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c 22 Children's Law Reform Amendment Act, 1989

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CHAPTER 22

An Act to amend the Children's Law Reform Act*Assented to June 20th, 1989*

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

1. Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(4a) Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other.

Duty of
separated
parents

2.—(1) Subsection 24 (1) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by inserting after "application" in the first line "or motion".

(2) Subsections 24 (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, are repealed and the following substituted therefor:

(2) In determining the best interests of a child for the purpose of an application or motion under this Part in respect of custody of or access to a child, a court shall consider all the child's needs and circumstances, including,

Best interests
of child

- (a) the love, affection and emotional ties between the child and,
 - (i) each person seeking custody or access,
 - (ii) other members of the child's family residing with him or her, and
 - (iii) persons involved in the child's care and upbringing;

- (b) the child's views and preferences, if they can reasonably be ascertained;
- (c) the length of time the child has lived in a stable home environment;
- (d) the ability of each person seeking custody or access to act as a parent;
- (e) the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child;
- (f) any plans proposed for the child's care and upbringing;
- (g) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (h) the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion.

Domestic violence to be considered

(3) In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household.

Restrictions on consideration of other past conduct

(4) Other than the conduct referred to in subsection (3), a person's past conduct may be considered only if the court is satisfied that it is relevant to the person's ability to act as a parent.

3. The said Act is amended by adding thereto the following section:

Application to fix times or days of access

28a.—(1) If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

Order

(2) The court may vary the order by specifying the times or days agreed to by the parties, or the times or days the court considers appropriate if the parties do not agree.

Separation agreements
1986, c. 4

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act, 1986* or a predecessor of that section that

provides for a person's access to a child without specifying times or days:

(4) Subsection (1) does not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act. Exception
S.C. 1986,
c. 4

4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 35a (2) or (6) (access enforcement, etc.). Exception

5. Subsection 30 (14) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(14) The court may require one party to pay all the fees and expenses of the person appointed under subsection (1) if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem,
serious
financial
hardship

6. Subsection 31 (10) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(10) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious
financial
hardship

7. The said Act is further amended by adding thereto the following section:

35a.—(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child may make a motion for relief under subsection (2) to the court that made the access order. Motion to
enforce right
of access

(2) If the court is satisfied that the responding party wrongfully denied the moving party access to the child, the court may, by order, Order for
relief

(a) require the responding party to give the moving party compensatory access to the child for the period agreed to by the parties, or for the period

the court considers appropriate if the parties do not agree;

- (b) require supervision as described in section 35;
- (c) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access;
- (d) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Period of
compensatory
access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

What
constitutes
wrongful
denial of
access

(4) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

1. The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised.
2. The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised.
3. The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.
4. The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties.
5. The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised.
6. The moving party did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access.
7. On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right of access.

8. The moving party had informed the responding party that he or she would not seek to exercise the right of access on the occasion in question.

(5) A person in whose favour an order has been made for custody of a child and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, may make a motion for relief under subsection (6) to the court that made the access order.

Motion re failure to exercise of right of access, etc.

(6) If the court is satisfied that the responding party, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, the court may, by order,

Order for relief

- (a) require supervision as described in section 35;
- (b) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;
- (c) appoint a mediator in accordance with section 31 as if the motion were an application for access.

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served.

Speedy hearing

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure.

Limitation

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit.

Oral evidence only

(10) At the hearing of the motion, unless the court orders otherwise, evidence shall be admitted only if it is directly related to,

Scope of evidence at hearing limited

- (a) the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires; or
- (b) the responding party's reasons for the denial or failure.

Separation
agreement
may be filed
with court
1986, c. 4

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act, 1986* or a predecessor of that section may file the agreement with the clerk of the Provincial Court (Family Division) or of the Unified Family Court, together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of
filing

(12) When a separation agreement providing for access to a child at specific times or on specific days is filed in this manner, subsections (1) and (5) apply as if the agreement were an order of the court where it is filed.

Motions
made in bad
faith

(13) If the court is satisfied that a person has made a motion under subsection (1) or (5) in bad faith, the court may prohibit him or her from making further motions without leave of the court.

Idem
S.C. 1986,
c. 4

(14) Subsections (1) and (5) do not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act.

Application

1989, c. 22

(15) Subsections (1) and (5) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day section 7 of the *Children's Law Reform Amendment Act, 1989* comes into force.

8. Subsection 36 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 8, section 4, is repealed and the following substituted therefor:

Order
restraining
harassment

(1) On application, a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the person to enter into the recognizance that the court considers appropriate.

Commence-
ment

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Children's Law Reform Amendment Act, 1989*.