

1982

## c 20 Children's Law Reform Amendment Act, 1982

Ontario

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## CHAPTER 20

**An Act to amend  
the Children's Law Reform Act**

*Assented to June 25th, 1982*

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

1. The *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part: Act,  
amended

## PART III

## CUSTODY, ACCESS AND GUARDIANSHIP

## INTERPRETATION

18.—(1) In this Part,

Interpre-  
tation

- (a) "court" means a provincial court (family division), the Unified Family Court, a county or district court, the Supreme Court or a surrogate court exercising jurisdiction under section 72;
- (b) "extra-provincial order" means an order, or that part of an order, of an extra-provincial tribunal that grants to a person custody of or access to a child;
- (c) "extra-provincial tribunal" means a court or tribunal outside Ontario that has jurisdiction to grant to a person custody of or access to a child;
- (d) "separation agreement" means an agreement that is a valid separation agreement under Part IV of the *Family Law Reform Act*. R.S.O. 1980,  
c. 152

(2) A reference in this Part to a child is a reference to the child while a minor. Child

Purposes

19. The purposes of this Part are,

- (a) to ensure that applications to the courts in respect of custody of, incidents of custody of, access to and guardianship for children will be determined on the basis of the best interests of the children;
- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in respect of the custody of the same child ought to be avoided, and to make provision so that the courts of Ontario will, unless there are exceptional circumstances, refrain from exercising or decline jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection;
- (c) to discourage the abduction of children as an alternative to the determination of custody rights by due process; and
- (d) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside Ontario.

CUSTODY AND ACCESS

Father and mother entitled to custody

20.—(1) Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child.

Rights and responsibilities

(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child.

Authority to act

(3) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child.

Where parents separate

(4) Where the parents of a child live separate and apart and the child lives with one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides.

Access

(5) The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

(6) The entitlement to custody of or access to a child terminates on the marriage of the child. Marriage of child

(7) Any entitlement to custody or access or incidents of custody under this section is subject to alteration by an order of the court or by separation agreement. Entitlement subject to agreement or order

21. A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child. Application for order

22.—(1) A court shall only exercise its jurisdiction to make an order for custody of or access to a child where, Jurisdiction

(a) the child is habitually resident in Ontario at the commencement of the application for the order;

(b) although the child is not habitually resident in Ontario, the court is satisfied,

(i) that the child is physically present in Ontario at the commencement of the application for the order,

(ii) that substantial evidence concerning the best interests of the child is available in Ontario,

(iii) that no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,

(iv) that no extra-provincial order in respect of custody of or access to the child has been recognized by a court in Ontario,

(v) that the child has a real and substantial connection with Ontario, and

(vi) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario.

(2) A child is habitually resident in the place where he resided, Habitual residence

(a) with both parents;

(b) where the parents are living separate and apart, with one parent under a separation agreement or with the consent, implied consent or acquiescence of the other or under a court order; or

- (c) with a person other than a parent on a permanent basis for a significant period of time,

whichever last occurred.

Abduction

(3) The removal or withholding of a child without the consent of the person having custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process by the person from whom the child is removed or withheld.

Serious harm to child

23. Notwithstanding sections 22 and 42, a court may exercise its jurisdiction to make or to vary an order in respect of the custody of or access to a child where,

- (a) the child is physically present in Ontario; and
- (b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if,
  - (i) the child remains in the custody of the person legally entitled to custody of the child,
  - (ii) the child is returned to the custody of the person legally entitled to custody of the child, or
  - (iii) the child is removed from Ontario.

Merits of application for custody or access

24. (1) The merits of an application under this Part in respect of custody of or access to a child shall be determined on the basis of the best interests of the child.

Best interests of child

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

- (a) the love, affection and emotional ties between the child and,
  - (i) each person entitled to or claiming custody of or access to the child,
  - (ii) other members of the child's family who reside with the child, and
  - (iii) persons involved in the care and upbringing of the child;
- (b) the views and preferences of the child, where such views and preferences can reasonably be ascertained;

- (c) the length of time the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (g) the relationship by blood or through an adoption order between the child and each person who is a party to the application.

(3) The past conduct of a person is not relevant to a determination of an application under this Part in respect of custody of or access to a child unless the conduct is relevant to the ability of the person to act as a parent of a child. Past conduct

25. A court having jurisdiction under this Part in respect of custody or access may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Ontario. Declining jurisdiction

26.—(1) Where an application under this Part in respect of custody of or access to a child has not been heard within six months after the commencement of the proceedings, the clerk or registrar of the court shall list the application for the court and give notice to the parties of the date and time when and the place where the court will fix a date for the hearing of the application. Delay

(2) At a hearing of a matter listed by the clerk or registrar in accordance with subsection (1), the court by order may fix a date for the hearing of the application and may give such directions in respect of the proceedings and make such order in respect of the costs of the proceedings as the court considers appropriate. Directions

(3) Where the court fixes a date under subsection (2), the court shall fix the earliest date that, in the opinion of the court, is compatible with a just disposition of the application. Early date

27. Where an action for divorce is commenced under the *Divorce Act* (Canada), any application under this Part in respect of custody of or access to a child that has not been determined is stayed except by leave of the court. Effect of divorce proceedings  
R.S.C. 1970,  
c. D-8

## CUSTODY AND ACCESS—ORDERS

Powers  
of court

28. The court to which an application is made under section 21,

- (a) by order may grant the custody of or access to the child to one or more persons;
- (b) by order may determine any aspect of the incidents of the right to custody or access; and
- (c) may make such additional order as the court considers necessary and proper in the circumstances.

Order  
varying  
an order

29. A court shall not make an order under this Part that varies an order in respect of custody or access made by a court in Ontario unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.

## CUSTODY AND ACCESS—ASSISTANCE TO COURT

Assessment  
of needs of  
child

30.—(1) The court before which an application is brought in respect of custody of or access to a child, by order, may appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

When  
order  
may be  
made

(2) An order may be made under subsection (1) on or before the hearing of the application in respect of custody of or access to the child and with or without a request by a party to the application.

Agreement  
by parties

(3) The court shall, if possible, appoint a person agreed upon by the parties, but if the parties do not agree the court shall choose and appoint the person.

Consent  
to act

(4) The court shall not appoint a person under subsection (1) unless the person has consented to make the assessment and to report to the court within the period of time specified by the court.

Attendance  
for  
assessment

(5) In an order under subsection (1), the court may require the parties, the child and any other person who has been given notice of the proposed order, or any of them, to attend for assessment by the person appointed by the order.

Refusal  
to attend

(6) Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the

court may draw such inferences in respect of the ability and willingness of any person to satisfy the needs of the child as the court considers appropriate.

(7) The person appointed under subsection (1) shall file his report with the clerk or registrar of the court. Report

(8) The clerk or registrar of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child. Copies of report

(9) The report mentioned in subsection (7) is admissible in evidence in the application. Admissibility of report

(10) Any of the parties, and counsel, if any, representing the child, may require the person appointed under subsection (1) to attend as a witness at the hearing of the application. Assessor may be witness

(11) Upon motion, the court by order may give such directions in respect of the assessment as the court considers appropriate. Directions

(12) The court shall require the parties to pay the fees and expenses of the person appointed under subsection (1). Fees and expenses

(13) The court shall specify in the order the proportions or amounts of the fees and expenses that the court requires each party to pay. Idem, proportions or amounts

(14) The court may relieve a party from responsibility for payment of any of the fees and expenses of the person appointed under subsection (1) where the court is satisfied that payment would cause serious financial hardship to the party. Idem, serious financial hardship

(15) The appointment of a person under subsection (1) does not prevent the parties or counsel representing the child from submitting other expert evidence as to the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child. Other expert evidence

31.—(1) Upon an application for custody of or access to a child, the court, at the request of the parties, by order may appoint a person selected by the parties to mediate any matter specified in the order. Mediation

(2) The court shall not appoint a person under subsection (1) unless the person, Consent to act

(a) has consented to act as mediator; and

(b) has agreed to file a report with the court within the period of time specified by the court.



Duty of mediator

(3) It is the duty of a mediator to confer with the parties and endeavour to obtain an agreement in respect of the matter.

Form of report

(4) Before entering into mediation on the matter, the parties shall decide whether,

(a) the mediator is to file a full report on the mediation, including anything that the mediator considers relevant to the matter in mediation; or

(b) the mediator is to file a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter.

Filing of report

(5) The mediator shall file his report with the clerk or registrar of the court in the form decided upon by the parties under subsection (4).

Copies of report

(6) The clerk or registrar of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child.

Admissions made in the course of mediation

(7) Where the parties have decided that the mediator's report is to be in the form described in clause (4) (b), evidence of anything said or of any admission or communication made in the course of the mediation is not admissible in any proceeding except with the consent of all parties to the proceeding in which the order was made under subsection (1).

Fees and expenses

(8) The court shall require the parties to pay the fees and expenses of the mediator.

Idem, proportions or amounts

(9) The court shall specify in the order the proportions or amounts of the fees and expenses that the court requires each party to pay.

Idem, serious financial hardship

(10) The court may relieve a party from responsibility for payment of any of the fees and expenses of the mediator where the court is satisfied that payment would cause serious financial hardship to the party.

Official Guardian's report

32. In an application under this Part in respect of a child, the court may require the Official Guardian to cause an investigation to be made and to report to the court upon all matters relating to the custody, support and education of the child, in which case section 1 of the *Matrimonial Causes Act* shall apply with necessary modifications and, for the purpose, the applicant shall be deemed to be the petitioner.

R.S.O. 1980, c. 258

Further evidence

33.—(1) Where a court is of the opinion that it is necessary to receive further evidence from a place outside Ontario before

making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside Ontario such supporting material as may be necessary together with a request,

- (a) that the Attorney General, Minister of Justice or similar officer take such action as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application; and
- (b) that the Attorney General, Minister of Justice or similar officer or the tribunal send to the court a certified copy of the evidence produced or given before the tribunal.

(2) A court that acts under subsection (1) may assess the cost of so acting against one or more of the parties to the application or may deal with such cost as costs in the cause. Cost of obtaining evidence

34.—(1) Where the Attorney General receives from an extra-provincial tribunal a request similar to that referred to in section 33 and such supporting material as may be necessary, it is the duty of the Attorney General to refer the request and the material to the proper court. Referral to court

(2) A court to which a request is referred by the Attorney General under subsection (1) shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request. Obtaining evidence

CUSTODY AND ACCESS—ENFORCEMENT

35.—(1) Where an order is made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access by a person, a children's aid society or other body. Supervision of custody or access

(2) A court shall not direct a person, a children's aid society or other body to supervise custody or access as mentioned in subsection (1) unless the person, society or body has consented to act as supervisor. Consent to act

36. Upon application, a court may make an order restraining any person from molesting, annoying or harassing the applicant or a child in the lawful custody of the applicant and may require the respondent to enter into such recognizance, with or without sureties, or to post a bond as the court considers appropriate. Order restraining harassment

37.—(1) Where a court is satisfied upon application by a person in whose favour an order has been made for custody of or access to Order where child unlawfully withheld

a child that there are reasonable and probable grounds for believing that any person is unlawfully withholding the child from the applicant, the court by order may authorize the applicant or someone on his behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody or access, as the case may be.

Order to locate and take child

(2) Where a court is satisfied upon application that there are reasonable and probable grounds for believing,

- (a) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child;
- (b) that a person who is prohibited by court order or separation agreement from removing a child from Ontario proposes to remove the child or have the child removed from Ontario; or
- (c) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from Ontario and that the child is not likely to return,

the court by order may direct the sheriff or a police force, or both, having jurisdiction in any area where it appears to the court that the child may be, to locate, apprehend and deliver the child to the person named in the order.

Application without notice

(3) An order may be made under subsection (2) upon an application without notice where the court is satisfied that it is necessary that action be taken without delay.

Duty to act

(4) The sheriff or police force directed to act by an order under subsection (2) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.

Entry and search

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a sheriff or a member of a police force may enter and search any place where he has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances.

Time

(6) An entry or a search referred to in subsection (5) shall be made only between 6 a.m. and 9 p.m. standard time unless the court, in the order, authorizes entry and search at another time.

Expiration of order

(7) An order made under subsection (2) shall name a date on which it expires, which shall be a date not later than six months after it is made unless the court is satisfied that a longer period of time is necessary in the circumstances.

(8) An application under subsection (1) or (2) may be made in an application for custody or access or at any other time. When application may be made

38.—(1) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person prohibited by court order or separation agreement from removing a child from Ontario proposes to remove the child from Ontario, the court in order to prevent the removal of the child from Ontario may make an order under subsection (3). Application to prevent unlawful removal of child

(2) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from Ontario and is not likely to return the child to Ontario, the court in order to secure the prompt, safe return of the child to Ontario may make an order under subsection (3). Application to ensure return of child

(3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following: Order by court

1. Transfer specific property to a named trustee to be held subject to the terms and conditions specified in the order.
2. Where payments have been ordered for the support of the child, make the payments to a specified trustee subject to the terms and conditions specified in the order.
3. Post a bond, with or without sureties, payable to the applicant in such amount as the court considers appropriate.
4. Deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to an individual or body specified by the court.

(4) A provincial court (family division) shall not make an order under paragraph 1 of subsection (3). Idem, provincial court (family division)

(5) In an order under paragraph 1 of subsection (3), the court may specify terms and conditions for the return or the disposition of the property as the court considers appropriate. Terms and conditions

(6) A court or an individual or body specified by the court in an order under paragraph 4 of subsection (3) shall hold a passport or travel document delivered in accordance with the order in safekeeping in accordance with any directions set out in the order. Safekeeping

## Directions

(7) In an order under subsection (3), a court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate.

## Contempt of orders of provincial court (family division)

39.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or both, any wilful contempt of or resistance to its process or orders in respect of custody of or access to a child, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

## Conditions of imprisonment

(2) An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

## Information as to address

40.—(1) Where, upon application to a court, it appears to the court that,

(a) for the purpose of bringing an application in respect of custody or access under this Part; or

(b) for the purpose of the enforcement of an order for custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in clause (b) is made, the court may order any person or public body to provide the court with such particulars of the address of the proposed respondent or person against whom the order referred to in clause (b) is made as are contained in the records in the custody of the person or body, and the person or body shall give the court such particulars as are contained in the records and the court may then give the particulars to such person or persons as the court considers appropriate.

## Exception

(2) A court shall not make an order on an application under subsection (1) where it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, rather than to learn or confirm the whereabouts of the proposed respondent or the enforcement of an order for custody or access.

## Compliance with order

(3) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

## Section binds Crown

(4) This section binds the Crown in right of Ontario.

## CUSTODY AND ACCESS—EXTRA-PROVINCIAL MATTERS

41. Upon application, a court,

Interim  
powers of  
court

- (a) that is satisfied that a child has been wrongfully removed to or is being wrongfully retained in Ontario; or
- (b) that may not exercise jurisdiction under section 22 or that has declined jurisdiction under section 25 or 43,

may do any one or more of the following:

1. Make such interim order in respect of the custody or access as the court considers is in the best interests of the child.
2. Stay the application subject to,
  - i. the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or
  - ii. such other conditions as the court considers appropriate.
3. Order a party to return the child to such place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application.

42.—(1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, a court shall recognize the order unless the court is satisfied,

Enforcement  
of extra-  
provincial  
orders

- (a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
- (b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;
- (c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child;
- (d) that the order of the extra-provincial tribunal is contrary to public policy in Ontario; or

(e) that, in accordance with section 22, the extra-provincial tribunal would not have jurisdiction if it were a court in Ontario.

Effect of recognition of order

(2) An order made by an extra-provincial tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such.

Conflicting orders

(3) A court presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1) shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

Further orders

(4) A court that has recognized an extra-provincial order may make such further orders under this Part as the court considers necessary to give effect to the order.

Superseding order, material change in circumstances

43.—(1) Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access to a child where the court is satisfied that there has been a material change in circumstances that affects or is likely to affect the best interests of the child and,

(a) the child is habitually resident in Ontario at the commencement of the application for the order; or

(b) although the child is not habitually resident in Ontario, the court is satisfied,

(i) that the child is physically present in Ontario at the commencement of the application for the order,

(ii) that the child no longer has a real and substantial connection with the place where the extra-provincial order was made,

(iii) that substantial evidence concerning the best interests of the child is available in Ontario,

(iv) that the child has a real and substantial connection with Ontario, and

(v) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario.

Declining jurisdiction

(2) A court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Ontario.

44. Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access to a child if the court is satisfied that the child would, on the balance of probability, suffer serious harm if,

Superseding order, serious harm

- (a) the child remains in the custody of the person legally entitled to custody of the child;
- (b) the child is returned to the custody of the person entitled to custody of the child; or
- (c) the child is removed from Ontario.

45. A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is *prima facie* evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

True copy of extra-provincial order

46. For the purposes of an application under this Part, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside Ontario and of a decision of an extra-provincial tribunal.

Court may take notice of foreign law

47.—(1) In this section, “convention” means the Convention on the Civil Aspects of International Child Abduction, set out in the Schedule to this section.

Interpretation

(2) On, from and after the date the convention enters into force in respect of Ontario as set out in Article 43 of the convention, except as provided in subsection (3), the convention is in force in Ontario and the provisions thereof are law in Ontario.

Convention on Civil Aspects of International Child Abduction

(3) The Crown is not bound to assume any costs resulting under the convention from the participation of legal counsel or advisers or from court proceedings except in accordance with the *Legal Aid Act*.

Exception

R.S.O. 1980, c. 234

(4) The Ministry of the Attorney General shall be the Central Authority for Ontario for the purpose of the convention.

Central Authority

(5) An application may be made to a court in pursuance of a right or an obligation under the convention.

Application to court

(6) The Attorney General shall request the Government of Canada to submit a declaration to the Ministry of Foreign Affairs

Request to ratify convention



of the Kingdom of the Netherlands, declaring that the convention extends to Ontario.

Publication  
of date

(7) The Attorney General shall publish in *The Ontario Gazette* the date the convention comes into force in Ontario.

Regulations

(8) The Lieutenant Governor in Council may make such regulations as he considers necessary to carry out the intent and purpose of this section.

Conflict

(9) Where there is a conflict between this section and any other enactment, this section prevails.

## SCHEDULE

### CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

#### CHAPTER I—SCOPE OF THE CONVENTION

##### *Article 1*

The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

##### *Article 2*

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

##### *Article 3*

The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

#### *Article 4*

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

#### *Article 5*

For the purposes of this Convention:

- (a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- (b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

### CHAPTER II—CENTRAL AUTHORITIES

#### *Article 6*

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

#### *Article 7*

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures:

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;

- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

#### CHAPTER III—RETURN OF CHILDREN

##### *Article 8*

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain:

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by:

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

##### *Article 9*

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

*Article 10*

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

*Article 11*

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

*Article 12*

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

*Article 13*

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

*Article 14*

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

*Article 15*

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

*Article 16*

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

*Article 17*

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

*Article 18*

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

*Article 19*

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

*Article 20*

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

## CHAPTER IV—RIGHTS OF ACCESS

*Article 21*

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

#### CHAPTER V—GENERAL PROVISIONS

##### *Article 22*

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

##### *Article 23*

No legalization or similar formality may be required in the context of this Convention.

##### *Article 24*

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

##### *Article 25*

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

##### *Article 26*

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

*Article 27*

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

*Article 28*

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

*Article 29*

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

*Article 30*

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

*Article 31*

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units:

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

*Article 32*

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 33*

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

*Article 34*

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

*Article 35*

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

*Article 36*

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

## CHAPTER VI—FINAL CLAUSES

*Article 37*

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 38*

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.



*Article 39*

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 40*

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

*Article 41*

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

*Article 42*

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 43*

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

*Article 44*

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

*Article 45*

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accessions referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciations referred to in Article 44.

Done at The Hague, on the 25th day of October, 1980.

## GUARDIANSHIP

48.—(1) Upon application, by a parent of a child or any other person, a court may appoint a guardian of the property of the child. Appointment of guardian

(2) A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child. Responsibility of guardian

49.—(1) As between themselves and subject to any court order or any agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians of the property of the child. Parents as guardians

(2) As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child. Parent and other person

More than  
one guardian

(3) A court may appoint more than one guardian of the property of a child.

Guardians  
jointly  
responsible

(4) Where more than one guardian is appointed of the property of a child, the guardians are jointly responsible for the care and management of the property of the child.

Criteria

50. In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the circumstances, including,

- (a) the ability of the applicant to manage the property of the child;
- (b) the merits of any plans proposed by the applicant for the care and management of the property of the child; and
- (c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.

Effect of  
appointment

51. The appointment of a guardian by a court under this Part has effect in all parts of Ontario.

Payment  
of debt  
due to  
child

52.—(1) Where a person is under a duty to pay money or deliver personal property to a child and no guardian of the property of the child has been appointed, the payment of not more than \$2,000 or the delivery of the personal property to a value of not more than \$2,000 in a year to,

- (a) the child, if the child is married;
- (b) a parent with whom the child resides; or
- (c) a person who has lawful custody of the child,

discharges the duty to the extent of the amount paid or the value of the personal property delivered, but the total amount paid, or total value of property delivered, under this subsection in respect of the same obligation shall not exceed \$5,000.

Money  
payable  
under  
judgment  
Receipt for  
payment

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a court.

(3) A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child resides or a person who has lawful custody of the child has the same validity as if a court had appointed the parent or the person as a guardian of the property of the child.

Responsibility  
for money  
or property

(4) A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a

guardian for the care and management of the money or personal property.

53. A guardian of the property of a child may be required to account or may voluntarily pass his accounts in respect of his care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass his accounts in respect of his trusteeship. Accounts

54. A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of eighteen years. Transfer of property to child

55. A guardian of the property of a child is entitled to payment of a reasonable amount for his fees for and expenses of management of the property of the child. Management fees and expenses

56.—(1) A court that appoints a guardian of the property of a child shall require the guardian to post a bond, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child. Bond by guardian

(2) Subsection (1) does not apply where the court appoints a parent of a child as guardian of the property of the child and the court is of the opinion that it is appropriate not to require the parent to post a bond. Where parent appointed guardian

57. Upon application by a married child, the court that appointed a guardian of the property of the child or a co-ordinate court by order shall end the guardianship for the child. Where child marries

58.—(1) A guardian of the property of a child may be removed by a court for the same reasons for which a trustee may be removed. Removal of guardian

(2) A guardian of the property of a child, with the permission of a court, may resign his office upon such conditions as the court considers appropriate. Resignation of guardian

59. A notice of every application to a court for appointment of a guardian of the property of a child shall be transmitted by the registrar or clerk of the court to the Surrogate Clerk for Ontario. Notice to Surrogate Clerk for Ontario

#### DISPOSITION OF PROPERTY

60.—(1) Upon application by the parent of a child or any other person, the Supreme Court by order may require or approve, or both, Supreme Court order re property of child

- (a) the disposition or encumbrance of all or part of the interest of the child in land;
- (b) the sale of the interest of the child in personal property; or
- (c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

Criteria (2) An order shall be made under subsection (1) only where the Supreme Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child.

Conditions (3) An order under subsection (1) may be made subject to such conditions as the Supreme Court considers appropriate.

Limitation (4) The Supreme Court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.

Execution of documents (5) The Supreme Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment.

Directions (6) The Supreme Court by order may give such directions as it considers necessary for the carrying out of an order made under subsection (1).

Validity of documents (7) Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was eighteen years of age or, if executed by another person in accordance with the order, as if the child had executed it and had been eighteen years of age at the time.

Liability (8) No person incurs or shall be deemed to incur liability by making a payment in accordance with an order under clause (1) (c).

Order for maintenance where power of appointment in favour of children 61.—(1) Upon application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his children, the Supreme Court may order that such part of the proceeds of the property as the Supreme Court considers proper be used for the support, education or benefit of one or more of the children.

Idem (2) An order may be made under subsection (1) whether or not,

- (a) there is a gift over in the event that there are no children to take under the power; or
- (b) any person could dispose of the property in the event that there are no children to take under the power.

#### TESTAMENTARY CUSTODY AND GUARDIANSHIP

62.—(1) A person entitled to custody of a child may appoint by will one or more persons to have custody of the child after the death of the appointor. Custody, appointment by will

(2) A guardian of the property of a child may appoint by will one or more persons to be guardians of the property of the child after the death of the appointor. Guardianship, appointment by will

(3) An unmarried parent who is a minor may make an appointment mentioned in subsection (1) or (2) by a written appointment signed by the parent. Appointment by minor

(4) An appointment under subsection (1), (2) or (3) is effective only, Limitation

- (a) if the appointor is the only person entitled to custody of the child or who is the guardian of the property of the child, as the case requires, on the day immediately before the appointment is to take effect; or
- (b) if the appointor and any other person entitled to custody of the child or who is the guardian of the property of the child, as the case requires, die at the same time or in circumstances that render it uncertain which survived the other.

(5) Where two or more persons are appointed to have custody of or to be guardians of the property of a child by appointors who die as mentioned in clause (4) (b), only the appointments of the persons appointed by both or all of the appointors are effective. Where more than one appointment

(6) No appointment under subsection (1), (2) or (3) is effective without the consent of the person appointed. Consent of appointee

(7) An appointment under subsection (1), (2) or (3) for custody of a child or guardianship of the property of a child expires ninety days after the appointment becomes effective or, where the appointee applies under this Part for custody of the child or guardianship of the property of the child within the ninety-day period, when the application is disposed of. Expiration of appointment

(8) An appointment under this section does not apply to prevent an application for or the making of an order under section 21 or 48. Application or order under ss. 21, 48

Application

- (9) This section applies in respect of,
- (a) any will made on or after the day this section comes into force; and
  - (b) any will made before the day this section comes into force, if the testator is living on the day this section comes into force.

## PROCEDURE

Joinder of proceedings

R.S.O. 1980, c. 152

Nature of order

63.—(1) An application under this Part may be made in the same proceeding and in the same manner as an application under the *Family Law Reform Act*, or in another proceeding.

(2) An application under this Part may be an original application or for the variance of an order previously given or to supersede an order of an extra-provincial tribunal.

Parties

(3) The parties to an application under this Part in respect of a child shall include,

- (a) the mother and the father of the child;
- (b) a person who has demonstrated a settled intention to treat the child as a child of his or her family;
- (c) a person who had the actual care and upbringing of the child immediately before the application; and
- (d) any other person whose presence as a party is necessary to determine the matters in issue.

Combining of applications

(4) Where, in an application under this Part, it appears to the court that it is necessary or desirable in the best interests of the child to have other matters first or simultaneously determined, the court may direct that the application stand over until such other proceedings are brought or determined as the court considers appropriate, subject to section 26.

Where identity of father not known

(5) Where there is no presumption of paternity and the identity of the father is not known or is not reasonably capable of being ascertained, the court may order substituted service or may dispense with service of documents upon the father in the proceeding.

Application or response by minor

64.—(1) A minor who is a spouse may make an application under this Part without a next friend and may respond without a guardian *ad litem*.

Consent by minor

(2) A consent in respect of a matter provided for by this Part is not invalid by reason only that the person giving the consent is a minor.

65.—(1) In considering an application under this Part, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them.

Child entitled to be heard

(2) The court may interview the child to determine the views and preferences of the child.

Interview by court

(3) The interview shall be recorded.

Recording

(4) The child is entitled to be advised by and to have his counsel, if any, present during the interview.

Counsel

66. Nothing in this Part abrogates the right of a child of sixteen or more years of age to withdraw from parental control.

Where child is sixteen or more years old

67. Except as otherwise provided, where an application is made to a court under this Part, no person who is a party to the proceeding shall make an application under this Part to any other court in respect of a matter in issue in the proceeding, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

All proceedings in one court

68. The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court by order may prohibit the publication of any matter connected with the application or given in evidence at the hearing.

Closed hearings

69.—(1) Upon the consent of the parties in an application under this Part, the court may make any order that the court is otherwise empowered to make by this Part, subject to the duty of the court to have regard to the best interests of the child.

Consent orders

(2) Any matter provided for in this Part and in a domestic contract as defined in the *Family Law Reform Act* may be incorporated in an order made under this Part.

Incorporation of contract in order  
R.S.O. 1980,  
c. 152

70. Where a domestic contract as defined in the *Family Law Reform Act* makes provision in respect of a matter that is provided for in this Part, the contract prevails except as otherwise provided in Part IV of the *Family Law Reform Act*.

Part subject to contracts

71. This Part does not deprive the Supreme Court of its *parens patriae* jurisdiction.

Jurisdiction of Supreme Court



Surrogate  
court

72. Where, in a proceeding in respect of an estate, an issue arises with respect to the custody of, access to or guardianship of the property of a child, a surrogate court may exercise the jurisdiction of a court under this Part.

Order made  
under  
R.S.O. 1980,  
c. 292

73. An application to vary an order made by a surrogate court under the *Minors Act* shall be made to a county or district court.

Place of  
application  
for interim  
order

74.—(1) An application for an interim order shall be made to the court in which the original proceeding was taken.

Place of  
application  
to vary  
order

(2) An application under this Part to vary an order may be made to the court in which the original proceeding was taken or to a co-ordinate court in another part of Ontario.

Interim  
order

75. In a proceeding under this Part, the court may make such interim order as the court considers appropriate.

Appeal from  
provincial  
court  
(family  
division)

76. An appeal from an order of a provincial court (family division) under this Part lies to the county or district court in the county or district in which the provincial court (family division) is situated.

Order  
effective  
pending  
appeal

77. An order under this Part is effective notwithstanding that an appeal is taken from the order, unless the court that made the order or the court to which the appeal is taken orders otherwise.

Rule of  
construction

78.—(1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a guardian with respect to the person of a child shall be construed to refer to custody of the child and a reference to a guardian with respect to property of a child shall be construed to refer to guardianship of the property of the child.

Application

(2) Subsection (1) applies to any instrument, any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the day this section comes into force.

Application  
of Part to  
order under  
R.S.O. 1980,  
cc. 292, 152;  
R.S.O. 1970,  
c. 128

79. This Part applies to an outstanding order for custody or guardianship of or access to a child made under the *Minors Act* (repealed by section 4 of the *Children's Law Reform Amendment Act, 1982*), the *Family Law Reform Act* or *The Deserted Wives' and Children's Maintenance Act* (repealed by *The Family Law Reform Act, 1978*) as if the order were made under this Part.

## COMPLEMENTARY AMENDMENTS

- 2.**—(1) Paragraph 22 of subsection 1 (1) of the *Education Act*, being chapter 129, is repealed and the following substituted therefor: R.S.O. 1980,  
c. 129,  
s. 1 (1), par.  
22,  
re-enacted
22. “guardian” means a person who has lawful custody of a child, other than the parent of the child.
- (2) Section 17 of the said Act is amended by striking out “in law” in the second line and inserting in lieu thereof “in section 1” and by striking out “or legal custody” in the fifth line. s. 17,  
amended
- 3.**—(1) Subsection 20 (1) of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980, is amended by striking out “or custody” in the third line. R.S.O. 1980,  
c. 152,  
s. 20 (1),  
amended
- (2) Clause 26 (1) (b) of the said Act is amended by striking out “custody or access” in the second line. s. 26 (1) (b),  
amended
- (3) Section 35 of the said Act is repealed and the following substituted therefor: s. 35,  
re-enacted
35. An application for custody or access under the *Children's Law Reform Act* may be joined with an application under this Act, but the court may direct that an application for support stand over until an application for custody has been determined. Joinder of  
actions  
R.S.O. 1980,  
c. 68
- 4.**—(1) The *Minors Act*, being chapter 292 of the Revised Statutes of Ontario, 1980, is repealed. R.S.O. 1980,  
c. 292,  
repealed
- (2) Where an application is made under the *Minors Act* or under section 35 of the *Family Law Reform Act* before subsection (1) comes into force and no evidence has been heard in the proceeding before subsection (1) comes into force, other than in respect of an interim order, the application shall be deemed to be an application under the *Children's Law Reform Act*, subject to such directions as the court considers appropriate. Application  
of subs. (1)  
to proceeding  
already  
commenced
- (3) Where an application referred to in subsection (2) is commenced in a surrogate court, the county or district court that has jurisdiction or, in the Judicial District of Hamilton-Wentworth, the Unified Family Court may order that the proceeding be removed to such county or district court or to the Unified Family Court, as the case may be, subject to such directions as the court considers appropriate. Where  
proceeding  
in surrogate  
court

R.S.O. 1980,  
c. 515  
Sched.,  
amended

5. The Schedule to the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following:

*“Children’s Law  
Reform Act*

All, except sections 60 and 61”.

Commence-  
ment

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

Short title

7. The short title of this Act is the *Children’s Law Reform Amendment Act, 1982*.