

2010 Bill 11

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Third Session, 27th Legislature, 59 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 11**

## **WITNESS SECURITY ACT**

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MR. DRYSDALE

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 11*  
*Mr. Drysdale*

## **BILL 11**

2010

### **WITNESS SECURITY ACT**

*(Assented to , 2010)*

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**27** Coming into force

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 the law enforcement agency that makes an application on behalf of a witness;
- (b) “application” means an application for protective services made under section 7;
- (c) “associated person” means a person whose safety or security may be at risk because of the person’s relationship or association with a witness;
- (d) “department”, except in clause (h), means the department administered by the Minister;
- (e) “law enforcement agency” means a police service as defined in the *Police Act*;
- (f) “letter of acknowledgment” means a letter of acknowledgment referred to in section 11;
- (g) “Minister”, except in clause (h), means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (h) “ministry” includes the department and any agency for which a Minister is responsible;
- (i) “prescribed” means prescribed in the regulations;
- (j) “protected person” means a witness or an associated person to whom protective services are being provided pursuant to this Act;
- (k) “protective service” means a service intended to protect or assist in protecting a person’s safety and security and may include, without limitation, the provision of

- (i) transportation to and from a safe location,
  - (ii) accommodation,
  - (iii) transportation and storage of personal possessions,
  - (iv) financial support,
  - (v) security services and equipment, and
  - (vi) counselling;
- (l) “witness” means a person who has given, is giving or is expected to give evidence in a prosecution by the Crown in right of Alberta for an offence under the *Criminal Code* (Canada);
  - (m) “Witness Security Coordinator” means the Witness Security Coordinator appointed under section 3;
  - (n) “Witness Security Panel” means the Witness Security Panel established under section 5.

**Purpose statement**

**2** The purpose of this Act is to promote the administration of justice and enhance public safety by providing for the provision of protective services to witnesses and persons associated with them who may be at risk of harm because of the witnesses’ involvement in the prosecution of criminal offences.

**Witness Security Coordinator**

**3(1)** The Minister shall appoint a Witness Security Coordinator to administer this Act and the regulations.

**(2)** The Witness Security Coordinator may, in writing and on any terms that the Witness Security Coordinator determines, delegate to any person employed in the department any power, duty or function of the Witness Security Coordinator under this Act and the regulations.

**Powers of Witness Security Coordinator**

**4(1)** The Witness Security Coordinator may make any inquiry or conduct any investigation that the Witness Security Coordinator

considers necessary to carry out any of the powers, duties or functions of the Witness Security Coordinator under this Act and the regulations.

**(2)** Without limiting the generality of subsection (1), the Witness Security Coordinator may make any inquiry or conduct any investigation that the Witness Security Coordinator considers necessary to assess or determine any of the following:

- (a) the risks to the safety or security of a witness or an associated person;
- (b) the eligibility of a witness or an associated person to receive protective services;
- (c) the types of protective services that a witness or an associated person might need;
- (d) the length of time during which a witness or an associated person might need protective services;
- (e) whether any of the matters described in clauses (a) to (d) have changed with respect to a protected person;
- (f) whether the provision of protective services to a protected person should be terminated.

**(3)** When the Witness Security Coordinator requests information from a law enforcement agency or a ministry for the purposes of an inquiry or investigation, the law enforcement agency or ministry shall provide the information and give the Witness Security Coordinator a copy of any document or other record containing the information.

#### **Witness Security Panel**

**5(1)** The Witness Security Panel is established.

**(2)** The Minister shall appoint

- (a) a chair, and
- (b) a roster of eligible persons, who are employees of the department, to act as the other members

of the Witness Security Panel.

(3) When an application is referred to the Witness Security Panel under section 9, the chair shall appoint 2 other members of the Witness Security Panel from the roster established under subsection (2)(b) to consider and make a decision on the application.

(4) The Minister may designate one of the members from the roster established under subsection (2)(b) as the vice-chair.

(5) The vice-chair shall act when the chair is absent or unable to act.

(6) Subject to this Act and the regulations, the Witness Security Panel may determine its own procedures.

#### **Provision of protective services**

**6(1)** Subject to subsection (2), a law enforcement agency may provide protective services to a witness or an associated person only in accordance with this Act and the regulations.

(2) Nothing in this Act affects the provision of protective services pursuant to

- (a) the *Witness Protection Program Act* (Canada), or
- (b) any alternative method described in the regulations.

#### **Application for protective services**

**7(1)** An application for the provision of protective services to a witness must be made to the Witness Security Coordinator by a law enforcement agency.

(2) An application under subsection (1) may be made only with the consent of the witness.

(3) An application must be in the form and contain the information required by the Witness Security Coordinator.

(4) On receipt of an application under subsection (1), the Witness Security Coordinator shall promptly review the application and assess or determine

- (a) the seriousness of the offence with respect to which the evidence of the witness relates;

- (b) the nature of the evidence of the witness and whether the witness is necessary to the prosecution of the case;
- (c) the risk to the safety or security of the witness or an associated person;
- (d) the likelihood of the witness or an associated person being able to adjust to any conditions that may be incorporated in a letter of acknowledgment, having regard to the maturity, judgment and relationships of the individual;
- (e) the financial and logistical requirements of providing protective services to the witness or an associated person;
- (f) the availability of any alternative methods for protecting the witness or an associated person without providing protective services;
- (g) whether the witness has been involved in any other witness protection program or is currently applying for any such program;
- (h) any other factors that the Witness Security Coordinator considers relevant.

**Witness, associated person, to provide information**

**8(1)** A witness who is the subject of an application shall

- (a) provide the Witness Security Coordinator with all the information that the Witness Security Coordinator requires to assess or determine any of the matters referred to in section 7(4);
- (b) provide the Witness Security Coordinator with copies of any documents or other records that contain, or are relevant to, any of the information referred to in clause (a);
- (c) provide the Witness Security Coordinator with
  - (i) the written consent of the witness to the disclosure by a third party of confidential information respecting the witness for the purposes of the application, or

- (ii) if the witness is not capable of giving consent, the written consent of a person who is entitled to give consent to the disclosure on behalf of the witness;
  - (d) co-operate with the Witness Security Coordinator in the conduct of any inquiry or investigation by the Witness Security Coordinator under section 4.
- (2)** If protective services are requested for an associated person, the witness who is the subject of the application shall
- (a) provide the Witness Security Coordinator with all the information that the Witness Security Coordinator requires to assess or determine
    - (i) the risks to the safety or security of the associated person, and
    - (ii) the types of protective services that the associated person might need;
  - (b) provide the Witness Security Coordinator with copies of any documents or other records that contain, or are relevant to, any of the information referred to in clause (a);
  - (c) provide the Witness Security Coordinator with
    - (i) the written consent of the associated person to the disclosure by a third party of confidential information respecting the associated person for the purposes of the application, or
    - (ii) if the associated person is not capable of giving consent, the written consent of a person who is entitled to give consent to the disclosure on behalf of the associated person.

**Referral to Witness Security Panel**

**9(1)** Subject to subsection (2), the Witness Security Coordinator shall refer an application, together with the Witness Security Coordinator's recommendations and findings under section 7(4), to the Witness Security Panel for its consideration and decision under section 10.



**(2)** If the Witness Security Coordinator determines that a witness requires protective services in exigent circumstances and it is not practicable to convene the Witness Security Panel to consider the application, the Witness Security Coordinator may

- (a) approve the protective services to be provided to the witness, and
- (b) if the Witness Security Coordinator determines that an associated person should receive protective services, approve the protective services to be provided to the associated person.

**(3)** Despite subsection (2), the Witness Security Coordinator shall still refer the application to the Witness Security Panel unless the protective services provided pursuant to subsection (2) will end before it is reasonably practicable to convene the Witness Security Panel.

**(4)** If a protected person continues to require the protective services provided pursuant to subsection (2) by the time the Witness Security Panel is convened, the protective services may be continued, but only if

- (a) the Witness Security Panel decides that the protective services should be continued, and
- (b) the protected person signs a letter of acknowledgment.

#### **Decision of Witness Security Panel**

**10(1)** The Witness Security Panel shall promptly consider an application referred to it by the Witness Security Coordinator and review all information provided in relation to the application.

**(2)** The Witness Security Panel shall decide whether or not the witness who is the subject of the application is eligible to receive protective services.

**(3)** If the Witness Security Panel decides that a witness is eligible to receive protective services, the Witness Security Panel shall

- (a) determine the protective services to be provided to the witness,

- (b) determine whether there are any associated persons who should receive protective services and, if so, the protective services to be provided to the associated persons,
- (c) determine the period during which the protective services are to be provided, and
- (d) subject to this Act and the regulations, determine the terms of any letters of acknowledgment that are required.

**(4)** After the Witness Security Panel makes a decision on an application, the Witness Security Panel shall promptly notify the applicant in writing of the decision.

**(5)** A decision of the Witness Security Panel under this section is final, but does not preclude an applicant from

- (a) making a new application on behalf of the witness if additional information becomes available, or
- (b) requesting the Witness Security Panel to reconsider its decision.

**(6)** A request under subsection (5)(b) must

- (a) be in writing and state the grounds on which the request is made, and
- (b) be delivered to the chair of the Witness Security Panel within 21 days of the applicant's receiving the Witness Security Panel's decision.

**(7)** On receiving a request under subsection (6), the Witness Security Panel shall, within 14 days,

- (a) confirm or vary the decision, and
- (b) promptly notify the applicant in writing of the decision under clause (a).

**Letter of acknowledgment**

**11(1)** Subject to section 9(2), no protective services may be provided to a person unless the person signs a letter of acknowledgment.

**(2)** Subject to section 9(2), a protected person is eligible to receive only those protective services that are set out in a letter of acknowledgment signed by the protected person.

**(3)** If a witness or an associated person is a minor or a represented adult as defined in the *Adult Guardianship Act*,

- (a) the guardian of the minor or of the represented adult, as the case may be, may sign a letter of acknowledgment on his or her behalf, and
- (b) on the signing of the letter of acknowledgment by the guardian, the witness or associated person is deemed to have signed the letter of acknowledgment.

#### **Variation of protective services**

**12(1)** Subject to subsection (2), if the Witness Security Coordinator is satisfied that the circumstances warrant a change in the provision of protective services to a protected person, the Witness Security Coordinator may

- (a) if, in the opinion of the Witness Security Coordinator, the change is minor,
  - (i) approve the provision of additional protective services to the protected person, or
  - (ii) extend the period during which a protective service is provided to the protected person,

or

- (b) if, in the opinion of the Witness Security Coordinator, the change is not minor, refer the matter to the Witness Security Panel for its consideration and approval.

**(2)** The provision of additional protective services or the extension of protective services approved under subsection (1) is not effective unless the protected person signs a new or revised letter of acknowledgment that incorporates the changes.

#### **Termination of protective services**

**13(1)** Subject to subsection (2), the provision of protective services to a protected person terminates on

- (a) the expiry of the letter of acknowledgment, or
- (b) the written request of the protected person.

**(2)** The Witness Security Coordinator may recommend in writing to the Witness Security Panel the early termination of the provision of all or some of the protective services under a letter of acknowledgment if the Witness Security Coordinator believes that the protected person

- (a) is no longer eligible to receive all or some of the protective services,
- (b) has made a material misrepresentation,
- (c) has failed to disclose any required information, or
- (d) has knowingly breached a term or condition set out in the letter of acknowledgment.

**(3)** If the Witness Security Coordinator makes a recommendation under subsection (2) to the Witness Security Panel, the Witness Security Coordinator shall take reasonable steps

- (a) to notify the applicant and the protected person of the recommendation and the reasons for the recommendation, and
- (b) to provide the protected person with the opportunity to make written submissions to the Witness Security Panel with respect to the recommendation.

**(4)** The Witness Security Panel, on receiving

- (a) a recommendation by the Witness Security Coordinator for early termination of the provision of all or some of the protective services, and
- (b) any written submissions made by the protected person,

may terminate the provision of all or some of the protective services.

**(5)** If the Witness Security Panel terminates the provision of all or some of the protective services,

- (a) the Witness Security Panel shall promptly notify the applicant in writing, and
  - (b) the applicant shall promptly notify the protected person of the decision.
- (6) A decision of the Witness Security Panel under this section is final.

**Assistance to protected persons re legal obligations**

**14(1)** If a protected person has any outstanding legal obligations or is involved in pending legal proceedings, the applicant shall take any reasonably practicable steps to enable the protected person to comply with those obligations or participate in those proceedings.

**(2)** Without limiting the generality of subsection (1), the steps that may be taken include

- (a) providing protective services to enable the protected person to attend court;
- (b) notifying a party to civil proceedings involving the protected person that the Witness Security Coordinator will undertake to serve documents on the protected person.

**(3)** If the protected person is involved in legal proceedings, the applicant shall take any reasonably practicable steps to enable the protected person to attend at and comply with any legal requirements of those proceedings.

**Co-operation of ministries**

**15** All ministries shall, to the extent possible, co-operate with any request from the Witness Security Coordinator to provide protective services to a protected person.

**Persons who provide protective services**

**16(1)** A person, other than an applicant, who provides protective services pursuant to this Act to an individual whom he or she knows to be a protected person shall comply with any directions that the Witness Security Coordinator may give for the purposes of this Act.

**(2)** An applicant shall provide protective services to a protected person

- (a) subject to section 13, in accordance with the terms of the letter of acknowledgment signed by the protected person, or
- (b) as directed by the Witness Security Coordinator, in the case of protective services approved by the Witness Security Coordinator pursuant to section 9(2).

**(3)** Despite any other Act or any regulation or professional bylaw, compliance with a direction of the Witness Security Coordinator pursuant to this section does not constitute a contravention of

- (a) any Act, regulation or professional bylaw, or
- (b) any applicable code of professional conduct or ethical standard.

#### **Reciprocal agreements**

**17** The Minister may enter into an agreement with the government of Canada or the government of another province or territory of Canada to provide for the reciprocal provision of protective services to witnesses and associated persons.

#### **FOIP does not apply**

**18(1)** Despite the *Freedom of Information and Protection of Privacy Act*, no portion of that Act applies to records that contain any of the following information:

- (a) information that would reveal the identity or location or otherwise compromise the safety or security of a protected person, a former protected person or a person on whose behalf an application has been made;
- (b) information that would reveal the identity or location of a person who knows the identity or location of a person described in clause (a);
- (c) information contained in an application;
- (d) prescribed information.

(2) Without limiting the generality of subsection (1), the Information and Privacy Commissioner is not entitled to require production of, or to examine, any records that contain any of the information described in subsection (1).

**Confidentiality**

**19(1)** No person shall disclose or provide access to information that might reveal the identity or location or otherwise compromise the safety or security of a protected person, a former protected person or a person on whose behalf an application has been made, except in accordance with this Act and the regulations.

(2) Subsection (1) does not apply to a disclosure of information that

(a) is made between any of the following persons:

- (i) the Witness Security Coordinator;
- (ii) a member of the Witness Security Panel;
- (iii) a person who is employed or retained by the department in the administration of this Act;
- (iv) a member of a law enforcement agency that is an applicant;
- (v) a person who has provided a protective service pursuant to this Act to an individual whom he or she knows to be a protected person;
- (vi) a person described by regulation,

and

(b) is necessary for the administration of this Act or the provision of protective services to a protected person.

(3) This section applies despite the *Freedom of Information and Protection of Privacy Act*.

**Permitted disclosures by the Witness Security Coordinator**

**20(1)** The Witness Security Coordinator may disclose information that might reveal the identity or location of a protected person or former protected person if

- (a) the protected person or former protected person consents to the disclosure,
- (b) the protected person or former protected person has previously disclosed the information or has acted in a manner that results in the disclosure of the information, or
- (c) the disclosure is essential to the public interest.

**(2)** A disclosure is essential to the public interest if the disclosure is for

- (a) the purpose of an investigation of a serious offence, if there is reason to believe that the protected person or former protected person was involved in the commission of the offence or can provide material information or evidence in relation to the offence,
- (b) the purpose of preventing the commission of a serious offence,
- (c) the purpose of conducting a public inquiry, or
- (d) a prescribed purpose.

**(3)** Before disclosing information on the basis that it is essential to the public interest, the Witness Security Coordinator shall consider whether the public interest can be met by means other than the proposed disclosure.

**Non-compellability**

**21(1)** Subject to section 22, the following persons are not compellable to give evidence about any information that comes to their knowledge in the exercise of their powers, duties or functions under this Act or the regulations:

- (a) the Witness Security Coordinator;
- (b) a member of the Witness Security Panel;



- (c) a person who is employed or retained by the department in the administration of this Act;
- (d) a member of a law enforcement agency that is an applicant;
- (e) a person who has provided a protective service pursuant to this Act to an individual whom he or she knows to be a protected person.

(2) Subsection (1) does not apply in respect of a prosecution for an offence under this Act.

#### **Certain disclosures not affected**

**22** Nothing in this Act affects

- (a) the obligation of the Crown to disclose information in the ordinary course of criminal proceedings, or
- (b) the disclosure of information in criminal proceedings when ordered by a court.

#### **Limit on liability**

**23** No action lies against the Witness Security Coordinator, a member of the Witness Security Panel, a member of a law enforcement agency or any other person acting under the authority of this Act

- (a) for anything done or omitted to be done in good faith in the performance or exercise, or intended performance or exercise, of a power, duty or function under this Act or the regulations, or
- (b) for any neglect or default in good faith in the performance or exercise, or intended performance or exercise, of a power, duty or function under this Act or the regulations.

#### **Exclusion of judicial review**

**24** A decision or action of the Witness Security Panel or the Witness Security Coordinator or a person exercising any of the powers or performing any of the functions of the Witness Security Coordinator shall not be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be

made or process entered or proceedings taken in any court by way of injunction, declaratory judgment, prohibition or otherwise to question, review, prohibit or restrain the Witness Security Panel or the Witness Security Coordinator.

#### **Offences and penalties**

**25(1)** A person who contravenes section 16(1) or 19(1) is guilty of an offence and liable on summary conviction to a fine of not more than \$50 000 or to imprisonment for a term of not more than 2 years, or to both.

**(2)** No prosecution is to be instituted pursuant to this section without the consent of the Minister of Justice and Attorney General.

#### **Regulations**

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

- (a) describing alternative methods of providing protective services for the purposes of section 6(2)(b);
- (b) respecting letters of acknowledgment, including, without limitation, regulations
  - (i) respecting the making and signing of letters of acknowledgment;
  - (ii) respecting the form and contents of letters of acknowledgment;
- (c) describing a person for the purposes of section 19(2)(a)(vi);
- (d) respecting the collection, use or disclosure of information, including personal information, for the purposes of this Act;
- (e) prescribing any matter or thing required or authorized by this Act to be prescribed;
- (f) defining any word or expression used but not defined in this Act;

- (g) requiring and governing the making of reports by the Witness Security Coordinator and by a law enforcement agency;
- (h) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable for carrying out the intent and purpose of this Act.

**Coming into force**

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

# RECORD OF DEBATE

Stage	Date	Member	From	To

  

Stage	Date	Member	From	To

  

Stage	Date	Member	From	To

  

Stage	Date	Member	From	To