

# BILL

No. <sup>65</sup>~~(47)~~ of 1913.

An Act Respecting Infants.

(Assented to 1913.)

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

- Short title**      **1.** This Act may be cited as "*The Infants Act*".
- Court may make order as to custody of and right of access to infant**      **2.** The Supreme Court, upon the application of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant, and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as the Court may deem just.
- Order as to maintenance**      (2) The Supreme Court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as according to the pecuniary circumstances of the father, or the value of the estate the court deems reasonable.
- Order not to be made in favour of a mother guilty of adultery**      (3) No order directing that the mother shall have the custody of or access to an infant shall be made in favour of a mother against whom adultery has been established by judgment in an action for criminal conversation or for alimony.
- Fathers may dispose of the custody of infants**      **3.** Subject to the provisions of this Act and to any order which may be made by the Supreme Court the father of an infant, whether born at the time of the decease of the father or at the time *en ventre sa mere*, by deed or by his last will and testament in such manner and from time to time as he shall think fit may dispose of the custody and education of such infant, while he remains an infant, or for any lesser time to any person in possession or remainder.
- (2) Such disposition shall be good and effectual against every person claiming the custody or education of such infant as guardian in socage or otherwise.
- Action of guardian for protection of ward.**      (3) The person to whom the custody of such infant is so committed may maintain an action against any person who wrongfully takes away or detains him for the recovery of such infant and for damages for such taking away or detention for the use and benefit of the infant.
- Power of Court as to production of infant**      **4.** Where upon any application by a parent for the production or custody of an infant the Supreme Court is of opinion that the parent has abandoned or deserted the infant, or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the infant, the court may in its discretion decline to make the order.
- Power of Court to order repayment of costs of bringing up child.**      **5.** If at the time of the application for the production of an infant the infant is being brought up by another person, the court may, in its discretion, if it orders the infant to be given up to the parent, further order that the parent shall pay to such person the whole of the cost properly incurred in bringing up the infant, or such portion thereof as shall seem to the court to be just and reasonable, having regard to all the circumstances of the case.

Court in making order to have regard to conduct of parent

**6.** Where a parent has—

- (a) Abandoned or deserted his infant; or
- (b) Allowed his infant to be brought up by another person at that person's expense, for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties;

the court shall not make an order for the delivery of the infant to the parent, unless the parent has satisfied the court that it would be for the welfare of the infant so to do.

Power of Court as to infant's religious education

**7.** Upon any application by the parent for the production or custody of an infant, if the Supreme Court is of opinion that the parent ought not to have the custody of the infant and that the infant is being brought up in a different religion to that in which the parent has a legal right to require that the infant should be brought up, the court shall have power to make such order as it may think fit to secure that the infant be brought up in the religion in which the parent has a legal right to require that the infant should be brought up. Nothing in this Act contained shall interfere with or affect the power of the court to consult the wishes of the infant in considering what order ought to be made, or diminish the right which any infant now possesses to the exercise of its own free choice.

Definitions of "parent" and "person"

**8.** As used in the four preceding sections the expression "parent" of an infant includes any person at law liable to maintain such infant or entitled to his custody, and "person" includes any school or institution.

Rules of equity as to custody and education of infants to prevail

**9.** In question relating to the custody and education of infants the rules of equity shall prevail.

INFANTS' REAL ESTATE

A sale of the estate of the infants may be authorized

**10.** Where an infant is seized, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, lease or other disposition of the same, or of a part thereof, is necessary or proper for the maintenance or education of the infant or that for any cause his interest requires or will be substantially promoted by such disposition, the court may order the sale, or the letting for a term of years, or other disposition of such real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate.

No sale contrary to a devise, etc.

(2) No sale, lease, or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use.

The application to be by next friend or guardian

**11.** The application shall be in the name of the infant by his next friend, or guardian: but shall not be made without the consent of the infant if he is of the age of fourteen years or upwards unless the court otherwise directs or allows.

When a substitute may be appointed to convey.

**12.** Where it is deemed convenient, the court may direct some other person in the place of the infant to convey the estate.

Deeds executed in behalf of infants to be valid

**13.** Every such conveyance, whether executed by the infant or by a person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time.

The Court to direct the application of proceeds

**14.** The money arising from such sale, lease or other disposition shall be laid out, applied and disposed of in such manner as the court directs.

Quality of surplus moneys upon sale of real estate

**15.** On any sale or other disposition so made, the money raised, or the surplus thereof, shall be of the same nature and character as the estate sold or disposed of; and the heirs, next of kin, or other representatives of the infant, shall have the like interest in any surplus which may remain at the decease of the infant as they would have had in the estate sold or disposed of if no such sale or other disposition had been made.

Consent to assignment of lease by infant.

**16.** Where an infant is seized of the reversion of land subject to a lease and such lease contains a covenant not to assign or sublet without leave, the guardian of such infant may with the approbation of a judge of the Supreme Court or of the judge of the District Court of the judicial district in which the land, or any part of it, is situate, consent to any assignment or transfer of such leasehold interest, in the same manner and with the like effect as if the consent were given by a lessor under no such disability.

Order for maintenance where estate settled for life with power of appointment in favour of children of life tenant

**17.** Where by a will or other instrument property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child, in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children.

#### DIVIDENDS OF INFANT'S STOCK OR PROCEEDS THEREOF

Supreme Court may order dividends of stock belonging to infants be applied for maintenance

**18.** The Supreme Court by an order to be made on the application of the guardian of an infant in whose name any stock or money by virtue of any statute for paying off any stock is standing and who is beneficially entitled thereto, or if there is no guardian by an order to be made in any action, cause or matter depending in the court may direct all or any part of the dividends in respect of such stock or any such money to be paid to the guardian of such infant or to any other person for the maintenance and education or otherwise for the benefit of the infant.

(2) Such guardian or other person to whom payment is directed to be made shall be named in the order and his receipt therefor shall be as effectual as if the infant had attained the age of twenty-one years and had signed and given the same.

Costs may be directed to be paid

(3) The court may order the costs and expenses of and relating to the application to be made and raised out of, or from the stock or dividends in respect of which the same is made in such manner as the court deems proper.

Act to be an indemnity to banks, etc.

(4) This section shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto.

#### MARRIAGE SETTLEMENTS OF INFANTS.

Infants may with the approbation of the Supreme Court make valid settlements upon marriage

**19.** Every infant upon, or in contemplation of, his marriage with the sanction of the Supreme Court may make a valid and binding settlement, or contract for a settlement, of all or any part of his property or property over which he has a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such property or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant.

If infant die under age, appointment or disentailing deed to be void **20.** Where an appointment under a power of appointment or a disentailing assurance has been executed by an infant tenant in tail under the provisions of the next preceding section and the infant afterwards dies under age, such appointment or disentailing assurance shall thereupon become absolutely void.

The sanction of the Supreme court to be given upon motion. **21.** The sanction of the court to any such settlement or contract for a settlement may be given upon the application of the infant or his guardian without the institution of an action, and if there is no guardian, the court may require a guardian to be appointed if it shall think fit and the court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application.

**22.** Nothing in the next three preceding sections shall apply to a male infant under the age of twenty years, or to a female infant under the age of seventeen years.

#### GUARDIANS.

On death of father, mother to be guardian alone, or jointly with others **23.** On the death of the father of an infant, the mother, if surviving, shall be the guardian of the infant, either alone, when no guardian has been appointed by the father, or jointly with any guardian appointed by the father.

(2) Where no guardian has been appointed by the father, or if the guardian appointed by the father is dead, or refuses to act, the Supreme Court or the District Court may from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian in certain cases (3) The mother of an infant may, by deed or will, appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant, if the infant be then unmarried, and where guardians are appointed by both parents they shall act jointly.

(4) The mother of an infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the infant, and the court after her death, if it be shown that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be empowered to act, or may make such other order in respect of the guardianship as may be deemed just.

(5) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order as may be deemed proper.

Court may appoint guardian **24.** Upon the application of an infant, or of any one on its behalf, when it is made to appear that the infant has no parent or lawful guardian or that such parent or lawful guardian is not a fit and proper person to have the guardianship of the infant, the court may appoint a guardian or new guardian.

Removal of guardians **25.** Testamentary guardians and guardians appointed by order or letters of guardianship shall be removable by the Supreme Court or by the District Court for the same causes for which trustees are removable.

(2) Any such guardian may by leave of the court resign his office upon such terms and conditions as may be deemed just.

## AUTHORITY OF GUARDIANS.

- 26.** Unless, where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, the guardian so appointed or constituted during the continuance of his guardianship—
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| Guardian's authority                     |  |
| To act for ward                          | (a) Shall have authority to act for and on behalf of the infant;   |
| To appear in actions                     | (b) May appear in any court and prosecute or defend any action or proceeding in his name;  |
| To manage real and personal estate, etc. | (c) Shall have the charge and management of the infant's estate, real and personal when he has given such security as may be ordered by the court or when security has been dispensed with by order of the court, have the custody of the infant's person and the care of his education. |

## ADOPTION OF INFANT.

**27.** Any adult person, or a husband and wife jointly, may by petition to the Supreme Court apply for leave to adopt an infant or infants.

**28.** The Supreme Court may, on the return of the petition, if satisfied of the ability of the petitioner or petitioners to bring up and educate the infant in a proper manner and of the fitness and propriety of the adoption, having regard to the welfare of the infant and the interest of the natural parents, if living, make an order for the adoption of the infant by the petitioner or petitioners.

**29.** Unless such consent is dispensed with by the said court no order for adoption shall be made without the written consent of the following persons duly verified by affidavit, that is to say:

1. The infant when above the age of ten years;
2. The parents of the infant or survivor of them; or the parent, guardian or person having the custody of the infant; or the mother only where the infant is illegitimate;
3. The parent by adoption in case of a subsequent adoption;
4. One of the next of kin to the infant where such infant has no parent or guardian.

**30.** When an order for adoption has been made the effect shall be—

1. To divest the natural parents, guardian or person in whose custody the infant has been, of all legal rights in respect of such infant and to free such persons from all legal obligations and duties as to the maintenance of such infant;
2. To make such infant, for the custody of the person and right of obedience, to all intents and purposes the child of the petitioner or petitioners;
3. To give the infant the same right to any claim for nurture, maintenance and education upon his adopted parent or parents that he would have were they his natural parent or parents.

**31.** As to succession to property an infant adopted in accordance with the provisions of this Act shall, in case of intestacy, take the same share of property of the parent by adoption that he would take if born to such parent in lawful wedlock, and he shall stand in regard to the legal descendants but to no other of the kindred of such parent in the same position as if born to such parent in lawful wedlock.

**32.** If a person adopted dies intestate his property, acquired by himself or by gift or inheritance from his parent by adoption or from the kindred of such parent, shall be distributed among the persons who would have been his kindred if he had been born to such parent in lawful wedlock; and property received by gift or inheritance from his natural parents or kindred shall be distributed in the same manner as if no act of adoption had taken place.

(2) No person shall by being adopted lose his right to inherit from natural parents or kindred.

**33.** Any child, adopted elsewhere than in Alberta, and the adopted parents of such child shall, in the case of intestacy, have the same rights in respect of the property of each other in Alberta, that they would have if such property were situate in the place of the said adoption.

**34.** The practice and procedure on applications to the court under this Act shall be governed by *The Judicature Ordinance* and the Rules of Court.

What District  
Court or Judge  
to act.

**35.** Except where otherwise provided herein the District Court referred to in this Act is the District Court of the judicial district in which the infants or any or either of them reside.

(2) The powers conferred by this Act on the Supreme Court may be exercised by a judge thereof in chambers.

~~No. 44~~

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*First*  
FOURTH SESSION  
*Third*  
~~SECOND~~ LEGISLATURE  
GEORGE V  
1913

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**BILL**

An Act Respecting Infants.

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Received and read the

First time .....

Second time .....

Third time.....

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HON. C. W. CROSS

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