

*Bill 5*

## **BILL 5**

2005

### **FAMILY LAW AMENDMENT ACT, 2005**

*(Assented to* , 2005)

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

#### **Amends SA 2003 cF-4.5**

**1 The *Family Law Act* is amended by this Act.**

**2 Section 1(o) is repealed and the following is substituted:**

- (o) “respondent” means a person against whom proceedings are brought under this Act.

**3 Section 3(2) is amended**

- (a) in clause (a) by adding “10,” after “9,”;
- (b) by repealing clause (b).

**4 Section 8(1)(d) is repealed and the following is substituted:**

- (d) the male person cohabited with the mother of the child for 12 consecutive months during which time the child was born and has acknowledged that he is the father of the child;

**5 Section 20 is repealed and the following is substituted:**

**Guardians of child**

**20(1)** This section is subject to any order of the court or agreement to the contrary between the parents of a child regarding the guardianship of the child.

**(2)** The mother and the father of a child are both the guardians of the child where

- (a) the mother and the father were married to each other at the time of the birth of the child,
- (b) the mother and the father were married to each other 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 mother and the father married each other after the birth of the child,
- (d) the mother and the father cohabited with each other for 12 consecutive months during which time the child was born, or
- (e) the mother and the father were each other's adult interdependent partners at the time of the birth of the child or became each other's adult interdependent partners after the birth of the child.

**(3)** Where the mother and the father of a child are not the guardians of the child under subsection (2), the mother and the father are both the guardians of the child until such time as the child begins to usually reside

- (a) with one of the parents, at which time that parent becomes the sole guardian of the child, or

(b) with both parents or alternately with each parent for substantially equivalent periods of time, at which time both parents become the guardians of the child.

(4) Despite subsection (3), a parent with whom the child has usually resided for one year is a guardian of the child even if the child no longer resides with that parent.

**6 Section 21 is amended by repealing subsections (5) and (6) and substituting the following:**

(5) Except where otherwise limited by law, including a parenting order, each guardian has the following 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 medical care, food, clothing and shelter.

(6) Except where otherwise limited by law, including a parenting order, each guardian may exercise the following powers:

- (a) 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;
- (b) to decide the child's place of residence and to change the child's place of residence;
- (c) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;
- (d) to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (e) to decide with whom the child is to live and with whom the child is to associate;

- (f) 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;
- (g) to consent to medical, dental and other health-related treatment for the child;
- (h) 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;
- (i) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive;
- (j) subject to the *Minors' Property Act* and the *Public Trustee Act*, to commence, defend, compromise or settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;
- (k) 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 any other reason;
- (l) to receive from third parties health, education or other information that may significantly affect the child;
- (m) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.

(7) A guardian who exercises any of the powers referred to in subsection (6) shall do so in a manner consistent with the evolving capacity of the child.

(8) Subsections (2) and (4) do not apply to decisions of a director under the *Child, Youth and Family Enhancement Act*.

**7 Section 23(7) is amended by striking out “section 24” and substituting “section 25”.**

**8 Section 51(6) is repealed.**

**9 Section 66(3)(a) is amended by adding “or” after “sum”.**

**10 Section 77(4)(a) is amended by striking out “as” and substituting “including those”.**

**11 Section 87(c) is amended by adding “, judgment, finding or declaration” after “order”.**

**12 Section 107 is amended by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):**

(a) defining “party” for the purposes of this Act;

**13 Section 108 is amended**

**(a) in subsection (5) by striking out “terminated” and substituting “set aside”;**

**(b) in subsection (7) by striking out “access enforcement order under this Act” and substituting “enforcement order made under Division 4 of Part 2”.**

### **Explanatory Notes**

**1** Amends chapter F-4.5 of the Statutes of Alberta, 2003.

**2** Section 1(o) presently reads:

*1 In this Act,*

- (o) “respondent” means a person who answers or responds to an application under this Part.

**3** Section 3(2) presently reads in part:

*(2) Subject to this section, the Provincial Court has jurisdiction in all matters under this Act except*

- (a) to make a declaration under section 9, 12 or 83,*
- (b) to make orders or give directions under sections 27, 28, 29 and 31(2),*

**4** Section 8(1)(d) presently reads:

*8(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:*

- (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;*

**5** Section 20 presently reads:

*20(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(f)(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.*

**6** Section 21 presently reads in part:

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

*the child and shall exercise them in a manner consistent with the evolving capacity 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 medical care, 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, defend, 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 receive from third parties health, education and other information that may significantly affect the child;*
  - (o) *to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.*
- (6) *Subsections (2) and (4) do not apply to decisions of a director under the Child Welfare Act.*

**7** Section 23(7) presently reads:

*(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** Section 51(6) presently reads:

*(6) 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.*

**9** Section 66(3)(a) presently reads:

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

- (a) that an amount be paid in a lump sum periodically, either for an indefinite or limited period or until a specified event occurs;*

**10** Section 77(4)(a) presently reads:

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

- (a) a change of circumstances, as provided for in the prescribed guidelines, has occurred since the making of the order or the last variation order made in respect of that order, or*

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

**11** Section 87(c) presently reads:

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

- (c) an order of the court.*

**12** Regulation-making authority to define party.

**13** Section 108 presently reads in part:

*(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.*

*(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.*