2008 Bill 15

First Session, 27th Legislature, 57 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 15

**FAMILY LAW AMENDMENT ACT, 2008**

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

First Reading . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Second Reading . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Committee of the Whole . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Third Reading . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Royal Assent . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

# BILL 15

2008

## FAMILY LAW AMENDMENT ACT, 2008

*(Assented to          , 2008)*

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 46(d) is amended by adding** ", except in sections 55.1 to 55.8," **after** "means".

**3  The following is added after section 55:**

### Division 1.1
### Child Support
### Recalculation Program

**Definitions**
**55.1**  In this Division,

   (a)  "child support guidelines" means

      (i)  the *Alberta Child Support Guidelines* (AR 147/2005),

**Explanatory Notes**

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

**2**  Section 46(d) presently reads:

*46   In this Part,*

   *(d)   "child support order" means an order made under section*
        *50;*

**3**  Child support recalculation program.

(ii) the Federal Child Support Guidelines under the *Divorce Act* (Canada), or

(iii) child support guidelines established by another province under which child support is calculated in a manner that is substantially similar to the manner in which child support is calculated under the *Alberta Child Support Guidelines* (AR 147/2005);

(b) "child support order" means an order respecting child support made under

(i) this Act,

(ii) the *Divorce Act* (Canada), or

(iii) an enactment of another province respecting family law if the order has been registered under section 18 of the *Interjurisdictional Support Orders Act*,

but does not include a child support order that has no force or effect until it is confirmed by a court with jurisdiction to do so;

(c) "Director" means the Director of the recalculation program designated under section 55.11;

(d) "payor" means a person who is obligated to pay support for a child pursuant to a child support order;

(e) "recalculated amount" means the amount of child support determined after recalculation by the recalculation program;

(f) "recalculation program" means the child support recalculation program established by section 55.11;

(g) "recipient" means a person who has a right to receive support for a child under a child support order.

**Child support recalculation program**
**55.11(1)** There is hereby established a child support service to be known as the child support recalculation program.

**(2)** The recalculation program may, if a child support order meets the criteria established in the regulations under this Division, recalculate annually

    (a)  the amount of child support specified in the child support order that was determined in accordance with the applicable table of the child support guidelines, and

    (b)  the proportionate shares of any special or extraordinary expenses included in the child support order.

**(3)** The recalculation program shall perform a recalculation under subsection (2)

    (a)  subject to section 55.51, on the basis of updated income information, and

    (b)  in accordance with this Division, the regulations under this Division and the child support guidelines.

**(4)** The Minister may by order designate any individual as the Director of the recalculation program.

### Registration

**55.2(1)** Either a payor or a recipient may register a child support order with the recalculation program in the manner set out in the regulations under this Division.

**(2)** A child support order may be withdrawn from the recalculation program in accordance with the regulations under this Division.

### Prohibiting recalculation

**55.21** If a court determines that recalculation of the amount of child support under a child support order by the recalculation program is inappropriate, the court may order that the amount of child support specified in the child support order is not to be recalculated by the recalculation program.

### Waiver

**55.3** A payor and a recipient whose child support order has been registered with the recalculation program may agree in writing to waive a particular recalculation in accordance with the regulations under this Division.

**Recalculated amount**

**55.31**  Subject to section 55.4, if the recalculated amount differs from the amount of child support currently required to be paid by at least the prescribed amount, the recalculated amount is deemed to be the amount of child support required to be paid under the child support order effective 31 days after the day on which the payor and the recipient are notified in accordance with the regulations under this Division respecting the recalculated amount.

**Right to object**

**55.4(1)**  A payor or a recipient who does not agree with the recalculated amount may object, within 30 days after receiving notification respecting the recalculated amount, by commencing an application to a court to vary, suspend or terminate the child support order.

**(2)**  At the time an application under subsection (1) is commenced, the person who commenced the application shall notify the recalculation program in writing in accordance with the regulations under this Division.

**(3)**  Where an application has been commenced under subsection (1), the operation of section 55.31 is suspended pending the determination of the application and the child support order continues in effect as if the recalculation had not been made.

**(4)**  Where an application has been commenced under subsection (1) but

(a)   the application is withdrawn, or

(b)   the application is dismissed by the court,

the payor becomes liable to pay the recalculated amount in accordance with section 55.31 as if the application had not been commenced.

**(5)**  For the purposes of this section, commencing an application includes complying with any mandatory prerequisites or requirements of the court in respect of the application.

### Income information

**55.41(1)** A payor or recipient whose income information is necessary for the purpose of recalculation shall provide to the recalculation program updated income information as required by the regulations under this Division at the times and in the manner set out in the regulations under this Division.

**(2)** The requirement for a payor or recipient to provide updated income information under subsection (1) does not replace or affect any other obligation of the payor or recipient to provide financial disclosure or any right of a payor or recipient to request financial disclosure.

### Contact information

**55.5** Both the payor and the recipient shall provide their current contact information to the recalculation program at the times and in the manner set out in the regulations under this Division.

### Recalculation without income information

**55.51(1)** Where a payor or a recipient fails to provide the recalculation program with income information as required under section 55.41, the recalculation program may recalculate the amount of child support by determining the income of the payor or the recipient, as the case may be, in accordance with subsection (2).

**(2)** For the purposes of subsection (1), the income of the payor or the recipient, as the case may be, is deemed to be the sum of

  (a)  the payor's or the recipient's income used to determine the current amount of child support, whether that income was

    (i)  set out in the payor's or recipient's child support order,

    (ii)  previously determined by the recalculation program from income information required to be provided in accordance with section 55.41, or

    (iii)  previously determined by the recalculation program in accordance with this section,

and

    (b)  10% of the payor's or recipient's income referred to in clause (a).

**Protection from liability**
**55.6** No action or proceeding in respect of any act or thing done or omitted to be done or purported to be done or omitted to be done in good faith under this Division or the regulations may be brought against the Director or any person acting under the authority or direction of the Director in the exercise or performance or intended exercise or performance of a power, duty or function under this Division.

**Confidentiality**
**55.61(1)** A person's right of access under Part 1 of the *Freedom of Information and Protection of Privacy Act* to records in the custody or under the control of the recalculation program does not extend to personal information of another person contained in those records.

**(2)** Subsection (1) prevails despite section 6(1) of the *Freedom of Information and Protection of Privacy Act*.

**Use and disclosure of information**
**55.7(1)** The Director shall not use or disclose personal information that is collected for the purposes of the recalculation program except where the use or disclosure is

    (a)  necessary for the purpose of administering the recalculation program,

    (b)  authorized by this Act and the regulations under this Division, or

    (c)  otherwise required by an enactment of Alberta or Canada.

**(2)** Subsection (1) prevails despite sections 39(1) and 40(1) of the *Freedom of Information and Protection of Privacy Act*.

**Service fee**

**55.71(1)** The Director may charge a service fee in accordance with the regulations under this Division for services provided by the recalculation program.

**(2)** A service fee charged under subsection (1) may be collected by the Director of Maintenance Enforcement in the same manner as fees and charges payable to the Director of Maintenance Enforcement under the *Maintenance Enforcement Act.*

**(3)** No fees or charges of any kind are payable by the Director

(a) for access or transfer to the Director of any information or record that is necessary for the purpose of administering this Division, or

(b) for or in connection with anything that a person is required to do under this Division.

**Regulations**

**55.8** The Lieutenant Governor in Council may make regulations

(a) respecting the recalculation program and its structure, operations, duties and functions;

(b) respecting registration of child support orders with the recalculation program;

(c) respecting the requirements for the withdrawal of child support orders, including which persons may withdraw a child support order, from the recalculation program;

(d) establishing criteria for determining whether a child support order is eligible for recalculation by the recalculation program;

(e) prescribing an amount for the purposes of section 55.31;

(f) respecting the application of some or all of the provisions of this Division to child support agreements, including establishing criteria for determining whether a

child support agreement is eligible for recalculation by the recalculation program;

(g) respecting the manner in which and the times at which a payor and a recipient may agree to waive a particular recalculation;

(h) respecting notification that must be provided to or by the recalculation program under sections 55.31 and 55.4;

(i) respecting the information that payors and recipients are required to provide under sections 55.41 and 55.5;

(j) respecting the manner in which and the time within which information may or must be provided to or by the recalculation program;

(k) respecting the circumstances in which the recalculation program may decline to recalculate child support;

(l) respecting service fees;

(m) respecting the collection, use and disclosure of personal information by the recalculation program, including purposes for which information may be used or disclosed by the Director;

(n) defining terms used but not defined in this Division.


**4** **Section 108(10) is amended by adding** "and, in the case of an order for child support referred to in clause (a), (b) or (c), recalculated," **after** "terminated".

**4**  Section 108(10) presently reads:

*(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*

**5  The *Maintenance Enforcement Act* is amended in section 15(3) by adding the following after clause (e):**

   (e.1)   provide contact information respecting a debtor or creditor that is in the records of the Director, or information respecting a maintenance order filed with the Director in respect of a debtor or creditor, to the child support recalculation program under the *Family Law Act* for the purpose of recalculation of the amount payable as child support;

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

*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.*

**5**  Amends RSA 2000 cM-1.

**6**  Coming into force.

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