

SNL1999 CHAPTER A-2.1

## **ADOPTION ACT**

Amended:

2001 c42 s3; 2002 cA-1.1 s75; 2002 c13; 2004 cL-3.1 s15; 2004 c47 s3; 2006 c40 s2; 2006 cR-7.1 s29; 2009 c16 s9; 2009 c26 ss1-3; 2009 cV-6.01 s49; 2010 cC-12.2 s85

# **CHAPTER A-2.1**

## **AN ACT RESPECTING ADOPTIONS**

*(Assented to December 14, 1999)*

*Analysis*

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

**Short title**

1. This Act may be cited as the *Adoption Act* .

[1999 cA-2.1 s1](#)

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**Definitions**

**2. In this Act**

- (a) "adopted child" means a child adopted under this Act or a former Act;
  - (b) "adopted person", except in paragraph 50(2)(a) and subsection 51(3), means a person who is 19 years of age or older who was, as a child, adopted under this Act or a former Act;
  - (c) "adoption agency" means an adoption agency licensed under section 5;
  - (d) "adoptive parent" means a person who has adopted a child under this Act or a former Act;
- (d.1) [Rep. by 2009 c26 s1]
- (e) [Rep. by 2002 c13 s1]
  - (f) [Rep. by 2002 c13 s1]
  - (g) [Rep. by 2002 c13 s1]
  - (h) [Rep. by 2006 cR-7.1 s29]
  - (i) "child" means an unmarried person under the age of 19 years;

- (j) "convention" means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption attached in the Schedule to this Act;
- (k) "court" means the Trial Division - Family Division or the Provincial Court of the province;
- (l) "custody" means the rights and responsibilities of a parent in respect of a child;
- (m) "department" means the department presided over by the minister;
- (n) "direct placement" means the selection, before a consent to adoption is irrevocable, of a prospective adoptive parent by a birth parent or other person having custody of the child and the approval of the placement of the child by a director;
- (o) "director" unless the context indicates otherwise, means a director appointed under subsection 4(2);
- (o.1) [Rep. by 2010 cC-12.2 s85]
- (p) "former Act" as the context requires, includes the *Adoption of Children Act*, the *Adoption of Children Act, 1964* and Part V of the *Child Welfare Act, 1952* ;
- (p.1) "manager" means a manager appointed under the *Children and Youth Care and Protection Act* ;
- (q) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (r) "openness agreement" means an agreement made under section 43 or 44;
- (s) "post placement report" means a report prepared by a director or an adoption agency as required under section 22;
- (t) "provincial director" means the provincial director appointed under subsection 4(1);
- (u) "registrar", unless the context indicates otherwise, means the Registrar General appointed under section 3 of the *Vital Statistics Act, 2009* ; and
- (v) "relative" means a parent, grandparent, aunt, uncle or sibling of a child by birth or adoption.

[1999 cA-2.1 s2](#); [2002 c13 s1](#); [2004 c47 s3](#); [2006 cR-7.1 s29](#); [2009 cV-6.01 s49](#); [2009 c16 s9](#); [2009 c26 s1](#); [2010 cC-12.2 s85](#); [2010 cC-12.2 s85](#)

### **Best interest principles**

3. (1) This Act shall be construed so as to provide for new and permanent family ties through adoption while, in every respect, giving paramount consideration to the best interests of the child.

(2) All relevant principles shall be considered in determining the best interests of the child including the

- (a) child's safety;
- (b) child's developmental needs;
- (c) importance of stability and continuity in the child's care;
- (d) importance to the child's development of having a positive relationship with a parent and a secure place as a member of a family;
- (e) quality of the relationship the child has with a birth parent or other individual and the effect of maintaining that relationship;
- (f) child's cultural heritage;
- (g) child's views and wishes, where possible; and
- (h) effect on the child if there is delay in the making of a decision with respect to the child.

(3) Notwithstanding subsections (1) and (2), this Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

[2002 c13 s2; 2004 cL-3.1 s15](#)

## **PART I ADMINISTRATION**

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#### **Provincial director and directors**

4. (1) There shall be appointed an employee of the government of the province to be the provincial director of adoptions who shall be responsible for
- (a) the selection of a child for placement for adoption and the selection of an adult or adults with whom a child being adopted is to be placed;
  - (b) interprovincial adoptions;
  - (c) adoptions made in accordance with the convention;
  - (d) monitoring, reviewing and establishing province wide policies and standards for adoptions and adoption agencies; and
  - (e) reviewing and establishing standards and qualifications for adoption agency licensing.
- (2) There shall be employed, in the manner provided by law, those directors necessary for the purpose of this Act.

[2009 c26 s2](#)

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#### **Adoption agency licence**

5. (1) A person may apply to a director for, and a director may issue to that person, a licence to operate an adoption agency where he or she is satisfied that the person
- (a) meets the requirements of this Act and the regulations respecting the establishment of an adoption agency;
  - (b) has the educational, employment and other qualifications required under this Act and the regulations;
  - (c) has provided the documents and other information required under this Act and the regulations; and
  - (d) has paid the required fee.
- (2) Where the applicant for a licence to operate an adoption agency is a corporation, paragraph (1)(b) applies to the employees of the corporation.
- (3) A corporation licensed under subsection (1) shall immediately notify the director of a change in the ownership, officers or employees of the corporation and, in relation to a change

- (a) in ownership, the prior approval of the director is required; and
- (b) in employees, the corporation shall comply with paragraph (1)(b).
- (4) A licence issued under subsection (1) may be issued subject to terms and conditions that the director may impose.
- (5) A licence issued under this section may be renewed in the same manner as for an application for a new licence made under this section.
- (6) An adoption agency licensed under this section shall keep as confidential all information with respect to adoptions except as required under this Act or another Act to be released to the minister, provincial director, a director or another person.
- (7) A person shall not carry on the work of an adoption agency unless that person holds a licence issued under this Act.
- (8) A licence issued under this section is not transferable to another person.
- (9) A director shall, in writing, notify an applicant for a licence of his or her refusal to issue that licence and provide to that person the reasons for the refusal.
- (10) Where an adoption agency does not comply with this Act, a director may, notwithstanding a penalty that may be imposed under section 72, revoke a licence issued to that agency under this Act.

[2002 c13 s3; 2006 c40 s2](#)

## **PART II PLACEMENT FOR ADOPTION**

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### **Placement**

- 6. (1) A child shall be selected for adoption by the provincial director and placed for adoption by a director.
- (2) Notwithstanding subsection (1), a birth parent or other person having custody of the child may place that child for adoption by a direct placement that a director shall first approve in accordance with this Act.
- (3) A child may be placed for adoption with one adult or 2 adults jointly.

(4) A birth parent may place his or her child for adoption with a relative of that child.

(5) A prospective adoptive parent shall be a resident of the province for at least 6 months before applying to have a child placed in his or her home for the purpose of adopting a child under this Act unless approved for a direct placement.

(6) Subsection (5) does not apply to a person who applies to be made an adoptive parent jointly with the birth parent of the child, or to a relative of the child.

[1999 cA-2.1 s6; 2002 c13 s4](#)

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### **Director and adoption agency duties**

7. (1) Before a child is placed for adoption, a director or an adoption agency shall

- (a) provide information on adoption and alternatives to adoption to the birth parent or other person having custody of the child who is requesting a placement of that child for adoption;
- (b) obtain as much information as possible about the medical and social history of the child's birth family and preserve the information for the child;
- (c) give the prospective adoptive parent information on the medical and social history of the child's birth family;
- (d) make sure that the child
  - (i) if 5 years of age or older, has been counselled on the effect of adoption, and
  - (ii) if 12 years of age or older, has given his or her consent to the adoption; and
- (e) make reasonable efforts to obtain consents required under section 10.

(2) A director or an adoption agency shall complete a home study report of a prospective adoptive parent and, where that study is carried out by an adoption agency, that agency shall forward the completed home study report to the director for approval.

(3) Where a home study report has been completed under subsection (2), the director may, based upon that report, give approval for a prospective adoptive parent to have a child placed into his or her home for the purpose of adopting that child.

(4) A director or an adoption agency shall do those things necessary to acquire the documentation required under subsection 22(1) and, where the documentation is acquired by an adoption agency, copies of that documentation shall be forwarded to the director.

[2002 c13 s5](#)

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### **Provincial director duties**

8. (1) The provincial director shall determine the manner in which

- (a) a child is selected for placement with a prospective adoptive parent; and
- (b) a prospective adoptive parent is selected to have a child placed into his or her home for the purpose of adoption.

(2) Before selecting a prospective adoptive parent placement for a child, the provincial director shall, if the birth parent or other person having custody of a child and requesting the placement wishes to select the child's prospective adoptive parent, provide the director with information to share with the birth parent or person having custody of the child.

- (3) Information shared by the director under subsection (2), may, in the discretion of the director, be identifying or non-identifying information.
- (4) The provincial director shall only select a placement for a child with a prospective adoptive parent who has been approved under subsection 7(3).
- (5) The provincial director has all the powers of a director under this Act for the purpose of interprovincial adoptions and adoptions to which the convention applies.

[1999 cA-2.1 s8; 2002 c13 s6](#)

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### **Direct placement**

9. (1) Where a birth parent or other person with custody of a child wishes to make a direct placement of that child, he or she shall, before making that direct placement, notify the director of his or her intent.

(2) As soon as possible after being notified under subsection (1), a director shall

- (a) provide information on adoption and the alternatives to adoption to the birth parent or other person having custody of the child and who is proposing to place the child;
- (b) obtain as much information as possible about the medical and social history of the child's birth family and preserve the information for the child;
- (c) give the prospective adoptive parent information on the medical and social history of the child's birth family;
- (d) prepare a pre-placement assessment of the prospective adoptive parent; and
- (e) make sure that the child
  - (i) if 5 years of age or older, has been counselled on the effect of adoption, and
  - (ii) if 12 years of age or older, has given his or her consent to the adoption.

(3) A director shall determine if a direct placement with a prospective adoptive parent is to be approved and that parent may receive a child by direct placement only where, before the child is received into his or her home the

- (a) prospective adoptive parent has been approved by the director to have the child placed with him or her;
- (b) birth parent or other person having custody of the child who is placing the child receives an approval from the director for the direct placement; and
- (c) prospective adoptive parent receives, in accordance with the regulations, information relating to the medical and social history of the child's birth family.

[1999 cA-2.1 s9; 2002 c13 s7](#)

### **PART III CONSENTS**

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#### **Consents**

**10.** (1) A child shall not be adopted in the province without the consent of each of the following:

- (a) the child, where the child is 12 or more years of age;

(b) the birth mother;

(c) the father; and

(d) where applicable, a person having custody of the child.

(2) For the purpose of giving a consent for an adoption, a father is a person who

(a) has acknowledged paternity by signing the child's birth registration;

(b) is or was the person with custody or joint custody with the birth mother;

(c) has acknowledged paternity and has custody or access rights to the child by an order of the court or an agreement enforceable under Part III of the *Children's Law Act* or Part IV of the *Family Law Act* ;

(d) has acknowledged paternity and has supported, maintained or cared for the child voluntarily or under a court order; or

(e) has acknowledged paternity and is named by the birth mother as the child's father.

(3) Where a child is in the continuous custody of a manager, the only consents required for the adoption of that child are those of the manager, and of the child, where that child is 12 years of age or older.

(4) Where a child who has been adopted is to be adopted again, the consent of a person who became a parent at the time of the previous adoption is required, instead of the person who ceased to have any parental rights and responsibilities upon the granting of the previous adoption order.

(5) Where a child from another jurisdiction is to be placed for adoption in the province, the laws of that jurisdiction shall apply with respect to the consents required for the placement of the child.

(6) A birth mother's consent to the adoption of her child is not valid unless her child is more than 7 days old when her consent is given.

(7) Where a person whose consent is required under this section is deceased, upon production of proof satisfactory to the court of the person's death, consent is not required.

[1999 cA-2.1 s10; 2010 cC-12.2 s85](#)

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### **Birth parent under 19 years**

11. A birth parent who is under 19 years of age may give a valid consent to the adoption of his or her child.

[1999 cA-2.1 s11](#)

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### **Form of consent**

12. (1) A consent to the adoption of a child in the province by a person resident in the province shall be in the required form.

(2) Where a consent to the adoption of a child in the province is required from a person who resides outside the province, the consent is sufficient for the purpose of this Act if it is in a form that meets the requirements for adoption consents in the jurisdiction in which the person is resident.

[1999 cA-2.1 s12](#)

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### **Dispensing with consent**

13. (1) On application, a court may, by order, dispense with a consent required under this Part where

- (a) the court considers it to be in the best interests of the child;
- (b) the person whose consent is to be dispensed with is not capable of giving an informed consent;
- (c) reasonable but unsuccessful efforts have been made to locate the person whose consent is to be dispensed with;
- (d) the person whose consent is to be dispensed with
  - (i) has abandoned or deserted the child,
  - (ii) has not made reasonable efforts to meet his or her parental obligations to the child, or

- (iii) is not capable of caring for the child; or
- (e) there are other circumstances that justify the dispensing with consent.
- (2) Notwithstanding subsection (1), a court may, by order, dispense with a required consent of a child only where the child is not capable of giving informed consent.
- (3) Before making an order under this section, a court may consider a recommendation in a report filed by a director or a parent.
- (4) An application may be made under this section without notice to another person and may be joined with another application that may be made under this Act.

[1999 cA-2.1 s13; 2002 c13 s8](#)

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#### **Revocation of consent**

- 14.** (1) A person who has consented to a child's adoption may, in writing, revoke his or her consent and the notice of revocation shall be received by the manager not more than 21 days after the consent was given.
- (2) A revocation of consent shall be sent to the manager to whom the consent to adoption was given.
  - (3) As soon as possible after receiving the revocation, the manager shall make reasonable efforts to give notice of it to each person who consented to the adoption and to the prospective adoptive parent.
  - (4) Where the person revoking consent had care and custody of the child immediately before giving consent, the child shall be returned to that person as soon as possible after the manager receives the revocation.

[2002 c13 s9; 2010 cC-12.2 s85](#)

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#### **Other revocation**

- 15.** Section 14 applies, with the necessary changes, to an adoption by a relative of the adoptive child or by a parent who wishes to become a parent of the child jointly with the child's parent.

[2002 c13 s9](#)

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### **Revocation by child**

**16.** Where a child is required to give his or her consent to an adoption that child may revoke his or her consent at any time before the adoption order is made by advising the director of his or her intent to revoke that consent.

[1999 cA-2.1 s16](#)

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### **Revocation of consents given outside province**

**17.** (1) A consent to the adoption of a child residing in the province where the consent was given under the law of another jurisdiction may be revoked in accordance with the law of that jurisdiction.

(2) Subsection (1) does not limit a child's right under section 16 to revoke a consent before an adoption order is made.

[1999 cA-2.1 s17](#)

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### **Court revocation**

**18.** (1) Where more than 21 days have passed since a consent to the adoption of a child has been given under this Part, a person may apply to a court to have his or her consent revoked and that consent may only be revoked with the approval of a court in accordance with section 14, 15, 16 or 17.

(2) An application to a court under subsection (1) may only be made before an adoption order is granted.

(3) Where the child has not been placed with the prospective adoptive parents an application to a court for the revocation of a consent is not required and the approval of revocation may be given by a manager.

(4) A notice of an application to a court under subsection (1) shall be served on the manager to whom custody of the child has been given and each person who consented to the adoption.

(5) A notice is not required to be served under subsection (4) where the application to revoke consent relates to an adoption by a relative of the adoptive child or by a parent who wishes to become a parent of the child jointly with the child's parent.

(6) A court may, in accordance with this section, revoke a consent to an adoption if it is satisfied that it would be in the best interests of the child to make that revocation.

[2002 c13 s10; 2010 cC-12.2 s85](#)

#### **PART IV CARE, CUSTODY AND GUARDIANSHIP**

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##### **Care, custody and guardianship**

**19.** (1) A birth parent or other person having custody of a child shall transfer that child into the custody of a manager for the purpose of the adoption of that child until an adoption order is made or a consent to the adoption of the child is revoked under this Act.

(2) Subsection (1) does not apply to an adoption by a relative or a person applying to jointly become a parent of a child with a parent.

(3) Where a child has been placed with a prospective adoptive parent for the purpose of adoption, the prospective adoptive parent may

(a) authorize a health care provider to examine the child; and

(b) consent to routine health care for the child where, in the opinion of the health care provider, the health care should be provided.

(4) Where a director has custody of a child under subsection (1), the Registrar of the Supreme Court is the guardian of that child's estate as if that guardianship had been granted under the *Judicature Act* and the *Rules of the Supreme Court, 1986*.

[2002 c13 s10; 2010 cC-12.2 s85](#)

**PART V  
COURT PROCEEDINGS**

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**Who may apply to adopt**

20. (1) One adult alone or 2 adults jointly may apply to a court to adopt a child under this Act.
- (2) One adult may apply to a court to jointly become a parent of a child with a parent of that child.
  - (3) A person shall
    - (a) be a resident of the province for at least 6 months; and
    - (b) have had a child placed and residing in his or her home for at least 6 months

immediately before making an application under this Act to adopt that child.

- (4) For the purpose of this Part, an applicant is a person who may apply to adopt a child under this section.

[2002 c13 s10; 2006 c40 s2](#)

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**Director certificate**

21. (1) An adoption order shall not be made unless a director has certified, in writing, that
- (a) the applicant has been a resident of the province for at least 6 months and the child has lived with the applicant for at least 6 months immediately before the date of the application and that, during that time the conditions under which the child has lived justify the making of the adoption order; or
  - (b) the applicant is, to the knowledge of the director, an appropriate person to have the care and custody of the child and that for reasons set out in the certificate, the period of placement and residency under paragraphs 20(3)(a) and (b) may be dispensed with.

(2) Where an applicant is a relative or person who wishes to become a parent jointly with the parent of a child, subsection (1) does not apply to his or her application for an adoption order.

[2002 c13 s10](#)

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### **Required documents**

22. (1) An application to a court to adopt a child shall be accompanied by

- (a) all consents required for the adoption or the orders dispensing with consent or an application to dispense with consent;
- (b) the child's birth registration or, if it cannot be obtained, satisfactory evidence of the facts relating to the child's birth;
- (c) a home study report approved by a director;
- (d) a post placement report or the child's plan of care;
- (e) a director's certificate; and
- (f) the additional information that may be required by the regulations.

(2) Where subsection (1) has not been complied with, an adoption order shall not be made.

(3) Notwithstanding subsection (2), paragraphs (1)(c), (d) and (e) do not apply to an application made by an applicant referred to in subsection 21(2).

[2002 c13 s10](#)

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### **Additional information**

23. Where an applicant has applied for an adoption order a director or an adoption agency may file with the court

- (a) other evidence or information the director considers necessary to enable the court to determine whether the proposed adoption is in the child's best interest; and
- (b) a recommendation on any issue relating to the adoption.

[1999 cA-2.1 s23](#)

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### **Court requirement**

24. A court may require a director or an adoption agency to inquire into a matter respecting an application for an adoption order that the court considers necessary.

[1999 cA-2.1 s24](#)

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### **Adoption order**

25. (1) After considering the documents and evidence filed or given under sections 21 to 24 the court may make an adoption order if it is satisfied that it is in the child's best interests to be adopted by the applicant.

(2) Where there are requirements under this Act that the applicant be a resident of the province for at least 6 months and that the child reside with the applicant for at least 6 months, a court may, after considering recommendations made by a director, alter or dispense with those requirements.

[2002 c13 s11](#)

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### **Change of name**

26. (1) An applicant may request that a court change the child's given names or family name.

(2) Where a request is made under subsection (1), a court may change the child's given names or family name in the adoption order provided that

(a) where the child is 5 years of age or older, his or her views on the matter are considered; and

(b) where the child is 12 years of age or older, the child gives his or her consent.

(3) A child's consent under subsection (2) is not required where the court has dispensed with the child's consent to adoption.

[2002 c13 s11](#)

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### **Effect of adoption order**

27. (1) Where an adoption order is made,

(a) the child becomes the child of the adoptive parent;

(b) the adoptive parent becomes the parent of the child;

(c) a birth parent ceases to have parental rights and obligations in respect of that child, except a birth parent who remains as a parent jointly with the adoptive parent;

(d) a person having custody of the child ceases to have that custody; and

(e) a person whose consent is required under section 10 ceases to have a right or obligation with respect to that child.

(2) Where a child is adopted for a subsequent time, the

(a) child becomes the child of the subsequent adoptive parent;

(b) subsequent adoptive parent becomes the parent of the child;

(c) adoptive parent immediately before the subsequent adoptive parent ceases to have parental rights and responsibilities with respect to that child except an adoptive parent who remains as a parent jointly with the applicant; and

(d) a person having custody of the child ceases to have that custody.

(3) An adoption order does not affect an interest in property or a right of the adopted child that vested in the child before the date of the adoption order.

[2002 c13 s11](#)

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### **Effect on access order or agreement**

**28.** (1) Where an adoption order is made, an order or an agreement that is enforceable under Part III of the *Children's Law Act* or Part IV of the *Family Law Act* for access to the adopted child ceases unless the court orders otherwise under subsection (2).

(2) The court may, in the child's best interests continue or vary an access order or an access provision of an agreement that is enforceable under Part III of the *Children's Law Act* or Part IV of the *Family Law Act* .

[2002 c13 s11](#)

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### **Hearings private**

**29.** An application under this Act or another Act for an order relating to a child placed for adoption, or an appeal from that order, may be heard and a decision made in the absence of the public.

[1999 cA-2.1 s29](#)

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### **Confidentiality**

**30.** (1) Where the identity of a birth parent or other person having custody of a child and the identity of an applicant are not known to each other, the court may order that their identities or information that could reveal their identities not be disclosed in a document.

(2) An application for an order under this Act or a document filed in court in connection with the application may be searched only

(a) by order of the court; or

(b) with the approval of the provincial director.

[1999 cA-2.1 s30](#)

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### **Duties of court**

31. (1) Where an adoption order is made, the court shall send a certified copy of the order to the
- (a) registrar; and
  - (b) director.
- (2) Paragraph (1)(b) does not apply to an adoption order made with respect to an applicant referred to in subsection 21(2).
- (3) The court shall provide in a schedule to an adoption order information relating to an adoption and direct the registrar to record the information in compliance with the requirements of the *Vital Statistics Act, 2009* .
- (4) Where an adoption order relates to a child who was born outside this province, 2 certified copies of the adoption order shall be sent to the registrar.

[2002 c13 s12; 2009 cV-6.01 s49](#)

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### **Extra-provincial adoptions**

32. Where a person has been adopted in or under the laws of another jurisdiction, the person and his or her adoptive parent have the same status, rights and duties as if the adoption had been in accordance with this Act.

[1999 cA-2.1 s32](#)

## **PART VI INTERPROVINCIAL AND INTERCOUNTRY ADOPTIONS**

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### **Approval for extra-provincial child**

**33.** (1) Before a child who is not a resident of the province is brought into the province for adoption, his or her prospective adoptive parent shall obtain the approval of the provincial director.

(2) Where the laws of adoption in the jurisdiction in which the child is a resident have been complied with the provincial director may grant approval under subsection (1).

[1999 cA-2.1 s33](#)

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### **Exception**

**34.** Section 33 does not apply to a child who is brought into the province for adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child's birth parent.

[1999 cA-2.1 s34](#)

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### **Convention**

**35.** (1) The minister shall request that the Government of Canada declare, in accordance with Article 45 of the convention, that the convention extends to the province.

(2) The minister shall publish in the *Gazette* notice of the date the convention comes into force in the province.

(3) The provisions of the convention have the force of law in the province on the date referred to in subsection (2).

(4) This Act and other laws of the province apply to an adoption to which the convention applies.

(5) Notwithstanding subsection (4), in respect of an adoption to which the convention applies, where this Act or another law of the province conflicts with the convention, the convention prevails.

[1999 cA-2.1 s35](#)

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## **Definitions**

36. Words and expressions used in sections 38 to 42 have the same meaning as in the convention.

[1999 cA-2.1 s36](#)

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## **Central Authority**

37. The provincial director is the Central Authority for the province for the purpose of the convention.

[1999 cA-2.1 s37](#)

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## **Authority of foreign bodies**

38. Where authorized by the provincial director, a body accredited in a contracting state may act in the province.

[1999 cA-2.1 s38](#)

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## **Authority to act abroad**

39. The provincial director may authorize an adoption agency licensed under this Act to act in a contracting state.

[1999 cA-2.1 s39](#)

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### **Conversion of adoptions**

**40.** (1) Upon application by a person resident in the province, a court may make an order converting an adoption referred to in Article 27 of the convention to an adoption under this Act.

(2) An application for an order under this section shall be accompanied by proof that the consents required under Article 27 of the convention have been given.

[1999 cA-2.1 s40](#)

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### **Disclosure**

**41.** The provincial director may, in accordance with this Act, disclose to a person who is 19 years of age or more who, as a child, was adopted in accordance with the convention, information in the provincial director's records concerning the person's origin.

[1999 cA-2.1 s41](#)

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### **Powers of director**

**42.** For the purpose of sections 37 to 41 and the adoption of a child in the province to whom those sections apply, the provincial director has the powers and duties of a director under this Act.

[1999 cA-2.1 s42](#)

## **PART VII OPENNESS AND DISCLOSURE**

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### **Openness agreements**

**43.** (1) In order to facilitate communication or to maintain personal relationships after an adoption order is granted, before the adoption order is granted an openness agreement may be made by a prospective adoptive parent or an adoptive parent of a child and

- (a) a relative of the child;
  - (b) another person who has established a relationship with the child; and
  - (c) a prospective adoptive parent or adoptive parent of a birth sibling of the child.
- (2) An openness agreement may
- (a) be entered into only after consent to the adoption is given by the birth parent or other person having custody of the child who placed or requested that the child be placed for adoption; and
  - (b) include a process to resolve disputes arising with respect to the agreement or matters associated with it.
- (3) Where a child is 12 or more years of age his or her consent to an agreement made under this section is required before that agreement is entered into.

[1999 cA-2.1 s43; 2002 c13 s13](#)

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### **Post adoption openness**

**44.** (1) An adoptive parent of a child and a person referred to in paragraph 43(1)(a), (b) and (c) may register with a director to indicate their interest in making an openness agreement.

- (2) Where an adoptive parent and a person referred to in paragraph 43(1)(a), (b) and (c) have both registered under subsection (1), the director
- (a) may assist them in reaching an openness agreement and may facilitate the exchange of non-identifying information; and
  - (b) shall, if they both wish to exchange identifying information, disclose to each the identifying information provided by the other.

(3) An adoptive parent of a child and an adoptive parent of a birth sibling of that child may register under this section and subsections (1) and (2) shall apply, with the necessary changes.

[2002 c13 s14](#)

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#### **Disclosure in the interest of a child**

45. A director may disclose identifying information to a person if the disclosure is necessary for the

- (a) safety, health or well-being of an adopted child or adopted person; or
- (b) purpose of allowing an adopted child or adopted person to receive a benefit,

and where identifying information is disclosed, the person being identified shall be notified by the director of that disclosure if the whereabouts of the person can be determined.

[2002 c13 s14](#)

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#### **Registrar**

46. (1) The registrar shall record, in the manner the registrar considers appropriate, the information contained in an adoption order.

(2) An adoption order, together with the documents used in the application, shall be filed in the registry or central administrative office of the court that made the adoption order.

[2002 c13 s14](#)

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### **Post adoption information**

47. (1) The adoption order, application, documents filed and record of proceedings in relation to an application for adoption shall be kept by the court in a sealed packet and papers in the custody of the provincial director relating to the adopted child shall be kept by the provincial director in a sealed packet and neither packet shall be opened except upon the direction of a judge or the provincial director.

(2) A person is not entitled to obtain information in respect of an adoption or have a packet referred to in subsection (1) searched or obtain a certified extract from it except as provided for in this Act.

[1999 cA-2.1 s47; 2002 c13 s15](#)

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### **Disclosure to adopted person 19 or over**

48. (1) An adopted person may apply to the registrar for a copy of the following:

- (a) the adopted person's original birth registration; and
- (b) the adoption order.

(2) Where an adopted person applying under subsection (1) complies with section 52, the registrar shall give to him or her the requested copies unless a

- (a) disclosure veto has been filed under section 50; or
- (b) no-contact declaration has been filed under section 51 and the person applying has not signed the undertaking referred to in that section.

(3) Where a disclosure veto or a no-contact declaration has been filed by only one of the birth parents, the registrar shall provide the adopted person with the information referred to in subsection (1), but the registrar shall first remove information respecting the person who has filed a disclosure veto or no-contact declaration.

[1999 cA-2.1 s48; 2002 c13 s16; 2004 c47 s3](#)

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### **Disclosure to birth parent**

**49.** (1) A birth parent named on an adopted person's original birth registration may, with respect to that adopted person, apply to the registrar for a copy of one or more of the following:

- (a) the original birth registration with a notation of the adoption and changes of name consequent to the adoption; and
  - (b) the birth registration that was substituted for the adopted person's original birth registration; and
  - (c) the adoption order.
- (2) Where a birth parent applying under subsection (1) complies with section 52, the registrar shall give to him or her a copy of the requested records unless a
- (a) disclosure veto has been filed under section 50; or
  - (b) no-contact declaration has been filed under section 51 and the birth parent has not signed the undertaking referred to in that section.
- (3) The registrar shall remove identifying information of an adoptive parent from information given to a birth parent under this section.

[1999 cA-2.1 s49; 2002 c13 s17](#)

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### **Disclosure veto and statement**

**50.** (1) An application made under subsection (2) and a disclosure veto filed under this section may only be made or filed with respect to a birth registration or other information relating to an adoption ordered under a former Act.

- (2) The following persons may apply to the registrar to file a written veto prohibiting the disclosure of information applied for under section 48 or 49:
- (a) an adopted person who is 18 years of age or older; and
  - (b) a birth parent named on the original birth registration of an adopted person referred to in paragraph (a).
- (3) Where a person applying under subsection (2) complies with paragraph 52(a), the registrar shall file the disclosure veto submitted by that person.

(4) A person who files a disclosure veto under this section may file with it a written statement that includes the information he or she wishes to disclose.

(5) Where a person applying for information is informed that a disclosure veto has been filed, the registrar shall give to that person the information filed with the disclosure veto.

(6) A person who files a disclosure veto may, in writing, request that the registrar cancel that veto and the registrar shall carry out that request.

(7) Unless cancelled under subsection (6), a disclosure veto continues in effect until one year after the death of the person who filed the veto.

(8) While a disclosure veto is in effect, the registrar shall not disclose information that is applied for under section 48 or 49 that relates to the person who filed the veto.

[2002 c13 s18](#)

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#### **No-contact declaration and statement**

**51.** (1) An application made under subsection (2) or (3) and a no contact declaration filed under this section may only be made or filed with respect to an adoption ordered under a former Act.

(2) A birth parent who is named in an original birth registration and who wishes not to be contacted by the person named as his or her child in the registration may apply, in writing, to the registrar to file a no-contact declaration.

(3) An adopted person who is 18 years of age or over who wishes not to be contacted by a birth parent named on a birth registration may apply, in writing, to the registrar to file a no-contact declaration.

(4) Where a person applying under subsection (2) or (3) complies with paragraph 52(a), the registrar shall file the no-contact declaration.

(5) The registrar shall not give a person to whom a no-contact declaration applies a copy of a birth registration or other record naming the person who filed that declaration unless the person applying for that copy or record has, in the required form, signed an undertaking respecting that registration or record.

(6) A person who is named in a no-contact declaration filed under this section and has signed an undertaking under subsection (5) shall not

(a) knowingly contact or attempt to contact the person who filed the declaration;

(b) procure another person to contact the person who filed the declaration;

(c) use information obtained under this Act to intimidate or harass the person who filed the declaration; and

(d) procure another person to intimidate or harass, by the use of information obtained under this Act, the person who filed the declaration.

(7) A person who files a no-contact declaration may file with it a written statement that includes the information he or she wishes to disclose.

(8) Where a person to whom a no-contact declaration relates is given a copy of a birth registration under section 48 or 49, the registrar shall give to him or her the information in written statements filed under subsection (7).

(9) A person who files a no-contact declaration may, in writing, to the registrar, cancel the declaration.

[2002 c13 s18](#)

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### **Compliance with Vital Statistics Act**

**52.** A person who applies to the registrar under this Part shall

(a) supply proof of identity that the registrar may require; and

(b) where the application is for a copy of a record of information, pay the required fee.

[1999 cA-2.1 s52](#)

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### **Contact by the provincial director**

**53.** In circumstances affecting a person's health or safety, the provincial director may contact the following to provide to or obtain from them necessary information:

(a) a birth parent;

- (b) if the birth parent is not available, a relative of the birth parent;
- (c) an adopted person; and
- (d) an adoptive parent of an adopted child.

[2002 c13 s19](#)

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#### **Mutual exchange of identifying information**

54. (1) An adopted person and an adult relative of an adopted person may register with the provincial director to exchange identifying information.

(2) Where, under subsection (1), an adopted person and an adult relative of the adopted person have both registered under this section, the provincial director shall notify each of them and disclose the identifying information provided by the other.

[1999 cA-2.1 s54; 2002 c13 s20](#)

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#### **Provincial director's right to information**

55. (1) The provincial director has the right to information that is in the custody or control of

- (a) a department of the government of the province; or
- (b) a public body as defined by paragraph 2(p) of the *Access to Information and Protection of Privacy Act*,

that is necessary to enable him or her to locate a person for the purpose of this Act or is necessary for the health or safety of an adopted person.

(2) A department, board, commission or other body referred to in subsection (1) that has custody or control of information to which the provincial director is entitled under subsection (1) shall, upon request, disclose that information to the provincial director.

(3) This section applies notwithstanding another Act of the province.

(4) A director under the *Child, Youth and Family Services Act* shall, upon request, disclose to the provincial director information obtained under the *Child, Youth and Family Services Act* that is necessary to enable the provincial director to exercise the powers or perform the duties or functions given to him or her under this Act.

[2006 cR-7.1 s29; 2009 c26 s3](#)

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### **Search and reunion services**

**56.** (1) An adult who has obtained a copy of information under section 48 or 49 may apply to the provincial director for assistance in locating

(a) if he or she is an adopted person, his or her

(i) birth parent, or

(ii) birth grandparent, adult birth or adopted sibling or other adult birth or adopted relatives; and

(b) if he or she is a birth parent, his or her adult adopted child.

(2) A parent who signed a consent to an adoption or a person who was named by the mother as the father of an adopted person may apply to the provincial director for assistance in locating that adopted person.

(3) After the death of an adopted person,

(a) an adult son or daughter or adult grandchild of the deceased; and

(b) where a son or daughter of the deceased is a child, the child's surviving parent, or person having custody of him or her,

may apply to the provincial director for assistance in locating

(c) a birth parent of the deceased; and

(d) a birth grandparent, an adult birth or adopted sibling or other adult birth or adopted relative of the deceased.

(4) A person applying under subsection (3) shall provide to the provincial director copies of the deceased's death certificate.

(5) A person is not entitled to assistance under this section in locating a person who has filed a disclosure veto or a no-contact declaration under section 50 or 51.

(6) Where a person located by the provincial director wishes not to be contacted by a person applying under this section, the provincial director shall not disclose information identifying the name or location of the person.

(7) Where a person located by the provincial director wishes to be contacted by a person applying under this section, the provincial director may assist them to meet or communicate.

(8) The provincial director shall inform a person applying under this section of the outcome of his or her search and, where applicable, shall advise him or her that the person whom he or she requested assistance in locating

(a) does not wish to be contacted;

(b) cannot be located; or

(c) is deceased.

[2002 c13 s22](#)

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### **Sharing of information with adoption agencies**

**57.** (1) The provincial director may disclose information to an adoption agency, including information obtained by the provincial director under section 55 , if the disclosure is necessary to enable the agency to perform the duties or to exercise the powers and functions given to the agency under this Act or the regulations.

(2) An adoption agency shall not use or disclose information provided under subsection (1) except for the purpose for which it was provided.

[1999 cA-2.1 s57; 2002 c13 s23](#)

## **PART VIII ADMINISTRATION, POWERS AND INSPECTION**

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### **Provincial director's and director's power to delegate**

58. (1) The provincial director may delegate to a person or class of persons a power, duty or function given to the provincial director under this Act.
- (2) A director may delegate to a person or a class of persons a power, duty or function given to a director under this Act.
- (3) The delegation of the powers, duties or functions of the provincial director or a director shall be in writing and may include terms or conditions that the provincial director or director, as the case may be, considers advisable.

[1999 cA-2.1 s58](#)

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### **Inspection**

59. (1) Where it is reasonably necessary to ensure compliance with this Act the provincial director, a director or a person who they may authorize may
- (a) at reasonable times enter an adoption agency and inspect the premises;
  - (b) require the production of books, records or other documents applicable to that adoption agency and may examine those books, records or documents or remove them for the purpose of making copies of them;
  - (c) interview staff of an adoption agency to determine if the agency is complying with the Act; and
  - (d) inquire into all matters relating to the adoption agency, its employees and former employees.
- (2) Where a person removes books, records or other documents under paragraph (1)(b), he or she shall give to the person from whom those items were taken a receipt for those items and shall immediately make copies of those items and return the originals to the person who was given the receipt.
- (3) The provincial director and a director may require the inspection of an adoption agency yearly or more frequently where he or she considers that inspection necessary.
- (4) A person present at an adoption agency shall permit entry as required under this section and shall provide the person conducting the inspection with whatever assistance he or she requests.

[1999 cA-2.1 s59; 2002 c13 s24](#)

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### **Search with warrant**

**60.** (1) Where the provincial director, a director or another person acting under this Act believes on reasonable grounds that there is on a premises anything that will provide evidence of a contravention of this Act, the provincial director, a director or other person may, with a warrant issued under subsection (2), enter those premises and do all those things referred to in section 59 .

(2) A judge who is satisfied on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has occurred and there is on a premises anything that will provide evidence of the contravention may issue a warrant authorizing the provincial director, a director or other person named in the warrant to enter the premises and search for anything that may provide evidence with respect to a contravention of this Act and to do all those things referred to in section 59 .

(3) The holder of an adoption agency licence issued under this Act, the owner or operator of premises referred to in this section and section 59 and a person found there shall give the provincial director, a director or other person reasonable help to enable them to carry out their duties and functions under this Act and shall provide the information that they may reasonably require.

[2002 c13 s25](#)

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### **Telewarrant**

**61.** (1) Where, in the opinion of the provincial director, a director or other person, it would not be practical to appear before a judge to apply for a warrant, the provincial director, a director or other person may make the application by telephone, facsimile or other means of telecommunication.

(2) Where the information on which an application for a warrant is submitted by telephone, facsimile or other means of telecommunication, the information shall be given under oath or affirmation, and the oath or affirmation may be administered by telephone, facsimile or other means of telecommunication.

(3) The information submitted by telephone, facsimile or other means of telecommunication shall include

(a) a statement of the circumstances that make it impracticable for the provincial director, a director or other person to appear personally before a judge; and

(b) a statement of the provincial director's, a director's or other person's grounds for believing that a person has contravened this Act and that there is on a premises something that will provide evidence of the contravention.

(4) The sworn or affirmed information submitted by telephone, facsimile or other means of telecommunication by the provincial director, a director or other person shall specify the name of the person giving evidence, the facts ascertained and the manner and location in which evidence was received, and a record of that information shall be filed by the judge with the clerk of the court over which the judge presides.

[2002 c13 s25](#)

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### **Appearance in court**

**61.1** A director or social worker may appear in court in respect of a matter arising out of a provision of this Act.

[2002 c13 s25](#)

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### **Protection from liability**

**62.** (1) The provincial director, a director, the registrar or other person are not personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of

(a) a power, duty or function conferred upon him or her by or under this Act; or

(b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred by or under this Act.

(2) Notwithstanding the *Access to Information and Protection of Privacy Act* and the *Privacy Act*, the use of, disclosure of and access to information in records pertaining to adoptions, regardless of where the information or records are located shall be governed by this Act.

[1999 cA-2.1 s62; 2002 cA-1.1 s75](#)

## **PART IX REGULATIONS**

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### **Ministerial regulations**

**63.** The minister may make regulations

- (a) respecting residency in the province for the purpose of this Act;
- (b) respecting the placement of children for adoption;
- (c) respecting the efforts to be made by the director or an adoption agency to notify a birth parent or another person having custody of a child as to the placement of the children for adoption;
- (d) respecting adoption consents;
- (e) respecting home studies, pre-placement assessments, post-placement and other required reports;
- (f) prescribing additional information to be filed with a court before an adoption order is made;
- (g) respecting the disclosure of information concerning the origin of a person adopted in accordance with the convention and designating the competent authorities for the purpose of the convention;
- (h) respecting disclosure vetoes and no-contact declarations;
- (i) respecting the search for and disclosure of information acquired and required under the Act;
- (j) respecting agreements that the provincial director and directors may enter into for the purpose of this Act and prescribing some or all of the contents of those agreements;
- (k) respecting the functions and duties of adoption agencies and respecting the delegation of a power, duty or function of the provincial director and directors under the Act to adoption agencies;
- (l) respecting the licensing of adoption agencies and the suspension, cancellation and reinstatement of licences issued under the Act;
- (m) respecting educational and other standards and conditions required for adoption agencies and their employees to obtain and retain a licence;
- (n) respecting the information, documents and reports adoption agencies are required to submit to a director, the frequency of the submissions and the inspection of the information, documents and reports by the director or other person;

- (o) respecting the disclosure of information by adoption agencies to directors and the provincial director;
- (p) respecting the surrender of records, accounts or other documents and information by adoption agencies and former adoption agencies to the provincial director and to directors;
- (q) respecting any other matter necessary for the proper operation, management, administration and accountability of adoption agencies;
- (r) respecting notifications required to be made, time periods for those notifications and applications to the provincial director, a director and the registrar under the Act, the information to be provided to and by the applicant including a proof of identity to be provided;
- (s) respecting the registration of information under the Act, the length of time that a registration shall stay in force and its cancellation or removal;
- (t) respecting who may access information provided by a person who has registered that information under this Act and respecting the confidentiality, security, disposal and disclosure of the information;
- (u) respecting openness agreements, post adoption information release and disclosure;
- (u.1) for the purpose of paragraph 69 (6)(d);
- (v) respecting promotional material, advertising restrictions and exemptions from advertising restrictions under this Act; and
- (w) generally to give effect to the purpose of the Act.

[1999 cA-2.1 s63; 2002 c13 s26](#)

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### **Lieutenant-Governor in Council regulations**

#### **64. The Lieutenant-Governor in Council may make regulations**

- (a) specifying the circumstances where fees may be collected in respect of services relating to an adoption of a child under this Act; and
- (b) establishing the fees or other expenses adoption agencies may charge for services and prohibiting adoption agencies from charging fees or expenses for specified services.

[1999 cA-2.1 s64](#)

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### **Fees and forms**

65. (1) The minister may set fees and establish forms and the information to accompany those forms for the purpose and administration of this Act.

(2) In this Act, "required form", unless otherwise stated, means in the form established under subsection (1).

[1999 cA-2.1 s65](#)

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### **Service and notice**

66. Where, under the Act, service upon or notice to a person is required, that service or notification shall be made in person or by registered mail at the last known address of the person and where that person is a corporation, that service or notification shall be made in the same manner upon a director or chief executive officer of the corporation.

[1999 cA-2.1 s66](#)

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### **Status of children**

67. The status of an adopted child is as set out in Part I of the *Children's Law Act* .

[1999 cA-2.1 s67](#)

## **PART X APPEALS**

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## Appeal

68. (1) A person aggrieved by an order of a judge under this Act, or by the refusal of a judge to make an order, may appeal from the decision granting or refusing the order, where the judge is a judge of the

- (a) Trial Division - Family Division, to the Court of Appeal; and
- (b) Provincial Court, to the Trial Division,

and the provisions of the *Judicature Act* and the *Rules of the Supreme Court, 1986* shall govern the proceedings on the appeal.

(2) The Trial Division or Court of Appeal to which an appeal is made may set aside or confirm the order referred to in subsection (1) or may make an order that a judge under this Act can make or may, by order directed to the judge from whom the appeal is taken, require that judge to make an order as the circumstances of the case may require.

[1999 cA-2.1 s68; 2002 c13 s27; 2009 c16 s9](#)

## PART XI OFFENCES AND PENALTIES

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### Prohibitions

69. (1) A person shall not place or arrange the placement of a child for the purpose of adoption unless the person is authorized under this Act to do so.

(2) A person shall not receive a child into his or her home for the purpose of caring for that child as if he or she had custody of that child unless that person has had that child placed into his or her home by a relative, under this Act or under another law of the province or of Canada .

(3) A person shall not receive a child into his or her home for the purpose of adoption except in accordance with this Act.

(4) A person shall not receive a child placed into his or her home by direct placement unless the person has complied with and is authorized under this Act to receive the child.

(5) A person shall not give, receive or agree to give or receive a payment or reward, whether directly or indirectly,

- (a) to procure or assist in procuring a child for the purpose of adoption in or outside the province; or
- (b) to place or arrange the placement of a child for the purpose of adoption in or outside the province.
- (6) Subsection (4) does not apply to
  - (a) a lawyer receiving reasonable fees and expenses for legal services provided in connection with an adoption;
  - (b) a health care provider receiving reasonable fees and expenses for medical services provided to a child who is the subject of an adoption or to the birth mother in connection with the pregnancy or birth;
  - (c) an adoption agency receiving fees and expenses that do not exceed those allowed under the regulations; and
  - (d) another person prescribed by the regulations.

[1999 cA-2.1 s69; 2002 c13 s28](#)

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### **Advertising prohibition**

- 70.** (1) A person shall not publish or have published in any form or manner an advertisement dealing with the placement or adoption of a child.
- (2) Subsection (1) does not apply to
    - (a) the publication of a notice under a court order;
    - (b) the publication of a notice authorized by the provincial director or a director;
    - (c) an advertisement by an adoption agency advertising, in accordance with the regulations, its services only, without reference to specific children;
    - (d) an announcement of an adoption placement or an adoption; and
    - (e) other forms of advertisement specified by the regulations.

[1999 cA-2.1 s70](#)

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### **Making a false statement**

71. A person shall not make a statement that the person knows to be false or misleading in an application or in connection with an application

- (a) for a copy of a birth registration or other record under this Act; or
- (b) to file a disclosure veto under section 50 or a no-contact declaration under section 51.

[1999 cA-2.1 s71](#)

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### **Penalty**

72. (1) A person who contravenes a provision of this Act is liable on summary conviction

- (a) for a first offence to a fine of not less than \$1,000 and not more than \$5,000 or to a term of imprisonment of not more than 60 days or to both the fine and imprisonment; and
- (b) for a subsequent offence to a fine of not less than \$5,000 and not more than \$10,000 or to a term of imprisonment of not more than 90 days or to both the fine and imprisonment.

(2) Where a person convicted under subsection (1) is a corporation, in addition to a fine that may be imposed upon that person, one or more directors and the chief executive officer of that corporation may be fined and imprisoned in accordance with that subsection.

- (3) In addition to a penalty that a judge may impose under subsection (1) or (2), the judge may make an order revoking the licence of an adoption agency.

[1999 cA-2.1 s72; 2002 c13 s29](#)

## **PART XII TRANSITIONAL, REPEAL AND COMMENCEMENT**

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## **Transitional**

**73.** (1) Notwithstanding sections 48, 49, 50 and 51, information that may be given or released to a person by the registrar under those sections shall not be given or released to that person before one year after the coming into force of this Act.

(2) Upon the coming into force of this Act, where, under the *Adoption of Children Act* in force immediately before the commencement of this Act

(a) a child has been placed for adoption;

(b) a birth parent or other person having custody of a child has consented to the placement of the child for adoption;

(c) a director has been given custody of a child with the intent that the child be placed for adoption;

(d) a prospective adoptive parent has requested that he or she have a child placed into his or her home for the purpose of adoption; and

(e) a home study, post placement or other report has been commenced or carried out in respect of a person,

and an adoption order has not been made under that Act, this Act, with the necessary changes, shall apply to those persons referred to in paragraphs (a) to (e).

[1999 cA-2.1 s73; 2002 c13 s30](#)

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## **RSN1990 cA-3 Rep.**

**74. The *Adoption of Children Act* is repealed.**

[1999 cA-2.1 s74](#)

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## **Commencement**

**75. This Act shall come into force on a date to be proclaimed by the Lieutenant-Governor in Council. (In force - Apr. 30/03)**

[1999 cA-2.1 s75](#)

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## **Schedule**

### CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of November 20, 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions,

#### **CHAPTER 1 — SCOPE OF THE CONVENTION**

##### **Article 1**

The objects of the present Convention are,

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

#### **Article 2**

1. The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2. The Convention covers only adoptions which create a permanent parent-child relationship.

#### **Article 3**

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph (c), have not been given before the child attains the age of 18 years.

### **CHAPTER II — REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

#### **Article 4**

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin,

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- (c) have ensured that,
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

- (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that,
- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
  - (2) consideration has been given to the child's wishes and opinions,
  - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
  - (4) such consent has not been induced by payment or compensation of any kind.

#### **Article 5**

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State,

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- (c) have determined that the child is or will be authorized to enter and reside permanently in that State.

### **CHAPTER III — CENTRAL AUTHORITIES AND ACCREDITED BODIES**

#### **Article 6**

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

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

#### **Article 7**

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2. They shall take directly all appropriate measures to,

- (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

#### **Article 8**

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

#### **Article 9**

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to,

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- (c) promote the development of adoption counselling and post-adoption services in their States;
- (d) provide each other with general evaluation reports about experience with intercountry adoption;
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

**Article 10**

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

**Article 11**

An accredited body shall,

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

**Article 12**

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

**Article 13**

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

**CHAPTER IV — PROCEDURAL  
REQUIREMENTS IN INTERCOUNTRY  
ADOPTION**

**Article 14**

Persons habitually resident in a Contracting State , who wish to adopt a child habitually resident in another Contracting State , shall apply to the Central Authority in the State of their habitual residence.

#### **Article 15**

1. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2. It shall transmit the report to the Central Authority of the State of origin.

#### **Article 16**

1. If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall,

- (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- (c) ensure that consents have been obtained in accordance with Article 4; and
- (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2. It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

#### **Article 17**

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if,

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- (c) the Central Authorities of both States have agreed that the adoption may proceed; and

- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

**Article 18**

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

**Article 19**

1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parent.
3. If the transfer of the child does not take place, the report referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

**Article 20**

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

**Article 21**

1. Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular,
  - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
  - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
  - (c) as a last resort, to arrange the return of the child, if his or her interests so require.

2. Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

#### **Article 22**

1. The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2. Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who,

(a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

(b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3. A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4. Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5. Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

### **CHAPTER V — RECOGNITION AND EFFECTS OF THE ADOPTION**

#### **Article 23**

1. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, subparagraph (c), were given.

2. Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

#### **Article 24**

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

#### **Article 25**

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

#### **Article 26**

1. The recognition of an adoption includes recognition of,

- (a) the legal parent-child relationship between the child and his or her adoptive parents;
- (b) parental responsibility of the adoptive parents for the child;
- (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

#### **Article 27**

1. Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect,

- (a) if the law of the receiving State so permits; and
- (b) if the consents referred to in Article 4, subparagraphs (c) and (d), have been or are given for the purpose of such an adoption.

2. Article 23 applies to the decision converting the adoption.

## **CHAPTER VI — GENERAL PROVISIONS**

### **Article 28**

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

### **Article 29**

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, subparagraphs (a) to (c), and Article 5, subparagraph (a), have been met, unless the adoption takes place within the family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

### **Article 30**

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

### **Article 31**

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

### **Article 32**

1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

### **Article 33**

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

### **Article 34**

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

### **Article 35**

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

### **Article 36**

In relation to a State which has two or more systems of law with regard to adoption 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 that State shall be construed as referring to the law in force in the relevant territorial unit;
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

### **Article 37**

In relation to a State which with regard to adoption 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 38**

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

#### **Article 39**

1. The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2. Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

#### **Article 40**

No reservation to the Convention shall be permitted.

#### **Article 41**

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

#### **Article 42**

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

### **CHAPTER VII — FINAL CLAUSES**

#### **Article 43**

1. The Convention shall be opened for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2. 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, depositary of the Convention.

#### **Article 44**

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2. The instrument of accession shall be deposited with the depositary.

3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in subparagraph (b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### **Article 45**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the 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.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of the State.

#### **Article 46**

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

2. Thereafter the Convention shall enter into force,

(a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### **Article 47**

1. A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

#### **Article 48**

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following,

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- (b) the accessions and objections raised to accessions referred to in Article 44;
- (c) the date on which the Convention enters into force in accordance with Article 46;
- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- (e) the agreements referred to in Article 39;
- (f) the denunciation referred to in Article 47.

[1999 cA-2.1 Sch.](#)

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