

Children's Law Reform Act

R.S.O. 1990, CHAPTER C.12

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PART I EQUAL STATUS OF CHILDREN

Rule of parentage

1. (1) Subject to subsection (2), for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage. R.S.O. 1990, c. C.12, s. 1 (1).

Exception for adopted children

(2) Where an adoption order has been made, section 158 or 159 of the *Child and Family Services Act* applies and the child is the child of the adopting parents as if they were the natural parents. R.S.O. 1990, c. C.12, s. 1 (2).

Kindred relationships

(3) The parent and child relationships as determined under subsections (1) and (2) shall be followed in the determination of other kindred relationships flowing therefrom. R.S.O. 1990, c. C.12, s. 1 (3).

Common law distinction of legitimacy abolished

(4) Any distinction at common law between the status of children born in wedlock and born out of wedlock is abolished and the relationship of parent and child and kindred relationships flowing therefrom shall be determined for the purposes of the common law in accordance with this section. R.S.O. 1990, c. C.12, s. 1 (4).

Rule of construction

2. (1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of the relationship of parent and child as determined under section 1. R.S.O. 1990, c. C.12, s. 2 (1).

Application

(2) Subsection (1) applies to,

- (a) 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 31st day of March, 1978; and
- (b) any instrument made on or after the 31st day of March, 1978. R.S.O. 1990, c. C.12, s. 2 (2).

PART II ESTABLISHMENT OF PARENTAGE

Court under ss. 4 to 7

3. The court having jurisdiction for the purposes of sections 4 to 7 is,

- (a) the Family Court, in the areas where it has jurisdiction under subsection 21.1 (4) of the *Courts of Justice Act*;
- (b) the Superior Court of Justice, in the rest of Ontario. 1996, c. 25, s. 3 (1); 2001, c. 9, Sched. B, s. 4 (7).

Paternity and maternity declarations

4. (1) Any person having an interest may apply to a court for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child. R.S.O. 1990, c. C.12, s. 4 (1).

Declaration of paternity recognized at law

(2) Where the court finds that a presumption of paternity exists under section 8 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law. R.S.O. 1990, c. C.12, s. 4 (2).

Declaration of maternity

(3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect. R.S.O. 1990, c. C.12, s. 4 (3).

Idem

(4) Subject to sections 6 and 7, an order made under this section shall be recognized for all purposes. R.S.O. 1990, c. C.12, s. 4 (4).

Application for declaration of paternity where no presumption

5. (1) Where there is no person recognized in law under section 8 to be the father of a child, any person may apply to the court for a declaration that a male person is his or her father, or any male person may apply to the court for a declaration that a person is his child. R.S.O. 1990, c. C.12, s. 5 (1).

Limitation

(2) An application shall not be made under subsection (1) unless both the persons whose relationship is sought to be established are living. R.S.O. 1990, c. C.12, s. 5 (2).

Declaratory order

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to sections 6 and 7, the order shall be recognized for all purposes. R.S.O. 1990, c. C.12, s. 5 (3).

Reopening on new evidence

6. Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto. R.S.O. 1990, c. C.12, s. 6.

Corresponding change of surname

6.1 (1) Any person declared under section 4, 5 or 6, as the case may be, to be the mother or father of a child may apply to the court for an order that the child's surname be changed to any surname that the child could have been given at birth under subsection 10 (3), (4) or (5) of the *Vital Statistics Act*. 2009, c. 11, s. 4.

Same

(2) An application under subsection (1) to change a child's surname may be made at the same time that an application for a declaration under section 4, 5 or 6 is made. 2009, c. 11, s. 4.

Best interests of the child

(3) An order under subsection (1) changing a child's surname may only be made if it is in the best interests of the child. 2009, c. 11, s. 4.

Appeal

7. An appeal lies from an order under section 4, 5 or 6.1 or a decision under section 6 in accordance with the rules of the court. R.S.O. 1990, c. C.12, s. 7; 2009, c. 11, s. 5.

Presumption of paternity

8. (1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances:

1. The person is married to the mother of the child at the time of the birth of the child.
2. The person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree *nisi* was granted within 300 days before the birth of the child.
3. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
4. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
5. The person has certified the child's birth, as the child's father, under the *Vital Statistics Act* or a similar Act in another jurisdiction in Canada.
6. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child. R.S.O. 1990, c. C.12, s. 8 (1).

Where marriage void

(2) For the purpose of subsection (1), where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit. R.S.O. 1990, c. C.12, s. 8 (2).

Conflicting presumptions

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection (1), no presumption shall be made as to paternity and no person is recognized in law to be the father. R.S.O. 1990, c. C.12, s. 8 (3).

Admissibility in evidence of acknowledgment against interest

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is proof, in the absence of evidence to the contrary, of the fact. R.S.O. 1990, c. C.12, s. 9.

Leave for blood tests and DNA tests

10. (1) On the application of a party in a civil proceeding in which the court is called on to determine a child's parentage, the court may give the party leave to obtain blood tests or DNA tests of the persons who are named in the order granting leave and to submit the results in evidence. 2006, c. 19, Sched. B, s. 4.

Conditions

(2) The court may impose conditions, as it thinks proper, on an order under subsection (1). 2006, c. 19, Sched. B, s. 4.

Consent to procedure

(3) The *Health Care Consent Act, 1996* applies to the blood test or DNA test as if it were treatment under that Act. 2006, c. 19, Sched. B, s. 4.

Inference from refusal

(4) If a person named in an order under subsection (1) refuses to submit to the blood test or DNA test, the court may draw such inferences as it thinks appropriate. 2006, c. 19, Sched. B, s. 4.

Exception

(5) Subsection (4) does not apply if the refusal is the decision of a substitute decision-maker as defined in section 9 of the *Health Care Consent Act, 1996*. 2006, c. 19, Sched. B, s. 4.

11. REPEALED: 2006, c. 19, Sched. B, s. 4.

Statutory declaration of parentage

12. (1) A person may file in the office of the Registrar General a statutory declaration, in the form provided by the Ministry of the Attorney General, affirming that he or she is the father or mother, as the case may be, of a child. R.S.O. 1990, c. C.12, s. 12 (1); 2009, c. 33, Sched. 2, s. 12 (1, 5).

Idem

(2) Two persons may file in the office of the Registrar General a statutory declaration, in the form provided by the Ministry of the Attorney General, jointly affirming that they are the father and mother of a child. R.S.O. 1990, c. C.12, s. 12 (2); 2009, c. 33, Sched. 2, s. 12 (2, 5).

Copies of statutory declarations under *Vital Statistics Act*

13. Upon application and upon payment of the fee prescribed under the *Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Registrar General as to the reason for requiring it may obtain from the Registrar General a certified copy of a statutory declaration filed under section 12. R.S.O. 1990, c. C.12, s. 13; 2009, c. 33, Sched. 2, s. 12 (5).

Filing of court decisions respecting parentage

14. (1) Every registrar or clerk of a court in Ontario shall furnish the Registrar General with a statement in the form provided by the Ministry of the Attorney General respecting each order or judgment of the court that confirms or makes a finding of parentage. R.S.O. 1990, c. C.12, s. 14 (1); 1993, c. 27, Sched.; 2009, c. 33, Sched. 2, s. 12 (3, 5).

Inspection by public

(2) Upon application and upon payment of the fee prescribed under the *Vital Statistics Act*, any person may inspect a statement respecting an order or judgment filed under subsection (1) and obtain a certified copy thereof from the Registrar General. R.S.O. 1990, c. C.12, s. 14 (2); 2009, c. 33, Sched. 2, s. 12 (5).

Certified copies as evidence

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as proof, in the absence of evidence to the contrary, of the filing and contents of the document for all purposes in any action or proceeding. R.S.O. 1990, c. C.12, s. 15; 2009, c. 33, Sched. 2, s. 12 (5).

Duties of Registrar General

16. Nothing in this Act shall be construed to require the Registrar General to amend a registration showing parentage other than in recognition of an order made under section 4, 5 or 6. R.S.O. 1990, c. C.12, s. 16; 2009, c. 33, Sched. 2, s. 12 (5).

17. REPEALED: 2009, c. 33, Sched. 2, s. 12 (4).

**PART III
CUSTODY, ACCESS AND GUARDIANSHIP**

INTERPRETATION

Definitions, Part III

18. (1) In this Part,

“court” means the Ontario Court of Justice, the Family Court or the Superior Court of Justice; (“tribunal”)

“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; (“ordonnance extraprovinciale”)

“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; (“tribunal extraprovincial”)

“separation agreement” means an agreement that is a valid separation agreement under Part IV of the *Family Law Act*. (“accord de séparation”) R.S.O. 1990, c. C.12, s. 18 (1); 1996, c. 25, s. 3 (2); 2001, c. 9, Sched. B, s. 4 (7, 8).

Child

(2) A reference in this Part to a child is a reference to the child while a minor. R.S.O. 1990, c. C.12, s. 18 (2).

Purposes, Part III

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. R.S.O. 1990, c. C.12, s. 19.

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. R.S.O. 1990, c. C.12, s. 20 (1).

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. R.S.O. 1990, c. C.12, s. 20 (2).

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. R.S.O. 1990, c. C.12, s. 20 (3).

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 of custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides. R.S.O. 1990, c. C.12, s. 20 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 20 is amended by section 77 by adding the following subsection:

Duty of separated parents

(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. R.S.O. 1990, c. C.12, s. 77.

See: R.S.O. 1990, c. C.12, ss. 77, 85.

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. R.S.O. 1990, c. C.12, s. 20 (5).

Marriage of child

(6) The entitlement to custody of or access to a child terminates on the marriage of the child. R.S.O. 1990, c. C.12, s. 20 (6).

Entitlement subject to agreement or order

(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. R.S.O. 1990, c. C.12, s. 20 (7).

Application for custody or access

21. (1) 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. R.S.O. 1990, c. C.12, s. 21.

Affidavit

(2) An application under subsection (1) for custody of or access to a child shall be accompanied by an affidavit, in the form prescribed for the purpose by the rules of court, of the person applying for custody or access, containing,

- (a) the person's proposed plan for the child's care and upbringing;
- (b) information respecting the person's current or previous involvement in any family proceedings, including proceedings under Part III of the *Child and Family Services Act* (child protection), or in any criminal proceedings; and
- (c) any other information known to the person that is relevant to the factors to be considered by the court under subsections 24 (2), (3) and (4) in determining the best interests of the child. 2009, c. 11, s. 6.

Police records checks, non-parents

21.1 (1) Every person who applies under section 21 for custody of a child and who is not a parent of the child shall file with the court the results of a recent police records check respecting the person in accordance with the rules of court. 2009, c. 11, s. 7.

Admissibility

(2) The results obtained by the court under subsection (1) and any information, statement or document derived from the information contained in the results are admissible in evidence in the application, if the court considers it to be relevant. 2009, c. 11, s. 7.

Use of evidence

(3) Subject to subsection 24 (3), evidence that is determined by the court to be admissible under subsection (2) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 7.

Regulations

(4) The Lieutenant Governor in Council may make regulations defining "police records check" for the purposes of subsection (1). 2009, c. 11, s. 7.

CAS records search, non-parents

Definition

21.2 (1) In this section,

"society" means an approved agency designated as a children's aid society under the *Child and Family Services Act*. 2009, c. 11, s. 8.

Request for report

(2) Every person who applies under section 21 for custody of a child and who is not a parent of the child shall submit a request, in the form provided by the Ministry of the Attorney General, to every society or other body or person prescribed by the regulations, for a report as to,

- (a) whether a society has records relating to the person applying for custody; and

- (b) if there are records and the records indicate that one or more files relating to the person have been opened, the date on which each file was opened and, if the file was closed, the date on which the file was closed. 2009, c. 11, s. 8.

Request to be filed

- (3) A copy of each request made under subsection (2) shall be filed with the court. 2009, c. 11, s. 8.

Report required

(4) Within 30 days of receiving a request under subsection (2), a society or other body or person shall provide the court in which the application was filed with a report, in the form provided by the Ministry of the Attorney General, containing the information required under that subsection, and shall provide a copy of the report to the requesting party. 2009, c. 11, s. 8.

Duty of clerk

(5) Subject to subsection (6), if the report indicates that there are records relating to the requesting party, the clerk of the court shall, 20 days after all of the reports that were requested by the party have been received by the court,

- (a) give a copy of the report to every other party and to counsel, if any, representing the child; and
- (b) file the report in the court file. 2009, c. 11, s. 8.

Exception

(6) The court may, on motion by the requesting party, order,

- (a) that the time period referred to in subsection (5) be lengthened; or
- (b) that all or part of the report be sealed in the court file and not disclosed if,
 - (i) the court determines that some or all of the information contained in the report is not relevant to the application, or
 - (ii) the party withdraws the application. 2009, c. 11, s. 8.

Admissibility

(7) A report that is filed under subsection (5) and any information, statement or document derived from the information contained in the report is admissible in evidence in the application, if the court considers it to be relevant. 2009, c. 11, s. 8.

Use of evidence

(8) Subject to subsection 24 (3), evidence that is determined by the court to be admissible under subsection (7) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 8.

Interpretation

(9) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 45 (8) of the *Child and Family Services Act* or an order under clause 70 (1) (b). 2009, c. 11, s. 8.

Regulations

- (10) The Lieutenant Governor in Council may make regulations for the purposes of subsection (2),
 - (a) specifying one or more societies or other bodies or persons to whom a request must be submitted;
 - (b) governing the manner and scope of the search required to be undertaken in response to a request;
 - (c) specifying classes of files that shall be excluded from the report. 2009, c. 11, s. 8.

Other proceedings

Application by non-parent

21.3 (1) Where an application for custody of a child is made by a person who is not a parent of the child, the clerk of the court shall provide to the court and to the parties information in writing respecting any current or previous family proceedings involving the child or any person who is a party to the application and who is not a parent of the child. 2009, c. 11, s. 9.

Same

(2) Where an application for custody of a child is made by a person who is not a parent of the child, the court may require the clerk of the court to provide to the court and to the parties information in writing respecting any current or previous criminal proceedings involving any person who is a party to the application and who is not a parent of the child. 2009, c. 11, s. 9.

Same

(3) Written information provided under subsection (1) or (2) shall also be provided to counsel, if any, representing the child who is the subject of the application. 2009, c. 11, s. 9.

Admissibility

(4) Written information that is provided to the court under subsection (1) or (2) and any information, statement or document derived from that information is admissible in evidence in the application, if the court considers it to be relevant. 2009, c. 11, s. 9.

Use of evidence

(5) Subject to subsection 24 (3), evidence that is determined by the court to be admissible under subsection (4) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 9.

Interpretation

(6) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 45 (8) of the *Child and Family Services Act* or an order under clause 70 (1) (b). 2009, c. 11, s. 9.

Regulations

- (7) The Attorney General may make regulations for the purposes of this section,
- (a) defining “family proceeding” and “criminal proceeding”;
 - (b) prescribing the scope, content and form of the written information that shall or may be provided under this section;
 - (c) providing for a process for removing from the written information provided under subsection (1) or (2) information respecting a proceeding that does not involve the child who is the subject of the application or a person who is a party and is not a parent of the child, as the case may be. 2009, c. 11, s. 9.

Jurisdiction

- 22.** (1) A court shall only exercise its jurisdiction to make an order for custody of or access to a child where,
- (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. R.S.O. 1990, c. C.12, s. 22 (1).

Habitual residence

- (2) A child is habitually resident in the place where he or she resided,
- (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. R.S.O. 1990, c. C.12, s. 22 (2).

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. R.S.O. 1990, c. C.12, s. 22 (3).

Serious harm to child

23. Despite sections 22 and 41, 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. R.S.O. 1990, c. C.12, s. 23.

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, in accordance with subsections (2), (3) and (4). 2006, c. 1, s. 3 (1).

Best interests of child

- (2) The court shall consider all the child's needs and circumstances, 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 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 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) the plan proposed by each person applying for custody of or access to the child for the child's care and upbringing;
 - (f) the permanence and stability of the family unit with which it is proposed that the child will live;
 - (g) the ability of each person applying for custody of or access to the child to act as a parent; and
 - (h) the relationship by blood or through an adoption order between the child and each person who is a party to the application. 2006, c. 1, s. 3 (1); 2009, c. 11, s. 10.

Past conduct

- (3) A person's past conduct shall be considered only,
 - (a) in accordance with subsection (4); or
 - (b) if the court is satisfied that the conduct is otherwise relevant to the person's ability to act as a parent. 2006, c. 1, s. 3 (1).

Violence and abuse

(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,

- (a) his or her spouse;
- (b) a parent of the child to whom the application relates;
- (c) a member of the person's household; or
- (d) any child. 2006, c. 1, s. 3 (1).

Same

(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse. 2006, c. 1, s. 3 (1).

Declining jurisdiction

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. R.S.O. 1990, c. C.12, s. 25.

Delay

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 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. R.S.O. 1990, c. C.12, s. 26 (1); 2009, c. 11, s. 11 (1).

Exception

(1.1) Subsection (1) does not apply to an application under this Part that relates to the custody of or access to a child if the child is the subject of an application or order under Part III of the *Child and Family Services Act*, unless the application under this Part relates to,

- (a) an order in respect of the child that was made under subsection 57.1 (1) of the *Child and Family Services Act*;
- (b) an order referred to in subsection 57.1 (3) of the *Child and Family Services Act* that was made at the same time as an order under subsection 57.1 (1) of that Act; or
- (c) an access order in respect of the child under section 58 of the *Child and Family Services Act* that was made at the same time as an order under subsection 57.1 (1) of that Act. 2006, c. 5, s. 51 (1).

Directions

(2) At a hearing of a matter listed by the clerk 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. R.S.O. 1990, c. C.12, s. 26 (2); 2009, c. 11, s. 11 (2).

Early date

(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. R.S.O. 1990, c. C.12, s. 26 (3).

Effect of divorce proceedings

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. R.S.O. 1990, c. C.12, s. 27.

CUSTODY AND ACCESS – ORDERS

Powers of court

- 28.** (1) 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, including an order,
 - (i) limiting the duration, frequency, manner or location of contact or communication between any of the parties, or between a party and the child,
 - (ii) prohibiting a party or other person from engaging in specified conduct in the presence of the child or at any time when the person is responsible for the care of the child,
 - (iii) prohibiting a party from changing the child's residence, school or day care facility without the consent of another party or an order of the court,
 - (iv) prohibiting a party from removing the child from Ontario without the consent of another party or an order of the court,
 - (v) requiring the delivery, to the court or to a person or body specified by the court, of the child's passport, the child's health card within the meaning of the *Health Insurance Act* or any other document relating to the child that the court may specify,
 - (vi) requiring a party to give information or to consent to the release of information respecting the health, education and welfare of the child to another party or other person specified by the court, or

- (vii) requiring a party to facilitate communication by the child with another party or other person specified by the court in a manner that is appropriate for the child. R.S.O. 1990, c. C.12, s. 28; 2009, c. 11, s. 12.

Exception

(2) If an application is made under section 21 with respect to a child who is the subject of an order made under section 57.1 of the *Child and Family Services Act*, the court shall treat the application as if it were an application to vary an order made under this section. 2006, c. 5, s. 51 (2).

Same

(3) If an order for access to a child was made under Part III of the *Child and Family Services Act* at the same time as an order for custody of the child was made under section 57.1 of that Act, the court shall treat an application under section 21 relating to access to the child as if it were an application to vary an order made under this section. 2006, c. 5, s. 51 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by section 79 by adding 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. R.S.O. 1990, c. C.12, s. 79.

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. R.S.O. 1990, c. C.12, s. 79.

Separation agreements

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act* or a predecessor of that section that provides for a person's access to a child without specifying times or days. R.S.O. 1990, c. C.12, s. 79.

Exception

(4) Subsection (1) does not apply in respect of orders made under the Divorce Act (Canada) or a predecessor of that Act. R.S.O. 1990, c. C.12, s. 79.

See: R.S.O. 1990, c. C.12, ss. 79, 85.

Order varying an order

29. (1) 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. R.S.O. 1990, c. C.12, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 29 is amended by section 80 by adding the following subsection:

Exception

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 34a (2) or (6) (access enforcement, etc.). R.S.O. 1990, c. C.12, s. 80.

See: R.S.O. 1990, c. C.12, ss. 80, 85.

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. R.S.O. 1990, c. C.12, s. 30 (1).

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. R.S.O. 1990, c. C.12, s. 30 (2).

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. R.S.O. 1990, c. C.12, s. 30 (3).

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. R.S.O. 1990, c. C.12, s. 30 (4).

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. R.S.O. 1990, c. C.12, s. 30 (5).

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. R.S.O. 1990, c. C.12, s. 30 (6).

Report

(7) The person appointed under subsection (1) shall file his or her report with the clerk of the court. R.S.O. 1990, c. C.12, s. 30 (7); 2009, c. 11, s. 13 (1).

Copies of report

(8) The clerk of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child. R.S.O. 1990, c. C.12, s. 30 (8); 2009, c. 11, s. 13 (2).

Admissibility of report

(9) The report mentioned in subsection (7) is admissible in evidence in the application. R.S.O. 1990, c. C.12, s. 30 (9).

Assessor may be witness

(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. R.S.O. 1990, c. C.12, s. 30 (10).

Directions

(11) Upon motion, the court by order may give such directions in respect of the assessment as the court considers appropriate. R.S.O. 1990, c. C.12, s. 30 (11).

Fees and expenses

(12) The court shall require the parties to pay the fees and expenses of the person appointed under subsection (1). R.S.O. 1990, c. C.12, s. 30 (12).

Idem, proportions or amounts

(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. R.S.O. 1990, c. C.12, s. 30 (13).

Idem, serious financial hardship

(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. R.S.O. 1990, c. C.12, s. 30 (14).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (14) is repealed by section 81 and the following substituted:

Idem, serious financial hardship

(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. R.S.O. 1990, c. C.12, s. 81.

See: R.S.O. 1990, c. C.12, ss. 81, 85.

Other expert evidence

(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. R.S.O. 1990, c. C.12, s. 30 (15).

Mediation

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. R.S.O. 1990, c. C.12, s. 31 (1).

Consent to act

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

(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. R.S.O. 1990, c. C.12, s. 31 (2).

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. R.S.O. 1990, c. C.12, s. 31 (3).

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. R.S.O. 1990, c. C.12, s. 31 (4).

Filing of report

(5) The mediator shall file his or her report with the clerk of the court in the form decided upon by the parties under subsection (4). R.S.O. 1990, c. C.12, s. 31 (5); 2009, c. 11, s. 14 (1).

Copies of report

(6) The clerk of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child. R.S.O. 1990, c. C.12, s. 31 (6); 2009, c. 11, s. 14 (2).

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). R.S.O. 1990, c. C.12, s. 31 (7).

Fees and expenses

(8) The court shall require the parties to pay the fees and expenses of the mediator. R.S.O. 1990, c. C.12, s. 31 (8).

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. R.S.O. 1990, c. C.12, s. 31 (9).

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. R.S.O. 1990, c. C.12, s. 31 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (10) is repealed by section 82 and the following substituted:

Idem, serious financial hardship

(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. R.S.O. 1990, c. C.12, s. 82.

See: R.S.O. 1990, c. C.12, ss. 82, 85.

Further evidence from outside Ontario

32. (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. R.S.O. 1990, c. C.12, s. 32 (1).

Cost of obtaining evidence

(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. R.S.O. 1990, c. C.12, s. 32 (2).

Request from outside Ontario for further evidence

33. (1) Where the Attorney General receives from an extra-provincial tribunal a request similar to that referred to in section 32 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. R.S.O. 1990, c. C.12, s. 33 (1).

Obtaining evidence

(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. R.S.O. 1990, c. C.12, s. 33 (2).

CUSTODY AND ACCESS – ENFORCEMENT

Supervision of custody or access

34. (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. R.S.O. 1990, c. C.12, s. 34 (1).

Consent to act

(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. R.S.O. 1990, c. C.12, s. 34 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by section 83 by adding the following section:

Motions re right of access

Motion to enforce right of access

34a. (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. R.S.O. 1990, c. C.12, s. 83.

Order for relief

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

- (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 34;
- (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. R.S.O. 1990, c. C.12, s. 83.

Period of compensatory access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied. R.S.O. 1990, c. C.12, s. 83.

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. R.S.O. 1990, c. C.12, s. 83.

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

(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. R.S.O. 1990, c. C.12, s. 83.

Order for relief

(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,

- (a) require supervision as described in section 34;
- (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. R.S.O. 1990, c. C.12, s. 83.

Speedy hearing

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served. R.S.O. 1990, c. C.12, s. 83.

Limitation

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure. R.S.O. 1990, c. C.12, s. 83.

Oral evidence only

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit. R.S.O. 1990, c. C.12, s. 83.

Scope of evidence at hearing limited

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

- (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. R.S.O. 1990, c. C.12, s. 83.

Separation agreement may be filed with court

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act* or a predecessor of that section may file the agreement with the clerk of the Ontario Court (Provincial 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. R.S.O. 1990, c. C.12, s. 83.

Note: Subsection (11) is amended by the Statutes of Ontario, 2001, chapter 9, Schedule B, subsection 4 (8) by striking out "Ontario Court (Provincial Division)" and substituting "Ontario Court of Justice". See: 2001, c. 9, Sched. B, s. 4 (8).

Note: Subsection (11) is amended by the Statutes of Ontario, 2001, chapter 9, Schedule B, subsection 4 (9) by striking out "Unified Family Court" and substituting "Family Court". See: 2001, c. 9, Sched. B, s. 4 (9).

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. R.S.O. 1990, c. C.12, s. 83.

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. R.S.O. 1990, c. C.12, s. 83.

Idem

(14) Subsections (1) and (5) do not apply in respect of orders made under the Divorce Act (Canada) or a predecessor of that Act. R.S.O. 1990, c. C.12, s. 83.

Application

(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 this section comes into force. R.S.O. 1990, c. C.12, s. 83.

See: R.S.O. 1990, c. C.12, ss. 83, 85.

Restraining order

35. (1) On application, the court may make an interim or final restraining order against any person if the applicant has reasonable grounds to fear for his or her own safety or for the safety of any child in his or her lawful custody. 2009, c. 11, s. 15.

Provisions of order

(2) A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:

1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant's lawful custody.
2. Restraining the respondent from coming within a specified distance of one or more locations.
3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.
4. Any other provision that the court considers appropriate. 2009, c. 11, s. 15.

Transition

(3) This section, as it read immediately before the day section 15 of the *Family Statute Law Amendment Act, 2009* came into force, continues to apply to,

- (a) any prosecution or other proceeding begun under this section before that day; and
- (b) any order made under this section that was in force immediately before that day. 2009, c. 11, s. 15.

Order where child unlawfully withheld

36. (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 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 or her 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. R.S.O. 1990, c. C.12, s. 36 (1).

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 a police force, 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. R.S.O. 1990, c. C.12, s. 36 (2).

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. R.S.O. 1990, c. C.12, s. 36 (3).

Duty to act

(4) The 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. R.S.O. 1990, c. C.12, s. 36 (4).

Entry and search

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a member of a police force may enter and search any place where he or she has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances. R.S.O. 1990, c. C.12, s. 36 (5).

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. R.S.O. 1990, c. C.12, s. 36 (6).

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. R.S.O. 1990, c. C.12, s. 36 (7).

When application may be made

(8) An application under subsection (1) or (2) may be made in an application for custody or access or at any other time. R.S.O. 1990, c. C.12, s. 36 (8).

Court orders, removal and return of children

To prevent unlawful removal of child

37. (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). R.S.O. 1990, c. C.12, s. 37 (1).

To ensure return 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). R.S.O. 1990, c. C.12, s. 37 (2).

Order by court

- (3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following:
- 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. R.S.O. 1990, c. C.12, s. 37 (3); 2009, c. 11, s. 16.

Idem, Ontario Court of Justice

(4) The Ontario Court of Justice shall not make an order under paragraph 1 of subsection (3). R.S.O. 1990, c. C.12, s. 37 (4); 2001, c. 9, Sched. B, s. 4 (8).

Terms and conditions

(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. R.S.O. 1990, c. C.12, s. 37 (5).

Safekeeping

(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. R.S.O. 1990, c. C.12, s. 37 (6).

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. R.S.O. 1990, c. C.12, s. 37 (7).

Contempt of orders of Ontario Court of Justice

38. (1) In addition to its powers in respect of contempt, the Ontario Court of Justice 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 \$5,000 nor shall the imprisonment exceed ninety days. R.S.O. 1990, c. C.12, s. 38 (1); 2001, c. 9, Sched. B, s. 4 (8).

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. R.S.O. 1990, c. C.12, s. 38 (2).

Information as to address

39. (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. R.S.O. 1990, c. C.12, s. 39 (1).

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. R.S.O. 1990, c. C.12, s. 39 (2).

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. R.S.O. 1990, c. C.12, s. 39 (3).

Section binds Crown

(4) This section binds the Crown in right of Ontario. R.S.O. 1990, c. C.12, s. 39 (4).

CUSTODY AND ACCESS – EXTRA-PROVINCIAL MATTERS

Interim powers of court

40. Upon application, a 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 42,
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. R.S.O. 1990, c. C.12, s. 40.

Enforcement of extra-provincial orders

41. (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,

- (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. R.S.O. 1990, c. C.12, s. 41 (1).

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. R.S.O. 1990, c. C.12, s. 41 (2).

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. R.S.O. 1990, c. C.12, s. 41 (3).

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. R.S.O. 1990, c. C.12, s. 41 (4).

Superseding order, material change in circumstances

42. (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. R.S.O. 1990, c. C.12, s. 42 (1).

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. R.S.O. 1990, c. C.12, s. 42 (2).

Superseding order, serious harm

43. 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,

- (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. R.S.O. 1990, c. C.12, s. 43.

True copy of extra-provincial order

44. 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 proof, in the absence of evidence to the contrary, 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. R.S.O. 1990, c. C.12, s. 44.

Court may take notice of foreign law

45. 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. R.S.O. 1990, c. C.12, s. 45.

Convention on Civil Aspects of International Child Abduction

Definition

46. (1) In this section,

“convention” means the Convention on the Civil Aspects of International Child Abduction, set out in the Schedule to this section. R.S.O. 1990, c. C.12, s. 46 (1).

Convention in force

(2) On, from and after the 1st day of December, 1983, except as provided in subsection (3), the convention is in force in Ontario and the provisions thereof are law in Ontario. R.S.O. 1990, c. C.12, s. 46 (2).

Crown, legal costs under convention

(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 Services Act, 1998*. R.S.O. 1990, c. C.12, s. 46 (3); 1998, c. 26, s. 101.

Central Authority

(4) The Ministry of the Attorney General shall be the Central Authority for Ontario for the purpose of the convention. R.S.O. 1990, c. C.12, s. 46 (4).

Application to court

(5) An application may be made to a court in pursuance of a right or an obligation under the convention. R.S.O. 1990, c. C.12, s. 46 (5).

Request to ratify convention

(6) The Attorney General shall request the Government of Canada to submit a declaration to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, declaring that the convention extends to Ontario. R.S.O. 1990, c. C.12, s. 46 (6).

Regulations

(7) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary to carry out the intent and purpose of this section. R.S.O. 1990, c. C.12, s. 46 (7).

Conflict

(8) 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 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

Despite 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.

R.S.O. 1990, c. C.12, s. 46 (8).

GUARDIANSHIP

Appointment of guardian

47. (1) Upon application by a child's parent or by any other person, on notice to the Children's Lawyer, a court may appoint a guardian of the child's property. 2001, c. 9, Sched. B, s. 4 (1).

Responsibility 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. R.S.O. 1990, c. C.12, s. 47 (2).

Parents and joint guardians

Parents as guardians

48. (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. R.S.O. 1990, c. C.12, s. 48 (1).

Parent and other person

(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. R.S.O. 1990, c. C.12, s. 48 (2).

More than one guardian

(3) A court may appoint more than one guardian of the property of a child. R.S.O. 1990, c. C.12, s. 48 (3).

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. R.S.O. 1990, c. C.12, s. 48 (4).

Criteria

49. 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 the plan 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. R.S.O. 1990, c. C.12, s. 49; 2001, c. 9, Sched. B, s. 4 (2).

Effect of appointment

50. The appointment of a guardian by a court under this Part has effect in all parts of Ontario. R.S.O. 1990, c. C.12, s. 50.

Payment of debt due to child if no guardian

51. (1) If no guardian of a child's property has been appointed, a person who is under a duty to pay money or deliver personal property to the child discharges that duty, to the extent of the amount paid or the value of the personal property delivered, subject to subsection (1.1), by paying money or delivering personal property to,

- (a) the child, if the child has a legal obligation to support another person;
- (b) a parent with whom the child resides; or
- (c) a person who has lawful custody of the child. 2001, c. 9, Sched. B, s. 4 (3).

Same

(1.1) The total of the amount of money paid and the value of personal property delivered under subsection (1) shall not exceed the prescribed amount or, if no amount is prescribed, \$10,000. 2001, c. 9, Sched. B, s. 4 (3).

Money payable under judgment

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a court. R.S.O. 1990, c. C.12, s. 51 (2).

Receipt for payment

(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. R.S.O. 1990, c. C.12, s. 51 (3).

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. R.S.O. 1990, c. C.12, s. 51 (4).

Regulations

(5) The Lieutenant Governor in Council may, by regulation, prescribe an amount for the purpose of subsection (1.1). 2001, c. 9, Sched. B, s. 4 (4).

Accounts

52. A guardian of the property of a child may be required to account or may voluntarily pass the accounts in respect of the 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 the accounts in respect of the trusteeship. R.S.O. 1990, c. C.12, s. 52.

Transfer of property to child

53. 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. R.S.O. 1990, c. C.12, s. 53.

Management fees and expenses

54. A guardian of the property of a child is entitled to payment of a reasonable amount for fees for and expenses of management of the property of the child. R.S.O. 1990, c. C.12, s. 54.

Bond by guardian

55. (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. R.S.O. 1990, c. C.12, s. 55 (1).

Where parent appointed 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. R.S.O. 1990, c. C.12, s. 55 (2).

Where child has support obligation

56. Upon application by a child who has a legal obligation to support another person, 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. R.S.O. 1990, c. C.12, s. 56.

Removal and resignation of guardian

Removal

57. (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. R.S.O. 1990, c. C.12, s. 57 (1).

Resignation

(2) A guardian of the property of a child, with the permission of a court, may resign as guardian upon such conditions as the court considers appropriate. R.S.O. 1990, c. C.12, s. 57 (2).

Notice to Estate Registrar for Ontario

58. A notice of every application to a court for appointment of a guardian of the property of a child shall be transmitted by the clerk of the court to the Estate Registrar for Ontario. R.S.O. 1990, c. C.12, s. 58; 1993, c. 27, Sched.; 2009, c. 11, s. 17.

DISPOSITION OF PROPERTY

Court order re property of child

59. (1) Upon application by a child's parent or by any other person, on notice to the Children's Lawyer, the Superior Court of Justice by order may require or approve, or both,

- (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. R.S.O. 1990, c. C.12, s. 59 (1); 2001, c. 9, Sched. B, s. 4 (5).

Criteria

(2) An order shall be made under subsection (1) only where the 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. R.S.O. 1990, c. C.12, s. 59 (2).

Conditions

(3) An order under subsection (1) may be made subject to such conditions as the Court considers appropriate. R.S.O. 1990, c. C.12, s. 59 (3).

Limitation

(4) The 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. R.S.O. 1990, c. C.12, s. 59 (4).

Execution of documents

(5) The 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. R.S.O. 1990, c. C.12, s. 59 (5).

Directions

(6) The Court by order may give such directions as it considers necessary for the carrying out of an order made under subsection (1). R.S.O. 1990, c. C.12, s. 59 (6).

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. R.S.O. 1990, c. C.12, s. 59 (7).

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). R.S.O. 1990, c. C.12, s. 59 (8).

Order for maintenance where power of appointment in favour of children

60. (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 or her children, the Superior Court of Justice may order that such part of the proceeds of the property as the Court considers proper be used for the support, education or benefit of one or more of the children. R.S.O. 1990, c. C.12, s. 60 (1); 2001, c. 9, Sched. B, s. 4 (7).

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. R.S.O. 1990, c. C.12, s. 60 (2).

TESTAMENTARY CUSTODY AND GUARDIANSHIP

Appointments by will

Custody

61. (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. R.S.O. 1990, c. C.12, s. 61 (1).

Guardianship

(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. R.S.O. 1990, c. C.12, s. 61 (2).

Appointment by minor

(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. R.S.O. 1990, c. C.12, s. 61 (3).

Limitation

- (4) An appointment under subsection (1), (2) or (3) is effective only,
 - (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. R.S.O. 1990, c. C.12, s. 61 (4).

Where more than one appointment

(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. R.S.O. 1990, c. C.12, s. 61 (5).

Consent of appointee

(6) No appointment under subsection (1), (2) or (3) is effective without the consent of the person appointed. R.S.O. 1990, c. C.12, s. 61 (6).

Expiration of appointment

(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. R.S.O. 1990, c. C.12, s. 61 (7).

Application or order under ss. 21, 47

(8) An appointment under this section does not apply to prevent an application for or the making of an order under section 21 or 47. R.S.O. 1990, c. C.12, s. 61 (8).

Application

(9) This section applies in respect of,

- (a) any will made on or after the 1st day of October, 1982; and
- (b) any will made before the 1st day of October, 1982, if the testator is living on that day. R.S.O. 1990, c. C.12, s. 61 (9).

PROCEDURE

Procedure, general

Joinder of proceedings

62. (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 Act*, or in another proceeding. R.S.O. 1990, c. C.12, s. 62 (1).

Nature of order

(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. R.S.O. 1990, c. C.12, s. 62 (2).

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. R.S.O. 1990, c. C.12, s. 62 (3).

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. R.S.O. 1990, c. C.12, s. 62 (4).

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. R.S.O. 1990, c. C.12, s. 62 (5).

Application or response by minor

63. (1) A minor who is a parent may make an application under this Part without a next friend and may respond without a litigation guardian. R.S.O. 1990, c. C.12, s. 63 (1).

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. R.S.O. 1990, c. C.12, s. 63 (2).

Child entitled to be heard

64. (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. R.S.O. 1990, c. C.12, s. 64 (1).

Interview by court

(2) The court may interview the child to determine the views and preferences of the child. R.S.O. 1990, c. C.12, s. 64 (2).

Recording

(3) The interview shall be recorded. R.S.O. 1990, c. C.12, s. 64 (3).

Counsel

(4) The child is entitled to be advised by and to have his or her counsel, if any, present during the interview. R.S.O. 1990, c. C.12, s. 64 (4).

Where child is sixteen or more years old

65. Nothing in this Part abrogates the right of a child of sixteen or more years of age to withdraw from parental control. R.S.O. 1990, c. C.12, s. 65.

All proceedings in one court

66. 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 proceeding 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. R.S.O. 1990, c. C.12, s. 66.

Consent and domestic contracts

Consent orders

67. (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. R.S.O. 1990, c. C.12, s. 67 (1).

Incorporation of contract in order

(2) Any matter provided for in this Part and in a domestic contract as defined in the *Family Law Act* may be incorporated in an order made under this Part. R.S.O. 1990, c. C.12, s. 67 (2).

Part subject to contracts

68. Where a domestic contract as defined in the *Family Law 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 Act*. R.S.O. 1990, c. C.12, s. 68.

Jurisdiction of Superior Court of Justice

69. This Part does not deprive the Superior Court of Justice of its *parens patriae* jurisdiction. R.S.O. 1990, c. C.12, s. 69; 2001, c. 9, Sched. B, s. 4 (7).

Confidentiality

70. (1) Where a proceeding includes an application under this Part, the court shall consider whether it is appropriate to order,

- (a) that access to all or part of the court file be limited to,
 - (i) the court and authorized court employees,
 - (ii) the parties and their counsel,
 - (iii) counsel, if any, representing the child who is the subject of the application, and
 - (iv) any other person that the court may specify; or
- (b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file. 2009, c. 11, s. 18.

Considerations

(2) In determining whether to make an order under subsection (1), the court shall consider,

- (a) the nature and sensitivity of the information contained in the documents relating to the application under this Part that appear in the court file; and
- (b) whether not making the order could cause physical, mental or emotional harm to any person referred to in those documents. 2009, c. 11, s. 18.

Order on application

- (3) Any interested person may make an application for an order under subsection (1). 2009, c. 11, s. 18.

Varying or discharging order

- (4) The court may vary or discharge an order made under subsection (1). 2009, c. 11, s. 18.

Where to apply for interim orders and variations

Place of application for interim order

71. (1) An application for an interim order shall be made to the court in which the original proceeding was taken. R.S.O. 1990, c. C.12, s. 71 (1).

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. R.S.O. 1990, c. C.12, s. 71 (2).

Interim order

72. In a proceeding under this Part, the court may make such interim order as the court considers appropriate. R.S.O. 1990, c. C.12, s. 72.

Appeal from Ontario Court of Justice

73. An appeal from an order of the Ontario Court of Justice under this Part lies to the Superior Court of Justice. R.S.O. 1990, c. C.12, s. 73; 2001, c. 9, Sched. B, s. 4 (7, 8).

Order effective pending appeal

74. An order under this Part is effective even if 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. R.S.O. 1990, c. C.12, s. 74.

Rule of construction, guardianship of person and property

75. (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. R.S.O. 1990, c. C.12, s. 75 (1).

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 1st day of October, 1982. R.S.O. 1990, c. C.12, s. 75 (2).

76. REPEALED: 2001, c. 9, Sched. B, s. 4 (6).

77. OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT). R.S.O. 1990, c. C.12, s. 77.

78. REPEALED: 2006, c. 1, s. 3 (2).

79.-84. OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT). R.S.O. 1990, c. C.12, ss. 79-84.

85. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). R.S.O. 1990, c. C.12, s. 85.

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