entitlements of guardianship in the best interests of the child.

(2) Where a child has more than one guardian, the guardians

- (a) shall use their best efforts to co-operate with one another in exercising their powers, responsibilities and entitlements of guardianship, and
- (b) may enter into an agreement with respect to the allocation of those powers, responsibilities and entitlements among themselves.

(3) A guardian who is neither a parent of the child nor a person standing in the place of a parent has no legal duty to support the child from the guardian's own financial resources.

(4) Except where otherwise limited by a parenting order, each guardian is entitled

- (a) to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of the powers and responsibilities of guardianship described in subsection (5), and
- (b) to have sufficient contact with the child to carry out those powers and responsibilities.

(5) Except where otherwise limited by a parenting order, each guardian has the following powers and responsibilities in respect of the child:

- (a) to nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood;
- (b) to ensure the child has the necessities of life, including food, clothing and shelter;
- (c) to make day to day decisions affecting the child, including having the day to day care and control of the child and supervising the child's daily activities;
- (d) to decide the child's place of residence and to change the child's place of residence;

- (e) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;
- (f) to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (g) to decide with whom the child is to live and with whom the child is to associate;
- (h) to decide whether the child should work and, if so, the nature and extent of the work, for whom the work is to be done and related matters;
- (i) to consent to medical, dental and other health-related treatment for the child;
- (j) to grant or refuse consent where consent of a parent or guardian is required by law in any application, approval, action, proceeding or other matter;
- (k) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive;
- (l) subject to the *Minors' Property Act* and the *Public Trustee Act*, to commence, compromise or settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;
- (m) to appoint a person to act on behalf of the guardian in an emergency situation or where the guardian is temporarily absent because of illness or other reason;
- (n) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.

Testamentary appointment of guardian

21(1) A guardian who is a parent of the child may by deed or will appoint a person to be guardian of the child after the death of that guardian.

(2) An appointment under subsection (1) does not take effect unless accepted by the person either expressly or impliedly by the person's conduct.

(3) Unless the guardian expressly states otherwise in the deed or will,

- (a) the guardianship takes effect immediately on the guardian's death, and
- (b) if more than one person is appointed as a guardian under subsection (1), any one of the persons may accept the appointment even if one or more of the other persons appointed decline to accept.

(4) A guardian may revoke an appointment under subsection (1) at any time before the guardian's death.

(5) A person appointed as a guardian under subsection (1) has only the powers, responsibilities and entitlements of guardianship that the guardian had at the time of the guardian's death.

(6) If a guardian who is subject to a parenting order dies without appointing a testamentary guardian, a surviving guardian who is a parent of the child may, subject to any limitations imposed by the court, exercise the powers, responsibilities and entitlements of guardianship that had been allocated to the deceased guardian under that order.

Guardianship order

22(1) The court may, on application by a person who

- (a) is an adult and has had the care and control of a child for a period of more than 6 months, or
- (b) is a parent other than a guardian of a child,

make an order appointing the person as a guardian of the child.

(2) The court may, on application by a child, make an order appointing a person as a guardian of the child if

- (a) the child has no guardian, or
- (b) none of the child's guardians is able or willing to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

(3) The court on hearing an application for a guardianship order shall consider, and may require the applicant to provide the court with a report prepared by a qualified person respecting,

- (a) the suitability of the proposed guardian as a guardian,
- (b) the ability and willingness of the proposed guardian to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, and
- (c) whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.

(4) Subject to subsection (5), a person may not apply for a guardianship order unless the child or proposed guardian resides in Alberta.

(5) If it is satisfied that there are good and sufficient reasons for doing so, the court may waive the requirement

- (a) that the child or proposed guardian reside in Alberta, or
- (b) in the case of an application under subsection (1)(a), that the applicant has had the care and control of the child for a period of more than 6 months.

(6) Subject to the regulations, the court may at any time on its own motion make a guardianship order appointing a guardian of a child to act jointly with another guardian of the child.

(7) The court may, in making a guardianship order under this section or terminating the guardianship of a guardian under section 24, make a parenting order on its own motion or on application by one or more of the parties.

(8) No order may be made under subsection (1) or (2) if the purpose of the application is to facilitate the adoption of the child.

Consent to guardianship

23(1) A guardianship order shall not be made without the consent of

- (a) each guardian of the child,
- (b) the child, if the child is 12 years of age or older, and

(c) the proposed guardian.

(2) Despite subsection (1), the court may make an order dispensing with the consent of one or more of the persons referred to in subsection (1)(a) or (b) if the court is satisfied that there are good and sufficient reasons for doing so.

Termination of guardianship

24(1) The court may, on application by a guardian or a proposed guardian, make an order terminating the guardianship of a guardian, including the applicant, if

- (a) the court is satisfied that the guardian whose guardianship is to be terminated consents to the termination, or
- (b) for reasons that appear to it to be sufficient, the court considers it necessary or desirable to do so.

(2) No order under subsection (1) relating to a child who is 12 years of age or older shall be made without the consent of the child.

(3) A parent of a child may not apply for an order under this section without leave of the court.

(4) Despite subsection (2), the court may make an order dispensing with the consent of the child if the court is satisfied that there are good and sufficient reasons for doing so.

(5) If the court makes a guardianship order pursuant to an application by a child under section 22(2), the court may make a further order terminating the guardianship of any guardian if the court is satisfied that the guardian is unable or unwilling to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

Duration of guardianship

25 A person continues to be a guardian of a child until the earliest of

- (a) the guardian's death,
- (b) the child's attaining the age of 18 years,

- (c) the child's becoming a spouse or adult interdependent partner, and
- (d) the termination of the guardian's guardianship under section 24.

Trusteeship order

26(1) The court may, on application by a guardian, make an order appointing the guardian as a trustee of the estate of the child.

(2) Despite subsection (1), an application for a trusteeship order may be made by or on behalf of a proposed guardian, but the court shall not appoint a proposed guardian as a trustee of the estate of a child unless the court has first appointed the proposed guardian as a guardian of the child.

(3) The court may in a trusteeship order require the guardian to furnish security in an amount determined by the court.

(4) A guardian who is appointed as a trustee of the estate of the child has the care and management of the estate of the child, whether real or personal, and may receive any money due and payable to the child and give a release in respect of it.

Consent to trusteeship

27(1) A trusteeship order shall not be made without the consent of

- (a) each guardian of the child,
- (b) the child, if the child is 12 years of age or older, and
- (c) the Public Trustee.

(2) Despite subsection (1), the court may make an order dispensing with the consent of one or more persons referred to in subsection (1)(a) or (b) if the court is satisfied that there are good and sufficient reasons for doing so.

Termination of trusteeship

28 The court may, on application by

- (a) a guardian appointed as a trustee of the estate of the child,

- (b) the child, if the child is 12 years of age or older, or
- (c) the Public Trustee,

make an order terminating the trusteeship of a guardian, including the applicant, for any grounds for which trustees are removable or if the court is satisfied that it is in the best interests of the child to do so.

Review of guardian's decision

29(1) In this section, “significant decision” means a decision that

- (a) involves a serious risk to the health or safety of a child, or
- (b) is likely to have serious long-term consequences for the child.

(2) The court may, on application by a guardian or on its own motion, review a significant decision of a guardian and may

- (a) confirm, reverse or vary that decision, and
- (b) provide advice and directions in respect of that decision.

Referral of questions to court

30(1) A guardian appointed by the court or by will or deed may apply to the court for directions concerning a question affecting the child, and the court may make any order in that regard that the court considers appropriate.

(2) A guardian who is appointed by the court as a trustee of the estate of the child may apply to the court for directions concerning a question affecting the child's estate, and the court may make any order in that regard that the court considers appropriate.

Division 2 Parenting Orders

Definition

31 In this Division, “parenting time” means time during which a guardian has the power and responsibility to make day to day decisions affecting the child, including having the day to day care of the child and supervising the child's daily activities.

Parenting order

32(1) Where a child has more than one guardian and the guardians

- (a) are not able to agree with each other in exercising the powers, responsibilities and entitlements of guardianship in respect of the child, and
- (b) in the case where the guardians are the parents of the child, are living separate and apart,

the court may, on application by one or more of the guardians, make an order relating to the exercise of the powers, responsibilities and entitlements of guardianship in respect of the child.

(2) A parenting order may contain any or all of the following:

- (a) an allocation, generally or specifically, of the powers, responsibilities and entitlements of guardianship among the guardians;
- (b) an allocation of parenting time, which may be by way of a schedule, unless a schedule is unnecessary in the circumstances;
- (c) a dispute resolution process for any or all future disputes regarding guardianship or parenting arrangements, if the process has been agreed to by the persons who are bound by that process;
- (d) any other provisions that the court considers appropriate.

(3) A parenting order must indicate which of the guardians has the power to decide the child's place of residence.

(4) Subject to any limitations imposed by the court, parenting time allocated to a guardian under subsection (2)(b) is exclusive to that guardian.

(5) Unless the court orders otherwise, if a guardianship power or responsibility is allocated to one guardian, the other guardian or guardians are entitled to make inquiries and to be given information about any significant matter that arises in connection with the exercise of that power or responsibility.

Terms and conditions

33(1) The court may make a parenting order for a definite or indefinite period or until a specified event occurs and may impose terms, conditions and restrictions in connection with the order as the court considers appropriate.

(2) Without limiting the generality of subsection (1), the court may include in a parenting order a term requiring a guardian who intends to change his or her place of residence or that of the child to notify the other guardian or guardians, at least 60 days before the change or within such other period before the change as the court may specify, of the change, the date on which the change will be made, and the address of the new place of residence for the guardian or the child, as the case may be.

Variation of parenting order

34(1) In this section, “variation order” means an order made under subsection (2) or (5).

(2) Where the court has made a parenting order, the court may, on application by one or more of the guardians, make an order varying, suspending or terminating the parenting order or any part of that order.

(3) Before the court makes a variation order in respect of a parenting order, the court shall satisfy itself that a change in the needs or circumstances of the child has occurred since the making of the parenting order or the last variation order made in respect of that order, and in making the variation order, the court shall consider only the best interests of the child, as required by section 17 and as determined by reference to that change.

(4) The court may include in a variation order any provision that could have been included in the parenting order in respect of which the variation order is sought.

(5) The court may, on application by the child or a person who has the care and control of the child, make an order varying, suspending or terminating a parenting order referred to in section 21(6) or any part of that order.

Division 3 Contact Orders

Contact order

35(1) The court may, on application by any person other than a guardian, make an order providing for contact between a child and the applicant.

(2) Subject to subsection (3), a person other than

- (a) a parent of a child, or
- (b) a person standing in the place of a parent

may not make an application under this section without the leave of the court.

(3) A grandparent of a child does not require the leave of the court to make an application under this section if

- (a) the guardians are the parents of the child and
 - (i) the guardians are living separate and apart, or
 - (ii) one of the guardians has died,

and

- (b) the grandparent's contact with the child has been interrupted by
 - (i) the separation of the guardians, or
 - (ii) the death of the guardian.

(4) In determining whether to grant leave under subsection (2), the court shall consider

- (a) the significance of the relationship between the child and the applicant and in particular the existence of a positive relationship between the child and the applicant, and
- (b) the necessity of making an order to facilitate contact between the child and the applicant.

(5) Before the court makes a contact order, the court shall satisfy itself that

- (a) contact between the child and the applicant is in the best interests of the child,
- (b) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the applicant is denied, and
- (c) the guardians' denial of contact between the child and the applicant is unreasonable.

(6) The court may, in a contact order, provide for contact between the child and the applicant in the form of visits or in the form of oral or written communication or any other method of communication, and may provide for any related matter that the court considers appropriate.

Terms and conditions

36 The court may make a contact order for a definite or indefinite period or until a specified event occurs and may impose terms, conditions and restrictions in connection with the order as the court considers appropriate.

Variation of contact order

37(1) In this section, "variation order" means an order made under subsection (2).

(2) Where the court has made a contact order, the court may, on application by

- (a) a person who has been granted contact with a child under a contact order, or
- (b) a guardian of the child,

make an order varying, suspending or terminating the contact order or any part of that order.

(3) Before the court makes a variation order in respect of a contact order, the court shall satisfy itself that a change in the needs or circumstances of the child has occurred since the making of the contact order or the last variation order made in respect of that

order, and in making the variation order, the court shall consider only the best interests of the child, as required by section 17 and as determined by reference to the change.

(4) The court may include in a variation order any provision that could have been included in the contact order in respect of which the variation order is sought.

Division 4 Enforcement of Access to Child

Interpretation

38(1) In this Division,

- (a) “access enforcement order” means an order made under section 41;
- (b) “access order” means an order or interim order of the court or an extra-provincial tribunal that includes a provision granting a right of access to a child, but does not include an order made under the *Child Welfare Act*;
- (c) “compensatory access” means access that may be given in substitution for access that has been denied;
- (d) “denial of access” means a denial of access of a person who is entitled to access under an access order and includes the failure of a person to return a child after having exercised a right of access under an access order;
- (e) “enforcement officer” means
 - (i) a police officer as defined in section 1 of the *Police Act*,
 - (ii) a person appointed for the purposes of section 156 of the *National Defence Act* (Canada) or employed on duties prescribed in regulations made under the *National Defence Act* (Canada) that require that person to have the powers of a peace officer,
 - (iii) a First Nations police officer appointed pursuant to section 42 of the *Police Act*, or

- (iv) a person or one of a category of persons prescribed by the regulations;
- (f) “extra-provincial tribunal” means a court or tribunal outside Alberta with authority to grant an access order;
- (g) “presiding justice” means a presiding justice of the peace under the *Justice of the Peace Act*;
- (h) “right of access”, in respect of a child, includes
 - (i) any parenting time allocated to a guardian under a parenting order during which the guardian is entitled to have physical custody of the child, and
 - (ii) visitation privileges granted to a person under a contact order.

(2) For the purposes of sections 41(2)(c) and (6)(b) and 42, necessary expenses include the following:

- (a) travel expenses;
- (b) the costs of locating and securing access to a child;
- (c) lost wages;
- (d) any other expenses the court may allow.

Application of Division

39(1) This Division applies only to the enforcement of those provisions of an access order that provide for access to a child at determinable times, on determinable days or dates or for determinable periods.

(2) Subject to section 41(2)(f), this Division does not apply to a denial of access or failure to exercise a right of access that occurred before April 14, 2000.

Other rights not affected

40(1) Nothing in this Division affects any other rights or remedies provided by law to enforce, confirm, vary or terminate an access order.

(2) Unless a court has jurisdiction, nothing in this Division is to be construed as authorizing the court to vary or terminate an access order.

Access enforcement order

41(1) Subject to subsection (5), the court, on application by a person with a right of access, if it is satisfied that there has been a denial of access, may make any access enforcement order that is appropriate in the circumstances.

(2) An access enforcement order under subsection (1) may contain any one or more of the following provisions:

- (a) a provision requiring the respondent to give the applicant compensatory access to the child;
- (b) a provision requiring the respondent to give security, in the form and amount and under the conditions determined by the court, for the performance of the obligation to give the applicant access to the child;
- (c) a provision requiring the respondent to reimburse the applicant for any necessary expenses actually incurred as a result of the denial of access;
- (d) a provision imposing on the respondent a penalty in an amount not exceeding \$100 for each day that access has been or is denied to a maximum of \$5000 and in default of payment to imprisonment for a term not exceeding 90 days;
- (e) a provision providing for the respondent to be imprisoned continuously or intermittently, to a maximum of 90 days, for having denied access, or for denying access, until access is given;
- (f) where the court is satisfied, based on the respondent's history of denying access or based on other reasonable and probable grounds, that access will be denied, a provision directing an enforcement officer to assist the applicant in obtaining access to the child in accordance with section 45;
- (g) a provision directing the respondent or the applicant, or both, to do anything that the court considers appropriate in

the circumstances that is intended to induce compliance with the access order.

(3) A provision referred to in subsection (2)(d), (e) or (f) may be included in an access enforcement order only if the court is satisfied that none of the other provisions provided for in subsection (2) would be effective.

(4) If an access enforcement order contains a provision referred to in subsection (2)(f), the court shall include sufficient particulars of time, days, dates or periods of access to be enforced.

(5) If the court is of the opinion that the denial of access to the child was excusable in the particular circumstances, the court may

- (a) refuse to make an access enforcement order, or
- (b) make any access enforcement order in accordance with subsection (6) that is appropriate in the circumstances.

(6) An access enforcement order referred to in subsection (5)(b) may contain any one or more of the following provisions:

- (a) a provision requiring the respondent to give the applicant compensatory access to the child;
- (b) a provision requiring the respondent to reimburse the applicant for any necessary expenses actually incurred as a result of the denial of access;
- (c) a provision directing the respondent or the applicant, or both, to do anything that the court considers appropriate in the circumstances that is intended to induce compliance with the access order.

Failure to exercise access

42 Where a person who has a right of access fails to exercise that right without reasonable notice to any other person who has a right of access, the court may, on application by that other person, make an order requiring the person to reimburse that other person for any necessary expenses actually incurred as a result of the failure to exercise access.

Variation of access enforcement order

43(1) Where the court has made an access enforcement order under this Division, the court may, on application by a person with a right of access, make an order varying or terminating the order or any part of that order.

(2) Where an application is made to a court of competent jurisdiction to vary or terminate an access order, that court may vary or terminate an order made under this Division.

(3) Where, as a result of the variation of an access order, there is an inconsistency between the varied access order and an order made under this Division, the provisions of the order under this Division that are inconsistent with the varied access order are void.

(4) Where an access order is terminated, an order under this Division made in respect of that access order is terminated.

Reasons must be given

44 In a proceeding under section 41, 42 or 43(1), the court shall give reasons for any order or decision it makes.

Assistance of enforcement officer

45(1) Where an access enforcement order contains a provision referred to in section 41(2)(f), an enforcement officer shall, at the request of the applicant and on production of a certified copy of the original access enforcement order, give assistance to the applicant, comply with the directions of the court and take all reasonable steps to find the child to whom the access enforcement order relates and to bring the child to the applicant.

(2) Where an enforcement officer is denied entry into, or is otherwise unable to enter, premises where the enforcement officer has reasonable and probable grounds for believing that the child to whom the access enforcement order relates may be found, the enforcement officer may, if the enforcement officer wishes to enter the premises, apply to a presiding justice for an order authorizing the enforcement officer to enter the premises and to bring the child to the applicant.

(3) Despite subsection (1) or (2), an enforcement officer is not required to bring the child to whom the access enforcement order

relates to the applicant if the enforcement officer determines that, in the circumstances, it is not in the best interests of the child.

(4) Where the presiding justice makes an order under subsection (2) authorizing entry into the premises, the enforcement officer may enter the premises with such assistance and using such force as is reasonably necessary.

(5) An entry referred to in subsection (4) may be made only between the hours of 8 a.m. and 9 p.m. unless the presiding justice, in the order under subsection (2), authorizes entry at another time.

(6) No action lies against an enforcement officer, or a person giving assistance under subsection (4), by reason of anything done or caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith pursuant to or in the exercise or purported exercise of any power conferred by this Division.

Report by enforcement officer

46(1) The enforcement officer shall prepare a report in accordance with the regulations that includes a statement that describes the events and circumstances relating to the assistance that was provided.

(2) A copy of the report prepared by the enforcement officer must be made available to the applicant and the respondent.

(3) A report referred to in subsection (1) purporting to be signed by the enforcement officer is admissible in evidence at any subsequent proceedings relating to the enforcement of the access order as prima facie proof of the contents of the report without proof of the signature or official character of the person signing the report.

(4) An enforcement officer who has prepared a report under subsection (1) may be required to attend a proceeding under this Division only with the leave of the court.

Part 3 Support Obligations

Definitions

47 In this Part,

- (a) “adult interdependent partner” includes a former adult interdependent partner;
- (b) “child support agreement” means an agreement entered into under section 55;
- (c) “child support order” means an order made under section 51;
- (d) “person in need support order” means an order made under section 68;
- (e) “spousal or adult interdependent partner support order” means an order made under section 59;
- (f) “spouse” includes a former spouse and a party to a marriage despite the fact that the marriage is void or voidable;
- (g) “support order” means
 - (i) a child support order,
 - (ii) a spousal or adult interdependent partner support order, or
 - (iii) a person in need support order,and includes an interim order for support made under section 81.

Division 1 Support of Child

Definition

48 In this Division, “parent” includes a person standing in the place of a parent.

Standing in the place of a parent

49(1) A person is standing in the place of a parent if the person

- (a) is the spouse of the mother or father of the child or is or was in a relationship of interdependence of some permanence with the mother or father of the child, and

- (b) has demonstrated a settled intention to treat the child as the person's own child.

(2) In determining whether a person has demonstrated a settled intention to treat the child as the person's own child, the court may consider any or all of the following factors:

- (a) the child's age;
- (b) the duration of the child's relationship with the person;
- (c) the nature of the child's relationship with the person, including
 - (i) the child's perception of the person as a parental figure,
 - (ii) the extent to which the person is involved in the child's care, discipline, education and recreational activities, and
 - (iii) any continuing contact or attempts at contact between the person and the child if the person is living separate and apart from the child's father or mother;
- (d) whether the person has considered
 - (i) applying for guardianship of the child,
 - (ii) adopting the child, or
 - (iii) changing the child's surname to that person's surname;
- (e) whether the person has provided direct or indirect financial support for the child;
- (f) the nature of the child's relationship with any other parent of the child;
- (g) any other factor that the court considers relevant.

Obligation to support child

50(1) Every parent has an obligation to provide support for his or her child.

(2) Despite subsection (1), but subject to subsection (3), the obligation under subsection (1) does not extend to a child who

- (a) has voluntarily withdrawn from his or her parents' charge and is living an independent lifestyle, or
- (b) is a spouse or adult interdependent partner.

(3) The obligation under subsection (1) is revived if the child abandons his or her independent lifestyle and returns to his or her parents' charge.

(4) The obligation of a mother or father to provide child support outweighs the obligation of a person standing in the place of a parent to provide child support.

Child support order

51(1) Subject to this section, the court may make an order requiring a parent to provide support for his or her child on application by

- (a) the child,
- (b) a parent or guardian of the child,
- (c) a person who has the care and control of the child, or
- (d) any other person with leave of the court where the court considers the application would be in the best interests of the child.

(2) The court may make a child support order only if

- (a) the parents are living separate and apart,
- (b) although the parents are not living separate and apart,
 - (i) the parents are, in the opinion of the court, experiencing such discord that they cannot reasonably be expected to live together, or

- (ii) one parent has without sufficient cause refused or neglected to provide the other parent or the child with the necessities of life, including food, clothing and shelter, when capable of providing them,

or

- (c) a person other than a parent has the care and control of the child.

(3) In an application for a child support order, the court may, on the respondent's motion, add as a party any other parent who may have an obligation to provide support for the child.

(4) The court may make a child support order against more than one parent of the child.

(5) If, on an application under this section, 2 or more persons are alleged to be the father of the child and the court

- (a) finds on a balance of probabilities that any one of them might be the father, and

- (b) is unable to determine which person is the father,

the court may, for the purposes of this Division only, make a limited declaration declaring each person who in the opinion of the court might be the father to be the father and direct each person to pay child support in an amount the court considers appropriate.

(6) Subject to subsection (5), a child support order requiring a father or mother to provide support for the child is deemed to be a declaration of parentage under section 8 in respect of that person.

Calculating child support

52(1) Subject to the regulations, in making a child support order, the court shall calculate an amount to be paid for the support of the child that will enable the child to be maintained at a standard of living consistent with the financial resources of each of the child's parents.

(2) If the person against whom a child support order is sought is a person standing in the place of a parent, the court shall consider, in determining the amount and duration of child support,

- (a) the amount of child support that is being paid or should be paid by the father or mother, or both, of the child,
- (b) the duration of the relationship between the person standing in the place of a parent and the child for whose benefit the order is sought, and
- (c) any other factor that the court considers relevant.

Objectives of child support order or agreement

53(1) A child support order or a child support agreement should

- (a) ensure the child benefits from the financial means and abilities of the child's parents, and
- (b) minimize conflict regarding the determination of the amount and timing of the support payments.

(2) In making child support orders, the court shall, where possible, promote consistent treatment of parents and children who are in similar circumstances.

Change in care and control

54 A child support order or a child support agreement may provide that a payment for the support of a child must 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.

Child support agreement

55(1) A parent of a child may enter into a written agreement with

- (a) another parent of the child, or
- (b) a person who has the care and control of the child,

whereby the parent agrees to pay support for the child.

(2) An agreement under subsection (1) does not preclude a person from applying for a child support order.

(3) A child support order terminates any previous child support agreement.

Suspension of child support order or agreement

56(1) Except where the court orders otherwise, where a child support order or a child support agreement is made when the child's parents are living separate and apart and the parents resume living together, then, after the parents have lived together again for 30 days, the order or agreement is suspended.

(2) Child support is not payable during any period that a child support order or child support agreement is suspended under subsection (1).

(3) A child support order or a child support agreement ceases to be suspended under subsection (1) if the parents resume living separate and apart.

(4) This section does not apply where the child support is being paid to the child or to a person who is not a parent of the child.

Termination of child support order

57(1) Except where the court orders otherwise, a child support order terminates on the adoption or death of the child.

(2) The termination of a child support order does not affect any arrears owing under the order before it is terminated.

Division 2 Support of Spouse or Adult Interdependent Partner

Obligation to support spouse or adult interdependent partner

58 Every spouse or adult interdependent partner has an obligation to provide support for the other spouse or adult interdependent partner.

Spousal or adult interdependent partner support order

59(1) Subject to this section, the court may, on application by a spouse or adult interdependent partner, make an order requiring a spouse or adult interdependent partner to provide support for the other spouse or adult interdependent partner.

(2) The court may make an order under this section only if

- (a) in the case of spouses,
 - (i) one or both of the spouses have obtained a declaration of irreconcilability under section 80,
 - (ii) the spouses are living separate and apart, or
 - (iii) although the spouses are not living separate and apart,
 - (A) the spouses are, in the opinion of court, experiencing such discord that they cannot reasonably be expected to live together as spouses, or
 - (B) one spouse has without sufficient cause refused or neglected to provide the other spouse with the necessities of life, including food, clothing and shelter, when capable of providing them;
- (b) in the case of adult interdependent partners,
 - (i) one or both of the adult interdependent partners have obtained a declaration of irreconcilability under section 80,
 - (ii) the adult interdependent partners are living separate and apart, or
 - (iii) although the adult interdependent partners are not living separate and apart,
 - (A) the adult interdependent partners are, in the opinion of the court, experiencing such discord that they cannot reasonably be expected to live together as adult interdependent partners, or
 - (B) one adult interdependent partner has without sufficient cause refused or neglected to provide the other adult interdependent partner with the necessities of life, including food, clothing and shelter, when capable of providing them.

Factors

60 In making a spousal or adult interdependent partner support order, the court shall consider

- (a) the conditions, means, needs and other circumstances of each spouse or adult interdependent partner, including
 - (i) the length of time the spouses or adult interdependent partners lived together,
 - (ii) the functions performed by each spouse or adult interdependent partner during the period they lived together, and
 - (iii) any order or arrangement relating to the support of the spouses or adult interdependent partners,
- (b) any legal obligation of the spouse or adult interdependent partner having the support obligation under the order to provide support for any other person, and
- (c) the extent to which any other person who is living with the spouse or adult interdependent partner having the support obligation under the order contributes towards household expenses and thereby increases the ability of that spouse or adult interdependent partner to provide support, and
- (d) the extent to which any other person who is living with the spouse or adult interdependent partner who is to receive support under the order contributes towards household expenses and thereby reduces the financial needs of that spouse or adult interdependent partner.

Misconduct

61 In making a spousal or adult interdependent partner support order, the court shall not take into consideration any misconduct of a spouse or adult interdependent partner, except conduct that

- (a) arbitrarily or unreasonably precipitates, prolongs or aggravates the need for support, or
- (b) arbitrarily or unreasonably affects the ability of the spouse or adult interdependent partner having the support obligation under the order to provide the support.

Objectives of spousal or adult interdependent partner support order

62 A spousal or adult interdependent partner support order should

- (a) recognize any economic advantages and disadvantages to the spouses or adult interdependent partners arising from the relationship or its breakdown,
- (b) apportion between the spouses or adult interdependent partners any financial consequences arising from the care of any child of the relationship over and above the obligation apportioned between the spouses or adult interdependent partners pursuant to a child support order or a child support agreement,
- (c) relieve any economic hardship of the spouses or adult interdependent partners arising from the breakdown of the relationship, and
- (d) insofar as practicable, enable each spouse or adult interdependent partner to achieve economic self-sufficiency within a reasonable period of time.

Priority of child support

63(1) Where the court is considering an application for spousal or adult interdependent partner support and an application for child support, the court shall give priority to child support in determining the applications.

(2) If, as a result of giving priority to child support, the court is not able to make a spousal or adult interdependent partner support order, or the court makes a spousal or adult interdependent partner support order in an amount that is less than it otherwise would have been, the court shall record its reasons for doing so.

(3) If, as a result of priority being given to child support, a spousal or adult interdependent partner support order was not made or the amount of a spousal or adult interdependent partner support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change in circumstances for the purposes of applying for spousal or adult interdependent partner support or a variation order in respect of the spousal or adult interdependent partner support order, as the case may be.

Spousal or adult interdependent partner support agreement

64(1) Spouses or adult interdependent partners may enter into a written agreement in which

- (a) one spouse or adult interdependent partner agrees to pay support for the other spouse or adult interdependent partner, or
- (b) one spouse or adult interdependent partner agrees to release the other spouse or adult interdependent partner from liability for support.

(2) An agreement under subsection (1) cannot vary an existing spousal or adult interdependent partner support order.

(3) The court may not make a spousal or adult interdependent partner support order that differs from the terms of an agreement under subsection (1) except in the following circumstances and where the court is of the opinion that the agreement is inequitable:

- (a) the spouse or adult interdependent partner who challenges the agreement or any part of the agreement entered into the agreement without receiving independent legal advice;
- (b) in the case of spouses, a consideration in making the agreement or any part of the agreement was the removal by one spouse of barriers that would prevent the other spouse's remarriage within that spouse's faith;
- (c) in the case of adult interdependent partners, after they entered into the agreement, they married each other;
- (d) one of the spouses or adult interdependent partners is in receipt of government financial assistance without reasonable support from the other spouse or adult interdependent partner.

Termination of spousal or adult interdependent partner support order

65(1) Except where the court orders otherwise, a spousal or adult interdependent partner support order terminates on the death of the spouse or adult interdependent partner in respect of whom support is paid.

(2) The termination of a spousal or adult interdependent partner support order does not affect any arrears owing under the order before it is terminated.

Division 3 Support for Person in Need

Definitions

66 In this Division,

- (a) “basic support” means support for necessities of life, including food, clothing and shelter;
- (b) “family member”, in respect of a person in need, means a parent, grandparent, child or grandchild of the person in need;
- (c) “person in need” means a person who
 - (i) is not able to maintain himself or herself,
 - (ii) is not able to work because of illness, disability or for any other reason other than pursuing an education, and
 - (iii) if applicable, has exhausted all other means of support under Division 1 or 2, or both.

Obligation to support person in need

67(1) Subject to this section, every family member has an obligation to provide basic support for a person in need.

(2) A family member has no obligation to provide basic support for a person in need if the family member is unable to do so out of the family member’s own financial resources.

(3) A grandparent’s obligation to provide basic support for a person in need arises only if

- (a) the parents of the person in need are not able to provide the support, and
- (b) the grandparent is able to provide the support.

(4) A grandchild's obligation to provide basic support for a person in need arises only if

- (a) the children of the person in need are not able to provide the support, and
- (b) the grandchild is able to provide the support.

Person in need support order

68(1) The court may, on application by a person in need, make an order requiring a family member to provide basic support for the person in need.

(2) In an application for a person in need support order, the court may, on the respondent's motion, add as a party any other family member who has an obligation to provide basic support for the person in need.

(3) In making a person in need support order, the court shall not take into consideration any financial assistance the person in need is receiving or is entitled to receive from any government or government agency.

Termination of person in need support order

69(1) Except where the court orders otherwise, a person in need support order terminates on the death of the person in need.

(2) The termination of a person in need support order does not affect any arrears owing under the order before it is terminated.

**Division 4
General Matters**

Exclusive possession of primary residence

70(1) In this section, "primary residence" means property in which one or both spouses or adult interdependent partners have an interest and that is or has been occupied by the spouses or adult interdependent partners as their home.

(2) In making a support order under Division 1 or 2, the court may, as part of that order, order that one spouse or adult interdependent partner be given, for such period as the court directs, exclusive possession of

- (a) the primary residence,
- (b) any or all of the household goods in the primary residence, and
- (c) as much of the property surrounding the primary residence as is necessary, in the opinion of the court, for the use of the primary residence.

(3) Sections 22 to 27 and 29 of the *Matrimonial Property Act* apply with all necessary modifications to an order made under subsection (2) as if the primary residence were a matrimonial home.

Disclosure of financial information

71(1) In an application under this Part, a party shall, on the written request of another party, provide the other party with financial information as prescribed by the regulations.

(2) If a party fails to comply with a request under subsection (1), the court may

- (a) proceed to hear the application for support, in the course of which it may draw an adverse inference against the party and impute income to that party in such amount as it considers appropriate,
- (b) order the party to comply with the request under subsection (1), or
- (c) order an employer, partner or principal of the party or any other person to provide to the other party or the court, or both, any or all of the financial information prescribed by the regulations that is within the knowledge of or shown on a record in the custody or under the control of the employer, partner, principal or other person.

(3) If a party fails to comply with an order under subsection (2)(b), the court may do one or more of the following:

- (a) dismiss any or all of the party's application;
- (b) make a contempt order against the party;

- (c) proceed to hear the application for support, in the course of which it may draw an adverse inference against the party and impute income to that party in such amount as it considers appropriate;
- (d) award costs in favour of the other party up to an amount that fully compensates the other party for all costs incurred in the proceeding.

(4) After a support order has been made, a party shall, on the written request of another party not more than once a year, provide the other party with financial information as prescribed by the regulations.

(5) If a party fails to comply with a request under subsection (4), the court may, on application,

- (a) order the party to comply with the request under subsection (4), or
- (b) order an employer, partner or principal of the party or any other person to provide to the other party or the court, or both, any or all of the financial information prescribed by the regulations that is within the knowledge of or shown on a record in the custody or under the control of the employer, partner, principal or other person.

(6) If a party fails to comply with an order under subsection (5)(a), the court may do one or both of the following:

- (a) make a contempt order against the party;
- (b) award costs in favour of the other party up to an amount that fully compensates the other party for all costs incurred in the proceeding.

(7) The court may, on application by any person, order that any or all documents received by the court under this section are not available for inspection by any person, other than the parties, except on order of the court.

(8) Financial information that is provided by an employee, partner or principal of a party or by any other person pursuant to subsection (2)(c) or (5)(b) may be received in evidence as prima facie proof of its contents.

(9) This section prevails despite any law, except in respect of the privilege that exists in respect of a solicitor and the solicitor's client.

Terms and conditions of support order

72(1) In this section,

- (a) “mother”, for the purposes of subsection (6), includes an expectant mother;
- (b) “support recipient” means a person for whom support is sought or obtained.

(2) The court may make a support order for a definite or indefinite period or until a specified event occurs and may impose terms, conditions and restrictions in connection with the order as the court considers appropriate.

(3) Without limiting the generality of subsection (2), the court may order one or more of the following:

- (a) that an amount be paid periodically, either for an indefinite or limited period or until a specified event occurs;
- (b) that a lump sum be paid or held in trust on any conditions the court considers appropriate;
- (c) that support be paid with respect to any period before the date of the application;
- (d) that property or an interest in property be transferred to or held in trust for or vested in the support recipient, whether absolutely, for life or for a term of years;
- (e) that some or all of the money payable under the order be paid to another person for the benefit of the support recipient;
- (f) that payment under the order be secured by a charge on property or otherwise.

(4) Subsection (3)(d) and (f) do not apply in respect of a person in need support order.

(5) In making a support order, the court may grant an injunction restraining the respondent from disposing of any property.

(6) The court may, in a spousal or adult interdependent partner support order or a child support order, but not in both, direct the father of a child to pay reasonable expenses for the support of the mother of the child

- (a) during a period not exceeding 3 months preceding the birth of the child,
- (b) at the birth of the child, and
- (c) during a period after the birth of the child,

whether or not the child survives the birth.

(7) No order may be made in respect of an expense referred to in subsection (6) unless the application for the order is commenced within 2 years after the expense is incurred.

(8) An order made under subsection (3)(d) requiring a person to transfer or convey property may authorize another person to execute the transfer or conveyance on behalf of the person.

(9) An order made under subsection (3)(f) charging real property for security of payment

- (a) is registerable in any land titles office the same way as a mortgage of the property described in it, and
- (b) does not affect an interest in the property acquired in good faith and for value without notice before the registration.

(10) An order made under subsection (3)(f) requiring a person to give a mortgage or other security on property may authorize another person to execute the mortgage or security on behalf of the person.

(11) On default of payment of an amount charged on property pursuant to an order made under subsection (3)(f), the court may

- (a) appoint a receiver of rents, profits or other money receivable from the property or interest in the property,

- (b) order the sale of the property or interest in the property on notice to all persons having an interest in the property,
- (c) if a receiver is appointed or a sale is ordered, direct that any surplus funds be paid into court as security for any future obligation under the order, and
- (d) make any other order that the court considers appropriate.

(12) Unless the court orders otherwise, an order for security under this section has effect as security only and the person liable under a support order is and remains personally liable for payments due under the order.

(13) In making a spousal or adult interdependent partner support order, the court may vary, suspend or terminate a property settlement that is made,

- (a) in the case of spouses, by the spouses before, during or after their marriage, or
- (b) in the case of adult interdependent partners, by the adult interdependent partners before, during or after their adult interdependent relationship,

but not so as to adversely affect the interest of a third party benefitted by the settlement.

Variation of support order

73(1) In this section, “variation order” means an order made under subsection (2).

(2) Where the court has made a support order, the court may, on application by a person referred to in subsection (3), make an order varying, suspending or terminating the support order or any part of that order, prospectively or retroactively.

(3) The following persons may make an application under subsection (2):

- (a) in the case of a child support order, a person referred to in section 51(1);
- (b) in the case of a spousal or adult interdependent partner support order, a person referred to in section 59(1);

- (c) in the case of a person in need support order, a person referred to in section 68(1);
- (d) if the person against whom the support order is made is deceased, the personal representative of that person.

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that

- (a) a change in the condition, means, needs or other circumstances of the child or the parents of the child has occurred since the making of the order or the last variation order made in respect of that order, or
- (b) evidence of a substantial nature that was not available at the previous hearing has become available,

and in making the variation order, the court shall consider that change of circumstances or evidence.

(5) Before the court makes a variation order in respect of a spousal or adult interdependent partner support order, the court shall satisfy itself that

- (a) a change in the condition, means, needs or other circumstances of either spouse or adult interdependent partner has occurred since the making of the order or the last variation order made in respect of that order, or
- (b) evidence of a substantial nature that was not available at the previous hearing has become available,

and in making the variation order, the court shall consider that change of circumstances or evidence.

(6) Despite subsection (5), if a spousal or adult interdependent partner support order provides for support for a definite period or until a specified event occurs, the court may not, on an application commenced after the expiration of that period or the occurrence of that event, make a variation order for the purpose of resuming that support unless the court is satisfied that

- (a) a variation order is necessary to relieve the economic hardship from a change described in subsection (5)(a) that is related to the breakdown of the relationship between the spouses or the adult interdependent partners, and

- (b) the changed circumstances, had they existed at the time of the making of the spousal or adult interdependent partner support order or the last variation order made in respect of that order would likely have resulted in a different order.

(7) Before the court makes a variation order in respect of a person in need support order, the court shall satisfy itself that

- (a) a change in the condition, means, needs or other circumstances of the person in need or a family member has occurred since the making of the order or the last variation order made in respect of that order, or
- (b) evidence of a substantial nature that was not available at the previous hearing has become available,

and in making the variation order, the court shall consider that change of circumstances or evidence.

(8) The court shall consider the same factors and pursue the same objectives with respect to an application to vary a support order as it does with respect to an application for a support order.

(9) The court may include in a variation order any provision that could have been included in the support order in respect of which the variation order is sought.

(10) The court may vary a support order pursuant to this section notwithstanding that it has been filed with the Court of Queen's Bench under the *Maintenance Enforcement Act*.

Competent and compellable witness

74 Despite any other enactments, in an application under Division 1, 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.

Applications may not be combined

75 No application under this Part that is brought by the Director pursuant to the *Income and Employment Supports Act* may be

combined with any other application under this Act except an application for a declaration of parentage under Part 1.

Enforcement of support agreement

76 For enforcement purposes under the *Maintenance Enforcement Act*, a child support agreement or a spousal or adult interdependent partner support agreement must be in the form prescribed or approved under the *Maintenance Enforcement Act*.

Support order binds estate

77 Unless the support order provides otherwise, a support order binds the estate of the person having the support obligation.

Effect of divorce proceedings

78(1) The jurisdiction of the court to make or vary a support order continues in effect unless and until a court makes an order with respect to support in a divorce proceeding under the *Divorce Act* (Canada).

(2) If a marriage is terminated by divorce and the question of support is not adjudicated in the divorce proceedings, a support order made under this Part continues in force according to its terms.

Application for reimbursement of burial expenses

79 The court may, on application by a person who has incurred expenses related to the burial of a child, make an order requiring a parent of the child to reimburse the person for all or part of those expenses.

Part 4 General Powers of Court

Declaration of irreconcilability

80 The court may, on application by one or both spouses or by one or both adult interdependent partners, make a declaration that the spouses or adult interdependent partners, as the case may be, have no prospect of reconciliation with each other.

Interim order

81(1) If an application is made for an order under this Act, the court may, as it considers appropriate, make an interim order for the relief applied for pending the determination of the application.

(2) If an application referred to in subsection (1) is for a support order under Part 3, any interim order must be in accord with the factors and objectives the court must consider in making the support order to the extent that this is practicable given the need for interim support.

Consent order

82(1) If the parties to an application under this Act

- (a) are in agreement respecting the matters 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.

Incorporation of terms of agreement in court order

83 Where the court makes an order under this Act, the court may incorporate in its order all or part of a written agreement made by some or all of the parties to the proceeding.

Evidence admissible

84 The following are admissible in evidence in a proceeding under this Act:

- (a) the record of the evidence given at any other proceeding;
- (b) any documents and exhibits received in evidence at any other proceeding;
- (c) an order of the court.

Failure to appear

85(1) If

- (a) an application is made under this Act,
- (b) notice of the application has been served on the respondent, and
- (c) the respondent fails to appear at the hearing,

the court may proceed in the absence of the respondent and may make any finding or order that it could have made had the respondent appeared at the hearing.

(2) If an order is made pursuant to subsection (1) in an application under Part 1, the respondent may, within 30 days after the date of the order, apply to the court for a rehearing, and the court may

- (a) direct a rehearing and confirm, vary or reverse the order, and
- (b) make any award as to costs of the rehearing that the court considers appropriate.

Appeal

86 A party to a proceeding under this Act may appeal a decision of the court in accordance with the regulations.

Order or judgment under appeal remains in force

87 An order or judgment under appeal remains in force pending the determination of the appeal unless the court that made the order or judgment or the appeal court orders otherwise.

Frivolous or vexatious applications

88 Where the court is satisfied that a person has made a frivolous or vexatious application under this Act, the court may prohibit that person from making further applications under this Act without the leave of the court.

Costs of action

89 Subject to the regulations, the court may at any time in a proceeding before the court and on any conditions that the court considers appropriate award costs in respect of any matters coming under this Act.

Application before child is born

90 An application under Part 1 or 2 or Division 1 of Part 3 involving a child may be commenced before the child's birth, but the application may not be heard before the child's birth.

Child as party

91(1) Subject to subsection (2), where a child is a party to an application under this Act, the application may be brought or defended

- (a) by a guardian of the child in the name of the child, or
- (b) by a next friend or guardian ad litem or any other individual appointed by the court to act on behalf of the child.

(2) A child who is or has been a spouse or adult interdependent partner may make, conduct or defend an application under this Act without the intervention of a next friend or guardian ad litem.

(3) The court may at any time appoint an individual to represent the interests of a child in a proceeding under this Act.

Order for relief on behalf of child

92 If the court is satisfied that an application for relief under this Act made to it by or on behalf of a spouse or adult interdependent partner should also have been made on behalf of a child, the court may make an order for relief on behalf of the child.

Spouse a compellable witness

93 In any proceedings under this Act, spouses are competent and compellable to give evidence against one another.

Dispute resolution

94 In a proceeding under this Act, the court may, on application by one or more of the parties, appoint a mediator or a neutral third party to assist the parties in resolving all or part of the matters in issue before the court.

Courses and programs

95 The court may in a proceeding under this Act require the parties to attend any course or program prescribed by the regulations.

Private hearing

96 The court may, in its discretion, order that any proceeding under this Act be heard in private.

Publication and broadcast ban

97 The court may, in its discretion, prohibit the publication or broadcast of any report of a proceeding under this Act.

Part 5 Other Actions

Loss of consortium through injury

98(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 in an action for damages by the spouse in respect of the deprivation.

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

Breach of promise to marry

99(1) Subject to subsection (2), the common law right to bring and maintain an action for breach of promise to marry is not affected by this Act.

(2) Only pecuniary damages are recoverable in an action for breach of promise to marry.

Gifts in contemplation of marriage

100 If a person makes a gift to another person in contemplation of or conditional on their marriage to each other and the marriage fails to occur or is abandoned, the question of whether the failure or abandonment was the fault of the person making the gift shall not be considered in determining the right of that person to recover the gift.

Actions may not be brought or maintained

101(1) An action may not be brought or maintained for

- (a) restitution of conjugal rights, or
- (b) jactitation of marriage.

(2) An action may not be brought or maintained for damages for

- (a) adultery, or
- (b) loss of services of a spouse or child as a result of
 - (i) the enticement or harbouring of the spouse or child,
or
 - (ii) the seduction of the child.

Unity of legal personality abolished

102(1) Unless another enactment provides otherwise, a person has a legal personality that is independent, separate and distinct from that of the person's spouse.

(2) A married person shall be recognized as having legal capacity for all purposes and in all respects as if he or she were an unmarried person and, in particular, has the same right of action in tort against his or her spouse as if they were not married.

(3) Subsections (1) and (2) operate to make the same law apply, and apply equally, to married men and married women and to remove any difference in it resulting from any common law rule or doctrine.

Right to pledge credit abolished

103 A wife's common law right to pledge her husband's credit for necessities after separation is abolished.

Implied agency abolished

104 The common law presumption of implied agency of a wife to render her husband liable for necessities supplied by a third party is abolished.

Part 6 Regulations

Regulations

105 The Lieutenant Governor in Council may make regulations

- (a) respecting the jurisdiction of the court or courts designated under section 3, including regulations respecting the proceedings that may be heard in each court if more than one court is designated under that section;
- (b) respecting the circumstances under which a lawyer is not required to present a statement to the court pursuant to section 4(2);
- (c) respecting the circumstances under which a declaration of parentage is not a declaration for all purposes of the law of Alberta;
- (d) respecting the circumstances in which the court may make a guardianship order pursuant to section 22(6);
- (e) designating persons or categories of persons for the purposes of section 38(1)(e)(iv);
- (f) respecting the report referred to in section 46;
- (g) respecting alternative methods of calculating child support for the purposes of section 52;
- (h) prescribing financial information to be provided under section 71;
- (i) respecting appeals under section 86;

- (j) respecting the courses and programs that a party must attend under section 95;
- (k) prescribing rules under which applications under this Act are to be made and heard and dealing generally with all matters of procedure under this Act;
- (l) respecting costs that may be awarded in respect of proceedings under this Act;
- (m) respecting the manner of serving notices of applications under this Act;
- (n) respecting the serving of copies of orders and other documents under this Act;
- (o) prescribing forms for the purposes of this Act and providing for their use;
- (p) defining any word or phrase that is not defined in this Act for the purposes of this Act or the regulations;
- (q) respecting any other matter or thing that the Lieutenant Governor in Council considers appropriate for the purposes of this Act.

Part 7 Transitional Provisions, Consequential Amendments, Repeals and Coming into Force

Transitional

106(1) In this section and section 107, “former Acts” means

- (a) the *Domestic Relations Act*,
- (b) the *Maintenance Order Act*,
- (c) the *Parentage and Maintenance Act*, and
- (d) Part 3 of the *Provincial Court Act*.

(2) In this section, “support” means support, maintenance or alimony payable for a person or a child of a person or both.

(3) Despite the repeal of the former Acts, any proceedings commenced under a former Act that are not fully disposed of before the coming into force of this section shall be dealt with and disposed of under that former Act.

(4) Despite subsection (3),

- (a) an action for judicial separation commenced under Part 2 of the *Domestic Relations Act* that is not fully disposed of before the coming into force of this section shall be continued under this Act as if it were an application for a declaration of irreconcilability under section 80 of this Act;
- (b) a proceeding commenced under a former Act that is not fully disposed of before the coming into force of this section may, with the consent of the parties, be dealt with and disposed of under this Act.

(5) A declaration of parentage under the *Domestic Relations Act* continues in force according to its terms and may be enforced, varied or terminated as if the declaration of parentage were a declaration of parentage under this Act.

(6) A declaration of parentage under the *Parentage and Maintenance Act* continues in force according to its terms and may be enforced or set aside as if the declaration of parentage were a declaration of parentage under this Act.

(7) An access enforcement order under the *Domestic Relations Act* continues in force according to its terms and may be enforced, varied or terminated as if the order were an access enforcement order under this Act.

(8) An order respecting the custody of or access to a child made under section 58 or 59 of the *Domestic Relations Act* or section 18 of the *Provincial Court Act* continues in force and, subject to a written agreement of the parties or an order of the court, is deemed to be a parenting order and, unless a contrary intention appears in the order, the powers, responsibilities and entitlements of guardianship are allocated among the guardians as follows:

- (a) in the case of an order under which one guardian has sole custody of the child (in this section referred to as the “custodial guardian”),

- (i) the custodial guardian has the powers, responsibilities and entitlements of guardianship described in section 20(4) and (5)(a) to (n), and
- (ii) each non-custodial guardian or guardian with access
 - (A) has the powers and responsibilities of guardianship described in section 20(5)(a), (b) and (k),
 - (B) may discipline or control the child as is reasonable when the child is in the care of the guardian,
 - (C) is entitled to request and receive information about any significant matter that arises in connection with the exercise of the custodial guardian's exercise of the powers and responsibilities described in section 20(5)(c) to (n),
 - (D) may make urgent or emergency medical decisions for the child if the custodial guardian is not available at the time the decision has to be made,
 - (E) is entitled to reasonable contact with the child or such other contact as is specified in the order, and
 - (F) with the consent of the custodial guardian, may exercise any of the powers, responsibilities and entitlements allocated to the custodial guardian;
- (b) in the case of an order under which the guardians have joint or shared custody of the child,
 - (i) each guardian has the powers, responsibilities and entitlements of guardianship described in section 20(4) and (5)(a), (b) and (d) to (n), and
 - (ii) the guardian with whom the child is living has the power to make the day to day decisions affecting the child, including having the day to day care and control of the child and supervising the child's daily activities.

(9) An order respecting the access to a child under section 19 of the *Provincial Court Act* continues in force according to its terms and may be enforced, varied, suspended or terminated as if the order were a parenting order or contact order, as the case may be.

(10) An order respecting

- (a) the support of a child, spouse or adult interdependent partner under the *Domestic Relations Act*,
- (b) the support of a child under the *Parentage and Maintenance Act*, or
- (c) the support of a child, spouse or other person under the *Maintenance Order Act*

continues in force according to its terms and may be enforced, varied, suspended or terminated as if the order were a support order under this Act.

(11) An agreement made under section 6 of the *Parentage and Maintenance Act* continues in force according to its terms and may be enforced, varied, suspended or terminated as if the agreement were made under this Act.

(12) A person who is a guardian under the *Domestic Relations Act* immediately before the coming into force of this section is deemed to be a guardian under Part 2 of this Act.

Transitional regulations

107(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the transition to this Act of anything under the former Acts, including the interpretation of any transitional provision in this Act;
- (b) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act from the former Acts.

(2) A regulation made under subsection (1) may be made retroactive to the extent set out in the regulation.

(3) A regulation made under subsection (1) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this Act,
 - (b) the coming into force of a regulation that repeals the regulation made under subsection (1), and
 - (c) 2 years after the regulation comes into force.
- (4) The repeal of a regulation under subsection (3)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

Amends RSA 2000 cA-2

108 The *Administration of Estates Act* is amended in section 1(e)(iv) by striking out “person or estate, or both,” and substituting “estate”.

Amends RSA 2000 cC-12

109(1) The *Child Welfare Act* is amended by this section.

(2) Section 1 is amended

(a) in subsection (1)(l)(i) by striking out “Part 7 of the *Domestic Relations Act*” and substituting “Part 2 of the *Family Law Act*”;

(b) in subsection (4) by striking out “*Domestic Relations Act*” and substituting “*Family Law Act*”.

(3) Section 57(1) and (2) are amended by striking out “Part 7 of the *Domestic Relations Act*” and substituting “Part 2 of the *Family Law Act*”.

Amends RSA 2000 cC-15

110(1) The *Civil Enforcement Act* is amended by this section.

(2) Section 81(1)(j) is amended by striking out “alimony or maintenance” and substituting “support, maintenance or alimony”.

(3) Section 93(c) is amended by adding “support,” before “maintenance”.

Amends RSA 2000 cD-6

111(1) The *Debtors' Assistance Act* is amended by this section.

(2) Section 4(e) and (f) are amended by adding “support,” before “maintenance” wherever it occurs.

(3) Section 6(1) is amended by striking out “alimony or maintenance” and substituting “support, maintenance or alimony”.

Amends RSA 2000 cD-15

112 The *Dower Act* is amended by repealing section 22 and substituting the following:

Order dispensing with consent

22 In a case where the deceased person while alive could have made an application for an order dispensing with the consent of the spouse to a disposition, the executor or administrator of the estate of the deceased married person may apply to the Court by notice of motion for an order dispensing with the consent of the surviving spouse to a disposition.

Amends RSA 2000 cM-1

113(1) The *Maintenance Enforcement Act* is amended by this section.

(2) The following is added after section 36:

Change in care and control

36.1(1) Where a maintenance order provides that a payment for the support 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, a person who assumes the care and control of the child shall, within 30 days of assuming the care and control of the child, notify the Director by registered mail of the change in care and control.

(2) The Director is not responsible for the repayment of any money disbursed by the Director after a change in the care and

control of a child of which the Director has not been notified under subsection (1).

(3) Section 46 is repealed.

Amends RSA 2000 cM-8

114(1) The *Matrimonial Property Act* is amended by this section.

(2) Section 5(1) is amended

(a) by adding the following after clause (b):

(b.1) if one or both of the spouses have obtained a declaration of irreconcilability under the *Family Law Act*,

(b) by repealing clause (c) and substituting the following:

(c) if the Court is satisfied that the spouses have been living separate and apart for a continuous period of at least one year immediately prior to the commencement of the application,

(3) Section 6(1)(a) is amended by striking out “or judgment of judicial separation” and substituting “, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*”.

(4) Section 7(3)(c) is amended by striking out “or a judgment of judicial separation” and substituting “, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*”.

(5) Section 20(d) is amended by adding “support or” before “maintenance”.

(6) Section 30(1)(c) is amended by striking out “*Domestic Relations Act*” and substituting “*Family Law Act*”.

Amends RSA 2000 cP-31

115(1) The *Provincial Court Act* is amended by this section.

(2) **Section 9.8(1) is amended by striking out “3 or”.**

(3) **Part 3 is repealed.**

Amends RSA 2000 cP-44

116(1) The *Public Trustee Act* is amended by this section.

(2) **Section 7(1)(a)(ii) and (b)(i) are amended by striking out “lawful custody of” and substituting “authority to make significant decisions affecting”.**

Amends RSA 2000 cT-8

117 The *Trustee Act* is amended in section 34(1)(a) by striking out “custody or control of” and substituting “authority to make significant decisions affecting”.

Amends RSA 2000 cV-4

118 The *Vital Statistics Act* is amended in section 30(2)(a) by striking out “the *Parentage and Maintenance Act*” and substituting “Part 1 of the *Family Law Act*”.

Amends RSA 2000 cW-15

119 The *Workers’ Compensation Act* is amended in section 49(b) by adding “support or” before “maintenance”.

Repeals

120 The following Acts are repealed:

- (a) *Domestic Relations Act*;
- (b) *Domestic Relations Amendment Act*, RSA 2000 c11(Supp);
- (c) *Maintenance Order Act*;
- (d) *Parentage and Maintenance Act*.

Coming into force

121 This Act comes into force on Proclamation.

Explanatory Notes

108 Amends chapter A-2 of the Revised Statutes of Alberta 2000.
Section 1(e)(iv) presently reads:

1 In this Act,

(e) “grant” means

*(iv) a grant of letters of guardianship of the person or estate,
or both, of a minor,*

*issued by a district court before July 12, 1967 or by the
Surrogate Court or Court of Queen’s Bench;*

109(1) Amends chapter C-12 of the Revised Statutes of Alberta
2000.

(2) Section 1 presently reads in part:

1(1) In this Act,

(1) “guardian” means

*(i) a person who is or is appointed a guardian of the child
under Part 7 of the Domestic Relations Act, or*

*(ii) a person who is a guardian of the child under an
agreement or order made pursuant to this Act;*

*(4) Subject to this Act, a person who is a guardian of a child under
an agreement or order made under this Act is a guardian under the
Domestic Relations Act.*

(3) Section 57(1) and (2) presently read:

57(1) Notwithstanding Part 7 of the Domestic Relations Act, for all purposes when a private guardianship order is made the applicant is a guardian of the child.

(2) Notwithstanding Part 7 of the Domestic Relations Act, if the Court makes a private guardianship order, it may make a further order terminating the guardianship of any other guardian of the child if

- (a) the Court is satisfied that the other guardian of the child consents to the termination, or*
- (b) for reasons that appear to it to be sufficient, the Court considers it necessary or desirable to do so.*

110(1) Amends chapter C-15 of the Revised Statutes of Alberta 2000.

(2) Section 81(1)(j) presently reads:

81(1) For the purposes of garnishing an enforcement debtor's employment earnings from the enforcement debtor's employer, the following applies:

- (j) the portion of an enforcement debtor's employment earnings that is exempt from garnishment and the portion that is attached by a garnishee summons issued in respect of a judgment for the payment of alimony or maintenance must be determined in accordance with the Maintenance Enforcement Act;*

(3) Section 93(c) presently reads:

93 The exemptions set out in this Part do not apply to the following:

- (c) to writ proceedings on a judgment for the payment of maintenance or alimony;*

111(1) Amends chapter D-6 of the Revised Statutes of Alberta 2000.

(2) Section 4(e) and (f) presently read:

4 The Board has the following powers, duties and functions:

- (e) to assist the parties to a proceeding in which maintenance or alimony is an issue in settling the amount of maintenance or alimony to be paid;
- (f) to provide a court, on its request, with a report as to the finances of the parties to a proceeding in which maintenance or alimony is an issue;

(3) Section 6(1) presently reads:

6(1) If an application for an order, the variation of an order or the enforcement of an order directing the payment of alimony or maintenance is made under any other Act, the court to which the application is made may request the Board to inquire into the finances of the parties to the application and report its findings to the court.

112 Amends chapter D-15 of the Revised Statutes of Alberta 2000. Section 22 presently reads:

22(1) When at the time of the death of a married person the spouse of the married person is living apart from the married person under circumstances that would disentitle the spouse to alimony, no life estate vests in the spouse and the spouse takes no benefit under this Act.

(2) In the case referred to in subsection (1) or in a case where the deceased person while alive could have made an application for an order dispensing with the consent of the spouse to a disposition, the executor or administrator of the estate of the deceased married person may apply to the Court by notice of motion for an order dispensing with the consent of the surviving spouse to a disposition.

113(1) Amends chapter M-1 of the Revised Statutes of Alberta 2000.

(2) Change in care and control.

(3) Section 46 presently reads:

46 The Domestic Relations Act is amended by repealing sections 31 to 41.

114(1) Amends chapter M-8 of the Revised Statutes of Alberta 2000.

(2) Section 5(1)(c) presently reads:

5(1) A matrimonial property order may only be made

(c) if the Court is satisfied that the spouses have been living separate and apart

(i) for a continuous period of at least one year immediately prior to the commencement of an application, or

(ii) for a period of less than one year immediately prior to the commencement of an application if, in the opinion of the Court, there is no possibility of the reconciliation of the spouses,

(3) Section 6(1)(a) presently reads:

6(1) An application for a matrimonial property order to which section 5(1)(a) or (b) applies

(a) may, notwithstanding subsection (2), be commenced at or after the date proceedings are commenced for a decree of divorce, a declaration of nullity or judgment of judicial separation, but

(4) Section 7(3)(c) presently reads:

(3) The Court shall, after taking the matters in section 8 into consideration, distribute the following in a manner that it considers just and equitable:

(c) property acquired by a spouse after a decree nisi of divorce, a declaration of nullity of marriage or a judgment of judicial separation is made in respect of the spouses;

(5) Section 20(d) presently reads:

20 *In exercising its powers under this Part, the Court shall have regard to*

(d) *any order made by a court with respect to the property or the maintenance of one or both of the spouses.*

(6) Section 30(1)(c) presently reads:

30(1) An application under this Part

(c) *may be made as an application in an action or proceeding between the spouses under the Domestic Relations Act or Part 1 of this Act.*

115(1) Amends chapter P-31 of the Revised Statutes of Alberta 2000.

(2) Section 9.8(1) presently reads:

9.8(1) The Court may at any time in any proceeding before the Court and on any conditions that the Court considers proper award costs in respect of any matters coming under Part 3 or 4.

(3) Repeal of Part 3, which deals with family matters.

116(1) Amends chapter P-44 of the Revised Statutes of Alberta 2000.

(2) Section 7(1)(a) and (b) presently read:

7(1) When a minor is entitled to share in the estate of an intestate and the share has been paid or is to be paid to the Public Trustee as guardian of the estate of the minor or for the benefit of the minor, or when property is held or is to be held by the Public Trustee as trustee for a minor and the property is not subject to the terms of a will, trust deed or other instrument governing the trust,

(a) *if the share or property of the minor exceeds \$75 000 in value, the Public Trustee may*

(i) *apply the income from the share or property for or toward the maintenance or education of the minor, and*

- (ii) *from time to time apply to the Court of Queen's Bench on summary application for an order authorizing the Public Trustee to expend, or to advance to a person having lawful custody of the minor, so much of the share or property for or toward the maintenance or education of the minor as the Court considers proper;*
- (b) *if the share or property of the minor does not exceed \$75 000 in value but is greater than \$4000 in value, the Public Trustee may*
 - (i) *from time to time expend, or advance to a person who has lawful custody of the minor, any sum the Public Trustee considers necessary for or toward the maintenance or education of the minor, and*
 - (ii) *for the purpose of subclause (i), resort to capital and sell or convert any of the real or personal property held on behalf of the minor;*

117 Amends chapter T-8 of the Revised Statutes of Alberta 2000. Section 34(1)(a) presently reads:

34(1) When property is held by a trustee in trust for a person for any interest whatever, whether contingent or vested either defeasibly or indefeasibly, the trustee may in the trustee's discretion,

- (a) *in the case of a beneficiary who is a minor, pay to the parent or guardian having custody or control of the minor, or pay on behalf of the beneficiary, or*

118 Amends chapter V-4 of the Revised Statutes of Alberta 2000. Section 30(2)(a) presently reads:

(2) A certified copy or photographic print of the registration of a birth or of an extract from it may be issued only

- (a) *to a person who requires it to comply with the Child Welfare Act or the Parentage and Maintenance Act,*

119 Amends chapter W-15 of the Revised Statutes of Alberta 2000. Section 49(b) presently reads:

49 If the Board is satisfied

(b) that a spouse or child dependent on the worker and residing in or out of Alberta is not being supported by the worker and an order has been made against the worker by a court for maintenance of the spouse or child or for alimony,

the Board may pay the compensation payable to the worker in whole or in part to the spouse or child.

120 Repeals.

121 Coming into force.