

Bill No. 71 of 1941.

A BILL TO AMEND THE DOMESTIC RELATIONS
ACT, 1927.

NOTE.

This Bill amends *The Domestic Relations Act, 1927*.

In a large number of adoption cases the guardian of the child in question is the Superintendent of Child Welfare. In other cases the parties adopting the child either live outside of the Province or move out of the Province after obtaining custody of the child. In most of these cases, adoption orders and the material required in connection therewith are prepared in the Office of the Superintendent of Child Welfare at Edmonton, and thereafter sent out to various other judicial centres. This procedure is necessary because the order presently is required to be obtained from a judge of the District Court of the district in which the applicant or the child resides. The amendment to section 36 is designed to save time, inconvenience and expense by permitting an application of this nature to be made in Edmonton irrespective of the place of residence of the child or of the parties adopting it. The former definition of "Superintendent" is no longer applicable since that officer's name has been changed to the "Superintendent of Child Welfare".

In many cases adoption orders have been taken out on forms which do not fit the official register kept by the Registrar of Vital Statistics. So many complaints have been made that it is now recommended that the prescribed form must be used in every case. The amendment to subsection (2) of section 39 is designed to effect this end. The amendment to subsection (4) of section 39 is intended to do away with any uncertainty which may exist as to whether the marriage of the parents of an illegitimate child has any effect on an order for adoption of that child. The new subsection (5) of section 39 enables the consent of the child to the adoption order to be dispensed with. In many cases children were placed in foster homes during their infancy, but due to carelessness or ignorance, orders for adoption were not obtained at that time. Generally the child is not aware that he is an adopted child and the foster parents do not wish to disclose this fact. Consequently, in many cases they are reluctant to apply now for an order for adoption and succession to their property may give rise to difficulties. For this reason it is proposed that a

judge be given the right to dispense with the consent of an adopted child in such cases provided the judge is satisfied that this is necessary or desirable.

The amendment introduced by the addition of the new section 40a provides that the order for adoption shall show whether the consent of an adopted child or a parent has been dispensed with by the judge.

The amendment to subsection (2) of section 45 enables the judge not only to order that the surname of the adopted child be changed but that the Christian name may also be changed at the request of the adopting parents.

Section 50 in the present Act sets out the procedure to be followed after the making of an order of adoption and it also makes certain provisions aimed at preserving secrecy with respect to applications for such orders. The new section 50 is intended to make these provisions somewhat more stringent so that no unnecessary information regarding the antecedents of an adopted child can be divulged except on order of a judge.

Paragraph (b) of section 59 is struck out so that the term "Guardian" where used in this Part will have its ordinary meaning and thus any possibility of conflict between the provisions of this section and section 74 of this Act and the provisions of *The Official Guardian Act* are removed.

Section 74 is amended to clarify the provisions of the old section and to make it clear that security is only required when the guardian has property of the infant under his control and is not required to obtain custody and care of the infant and to act on his behalf.

W. S. GRAY,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 71 of 1941.

An Act to amend The Domestic Relations Act, 1927.

(Assented to _____, 1941.)

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

1. This Act may be cited as "*The Domestic Relations Act, 1927, Amendment Act, 1941.*"

2. *The Domestic Relations Act, 1927*, being chapter 5 of the Statutes of Alberta, 1927, is hereby amended as to section 36,—

(a) by striking out paragraph (a) thereof and by substituting therefor the following:

"(a) 'Judge' shall mean judge of the District Court of the Judicial District in which the applicant for an order of adoption or the proposed adoptive child, or the guardian of the proposed adoptive child resides."

(b) by striking out paragraph (c) thereof and by substituting therefor the following:

"(c) 'Superintendent' shall mean the Superintendent of Child Welfare as defined in section 2 (u) of *The Child Welfare Act.*"

(c) by adding at the end thereof the following new paragraph:

"(d) 'Guardian' shall include the Superintendent when a child has been committed permanently under *The Child Welfare Act* to the care and custody of the Superintendent."

3. The said Act is further amended as to section 39,—

(a) by striking out subsection (2) thereof and substituting therefor the following:

"(2) No order for adoption shall be made except on a prescribed form to be supplied by the Superintendent and no application for an order for adoption shall be made until the Superintendent has been served with notice and is either represented thereon or has expressed his intention of not being so represented."

(b) by adding at the end thereof the following new subsections:

“(4) An order for adoption made with respect to an illegitimate child shall not be affected in any way by the marriage of its parents.

“(5) The consent of a child to the making of an order for the adoption thereof shall not be required if the judge for reasons which appear to him to be sufficient deems it necessary or desirable that such consent should be dispensed with.”

4. The said Act is further amended by adding immediately after section 40 the following new section:

“**40a.** In any case where the judge dispenses with any consent required by the next two preceding sections, he shall endorse a memorandum to that effect, on the order of adoption.”

5. The said Act is further amended as to section 45 by striking out subsection (2) thereof and substituting therefor the following:

“(2) In and by the order for adoption the judge may in his discretion give to the adopted child any surname and any first or Christian name or names requested by the applicant, and in that event the child shall be entitled to be and shall be known by the surname and first or Christian name or names so given to him.”

6. The said Act is further amended as to section 50 by striking out the same and substituting therefor the following:

“**50.**—(1) Every order of adoption, together with all the material used on the application, shall be filed in the office of the clerk of the court, the judge of which made the order, and the clerk shall forward a copy of the order certified by the judge to the Registrar General or his deputy, who shall record the same, and make the changes in his records made necessary by such order for adoption.

“(2) No order for adoption and no record of the proceedings with regard thereto shall be made public or disclosed to any person save upon the order of a judge; every order for adoption and all proceedings with regard thereto shall be kept by the clerk of the court in a sealed packet and all papers in the custody of the Superintendent relating to the adopted child shall be kept by him in a sealed packet and neither packet shall be opened save upon the order of a judge.

“(3) Notwithstanding anything to the contrary contained in *The Vital Statistics Act*, orders for adoption and the original birth registrations of all adopted children shall be kept by the Registrar General or his deputy in a special register and no person shall be entitled to have the said

special register or any entry therein searched nor to require any certified extract therefrom save upon the order of a judge;

“Provided, however, that the Registrar General or his deputy shall be entitled to refer to the said special register for the purpose of preparing a birth certificate requested by an adopted child, or either of the adopting parents, which birth certificate shall be in the name given the said adopted child by the order for adoption.”

7. The said Act is further amended as to section 59 by striking out paragraph (b) thereof.

8. The said Act is further amended as to section 74 by striking out the same and substituting therefor the following:

“**74.**—(1) Unless otherwise ordered by the Court, every guardian of the estate of an infant shall, except where such guardian is the Official Guardian, furnish such security if any as may be ordered by the Court.

“(2) Except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, every such guardian during the continuance of his guardianship,—

“(a) shall have authority to act for and on behalf of the infant;

“(b) may appear in court and prosecute or defend any action or proceedings in the infant’s name;

“(c) shall after furnishing such security as the Court under the provisions of this section may require have the care and management of his estate, real and personal, including the right to receive any moneys due and payable to the infant and to give a release in respect thereof;

“(d) shall have the custody of his person and the care of his education.”

9. This Act shall come into force on the day upon which it is assented to.

FIRST SESSION
NINTH LEGISLATURE
5 GEORGE VI
1941

BILL

An Act to Amend The Domestic
Relations Act, 1927.

Received and read the

First time.....

Second time.....

Third time.....

HON. DR. CROSS.

EDMONTON:
A. Shnitka, King's Printer
1941