

*Bill 3*  
*Mrs. Jablonski*

## **BILL 3**

2006

### **PROTECTION AGAINST FAMILY VIOLENCE AMENDMENT ACT, 2006**

*(Assented to , 2006)*

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

#### **Amends RSA 2000 cP-27**

**1 The *Protection Against Family Violence Act* is amended by  
this Act.**

**2 The following preamble is added before the enacting clause:**

#### **Preamble**

WHEREAS the Government of Alberta recognizes and values the  
family as the basic unit of society;

WHEREAS the Government of Alberta is committed to the  
prevention of family violence;

WHEREAS the Government of Alberta is committed to  
protecting victims of family violence from further violence;

WHEREAS an effective response to family violence provides an  
immediate period of safety to victims of family violence;

WHEREAS the Government of Alberta is committed to holding  
family members who are violent towards other family members  
accountable for their actions and the consequences of their  
actions; and

WHEREAS the Government of Alberta is committed to breaking the cycle of family violence by preventing and deterring further violence;

**3 The enacting clause is amended by adding “THEREFORE” before “HER MAJESTY”.**

**4 Section 1 is amended**

**(a) by renumbering it as section 1(1);**

**(b) in subsection (1)**

**(i) by repealing clause (d)(iii) and substituting the following:**

(iii) persons who are related to each other by blood, marriage or adoption or by virtue of an adult interdependent relationship,

**(ii) in clause (e)**

**(A) by repealing subclause (i) and substituting the following:**

(i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member,

**(B) by repealing subclause (ii) and substituting the following:**

(ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member,

**(C) by striking out “and” at the end of subclause (iii), adding “and” at the end of subclause (iv) and adding the following after subclause (iv):**

(v) stalking,

**(iii) by adding the following after clause (k):**

- (k.1) “stalking” means repeated conduct by a person, without lawful excuse or authority, that the person knows or reasonably ought to know constitutes harassment of a family member and causes a family member to fear for a family member’s personal safety;

**(c) by adding the following after subsection (1):**

**(2)** For the purposes of subsection (1)(k.1), “conduct” includes

- (a) following a family member or anyone known to the family member from place to place,
- (b) communicating directly or indirectly with or contacting a family member or anyone known to the family member,
- (c) being present at or watching any place where a family member, or anyone known to the family member, resides, works, carries on business or is present or likely to be present,
- (d) engaging in threatening conduct directed at a family member or anyone known to the family member, and
- (e) any other behaviour that a judge considers to be stalking.

**5 Section 2 is amended**

**(a) in subsection (1)**

**(i) by striking out “and” at the end of clause (a) and by adding the following after clause (a):**

- (a.1) that the claimant has reason to believe that the respondent will continue or resume carrying out family violence, and

**(ii) by repealing clause (b) and substituting the following:**

- (b) that, by reason of seriousness or urgency, the order should be granted to provide for the immediate

protection of the claimant and other family members who reside with the claimant.

**(b) in subsection (2)**

**(i) by repealing clause (a);**

**(ii) in clause (b) by adding “and other family members” after “claimant”;**

**(iii) by adding the following after clause (b):**

(b.1) whether there is or has been controlling behaviour by the respondent towards the claimant or other family members;

(b.2) whether the family violence is repetitive or escalating;

**(iv) by adding the following after clause (c):**

(c.1) the vulnerability of elderly claimants;

(c.2) the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;

**(v) by adding the following after clause (d):**

(e) the claimant’s need for a safe environment to arrange for longer-term protection from family violence.

**(c) by adding the following after subsection (2):**

**(2.1)** Without excluding any other circumstance, in determining whether an order under this section should be granted, by a provincial court judge or a designated justice of the peace, the following circumstances should not preclude the granting of an order:

(a) that an emergency protection order, Queen’s Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant has been granted previously;

- (b) that the respondent has previously complied with an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant;
- (c) that the respondent is temporarily absent from the residence at the time of application for an order;
- (d) that the claimant is temporarily residing in an emergency shelter or other safe place;
- (e) that criminal charges have been or may be laid against the respondent;
- (f) that the claimant has a history of returning to the residence and of residing with the respondent after occurrences of family violence.

**(d) in subsection (6) by striking out "7" and substituting "9".**

**6 Section 4(2) is amended**

- (a) in clause (k) by striking out "respondent, and any other family member that the Court considers appropriate," and substituting "respondent";**
- (b) by adding the following after clause (k):**
  - (k.1) a provision authorizing counselling for a child referred to in section 1(1)(d)(iv) without the consent of the respondent;

**7 Section 6(1)(c) is amended by striking out "other".**

**8 Section 8 is amended by adding the following after subsection (1):**

**(1.1)** Despite subsection (1), if a judge orders that the respondent be restrained from attending at or entering the residence of the claimant or another family member, the address of the residence

may be disclosed by the clerk of the court as part of the order or in the transcript of the proceedings that resulted in the order being granted.

**9 This Act comes into force on Proclamation.**

**Explanatory Notes**

**1** Amends chapter P-27 of the Revised Statutes of Alberta 2000.

**2** Preamble.

**3** Consequential to addition of preamble.

**4** Section 1 presently reads in part:

*1 In this Act,*

*(d) “family members” means*

- (i) persons who are or have been married to one another, who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship,*
- (ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time,*
- (iii) persons who reside together and are related to one or more persons in the household by blood, marriage or adoption or by virtue of an adult interdependent relationship,*
- (iv) any children in the care and custody of a person referred to in subclauses (i) to (iii), or*

(v) *persons who reside together where one of the persons has care and custody over the other pursuant to an order of the court;*

(e) *“family violence” includes*

(i) *any intentional or reckless act or omission that causes injury or property damage, the purpose of which is to intimidate or harm a family member,*

(ii) *any act or threatened act that causes a reasonable fear of injury or property damage, the purpose of which is to intimidate or harm a family member,*

(iii) *forced confinement, and*

(iv) *sexual abuse,*

*but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances;*

**5** Section 2 presently reads:

*2(1) An order under this section may be granted by a provincial court judge or a designated justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines*

(a) *that family violence has occurred, and*

(b) *that, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant.*

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

(a) *the nature of the family violence;*

- (b) *the history of family violence by the respondent toward the claimant;*
- (c) *the existence of any immediate danger to persons or property;*
- (d) *the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant.*

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

- (a) *a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;*
- (b) *a provision restraining the respondent from communicating with or contacting the claimant and other specified persons;*
- (c) *a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;*
- (d) *a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;*
- (e) *a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;*
- (f) *a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;*



(g) *any other provision that the provincial court judge or designated justice of the peace considers necessary to provide for the immediate protection of the claimant.*

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

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

(6) *An order under this section must indicate the date, time and place at which the order is scheduled for review at a hearing by a justice of the Court of Queen's Bench, which may not be later than 7 working days after the granting of the order.*

**6** Section 4(2) presently reads in part:

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

(k) *a provision requiring the respondent, and any other family member that the Court considers appropriate, to receive counselling;*

**7** Section 6(1) presently reads:

6(1) *An application for a protection order may be made*

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

(b) *on behalf of a person referred to in clause (a), with that person's consent, by a person or a member of a category of persons designated in the regulations, or*

(c) *by any other person on behalf of a person referred to in clause (a), with leave of the judge.*

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

8(1) *The clerks of the Court of Queen's Bench and of the Provincial Court must keep confidential any information*

*relating to the location of a claimant unless the claimant or a person acting on the claimant's behalf consents to the giving of the information.*

**9** Coming into force.