PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

CHILDREN'S LAW ACT

PLEASE NOTE

This document, prepared by the ***Legislative Counsel Office***, is an office consolidation of this Act, current to May 29, 2026. It is intended for information and reference purposes only.

This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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CHILDREN'S LAW ACT

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CHAPTER C-6.1

CHILDREN'S LAW ACT

PART 1 – INTERPRETATION, DUTIES

Definitions

1. Definitions

(1) In this Act,

(a) "**applicant**" means a person who brings an application under this Act;

(b) "**child**" means, except in Part 4 or Part 6, a person who is under the age of 18 years;

(c) "**child support guidelines**" means the child support guidelines established or adopted by regulations under this Act respecting the making of orders for child support;

(d) "**children's law dispute**" means a dispute respecting a matter to which this Act relates;

(e) "**contact order**" means a contact order made under section 43;

(f) "**court**" means the Family Section of the Supreme Court, unless the context requires otherwise;

(g) "**custodian**" means a custodian as defined in clause 1(e) of the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41;

(h) **"decision-making responsibility"** means the responsibility for making significant decisions about a child's well-being, including decisions in respect of

(i) health,

(ii) education,

(iii) culture, language, religion and spirituality, and

(iv) significant extra-curricular activities;

(i) "**Department**" means the Department of Justice and Public Safety;

(j) **"Director of Child Protection"** means the Director of Child Protection appointed pursuant to the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01;

(k) "**dispute resolution process**" means a process outside of court used by parties to a children's law dispute to attempt to resolve one or more of the disputed issues outside of court, and includes

(i) assistance from a dispute resolution professional,

(ii) mediation, negotiation, arbitration, collaborative family law and other processes, and

(iii) prescribed services;

(l) "**dispute resolution professional**" means

(i) a parenting coordinator,

(ii) a mediator conducting a mediation in relation to a children's law dispute,

(iii) an arbitrator conducting an arbitration in relation to a children's law dispute, or

(iv) a person within a class of prescribed persons;

(m) "**employee**" means an employee as defined in clause 1(h) of the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8;

(n) "**family justice services**" means public or private services intended to help persons deal with issues arising from separation, divorce or a children's law dispute;

(o) "**family member**" includes a member of the household of a child or of a parent as well as a dating partner of a parent who participates in the activities of the household;

(p) "**family violence**" means family violence as defined in section 2 of the *Victims of Family Violence Act* R.S.P.E.I. 1988, Cap. V-3.2;

(q) "**lawyer**" means a person authorized to practise law in the province pursuant to section 20 of the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1;

(r) "**Minister**" means the Minister of Justice and Public Safety and Attorney General;

(s) "**parent**" includes

(i) a person who is presumed or declared to be a parent of a child under Part 4, and

(ii) a person who has a parent-like relationship with a child and has decision-making responsibility for the child under a parenting order made under section 39;

(t) "**parenting order**" means a parenting order made under section 39;

(u) "**parenting time**" means the time a child spends in the care of a parent, whether or not the child is physically present with that parent during the entire time;

(v) "**personal health information**" means personal health information as defined in clause 1(t) of the *Health Information Act*;

(w) "**personal information**" means personal information as defined in clause 1(i) of the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01;

(x) "**police service**" means a police service as defined in clause 1(v) of the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;

(y) "**proceeding**" includes an action, application or submission to the court or other body having authority by law to make decisions as to the rights of persons;

(z) "**public body**" means a public body as defined in clause 1(k) of the *Freedom of Information and Protection of Privacy Act*;

(aa) "**Registrar**" means, except in section 80, the Registrar of the Court of Appeal and the Supreme Court appointed pursuant to the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1.

Application of Act

(2) This Act shall be construed and applied in a manner that is consistent with the United Nations Convention on the Rights of the Child. *2020,c.59,s.1; 2023,c.17,s.69(2).*

Best Interests of the Child

2. Primary consideration

In all proceedings under this Act, the best interests of the child shall be the primary consideration of the court. *2020,c.59,s.2.*

Duties of Parties

3. Best interests of child

(1) A person to whom parenting time or decision-making responsibility has been allocated in respect of a child or who has contact with a child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

Protection of children from conflict

(2) A party to a proceeding under this Act shall, to the best of the party's ability, protect any child from conflict arising from the proceeding.

Resolution of dispute through dispute resolution process

(3) To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a dispute resolution process.

Complete, accurate and up-to-date information

(4) A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information where required under this Act or the regulations.

Duty to comply with orders

(5) For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

Signed statement

(6) Every document that formally commences a proceeding under this Act, or that responds to such a document, and that is filed with the court by a party to the proceeding shall contain a statement by the party certifying that the party is aware of the party's duties under this section. *2020,c.59,s.3.*

Duties of Lawyer

4. Duties of lawyer

(1) Every lawyer who acts on behalf of a party in a proceeding under this Act has a duty

(a) to encourage the party to attempt to resolve the matters that may be the subject of an order under this Act through a dispute resolution process, unless in the circumstances it would clearly not be appropriate to do so;

(b) to inform the party of the family justice services known to the lawyer that may assist the party

(i) in resolving the matters that may be the subject of an order under this Act, and

(ii) in complying with any order or decision made under this Act; and

(c) to inform the party of the party's duties under this Act.

Statement of compliance

(2) Every document that formally commences a proceeding under this Act, or that responds to such a document, and that is filed with the court by a lawyer shall contain a statement by the lawyer certifying that the lawyer has complied with subsection (1). *2020,c.59,s.4.*

Duties of the Court

5. Purpose of section

(1) The purpose of this section is to facilitate

(a) the identification of orders, undertakings, recognizances, agreements or measures that may conflict with an order under this Act; and

(b) the coordination of proceedings.

Definition, "civil protection order"

(2) In this section, "civil protection order" means a civil order that is made to protect a specified person's safety, including an order that prohibits a person from

(a) being in physical proximity to the specified person or following the specified person from place to place;

(b) contacting or communicating with the specified person, either directly or indirectly;

(c) attending at or being within a certain distance of a specified place or location;

(d) engaging in harassing or threatening conduct directed at the specified person;

(e) occupying a family home or residence; or

(f) engaging in family violence.

Information regarding other orders or proceedings

(3) In a proceeding in which a party seeks a child support order, contact order or parenting order, and in relation to any party to that proceeding, the court has a duty to consider if any of the following are pending or in effect, unless in the circumstances the court is of the opinion it would clearly not be appropriate to do so:

(a) a civil protection order, an order under the *Victims of Family Violence Act* or a proceeding in relation to any such order;

(b) a child protection order, proceeding, agreement or measure;

(c) an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

Conduct inquiries, review information

(4) In order to carry out its duty under this section, the court may make inquiries of the parties or review information that is readily available and that has been obtained through a search carried out in accordance with applicable law, including the Rules of Civil Procedure. *2020,c.59,s.5.*

PART 2 - ADMINISTRATION

6. Minister responsible

(1) The Minister is responsible for the administration of this Act.

Delegation

(2) The Minister may delegate, in writing, to an employee of the Department any of the powers, responsibilities and functions of the Minister under this Act, as may be specified in the delegation. *2020,c.59,s.6.*

Child Support Services Office

7. Recalculation Office continued as Child Support Services Office

(1) The Recalculation Office established under the Administrative Recalculation of Child Support Regulations (EC465/03), pursuant to subsection 61(5) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, is continued under the name "Child Support Services Office".

Recalculation Officer continued

(2) The Recalculation Officer established under subsection 3(1) of the Administrative Recalculation of Child Support Regulations is continued under the same name.

Functions of Child Support Services Office

(3) The Child Support Services Office shall

(a) calculate child support in accordance with this Act and the child support guidelines;

(b) recalculate child support in accordance with this Act, the regulations and the child support guidelines; and

(c) perform additional duties as required by the Minister or under the child support guidelines.

Designation of Child Support Guidelines Officer

(4) The Minister may designate one or more employees of the Department as a Child Support Guidelines Officer with the Child Support Services Office to provide information and assistance to persons seeking child support under sections 15.1 and 17 of the *Divorce Act* (Canada) and Part 6 of this Act. *2020,c.59,s.7.*

PART 3 - RESOLUTION OF CHILDREN'S LAW DISPUTES

8. Resolution of conflict outside court

Parties to a children's law dispute are encouraged, where appropriate, to resolve conflict by means other than through court intervention. *2020,c.59,s.8.*

9. Party to provide information

(1) A party to a dispute resolution process shall provide to the other party complete, accurate and up-to-date information for the purposes of resolving the dispute.

Information to be used for dispute resolution process

(2) A party shall not use information obtained under this section except as necessary to resolve a children's law dispute through a dispute resolution process. *2020,c.59,s.9.*

10. Agreements

(1) Subject to this Act, two or more persons may make an agreement

(a) to resolve a children's law dispute; or

(b) respecting

(i) a matter that may be the subject of a children's law dispute in the future,

(ii) the means of resolving a children's law dispute or a matter that may be the subject of a children's law dispute in the future, including the type of dispute resolution process to be used, or

(iii) the implementation of an agreement or order.

Agreement combined with *Family Law Act* agreement

(2) An agreement referred to in subsection (1) may be combined with an agreement or a contract referred to section 50 of the *Family Law Act* to form a single agreement, and the requirements of this Act and section 50 of the *Family Law Act* apply to the respective parts of the combined agreement.

Agreement to be in writing, signed and witnessed

(3) An agreement and an agreement to amend or rescind an agreement are unenforceable unless they are made in writing, signed by the parties and witnessed.

Court may incorporate agreement in order

(4) On the application of a party to a proceeding, the court may incorporate an agreement in an order.

Court approval required

(5) An agreement entered into by a person who is under 18 years of age is enforceable only if the agreement is approved by the court whether approval is provided before or after the person enters into the agreement.

Agreement prevails

(6) Where there is a conflict between an agreement and Part 5 or Part 6 of this Act, the agreement prevails except as otherwise provided in this Act.

Agreement valid and enforceable in province

(7) Subject to subsection (9), an agreement that is governed by the law of a jurisdiction outside the province

(a) is valid and enforceable in the province if it is entered into in accordance with the province's internal law; and

(b) is subject to subsection 60(4).

Deemed agreement for the purposes of this Act

(8) For greater certainty, an agreement described in subsection (1) that is contained in a domestic contract or parental agreement made under the *Family Law Act* prior to the date this section comes into force shall be deemed to be an agreement referred to in subsection (1) for the purposes of this Act.

Court may set aside

(9) The court may disregard any provision of an agreement referred to in subsection (1) or (7) or an agreement or a contract referred to in section 50 of the *Family Law Act* where, in the opinion of the court,

(a) to do so is in the best interests of the child;

(b) a party did not understand the nature or consequences of the agreement or contract; or

(c) to do so is otherwise in accordance with the law of contract.

Application

(10) Subsections (7) and (9) apply despite any agreement to the contrary. *2020,c.59,s.10.*

11. Duty to assess whether family violence has occurred

(1) A dispute resolution professional or lawyer consulted by a party for the purposes of resolving a children's law dispute shall assess whether family violence has occurred and, if it appears to the dispute resolution professional or lawyer that family violence has occurred, assess the extent to which the family violence may adversely affect

(a) the safety of the party or a family member of that party; and

(b) the ability of the party to negotiate a fair agreement.

Duty to provide information on dispute resolution

(2) Having regard to the assessment made under subsection (1), the dispute resolution professional or lawyer consulted by a party to a children's law dispute shall

(a) discuss with the party the advisability of using various types of dispute resolution processes to resolve the matter; and

(b) inform the party of the family justice services, dispute resolution processes and other resources known to the dispute resolution professional or lawyer that may be available to assist in resolving the dispute.

Best interests of child

(3) A dispute resolution professional or lawyer consulted by a party for the purpose of resolving a children's law dispute shall advise the party that agreements and orders are required to be made in the best interests of the child. *2020,c.59,s.11.*

12. Mandatory information session

(1) The Lieutenant Governor in Council may approve rules of court under section 35 of the *Judicature Act* that require a party to an application under this Act to attend an information session on dispute resolution processes available in the province.

Minister may approve information session, form of certificate

(2) The Minister may approve, for the purposes of subsection (1),

(a) an information session on dispute resolution processes available in the province; and

(b) a form of certificate of completion in respect of the information session. *2020,c.59,s.12.*

13. Order to attend dispute resolution process

(1) The court may make an order directing the parties to a children's law dispute to attend a dispute resolution process.

Decline to order where risk of family violence

(2) The court shall not make an order under subsection (1) where the court is of the opinion that it is not appropriate to do so, including where there is a risk of family violence.

Appointment of dispute resolution professional

(3) The court may, on application, appoint a dispute resolution professional whom the parties have selected with respect to any matter that the court specifies.

Requirements

(4) The court shall not make an appointment under subsection (3) unless the dispute resolution professional has

(a) consented to the appointment; and

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

Confer with parties

(5) The dispute resolution professional shall confer with the parties, and with children where in the opinion of the dispute resolution professional it is appropriate to do so, and shall endeavour to obtain an agreement between the parties.

May file a report or limited report

(6) Before entering into a dispute resolution process, the parties shall decide whether

(a) the dispute resolution professional is to file a report with the court on the dispute resolution process, including anything that the dispute resolution professional considers relevant; or

(b) the dispute resolution professional is to file a limited report with the court that sets out only the agreement reached by the parties or states only that the parties did not reach an agreement.

Inadmissible as evidence in any proceeding without consent

(7) Where the parties have decided that the dispute resolution professional is to file a limited report with the court, no evidence of anything said or of any admission or communication made in the course of the dispute resolution process is admissible in any proceeding, without the consent of all parties to the proceeding.

Payment of fees and expenses

(8) The court shall require the parties to pay the dispute resolution professional's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.

Where serious financial hardship

(9) The court may require one party to pay all the dispute resolution professional's fees and expenses where the court is satisfied that payment would cause the other party or parties serious financial hardship. *2020,c.59,s.13.*

14. Dispute resolution professional

(1) A person who meets the requirements specified in the regulations in respect of a class of dispute resolution professional may, when acting as a dispute resolution professional of that class,

(a) assist in the resolution of a children's law dispute in accordance with the regulations;

(b) where authorized by the regulations, make determinations in respect of a children's law dispute; and

(c) where authorized by the regulations, prepare and submit a brief or report to the court for review under subsection 15(1).

Regulations – dispute resolution professionals

(2) The Lieutenant Governor in Council may make regulations

(a) prescribing the classes of dispute resolution professionals for the purposes of this Act;

(b) establishing the qualifications required in respect of each class of dispute resolution professional;

(c) authorizing the Minister to designate an employee of the Department to

(i) receive applications from persons requesting certification as a dispute resolution professional under this Act and the regulations,

(ii) issue and renew certification to qualified persons, and

(iii) carry out the other functions and responsibilities assigned to the employee by the Minister;

(d) establishing standards of practice that apply to each class of dispute resolution professional;

(e) specifying the level of professional liability insurance that a dispute resolution professional is required to maintain;

(f) respecting the making of determinations by a dispute resolution professional;

(g) respecting the terms and conditions of the contract between a dispute resolution professional and the parties for dispute resolution services;

(h) respecting matters that a dispute resolution professional may assist in or in respect of which a dispute resolution professional may

(i) make determinations, or

(ii) prepare and submit a brief or report to the court for review under subsection 15(1);

(i) respecting limits and conditions in respect of

(i) the authority of a dispute resolution professional to provide assistance,

(ii) the making of determinations by a dispute resolution professional, or

(iii) the preparation and submission of briefs or reports to the court by a dispute resolution professional;

(j) prescribing matters with which, or circumstances in which, a dispute resolution professional shall not assist, make determinations or prepare and submit a brief or report to the court;

(k) respecting enforcement of a determination made by a dispute resolution professional;

(l) respecting the formal requirements for a determination made or brief prepared by a dispute resolution professional;

(m) requiring a party, for the purposes of facilitating a dispute resolution process, to provide the dispute resolution professional with

(i) information requested by the dispute resolution professional, and

(ii) authorization for the dispute resolution professional to request and receive information respecting a child from a person who is not a party to the dispute resolution process;

(n) for the purposes of subsection 15(1),

(i) prescribing the information required to be submitted in a brief or report submitted by a dispute resolution professional, and

(ii) prescribing the manner in which a brief or report is to be submitted to the court.
2020,c.59,s.14.

15. Brief or report of dispute resolution professional

(1) The court may receive and consider a brief or report submitted by a dispute resolution professional that is related to a children's law dispute in accordance with the regulations.

Court may confirm brief or report

(2) On review of a brief or report referred to in subsection (1), the court may by order confirm the terms of an agreement between the parties or a determination of child support referred to in the brief or report, as the case may be, where the court is satisfied that the terms are, or the determination is, in the best interests of the child.

Form of brief or report

(3) The brief or report of the dispute resolution professional shall be in a form that complies with any applicable requirements of the Rules of Civil Procedure.

Order

(4) An order under subsection (2) is deemed to be an order under Part 5 or Part 6 of this Act, as the case may be. *2020,c.59,s.15.*

16. Effect of determination

(1) A determination made by a dispute resolution professional in accordance with the regulations

(a) is binding on the parties, effective on the date the determination is made or on a later date specified by the dispute resolution professional; and

(b) where filed with the court, is enforceable under this Act as if it were an order of the court.

Court may set aside determination

(2) On an application by a party to set aside a determination referred to in subsection (1), the court may change or set aside the determination where the court is satisfied that the dispute resolution professional

(a) acted outside the authority of the dispute resolution professional; or

(b) made an error of law or of mixed fact and law.

Order where determination set aside

(3) Where the court sets aside a determination under subsection (2), the court may make any order the court considers appropriate to resolve a dispute between the parties in respect of the subject matter of the determination.

Order where determination not set aside

(4) Where the court does not set aside a determination made by a dispute resolution professional, the court may make any order the court considers appropriate to enforce compliance with the determination. *2020,c.59,s.16.*

PART 4 - ESTABLISHMENT OF PARENTAGE

Interpretation, Application

17. Definitions

In this Part,

(a) "**assisted reproduction**" means a method of conceiving a child other than by sexual intercourse;

(b) "**birth mother**" means a person who gives birth to, or is delivered of, a child, regardless of whether the person's human reproductive material was used in the child's conception;

(c) "**Director**" means the Director of Vital Statistics appointed under subsection 38(2) of the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1;

(d) "**donor**" means a person who, for the purposes of assisted reproduction, other than for the person's own reproductive use, provides

(i) the person's own human reproductive material, from which a child is conceived, or

(ii) an embryo created through the use of the person's human reproductive material;

(e) "**embryo**" means an embryo as defined in the *Assisted Human Reproduction Act* (Canada);

(f) "**extra-provincial declaratory order**" means an order of an extra-provincial tribunal that declares whether a person is a child's parent;

(g) "**extra-provincial tribunal**" means a court or tribunal outside the province that has authority to make orders declaring whether a person is a child's parent;

(h) "**human reproductive material**" means human reproductive material as defined in the *Assisted Human Reproduction Act* (Canada);

(i) "**intended parent**" or "**intended parents**" means a person who intends, or persons who intend, to be a parent or parents of a child and, for that purpose, the person makes or the persons make an agreement with another person before the child is conceived that

(i) the other person will be the birth mother of a child conceived through assisted reproduction, and

(ii) the person, or persons, will be the child's parent or parents on the child's birth, regardless of whether that person's or those persons' human reproductive material was used in the child's conception;

(j) "**parentage tests**" means the tests used to identify inheritable characteristics, and include

(i) human leukocyte antigen tests,

(ii) tests of the deoxyribonucleic acid (DNA), and

(iii) any other test that the court considers appropriate;

(k) "**surrogate**" means a birth mother of a child conceived as a result of assisted reproduction if, at the time of the child's conception, the birth mother intended to relinquish that child to the intended parent or intended parents. *2020,c.59,s.17.*

18. Application - general

(1) Subject to subsection (2), this Part applies to

(a) an enactment made before, on or after the coming into force of this section; and

(b) an instrument made on or after the coming into force of this section.

Application - existing enactments and instruments

(2) This Part does not affect the disposition of property under an enactment or instrument before the date this section comes into force.

Reference to person includes

(3) In an enactment or instrument, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage includes a person who comes within that description by reason of the parent-child relationship as determined under this Part.

Exclusion

(4) In an enactment or instrument, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage does not include the following persons:

(a) a person who has donated human reproductive material or an embryo for use in assisted reproduction if

(i) that person is not presumed under this Act to be a parent of the child born as a result, or

(ii) that person has not been declared under this Act to be a parent of the child born as a result; and

(b) a person related by blood or marriage to a person referred to in clause (a).

Void and voidable marriages

(5) For the purposes of this Part,

(a) where two persons go through a form of marriage to each other and at least one of them does so in good faith, they live together and the marriage is void,

(i) they are deemed to have been married for the period they lived together, and

(ii) the marriage is deemed to be terminated when they stop living together; and

(b) where a voidable marriage is declared a nullity, the persons who went through the form of marriage are deemed to have been married until the date of the declaration of nullity.

Deemed date of conception where assisted reproduction

(6) For the purposes of this Part, if a child is born as a result of assisted reproduction, the child's conception is deemed to have occurred at the time the procedure that resulted in the conception was performed. *2020,c.59,s.18.*

Presumption of Parentage

19. Person is child of parents

(1) For all purposes of the law of the province,

(a) a person is the child of the person's parents;

(b) a child's parent is the person determined under this Part to be the child's parent; and

(c) the relationship of parent and child and kindred relationships flowing from that relationship shall be as determined under this Part.

No distinction based on legitimacy

(2) For greater certainty, there is no distinction in law between the status of a child born inside marriage and a child born outside marriage.

Parentage - adoption

(3) Where a child is adopted, sections 20 to 23 of this Act do not apply and the child's parents are as set out in the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1.

Donor not automatically parent

(4) Where a child is born as a result of assisted reproduction, a donor who provided human reproductive material or an embryo for the assisted reproduction of the child

(a) is not, by reason only of the donation, the child's parent;

(b) shall not be declared by a court, by reason only of the donation, to be the child's parent; and

(c) is the child's parent only if determined under this Part to be the child's parent.*2020,c.59,s.19.*

20. Parentage – no assisted reproduction

(1) On the birth of a child not born as a result of assisted reproduction, the child's parents are the birth mother and the child's biological father.

Presumption – child's father

(2) For the purposes of this section, a male person is presumed, unless the contrary is proven or subsection (3) applies, to be a child's biological father in any of the following circumstances:

(a) the person was married to the birth mother at the time of the child's birth;

(b) the person was married to the birth mother by a marriage that, within 300 days before the birth of the child, or a longer period if the court allows, ended by

(i) his death,

(ii) a declaration of nullity,

(iii) a judgment of divorce, or

(iv) his ceasing to live with the birth mother, in the case of a void marriage;

(c) the person married the birth mother after the child's birth and acknowledges that he is the child's biological father;

(d) the person was living with the birth mother in a marriage-like relationship at the time of the child's birth;

(e) the person was living with the birth mother in a marriage-like relationship that ended for any reason within 300 days, or a longer period if the court allows, before the birth of the child;

(f) a parentage test indicates that the person is the biological father of the child;

(g) the person and the birth mother have acknowledged that he is the child's biological father by filing an acknowledgement under the *Vital Statistics Act*.

Conflicting presumptions

(3) Where more than one person may be presumed to be a child's biological father under this section, no presumption of paternity shall be made under subsection (2). *2020,c.59,s.20.*

21. Parentage – assisted reproduction

(1) This section applies where

(a) a child is conceived through assisted reproduction, regardless of who provided the human reproductive material or embryo used for the assisted reproduction; and

(b) section 23 does not apply.

Birth mother is parent

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), the child's birth mother is the child's parent.

Birth mother's spouse is parent

(3) Subject to section 22, in addition to the child's birth mother, a person who was married to, or in a marriage-like relationship with, the child's birth mother when the child was conceived is also the child's parent unless there is proof that, before the child was conceived, the person

(a) did not consent to be the child's birth parent; or

(b) withdrew the consent to be the child's birth parent. *2020,c.59,s.21.*

22. Parentage – assisted reproduction after death

(1) This section applies where

(a) a child is conceived through assisted reproduction;

(b) the person who provided the human reproductive material or embryo used in the child's conception

(i) did so for the person's own reproductive use, and

(ii) died before the child's conception; and

(c) there is proof that the person

(i) gave written consent to the use of the human reproductive material or embryo, after the person's death, by a person who was married to, or in a marriage-like relationship with, the deceased person when that person died,

(ii) gave written consent to be the parent of a child conceived after the person's death, and

(iii) did not withdraw the consent referred to in subclause (i) or (ii) before the person's death.

Deceased person and spouse - parents

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), the child's parents are

(a) the person described in clause (1)(b); and

(b) the person who was married to, or in a marriage-like relationship with, the person referred to in clause (1)(b), regardless of whether the person also provided human reproductive material or the embryo used for the assisted reproduction. *2020,c.59,s.22.*

23. Parentage – surrogacy agreement

(1) This section applies where

(a) before a child is conceived through assisted reproduction, a written agreement is made between a potential surrogate and the intended parent or intended parents;

(b) the agreement provides that the potential surrogate will be the birth mother of a child conceived through assisted reproduction and that, on the child's birth,

(i) the surrogate will not be a parent of the child,

(ii) the surrogate will relinquish the child to the intended parent or intended parents, and

(iii) the intended parent or intended parents will be the child's parent or parents; and

(c) the potential surrogate and the intended parent or intended parents complete a declaration in the form approved by the Director indicating

(i) that the person has entered into a written agreement as specified in this subsection, and

(ii) that the person has received independent legal advice respecting the person's rights and obligations under the agreement, and the legal effect of relinquishing the child to the intended parent or intended parents under this Act.

Intended parents are parents

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), a person who is an intended parent under the agreement is the child's parent where all of the following conditions are met:

(a) before the child is conceived, no party to the agreement withdraws from the agreement;

(b) after the child's birth,

(i) the surrogate gives written consent to relinquish the child to the intended parent or intended parents, and

(ii) the intended parent or intended parents take the child into his or her, or their, care.

Court may waive consent requirement

(3) For the purpose of the written consent required under subclause (2)(b)(i), the court may waive the requirement for consent where

(a) the surrogate is deceased or incapable of giving consent; or

(b) after reasonable efforts to locate the surrogate have been made, the surrogate cannot be located.

Death of intended parent

(4) Where the intended parent dies, or the intended parents die, after the child is conceived, the deceased intended parent is, or intended parents are, the child's parent or parents if the surrogate gives written consent to relinquish the child to the personal representative or other person acting in the place of the deceased intended parent or intended parents.

Surrogacy agreement not consent

(5) An agreement under subsection (1) to act as a surrogate or to relinquish a child is not consent for the purpose of subclause (2)(b)(i) or subsection (4), but may be used as evidence of the parties' intentions with respect to the child's parentage if a dispute arises after the child's birth.

Non-application of section

(6) If the written agreement referred to in clause (1)(a) identifies more than two intended parents, no presumption of paternity shall be made under this section. *2020,c.59,s.23.*

Applications to the Court

24. Application for declaration

(1) Any person having an interest may apply to the court for an order declaring that a person is or is not a parent of a child.

Declaration of parentage

(2) Where there is a dispute or uncertainty as to whether a person is or is not a parent of a child under this Part, the court may make an order declaring parentage of the child.

Notice of application

(3) An applicant shall serve the following persons with notice of an application under subsection (1):

(a) the child, if the child is 16 years of age or older;

(b) each person who has parenting time or decision-making responsibility in respect of the child;

(c) each adult person with whom the child habitually resides and who generally has care of the child;

(d) each person known to the applicant who claims or is alleged to be a parent of the child;

(e) any other person to whom the court considers it appropriate to provide notice, including a child under the age of 16 years.

Court to give effect to applicable presumptions

(4) To the extent possible, the court shall, when making an order under this section, give effect to any applicable presumption respecting determination of parentage set out under this Part.

Court may make order despite death

(5) The court may make an order under this section despite the death of a child or person who is the subject of the application.

Application shall not be made - adoption

(6) An application shall not be made respecting a child who has been adopted. *2020,c.59,s.24.*

25. Court may order parentage test

(1) On application by a party to a proceeding under this Part, the court may order a person, including a child, to have a tissue sample or blood sample, or both, taken by a medical practitioner or other qualified person for the purpose of conducting parentage tests.

Cost of test

(2) An order under subsection (1) may require a party to pay all or part of the costs of the parentage tests.

Failure to comply with order

(3) Where a person named in an order under subsection (1) fails to comply with the order, the court may draw from that failure any inference that the court considers appropriate.

Consent

(4) If a person named by an order under subsection (1) is not capable of giving consent to have a tissue sample or blood sample taken, the person having legal authority to consent to treatment on behalf of the person may give the consent. *2020,c.59,s.25.*

26. New evidence

(1) This section applies where evidence becomes available that was not available at the time an application for an order declaring parentage under section 24 was heard.

Powers of court

(2) On application, the court may confirm or set aside an order made under section 24, or make a new order under that section.

Setting aside order

(3) The setting aside of an order under subsection (2) does not affect

(a) rights or duties that have already been exercised; or

(b) property interests that have already been distributed. *2020,c.59,s.26.*

Extra-provincial Declaratory Orders, Birth Certificates

27. Recognition of order - Canada

(1) Subject to subsection (2), an extra-provincial declaratory order that is made in Canada shall be recognized and have the same effect as if made in the province.

New order

(2) The court may decline to recognize an extra-provincial declaratory order that was made in Canada and may make a new order under this Part where

(a) evidence becomes available that was not available at the proceeding where the extra-provincial declaratory order was made; or

(b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress. *2020,c.59,s.27.*

28. Recognition of order – outside Canada

(1) Subject to subsection (2), an extra-provincial declaratory order that was made outside Canada shall be recognized and have the same effect as if made in the province where

(a) the child or at least one parent was habitually resident in the jurisdiction of the extra-provincial tribunal making the order at the time the proceeding was commenced or the order was made; or

(b) the child or at least one parent had a real and substantial connection with the jurisdiction of the extra-provincial tribunal making the order at the time the proceeding was commenced or the order was made.

New order

(2) The court may decline to recognize an extra-provincial declaratory order that was made outside Canada and may make a new order under this Part where

(a) evidence becomes available that was not available at the proceeding where the extra-provincial declaratory order was made;

(b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress; or

(c) the extra-provincial declaratory order is contrary to public policy. *2020,c.59,s.28.*

29. Application for declaration – foreign birth certificate

(1) The persons listed as the parents of a child on a birth certificate issued by a jurisdiction outside Canada who would not be presumed to be the parents of the child under this Part may apply to the court for a declaratory order that they are the parents of the child.

Powers of court

(2) The court may make an order sought under subsection (1) where the child would otherwise have no parents.

Evidence

(3) The court may consider a birth certificate issued by a jurisdiction outside Canada as evidence for the purpose of making an order under this section. *2020,c.59,s.29.*

Filing of Documents with the Director of Vital Statistics

30. Filing of declaration

(1) Any person may file in the office of the Director a declaration, in the form approved by the Director, affirming that the person is a parent of a child named in the declaration.

Statement to Director

(2) The Registrar shall provide the Director with a statement respecting each order or judgment of the court that confirms or makes a finding of parentage.

Inspection by public

(3) Subject to the *Vital Statistics Act*, any person may

(a) inspect a document filed with or provided to the Director under this Act; and

(b) obtain a certified copy of the document from the Director.

Certified copy as evidence

(4) A certified copy of a document referred to in subsection (3) that appears to be signed by the Director or on which the signature is lithographed, printed or stamped is, without proof of the office or signature of the Director, admissible in evidence as proof of the filing and contents of the document for all purposes in any action or proceeding. *2020,c.59,s.30.*

31. Filing of extra-provincial declaration

(1) A copy of an extra-provincial declaratory order, certified under the seal of the extra-provincial tribunal that made it, may be filed in the office of the Director.

Filing with additional information

(2) Where the extra-provincial declaratory order was made outside Canada, the copy referred to in subsection (1) shall be filed with

(a) the opinion of a lawyer that the order is entitled to recognition under this Act;

(b) a statement, sworn or affirmed by a public official or a person qualified to provide legal advice in the jurisdiction where the order was made as to the effect of the order under that jurisdiction's law; and

(c) if requested by the Director, a translation of the order and the statement under clause (b), verified by affidavit.

Amendment of record

(3) On the filing of an extra-provincial declaratory order under this section, the Director shall, in accordance with the *Vital Statistics Act*, amend the register of births to reflect the extra-provincial declaratory order unless the order contradicts an order made by the court that has already been filed.

Liability of Director

(4) The Director is not liable for any consequences resulting from the filing of an extra-provincial declaratory order under this section that is apparently regular on its face.

Certified copy of order as evidence

(5) A copy of an extra-provincial declaratory order, certified under the seal of the extra-provincial tribunal that made it, is admissible in evidence without proof of the signatures or office of any person executing the certificate. *2020,c.59,s.31.*

PART 5 - CARE OF AND TIME WITH CHILDREN

Interpretation, Application

32. Definitions

In this Part,

(a) "**extra-provincial order**" means an order, or that part of an order, of an extra-provincial tribunal that grants to a person parenting time, decision-making responsibility or contact in respect of a child;

(b) "**extra-provincial tribunal**" means a court or tribunal outside the province that has jurisdiction to grant to a person parenting time, decision-making responsibility or contact in respect of a child;

(c) "**parenting plan**" means a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree;

(d) "**relocation**" means a change in the place of residence of a child, a person who has parenting time or decision-making responsibility, or a person who has a pending application for a parenting order, that is likely to have a significant impact on the child's relationship with

(i) a person who has parenting time, decision-making responsibility or a pending application for a parenting order in respect of that child, or

(ii) a person who has contact with the child under a contact order. *2020,c.59,s.32.*

33. Factors to be considered

(1) In determining the best interests of a child under this Part, the court shall consider all factors related to the circumstances of the child, including

(a) the continuity of care for the child and the possible effect of disruption of that care on the child;

(b) the difference in the concept of time, and the developmental capacity of the child;

(c) the child's needs, given the child's age and stage of development, including the child's need for stability;

(d) the nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(e) each parent's willingness to support the development and maintenance of the child's relationship with the other parent;

(f) the history of care of the child;

(g) the views and preferences of the child, being given due weight in accordance with the age and maturity of the child;

(h) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(i) any plans for the child's care;

(j) the ability and willingness of each person in respect of whom an order would apply to care for and meet the needs of the child;

(k) the ability and willingness of each person in respect of whom an order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(l) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(m) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors related to family violence

(2) In considering the impact of any family violence under clause (1)(l), the court shall take into account

(a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for that person's safety or the safety of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve the person's ability to care for and meet the needs of the child; and

(h) any other relevant factor.

Past conduct

(3) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless that conduct is relevant to the determination of a matter under this Part.

Court may request interview

(4) The court may request that a person referred to in subsection 38(1) interview the child and prepare a report on the views of the child in consideration of the best interests of the child under clause (1)(g). *2020,c.59,s.33.*

34. Parents' rights and responsibilities

(1) The parents of a child are equally entitled to parenting time and decision-making responsibility in respect of the child.

Authority to act

(2) Where more than one person is entitled to parenting time and decision-making responsibility in respect of a child, any one of them may exercise parental rights and accept parental responsibilities in respect of the child.

Provision of services in respect of a child

(3) Subject to an order of the court, no person shall refuse to provide services in respect of a child solely on the basis that only one person with decision-making responsibility in respect of the child has provided consent for the provision of the service.

Where parents separate

(4) Where the parents of a child live separate and apart and the child lives with one parent with the consent, implied consent or acquiescence of the other parent, the right of the parent who is not living with the child to exercise the entitlement to decision-making responsibility, but not the entitlement to parenting time, is suspended until an agreement or order provides otherwise.

Right to certain information

(5) The entitlement of a parent to parenting time or decision-making responsibility in respect of a child under subsection (1) includes the right to be given information as described in section 42.

Marriage of child

(6) The entitlements of a parent under this section in respect of a child terminate on the marriage of the child.

Entitlement subject to determination, order or agreement

(7) The entitlements of a parent under this section are subject to

(a) a determination of a dispute resolution professional referred to in section 16;

(b) an agreement referred to in subsection 10(1); and

(c) an order of the court under this Part. *2020,c.59,s.34.*

Jurisdiction

35. Court order

(1) The court shall exercise its jurisdiction to make an order in respect of parenting time, decision-making responsibility or contact with a child only where

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

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

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

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

(iii) that no application for parenting time, decision-making responsibility or contact with a child is pending before an extra-provincial tribunal in another jurisdiction where the child is habitually resident,

(iv) that no extra-provincial order in respect of parenting time, decision-making responsibility or contact with a child has been recognized by a court in the province,

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

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

Serious harm to child

(2) Despite subsection (1), the court may exercise its jurisdiction to make or vary an order in respect of parenting time, decision-making responsibility or contact in respect of a child where

(a) the child is physically present in the province; and

(b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if the child

(i) remains in the day-to-day care of the person entitled to parenting time with the child,

(ii) is returned to the day-to-day care of the person entitled to parenting time with the child, or

(iii) is removed from the province.

Habitual residence

(3) A child is habitually resident in the place where the child has resided

(a) with both parents;

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

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

whichever last occurred.

Abduction

(4) The removal or withholding of a child without the consent of the parent that habitually resides with the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process from the person from whom the child is removed or withheld.

Consideration of factors under *Divorce Act* (Canada)

(5) In making a determination under subsection (4), the court may consider whether any of the factors regarding removal under section 6.2 of the *Divorce Act* (Canada) apply.

Application stayed

(6) Where a divorce proceeding is commenced under the *Divorce Act* (Canada), an application for parenting time, decision-making responsibility or contact in respect of a child under this Part that has not been adjudicated is stayed, unless the court orders otherwise. *2020,c.59,s.35.*

36. Best interests of child

(1) The court shall take into consideration only the best interests of the child in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in section 33, the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Parenting order and contact order

(3) For the purposes of this section,

(a) a parenting order includes an interim parenting order and a variation order in respect of a parenting order; and

(b) a contact order includes an interim contact order and a variation order in respect of a contact order. *2020,c.59,s.36.*

37. Investigation and report from Director of Child Protection

On application under this Part, the court may require the Director of Child Protection to investigate and report to the court on all matters relating to parenting time, decision-making responsibility or contact in respect of a child where

(a) the court has reasonable grounds to suspect that a child is in need of protection; or

(b) there is evidence that the child is receiving child protection services under the *Child, Youth and Family Services Act*. *2020,c.59,s.37; 2023,c.17,s.69(3).*

38. Assessment of needs of child

(1) In a proceeding under this Part, the court may, by order, appoint a person who has relevant technical or professional skills to assess and prepare a written report to the court on the needs of the child and on the ability and willingness of the parties or any of them to satisfy the needs of the child.

When order may be made

(2) An order may be made under subsection (1) on or before the hearing of the application under this Part and with or without a request by a party to the application.

Agreement by parties

(3) The court shall, where possible, appoint a person agreed upon by the parties for the purposes of subsection (1), but if the parties do not agree to an appointment the court shall choose and appoint the person.

Consent to act

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

Designation of persons

(5) The Minister may, in consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, designate one or more persons as a clinician for the purpose of assessing and reporting to the court under subsection (1).

Court may require attendance

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

Person appointed by court may require attendance

(7) Unless otherwise ordered by the court, a person appointed by the court under subsection (1) may require any person given notice of the order under subsection (1) to attend for the purpose of completing the assessment required by the court.

Refusal to attend

(8) Where a person ordered under this section to attend for assessment fails or refuses to attend or to undergo the assessment, the court may draw any inference in respect of the ability and willingness of the person to satisfy the needs of the child that the court considers appropriate.

Authority of clinician

(9) Despite any other Act, in conducting the assessment a clinician designated under subsection (5) may, without consent,

(a) visit the residence of the child and other places frequented by the child;

(b) interview the child at any place considered by the clinician to be appropriate, including at the child's school;

(c) interview the parent of the child;

(d) interview persons who care for the child and persons who have opportunities to observe the child;

(e) interview persons who provide health, social, educational or other services to the child or to the parent of the child;

(f) require information, including personal information and personal health information, to be provided by a person, public body or custodian to the clinician from medical, health, social, educational and other service records concerning the child and the parents of the child;

(g) require a police service to provide information to the clinician concerning the child and the parents of the child or persons requesting contact or parenting time with the child;

(h) require information to be provided about past parenting by any person; and

(i) consult other persons and gather any other information that may be necessary to complete the assessment.

Time for provision of information

(10) A person or public body that is required to provide information to a clinician under subsection (9) shall provide the information within 14 days of receiving the request.

Adverse inference

(11) In an application under this section, the court may draw an adverse inference against a person who fails or refuses, without reasonable excuse, a reasonable request by a person appointed under subsection (1) or who obstructs that person in carrying out the person's functions under this section.

Effect on confidentiality

(12) This section applies despite any other Act, including the *Freedom of Information and Protection of Privacy Act*, or any rule of common law relating to confidentiality, other than the rule of solicitor-client privilege.

Court order

(13) On the application of a party or upon review of information provided to the Court by the person appointed under subsection (1), the court may order a person

(a) to allow the person appointed under subsection (1) access to a person, place or record; or

(b) to cooperate with an assessment by the person appointed under subsection (1).

Report to be filed

(14) The person appointed under subsection (1) shall file the report referred to in subsection (1) with the Registrar.

Copies of report

(15) The Registrar shall provide a copy of the report to each of the parties and to the lawyer, if any, representing the child.

Timing of report may be modified

(16) Despite subsection (15), the court may, on request of the person preparing the report under subsection (1), direct that the timing of providing the report to the parties by the Registrar may be modified, where the court is of the opinion that it is appropriate to do so, including where there is a risk of family violence.

Admissibility of report

(17) The report referred to in subsection (15) is admissible as evidence in the application.

Person appointed may be witness

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

Directions

(19) The court may, on motion and by order, give directions in respect of the assessment that the court considers appropriate, including a direction that the report not identify a party's place of employment, address or location where the court is of the opinion that it is not appropriate to do so, including where there is a risk of family violence.

Other expert evidence

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

Payment of fees and expenses

(21) The court shall require the parties to pay the fees and expenses of the person appointed under subsection (1) who is not a clinician referred to in subsection (5), and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay. *2020,c.59,s.38; 2026,c.5,s.1.*

Parenting Time, Decision-Making Responsibility and Contact Orders

39. Parenting order

(1) The court may make a parenting order providing for the exercise of parenting time or decision-making responsibility, or both, in respect of a child, on application by

(a) either or both of the parents of the child;

(b) a person, other than a parent, who stands in the place of a parent or intends to stand in the place of a parent to the child; or

(c) a Children's Lawyer, in accordance with subsection 33.1(15) of the *Judicature Act*.

Interim order

(2) The court may, on application by a person referred to in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection.

Application by person other than parent

(3) A person described in clause (1)(b) may make an application under subsection (1) or (2) only with leave of the court.

Contents of parenting order

(4) The court may, in the parenting order,

(a) allocate parenting time in accordance with section 40;

(b) allocate decision-making responsibility in accordance with section 41;

(c) include requirements with respect to any means of communication that is to occur during the parenting time allocated to a person, between a child and any person to whom parenting time or decision-making responsibility is allocated;

(d) authorize or prohibit the relocation of the child;

(e) require that parenting time or the transfer of the child from one person to another be supervised;

(f) prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal; and

(g) provide for any other matter that the court considers appropriate.

Terms and conditions

(5) The court may make a parenting order for a definite or indefinite period or until a specific event occurs and may impose any terms, conditions and restrictions that the court considers appropriate.

Dispute resolution process

(6) The court may make an order directing the parties to attend a dispute resolution process in accordance with section 13. *2020,c.59,s.39.*

40. Parenting time consistent with best interests of the child

(1) In allocating parenting time under clause 39(4)(a), the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child.

Day-to-day decisions

(2) Unless the court orders otherwise, a person to whom parenting time is allocated under clause 39(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.

Schedule

(3) Parenting time may be allocated by way of a schedule. *2020,c.59,s.40.*

41. Allocation of decision-making responsibility

Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either parent, to both parents, to a person described in clause 39(1)(b), or to any combination of those persons. *2020,c.59,s.41.*

42. Entitlement to information

Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request information about the child's well-being, including information in respect of the child's health and education, from another person to whom parenting time or decision-making responsibility has been allocated, or from any other person who is likely to have the information, and to be given the requested information by those persons, subject to any applicable laws. *2020,c.59,s.42.*

43. Contact order

(1) The court may, on application by a person other than a parent, make a contact order providing for contact between that person and a child.

Interim order

(2) The court may, on application by a person referred to in subsection (1), make an interim contact order providing for contact between that person and the child, pending the determination of the application made under subsection (1).

Leave of court

(3) A person may make an application under subsection (1) or (2) only with leave of the court, unless the person obtained leave to make an application under clause 39(1)(b).

Relevant factors

(4) In determining whether to make a contact order under this section, the court shall consider all relevant factors, including whether contact between the applicant and the child could otherwise occur.

Contents of contact order

(5) The court may, in the contact order,

(a) provide for the contact between the applicant and the child in the form of visitation or by any means of communication;

(b) require that the contact or transfer of the child from one person to another be supervised;

(c) provide that a child shall not be removed from a specific geographic area without the written consent of any specified person or without a court order authorizing the removal; and

(d) provide for any other matter that the court considers appropriate.

Terms and conditions

(6) The court may make a contact order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that the court considers appropriate.

Variation of parenting order

(7) Where a parenting order in respect of the child has already been made, the court may make an order varying the parenting order to take into account the contact order it makes under this section and subsection 53(5) applies as a consequence with any necessary modifications. *2020,c.59,s.43.*

44. Parenting plan

(1) The court shall include in a parenting order or contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so.

Court may modify parenting plan

(2) The court may make any modifications to the parenting plan that the court considers appropriate and include them in the parenting order or contact order. *2020,c.59,s.44.*

Change in Place of Residence

45. Non-application to relocation

(1) This section does not apply to a change in the place of residence that is a relocation.

Notice

(2) A person who has parenting time or decision-making responsibility in respect of a child and who intends to change the person's place of residence or that of the child shall notify every other person who has parenting time or decision-making responsibility or contact under a contact order in respect of the child of the proposed change in place of residence.

Content of notice

(3) The notice referred to in subsection (2) shall be in writing and set out

(a) the expected date of the change in place of residence; and

(b) the address of the new place of residence and contact information of the person or child, as the case may be.

Form of notice

(4) The notice referred to in subsection (2) shall be

(a) in the form required by the Rules of Civil Procedure, if the Rules specify a form for the purpose of this section; or

(b) in the form prescribed by the regulations under the *Divorce Act* (Canada) for the purpose of section 16.8 of the *Divorce Act* (Canada), if the regulations prescribe a form for the purpose of that section.

Exception

(5) Despite subsections (2), (3) and (4), the court may, on application, order that the notice requirements specified in those subsections do not apply, or may modify them, where the court is of the opinion that it is appropriate to do so, including where there is a risk of family violence.

Application without notice

(6) An application referred to in subsection (5) may be made without notice to any other party. *2020,c.59,s.45.*

Relocation

46. Notice

(1) A person who has parenting time or decision-making responsibility in respect of a child and who intends to undertake a relocation shall notify every other person who has parenting time or decision-making responsibility or contact under a contact order in respect of the child of the proposed relocation.

Content of notice

(2) The notice referred to in subsection (1) shall be given in writing at least 60 days before the expected date of the proposed relocation and set out

(a) the expected date of the change in place of residence;

(b) to the extent known, the address of the new place of residence and contact information of the person or child, as the case may be;

(c) a proposal as to how parenting time, decision-making responsibility or contact with the child, as the case may be, could be exercised; and

(d) any other information prescribed by the regulations.

Form of notice

(3) The notice referred to in subsection (1) shall be

(a) in the form required by the Rules of Civil Procedure, if the Rules specify a form for the purpose of this section; or

(b) in the form prescribed by the regulations under the *Divorce Act* (Canada) for the purpose of section 16.8 of the *Divorce Act* (Canada), if the regulations prescribe a form for the purpose of that section.

Exception

(4) Despite subsections (1), (2) and (3), the court may, on application, order that the notice requirements specified in those subsections do not apply, or may modify them, where the court is of the opinion that it is appropriate to do so, including where there is a risk of family violence.

Application without notice

(5) An application referred to in subsection (4) may be made without notice to any other party. *2020,c.59,s.46.*

47. Relocation authorized

(1) A person who has given notice under section 46 and who intends to relocate a child may do so as of the date referred to in the notice where

(a) the relocation is authorized by the court; or

(b) the following conditions are satisfied:

(i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under section 46 does not object, in accordance with subsection (2), and

(ii) there is no order prohibiting the relocation.

Objection to relocation

(2) Where the person with parenting time or decision-making responsibility in respect of the child who has received a notice under section 46 objects to the proposed relocation, the person shall, within 30 days after the date on which the notice is received, set out their objection in

(a) the form required by the Rules of Civil Procedure, if the Rules specify a form for the purpose of this section;

(b) the form prescribed by the regulations under the *Divorce Act* (Canada) for the purpose of section 16.91 of the *Divorce Act* (Canada); or

(c) an application made under subsection 39(1) or section 53.

Content of form or application

(3) The form or application referred to in subsection (2) shall set out

(a) a statement that the person objects to the proposed relocation;

(b) the reasons for the objection;

(c) the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact, as the case may be, that is set out in the notice referred to in section 46; and

(d) any other information prescribed by the regulations. *2020,c.59,s.47.*

48. Best interests of child – additional factors to be considered for relocation

(1) In deciding whether to authorize a relocation of a child, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 33,

(a) the reasons for the relocation;

(b) the impact of the relocation on the child;

(c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life by each of those persons;

(d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 46, applicable family law legislation, and any order, arbitral award or agreement in effect;

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact with the

child, taking into consideration the location of the new place of residence and travel expenses; and

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with the person's obligations under family law legislation, any order, arbitral award, or agreement in effect, and the likelihood of future compliance.

Factor not to be considered

(2) In deciding whether to authorize a relocation of the child, the court shall not consider whether the person who intends to relocate the child would relocate without the child if the child's relocation was prohibited. *2020,c.59,s.48.*

49. Burden of proof – person who intends to relocate child

(1) Where the parties to the relocation proceeding substantially comply with an order, arbitral award, or agreement in effect that provides that a child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Burden of proof – person who objects to relocation

(2) Where the parties to the relocation proceeding substantially comply with an order, arbitral award, or agreement in effect that provides that a child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof – other cases

(3) In circumstances other than those described in subsections (1) and (2), the parties to the relocation proceeding have the burden of proving whether the relocation is in the best interests of the child. *2020,c.59,s.49.*

50. Power of court – interim order

The court may decide not to apply subsections 49(1) and (2) if the order referred to in those provisions is an interim order. *2020,c.59,s.50.*

51. Costs relating to exercise of parenting time

Where the court authorizes the relocation of a child, it may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child. *2020,c.59,s.51.*

52. Notice – persons with contact

(1) A person who has contact with a child under a contact order shall notify, in writing, every other person who has parenting time or decision-making responsibility in respect of the child of the person's intention to change the person's place of residence, the date on which the change is expected to occur, the address of the new place of residence, and the person's contact information.

Notice – significant impact

(2) Where the change in the person's place of residence is likely to have a significant impact on the child's relationship with the person, notice shall be given at least 60 days before the change

in the person's place of residence is expected to occur and shall set out, in addition to the information required in subsection (1), a proposal as to how contact could be exercised in light of the change and any other information prescribed by the regulations.

Exception

(3) Despite subsections (1) and (2), the court may, on application, order that the notice requirements specified in those subsections do not apply, or may modify them, where the court is of the opinion that it is appropriate to do so, including where there is a risk of family violence.

Notice not required

(4) An application referred to in subsection (3) may be made without notice to any other party.

Form of notice

(5) The notice described in subsection (2) shall be

(a) in the form required by the Rules of Civil Procedure, if the Rules specify a form for the purpose of this section; or

(b) in the form prescribed by the regulations under the *Divorce Act* (Canada) for the purpose of section 16.96 of the *Divorce Act* (Canada), if the regulations prescribe a form for the purpose of that section. *2020,c.59,s.52.*

Variation Orders

53. Variation order

(1) The court may make an order varying, rescinding or suspending, retroactively or prospectively,

(a) a parenting order or any provision of a parenting order, on application by

(i) a parent,

(ii) a person other than a parent who stands in the place of a parent or intends to stand in the place of a parent, or

(iii) a Children's Lawyer, in accordance with subsection 33.1(15) of the *Judicature Act*; or

(b) a contact order or any provision of a contact order, on application by a person to whom the order relates.

Leave of court

(2) A person to whom the parenting order in question does not relate may make an application under subclause (1)(a)(ii) only with leave of the court.

Variation of parenting order

(3) Where the court makes a variation order in respect of a contact order, it may make an order varying the parenting order to take into account that variation order, and subsection (5) applies as a consequence with any necessary modifications.

Variation of contact order

(4) Where the court makes a variation order in respect of a parenting order, it may make an order varying any contact order to take into account that variation order, and subsection (5) applies as a consequence with any necessary modifications.

Conditions of order

(5) The court may include in a variation order any provision that under this Part could have been included in the contact order or parenting order, as the case may be, in respect of which the variation order is sought, and the court has the same powers and obligations that it would have when making the contact order or parenting order.

Factors for parenting order or contact order

(6) Before the court makes a variation order in respect of a parenting order or contact order, as the case may be, the court shall satisfy itself that there has been a material change in the circumstances of the child since the making of the order or the last variation order made in respect of that order, or of an order made under subsection 43(7).

Change in circumstances – terminal illness or critical condition

(7) For the purpose of subsection (6), a terminal illness or critical condition of the child's parent shall be considered a material change in the circumstances of the child, and the court shall make a variation order in respect of a parenting order regarding the allocation of parenting time.

Change in circumstances - relocation

(8) The relocation of a child is deemed to constitute a material change in the circumstances of the child for the purpose of subsection (6).

Relocation prohibited – no change in circumstances

(9) A relocation of a child that has been prohibited by a court under clause (1)(a) or 39(4)(d) does not, in itself, constitute a material change in the circumstances of the child for the purpose of subsection (6).

Conduct

(10) In making a variation order, the court shall not take into consideration any conduct that under this Part could not have been considered in making the order in respect of which the variation order is sought. *2020,c.59,s.53.*

Extra-provincial orders

54. Powers of court – interim order

(1) The court may make an order or an interim order under this section where the court

(a) is satisfied that a child has been wrongfully removed from another province or is being wrongfully retained in this province;

(b) is satisfied that it has no jurisdiction under section 35 to make an order; or

(c) has declined to make an order under subsection 56(2).

Contents of interim order

(2) On an application under this section, the court may do one or more of the following:

(a) make an interim order in respect of parenting time, decision-making responsibility or contact in respect of a child that the court considers is in the best interests of the child;

(b) stay the application subject to

(i) the condition that a party to the application promptly commence or proceed expeditiously with a similar proceeding before an extra-provincial tribunal, or

(ii) any other conditions that the court considers appropriate;

(c) order a party to return the child to a place that the court considers appropriate and, in the discretion of the court, order payment of the costs of reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application. *2020,c.59,s.54.*

55. Enforcement of foreign order

(1) On application by a person who is entitled to parenting time, decision-making responsibility or contact in respect of a child under an order of an extra-provincial tribunal, the court shall recognize the order unless the court is satisfied that

(a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;

(b) the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(c) the law of the jurisdiction in which the order was made did not require the extra-provincial tribunal to consider the best interests of the child;

(d) the order of the extra-provincial tribunal is contrary to public policy in the province; or

(e) in accordance with section 35, the extra-provincial tribunal would not have jurisdiction if it were the court.

Effect of recognition of order

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

Conflicting orders

(3) Where the court is presented with conflicting orders made by extra-provincial tribunals for parenting time, decision-making responsibility or contact with a child under a contact order that, but for the conflict, would be recognized and enforced by the court under subsection (1), the court shall recognize and enforce the order that appears to the court to be most in accordance with the best interests of the child.

Further orders

(4) Where the court has recognized an extra-provincial order, the court may make any further orders that the court considers necessary to give effect to the extra-provincial order. *2020,c.59,s.55.*

56. Superseding order – change in circumstances

(1) On application, the court may, by order supersede an extra-provincial order for parenting time, decision-making responsibility or contact in respect of a child where the court is satisfied that there has been a material change in circumstances that affects or is likely to affect the best interests of the child, and

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

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

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

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

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

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

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

Declining jurisdiction

(2) The court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the province. *2020,c.59,s.56.*

57. Superseding order – serious harm to child

On application, the court may, by order, supersede an extra-provincial order for parenting time, decision-making responsibility or contact in respect of a child where the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if the child

(a) remains in the day-to-day care of the person entitled to parenting time with the child;

(b) is returned to the day-to-day care of the person entitled to parenting time with the child; or

(c) is removed from the province. *2020,c.59,s.57.*

PART 6 - CHILD SUPPORT

58. Obligation to support child

(1) Subject to subsection (2), a person has an obligation to provide child support for a child, to the extent the person is capable of doing so, where

(a) the person is a parent of the child; or

(b) the person has demonstrated a settled intention to treat the child as a child of the person, except under an arrangement where the child is placed for valuable consideration in a foster home by the Director of Child Protection.

Application

(2) The obligation referred to in subsection (1) applies where the child is

(a) unmarried and under the age of 18 years;

(b) 18 years of age or older and enrolled in a full-time education program; or

(c) 18 years of age or older and unable, by reason of illness, disability or other cause, to withdraw from the charge of the person or to obtain the necessaries of life. *2020,c.59,s.58.*

59. Appointment of person to assess and report

(1) In a proceeding under this Part, the court may, by order, appoint a person who has relevant technical or professional skills to assess and report to the court on all matters related to the ability of a party to provide child support, including the calculation of a party's income for the purpose of calculating child support payable by the party.

Order may be made

(2) An order may be made under subsection (1) on or before the hearing of an application under this Part and with or without a request by a party to the application.

Designation of financial assessors

(3) The Minister may, in consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, designate financial assessors who are employees of the Department for the purpose of assessing and reporting to the court under subsection (1).

Information to be provided

(4) The person appointed under subsection (1) may require financial information or other information that relates to the financial means of a party to be provided by a party for the purpose of conducting the assessment.

Provision of information

(5) A party that is required to provide information under subsection (4) shall provide the information within 14 days of receiving the request.

Adverse inference

(6) The court may draw an adverse inference against a party who fails or refuses, without reasonable excuse, a reasonable request for information made by a person appointed under subsection (1), or who obstructs the person in carrying out an assessment.

Filing of report with Registrar

(7) The person appointed under subsection (1) shall file the report referred to in subsection (1) with the Registrar.

Copy to each party

(8) The Registrar shall provide a copy of the report to each of the parties and to the lawyer, if any, representing the child.

Admissible as evidence

(9) The report referred to in subsection (1) is admissible as evidence in the application.

Attend as a witness

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

Directions

(11) The court may, on motion and by order, give directions in respect of the assessment that the court considers appropriate, including a direction that the report not identify a party's place of employment, address or location where the court is of the opinion that it is not appropriate to do so, including where there is a risk of family violence.

Expert evidence

(12) The appointment of a person under subsection (1) does not prevent the parties or lawyer representing the child from submitting other expert evidence as to the ability of a party to provide child support.

Payment of fees and expenses

(13) The court shall require the parties to pay the fees and expenses of the person appointed under subsection (1) who is not a financial assessor referred to in subsection (3), and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay. *2020,c.59,s.59.*

60. Order for support

(1) The court may, on application, order a person to provide child support for a child and determine the amount of support payable in respect of the child.

Applicants

(2) An application for an order for child support may be made by

(a) a parent of the child;

(b) the child; or

(c) any person on behalf of the child.

Application by Minister of Social Development and Seniors or delegate

(3) An application for an order for child support may be made by the Minister of Social Development and Seniors or a delegate of that Minister where a benefit or assistance is payable in respect of the support of the child pursuant to the *Child, Youth and Family Services Act* or the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3.

Setting aside an agreement

(4) The court may set aside a provision for child support or a waiver of the right to child support in an agreement and may determine and order child support in an application under subsection (1) although the agreement contains an express provision excluding the application of this section, where

(a) the provision for child support or the waiver of the right to child support results in unconscionable circumstances;

(b) the provision for child support is in favour of or the waiver is by or on behalf of a child who qualifies for an allowance for support out of public money; or

(c) there is default in the payment of child support under the agreement at the time the application is made.

Adding party

(5) In an application under this Part, the court may, on the motion of a party or on its own motion, add as a party another person who may have an obligation to provide child support in respect of a child.

Factor not considered

(6) In making an order under this Part, the court shall not take into consideration any misconduct of a parent of the child or another person.

Objectives of order for child support

(7) A child support order made under this section shall

(a) recognize that the parents of the child have a joint financial obligation to maintain the child; and

(b) apportion that obligation in accordance with the child support guidelines.

Application of child support guidelines

(8) A court making a child support order shall do so in accordance with the child support guidelines.

Exception, special provisions

(9) Despite subsection (8), the court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines where the court is satisfied

(a) that special provisions in an order or agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

(b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

(10) Where the court awards, under subsection (9), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so.

Exception, consent orders

(11) Despite subsection (8), on the consent of the parties, the court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines, where the court is satisfied

(a) that reasonable arrangements have been made for the support of the child to whom the order relates; and

(b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines.

Reasonable arrangements

(12) For the purpose of clause (11)(a), in determining whether reasonable arrangements have been made for the support of a child, the court

(a) shall consider the child support guidelines; and

(b) shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines. *2020,c.59,s.60; 2023,c.20,s.2; 2023,c.17,s.69(4).*

61. Powers of court

(1) In an application under section 60, the court may make an interim or a final order

(a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or definite period, or until the happening of a specified event;

(b) requiring that a lump sum be paid or held in trust;

(c) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the child's benefit;

(d) requiring that child support be paid in respect of any period before the date of the order;

(e) requiring payment to the Minister of Social Development and Seniors or a delegate of that Minister under subsection 60(3) of an amount in reimbursement for a benefit or assistance referred to in that subsection, including a benefit or assistance provided before the date of the order;

(f) requiring the securing of payment under the order by a charge on property or otherwise; and

(g) requiring that income tax returns, notices of assessment, and notices of reassessment for the previous year be filed annually with the Child Support Services Office for review and recalculation, in accordance with the child support guidelines, of the amount of child support payable under an order.

Assignment of support

(2) A child support order may be assigned to the Minister of Social Development and Seniors or a delegate of that Minister referred to in subsection 60(3).

Support order binds

(3) A child support order binds the estate of the person having the support obligation unless the order provides otherwise.

Where order assigned

(4) The Minister of Social Development and Seniors or a delegate of that Minister referred to in subsection 60(3) to whom a child support order is assigned is entitled to payments due under the order and has the same right to be notified of and to participate in proceedings under this Part to vary, rescind, suspend or enforce the order as the person who would otherwise be entitled to the payments. *2020,c.59,s.61; 2023,c.20,s.2.*

62. Agreement may be filed with court

(1) A person who is party to an agreement referred to in subsection 10(1) may file the agreement with the Registrar together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by the court or a subsequent agreement.

Effect of filing

(2) A provision in respect of the payment of child support contained in an agreement that is filed with the Registrar in accordance with subsection (1)

(a) may be enforced; or

(b) may be varied under section 64,

as if it were an order of the court.

Setting aside available

(3) Subsection 60(4) applies to an agreement that is filed under this section.

Enforcement available despite waiver

(4) Subsection (1) and clause (2)(a) apply despite a provision in an agreement to the contrary.

Existing contracts, existing arrears

(5) This section applies to

(a) agreements made before the date on which this Part comes into force; and

(b) arrears accrued before the date on which this Part comes into force. *2020,c.59,s.62.*

63. Effect of divorce proceeding

(1) Where a divorce proceeding is commenced under the *Divorce Act* (Canada), an application for child support under this Part that has not been adjudicated is stayed, unless the court orders otherwise.

Arrears may be included in order

(2) The court that deals with a divorce proceeding under the *Divorce Act* (Canada) may determine the amount of arrears owing under an order for child support made under this Part and make an order respecting that amount at the same time as it makes an order under the *Divorce Act* (Canada).

Order continues

(3) Where a marriage is terminated by a judgment of divorce or declaration of nullity and the question of child support is not adjudicated in the divorce or nullity proceedings, an order for child support made under this Part continues in force according to its terms. *2020,c.59,s.63.*

64. Application for variation

(1) An application to the court for variation of an order made or continued under this Part may be made by applicants eligible under subsections 60(2) and (3).

Powers of court

(2) Where the court is satisfied that there has been a change in circumstances within the meaning of that term as used in the child support guidelines or that evidence not available during the previous hearing has become available, the court may

(a) discharge, vary or suspend a term of the order, prospectively or retroactively;

(b) relieve the respondent from the requirement for payment of part or all of the arrears or any interest due on them; and

(c) make any other order for child support that the court could make on an application under section 60.

Application of child support guidelines, etc.

(3) A court making an order for child support under subsection (2) shall do so in accordance with subsections 60(8) to (12).

Limitation on applications for variation

(4) No application for variation shall be made within six months after the making of the child support order, or the disposition of another application for variation in respect of the same order, except by leave of the court. *2020,c.59,s.64.*

65. Priority of child support

Where the court is considering an application for child support and an application under the *Family Law Act* for the support of a spouse or former spouse, the court shall give priority to the application for child support. *2020,c.59,s.65.*

66. Financial statement

(1) In an application under this Part, where directed by the court, each party shall serve on the other party and file with the court a financial statement verified by oath in the manner and form prescribed by the Rules of Civil Procedure.

Order for sealing statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing, or any report prepared under subsection (4), be treated as confidential and not form part of the public record.

Costs related to failure to disclose

(3) Where a party, without reasonable cause, fails to serve and file a full and accurate financial statement if directed to do so by the court, the court shall award the costs related to the failure against the party.

Report on financial information provided by the parties

(4) The court may order a report on the financial information provided by the parties be prepared in accordance with section 59. *2020,c.59,s.66.*

67. Order for record by employer

(1) In an application under this Part, the court may order the employer of a party to the application to provide a written record of the party's wages or other remuneration during the preceding 12 months.

Record as evidence

(2) The written record referred to in subsection (1) purporting to be signed by the employer may be received in evidence as proof, in the absence of evidence to the contrary, of its contents.

Order for access to information

(3) The court may, on motion, make an order in accordance with subsection (4) where it appears to the court that, for the purpose of making an application under this Part, the moving party needs to learn or confirm the proposed respondent's place of employment, address or location.

Requirement to provide information

(4) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location.

Decline to order

(5) The court shall not make an order under subsection (3) that the moving party be provided with information respecting the respondent's place of employment, address or location where the court is of the opinion that it is not appropriate to do so, including where there is a risk of family violence.

Information confidential

(6) Where the court has declined to make an order allowing the moving party to receive information in accordance with subsection (5), the court may order that

(a) the information received by the court under this section be treated as confidential and not form part of the public record; and

(b) that the moving party may not have access to the information in the court file. *2020,c.59,s.67.*

68. Appeal

An order of the court under this Part may be appealed to the Court of Appeal. *2020,c.59,s.68.*

Provincial Child Support Service

69. Calculation of child support

(1) The Minister on behalf of the Government of Prince Edward Island may, with the approval of the Lieutenant Governor in Council, enter into an agreement with the Minister of Justice, on behalf of the Government of Canada, for the Child Support Services Office referred to in section 7 to calculate the amount of child support in accordance with the child support guidelines and set it out in a decision.

Parent may apply

(2) Where a service for the calculation of child support has been established in accordance with an agreement referred to in subsection (1), a parent may apply to the Child Support Services Office in accordance with the regulations for the calculation of the amount of child support payable in respect of a child under this Act.

Recalculation of child support

(3) The Minister on behalf of the Government of Prince Edward Island may, with the approval of the Lieutenant Governor in Council, enter into an agreement with the Minister of Justice, on behalf of the Government of Canada, for the Child Support Services Office referred to in section 7 to recalculate, in accordance with the applicable guidelines, the amount of child support on the basis of updated income information and set it out in a decision.

Child Support Services Office

(4) Where

(a) an order for child support is made under this Act before, on or after the continuation of the Child Support Services Office; and

(b) an agreement is entered into under this Act before, on or after the establishment of the Child Support Services Office

the order for child support, or the agreement, as the case may be, may be submitted to the Child Support Services Office, in accordance with the regulations, for the recalculation of the amount of child support payable under the order or agreement, if the order or agreement, as the case may be, provides for the recalculation of child support in accordance with the child support guidelines. *2020,c.59,s.69.*

PART 7 - HAGUE CONVENTION ON CHILD ABDUCTION

70. Interpretation

(1) In this Part, "**convention**" means the Convention on the Civil Aspects of International Child Abduction, set out in the Schedule to this Act.

Convention on the Civil Aspects of International Child Abduction

(2) The convention is in force in the province and the provisions of it form the law of the province.

Central Authority

(3) The Minister is the Central Authority for the province for the purposes of the convention.

Application to court

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

Regulations

(5) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary to carry out the intent and purpose of this Part.

Conflict

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

Adoption of Schedule

(7) The Schedule to this Act is hereby adopted and forms part of this Act. *2020,c.59,s.70.*

PART 8 – GENERAL

Enforcement

71. Additional powers

(1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or both, any wilful contempt of or resistance to its process, rules or orders under this Act.

Penalty

(2) A person is liable under subsection (1) to a fine of not more than $5,000 or to imprisonment for a term of not more than 90 days, or to both.

Conditions

(3) An order for imprisonment under subsection (1) may be conditional upon default in the performance of conditions as set out in the order and may provide for the imprisonment to be served intermittently. *2020,c.59,s.71.*

72. Order restraining harassment

The court may, on application by a person who has parenting time, decision-making responsibility or a contact order in respect of a child, make an order restraining the respondent from disturbing, annoying or harassing the applicant or child, or from communicating with the applicant or child, except as the order provides, and may require the respondent to enter into a recognizance, with or without sureties, or to post a bond, as the court considers appropriate. *2020,c.59,s.72.*

73. Order where child unlawfully withheld

(1) Where the court, on application by a person who has parenting time or in-person contact under a contact order in respect of a child, is satisfied that there are reasonable and probable grounds to believe that any person is unlawfully withholding the child from the applicant, the court may by order authorize the applicant or someone on the applicant's behalf to apprehend the child

for the purpose of giving effect to the rights of the applicant to parenting time or in-person contact, as the case may be.

Order to locate and take child

(2) Where the court, on application, is satisfied that there are reasonable and probable grounds to believe that

(a) any person is unlawfully withholding a child from a person entitled to parenting time or contact with the child;

(b) a person who is prohibited by a court order or an agreement from removing a child from the province proposes to remove the child or have the child removed from the province; or

(c) a person who is entitled to parenting time or contact with a child under a contact order proposes to remove the child or to have the child removed from the province and that the child is not likely to return,

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

Application without notice

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

Duty to act

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

Entry and search

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), the sheriff or a member of a police service may enter and search any place where the sheriff or member, as the case may be, has reasonable and probable grounds to believe that a child may be located at that place and may render assistance and force as is reasonable in the circumstances.

Time

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

Expiration of order

(7) An order made under subsection (2) expires six months after the day on which it was made, unless the order specifically provides otherwise.

When application may be made

(8) An application under subsection (1) or (2) may be made in an application for parenting time, decision-making responsibility or contact with the child, or at any other time. *2020,c.59,s.73.*

74. Application to prevent unlawful removal of child

(1) Where the court, on application, is satisfied on reasonable and probable grounds that a person prohibited by court order or agreement from removing a child from the province proposes to remove the child from the province, the court may make an order to prevent the removal of the child.

Application to ensure return of child

(2) Where the court, on application, is satisfied on reasonable and probable grounds that a person entitled to parenting time or contact with a child proposes to remove the child from the province and is not likely to return the child, the court may make an order to secure the prompt and safe return of the child to the province.

Order by court

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

(a) transfer specific property to a named trustee to be held subject to the terms and conditions specified in the order;

(b) where payments have been ordered for the child support of the child, make the payments to a specified trustee subject to the terms and conditions specified in the order;

(c) post a bond, with or without sureties, payable to the applicant in the amount that the court considers appropriate;

(d) deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to an individual or a body specified by the court.

Terms and conditions

(4) Where the court requires a person to transfer property as described in clause (3)(a), the court may specify terms and conditions for the return or disposition of the property that the court considers appropriate.

Safekeeping

(5) The court or an individual or a body specified by the court in an order that includes a requirement described in clause (3)(d) shall hold a passport or travel document delivered in safekeeping in accordance with any directions set out in the order.

Directions

(6) In an order under this section, the court may give any directions in respect of the safekeeping of the property, payments, passports or travel documents that the court considers appropriate.

Non-application of section

(7) This section does not apply in relation to the relocation of a child within the meaning of Part 5.
2020,c.59,s.74.

75. Further evidence

(1) Where the court is of the opinion that it is necessary to receive further evidence from a jurisdiction outside the province before making a decision, the court may send to the Minister, Minister of Justice (Canada) or similar officer of the jurisdiction outside the province any supporting material that is necessary together with a request

(a) that the Minister, Minister of Justice (Canada) or similar officer take any necessary action in order to require a named person to attend before the proper tribunal in that jurisdiction and produce or give evidence in respect of the subject-matter of the application; and

(b) that the Minister, Minister of Justice (Canada) or similar officer or the tribunal send to the court a certified copy of the evidence produced or given before the tribunal.

Cost of obtaining evidence

(2) In a proceeding under subsection (1), the court may assess the cost of the proceeding against one or more of the parties to the application or may deal with the cost as costs in the cause. *2020,c.59,s.75.*

76. Referral to court

(1) Where the Minister receives from an extra-provincial tribunal a request similar to the request referred to in section 75 and for necessary supporting material, the Minister shall refer the request and the material to the court.

Obtaining evidence

(2) Where the Minister refers a request under subsection (1), the court shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request. *2020,c.59,s.76.*

77. Information as to address

(1) Where, on application to a court, it appears to the court that for the purpose of

(a) bringing an application in respect of parenting time, decision-making responsibility or contact with a child; or

(b) enforcing an order for parenting time, decision-making responsibility or contact with a child,

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

Exception

(2) A court shall not make an order on an application under subsection (1) where

(a) it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has parenting time, decision-making responsibility or contact with a child, rather than to learn or confirm the whereabouts of the proposed respondent for the enforcement of an order for parenting time, decision-making responsibility or contact with a child; or

(b) in the court's opinion, it is not appropriate to do so, including where there is a risk of family violence.

Compliance with order

(3) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality. *2020,c.59,s.77.*

78. Sharing personal information, personal health information under this Act

(1) The Minister may authorize an employee of the Department to collect or disclose personal information or personal health information under this Act with another employee of the

Department or an employee of the Department of Social Development and Seniors for one or more of the following purposes:

(a) to administer this Act, including to

(i) exercise powers and perform duties under this Act,

(ii) enforce or comply with this Act, the *Maintenance Enforcement Act,* the *Social Assistance Act* and the *Divorce Act* (Canada);

(b) to protect any person's safety or mental or physical health.

Agreements

(2) The Minister may enter into agreements with any person, including the government of another jurisdiction, for the purpose of sharing personal information or personal health information for a purpose set out in subsection (1). *2020,c.59,s.78; 2023,c.20,s.2.*

79. Protection from liability

No action for damages or other legal proceedings lies or shall be instituted against the Minister or any other person acting under the authority of this Act or the regulations for anything done or omitted to be done, or purported to be done or omitted to be done, in good faith in the exercise or intended exercise of any power or performance of any duty under this Act or the regulations. *2020,c.59,s.79.*

80. True copy of extra-provincial order

A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is, in the absence of evidence to the contrary, proof of the making of the order, the contents of the order and the appointment and signature of the judge, presiding officer, registrar or other person, as the case may be. *2020,c.59,s.80.*

Foreign Law

81. Court may take notice of foreign law

For the purpose of an application under this Act, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside the province and of a decision of an extra-provincial tribunal. *2020,c.59,s.81.*

Child, Youth and Family Services Act

82. Does not affect *Child, Youth and Family Services Act*

For greater certainty, nothing in Part 5 applies in respect of a child who is committed permanently to the custody and guardianship of the Director of Child Protection pursuant to the *Child, Youth and Family Services Act*, or the enforcement of any equivalent order made by an extra-provincial tribunal. *2020,c.59,s.82; 2023,c.17,s.69(6).*

Legal Profession Act

83. Not practising law

Despite the *Legal Profession Act*, the following persons or classes of persons are not, by reason only of their performance of their functions under this Act or the regulations, deemed to be practicing law within the meaning of the *Legal Profession Act*:

(a) an employee of the Department designated as a Child Support Guidelines Officer referred to in subsection 7(4);

(b) a prescribed class of dispute resolution professional. *2020,c.59,s.83.*

Procedure

84. Joinder of proceedings

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

Nature of order

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

Combining of applications

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

Parties to an application

(4) The parties to an application under Part 5 or Part 6 in respect of a child shall include

(a) the parents of the child;

(b) a person who has demonstrated a settled intention to treat the child as a child of the person and the person's family;

(c) a person who had the actual care and upbringing of the child immediately before the application; and

(d) any other person whose presence as a party is necessary in the opinion of the court to determine the matters in issue. *2020,c.59,s.84.*

85. Closed hearings

Where, in the opinion of the court, the desirability of protecting against the consequences of possible disclosure of financial or personal matters outweighs the desirability of holding a hearing in public, the court may

(a) exclude the public from the hearing or any part of it; and

(b) prohibit the publication of

(i) any matter connected with the application or given in evidence at the hearing, or

(ii) any document filed with the court. *2020,c.59,s.85.*

86. Consent orders

Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act. *2020,c.59,s.86.*

87. Regulations

(1) The Lieutenant Governor in Council may make regulations respecting any matter referred to in this Act as prescribed by the regulations.

Idem

(2) The Lieutenant Governor in Council may make regulations

(a) prescribing services for the purposes of subclause 1(1)(k)(iii);

(b) prescribing the circumstances in which a party is not required to file a statement in accordance with subsection 3(6);

(c) prescribing the circumstances in which a lawyer is not required to file a statement in accordance with subsection 4(2);

(d) respecting the Child Support Services Office generally, including its structure, operations and duties;

(e) for the purposes of section 11,

(i) respecting the training, experience and other qualifications that a person shall have to assess whether family violence has occurred,

(ii) requiring that a dispute resolution professional who does not have the training, experience and other qualifications required under subclause (i) ensure that the parties to the children's law dispute are assessed for family violence by a person who does have the training, experience and other qualifications,

(iii) respecting records to be made in relation to an assessment for family violence and any assistance provided,

(iv) respecting the matters that shall be considered in assessing whether family violence has occurred, and

(v) respecting actions to be taken after an assessment, and putting limits and conditions on the taking of those actions;

(f) respecting the conduct of dispute resolution processes generally, including governing the responsibilities of dispute resolution professionals;

(g) respecting parentage tests for the purposes of section 25, including

(i) the method of taking tissue and blood samples and the handling, transportation and storage of them,

(ii) the conditions under which a tissue or blood sample may be tested,

(iii) designating persons and facilities, or classes of persons and facilities, that are authorized to conduct parentage tests for the purposes of section 25, and

(iv) prescribing procedures respecting the admission of reports of parentage tests in evidence;

(h) establishing child support guidelines respecting the making of child support orders, including but not limited to

(i) respecting the way in which the amount of an order for child support is to be determined,

(ii) respecting the circumstances in which discretion may be exercised in the making of an order for child support,

(iii) authorizing the court to require that an amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments,

(iv) authorizing the court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order,

(v) respecting the circumstances that give rise to the making of a variation order in respect of an order for child support,

(vi) respecting the determination of income for the purposes of the application of the child support guidelines,

(vii) authorizing the court to impute income for the purposes of the application of the child support guidelines,

(viii) respecting the production of information and providing for sanctions when that information is not provided;

(i) adopting, in whole or in part, with such modifications as the Lieutenant Governor in Council considers appropriate, the child support guidelines for Prince Edward Island established under the *Divorce Act* (Canada);

(j) respecting the preparation of a report under section 38 on the needs of the child and on the ability and willingness of the parties or any of them to satisfy the needs of the child;

(k) respecting information to be provided in a notice under section 46;

(l) respecting information to be provided in a notice under subsection 47(3);

(m) respecting information to be provided in a notice under subsection 52(2);

(n) respecting the preparation of a report on the financial information provided by the parties under subsection 66(4);

(o) respecting the calculation and recalculation of child support by the Child Support Services Office under section 69, including but not limited to

(i) respecting the assumptions, factors and criteria that the Child Support Services Office may use in calculating or recalculating child support,

(ii) respecting the circumstances in which the Child Support Services Office shall decline to calculate or recalculate child support, including restricting the Child Support Services Office from acting respecting agreements or orders made, filed or used before a date set out in the regulations,

(iii) respecting provisions that are required to be included in agreements respecting child support for child support to be calculated or recalculated by the Child Support Services Office,

(iv) respecting information that may be requested by the Child Support Services Office, including the purposes for which information may be used or disclosed by the Child Support Services Office,

(v) respecting the information that payors and recipients of child support are required to provide to the Child Support Services Office for the purpose of calculation or recalculation,

(vi) respecting the manner in which, and the time within which, a thing may or shall be done,

(vii) respecting the rights and duties, in relation to the Child Support Services Office, of payors and recipients,

(viii) respecting the giving of notice or other records, including waiving the requirement to give a notice or record,

(ix) respecting the correction of errors made by the Child Support Services Office,

(x) respecting the enforceability of a calculation or recalculation decision of the Child Support Services Office,

(xi) prescribing procedures for a payor or recipient to object to a calculation or recalculation decision of the Child Support Services Office;

(p) establishing classes of persons and making different regulations for different classes of persons;

(q) respecting the giving or serving of any notice or other document under this Act, including

(i) rules for determining when a notice or other document is deemed to have been given, served or received, and

(ii) authorizing substituted service;

(r) governing recordkeeping and the retention and disposal of records maintained under this Act;

(s) prescribing fees, or the manner of calculating fees, to be paid by a party for services provided under this Act;

(t) respecting the collection, use and disclosure of personal information, as those terms are defined in the *Freedom of Information and Protection of Privacy Act*, for the purposes of this Act or for a consistent purpose, by a public body;

(u) respecting the collection, maintenance, use and disclosure of personal health information, as those terms are defined in the *Health Information Act*, for the purposes of this Act or for a consistent purpose, by a custodian;

(v) adopting by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a regulation, code, standard or rule

(i) enacted as or under a law of another jurisdiction, including a jurisdiction outside of Canada, or

(ii) set by a provincial, national or international body or any other body that may make codes, standards or rules;

(w) respecting procedural matters not provided for in the Rules of Civil Procedure;

(x) defining any term used but not defined in this Act; and

(y) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

Order for child support

(3) In subsection (2), an order for child support means

(a) an order or interim order made under Part 6; or

(b) a variation order in respect of an order for child support. *2020,c.59,s.87.*

PART 9 - TRANSITION, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

88. Transitional regulations

(1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition to this Act from

(a) the *Child Status Act* R.S.P.E.I. 1988, Cap. C-6;

(b) the *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33; and

(c) the *Family Law Act*.

Duration

(2) The authority to make or amend a regulation made under subsection (1), but not the authority to revoke a regulation made under subsection (1), ends three years after the date on which subsection (1) comes into force. *2020,c.59,s.88.*

89. Order under *Child Status Act*

(1) An order made under the *Child Status Act* may be varied, rescinded, suspended or enforced in accordance with Part 4 of this Act as if the order were an order under Part 4.

Proceeding under *Child Status Act*

(2) A proceeding commenced under the *Child Status Act* before the date on which this section comes into force and not finally disposed of before that date shall be dealt with and disposed of in accordance with Part 4 of this Act. *2020,c.59,s.89.*

90. Order under *Custody Jurisdiction and Enforcement Act*

(1) An order made under the *Custody Jurisdiction and Enforcement Act* may be varied, rescinded, suspended or enforced in accordance with Part 5 of this Act as if the order were an order under Part 5.

Proceeding under *Custody Jurisdiction and Enforcement Act*

(2) A proceeding commenced under the *Custody Jurisdiction and Enforcement Act* before the date on which this section comes into force and not finally disposed of before that date shall be dealt with and continued in accordance with Part 5 of this Act. *2020,c.59,s.90.*

91. Order under *Family Law Act*

(1) An order for child support made under the *Family Law Act* before the date on which this section comes into force may be varied, rescinded, suspended or enforced in accordance with Part 6 of this Act as if the order were an order under Part 6.

Proceeding under *Family Law Act*

(2) A proceeding commenced under the *Family Law Act* in respect of child support before the date on which this section comes into force and not finally disposed of before that date shall be continued in accordance with Part 6 this Act. *2020,c.59,s.91*.

92. Custody, Access - Transitional

Unless the court orders otherwise,

(a) a person who had custody of a child, by virtue of a custody order made under the *Custody Jurisdiction and Enforcement Act*, immediately before the date on which this section comes into force, is deemed, as of that date, to be a person to whom parenting time and decision-making responsibility has been allocated under section 39; and

(b) a parent who had access to a child by virtue of a custody order made under the *Custody Jurisdiction and Enforcement Act*, immediately before the date on which this section comes into force, is deemed, as of that date, to be a person to whom parenting time has been allocated under section 39. *2020,c.59,s.92.*

93. Access - Transitional

(1) This section applies to a person, other than a person referred to in section 92, who had access to a child by virtue of a custody order under the *Custody Jurisdiction and Enforcement Act* immediately before the date on which this section comes into force.

Deemed contact with child

(2) Unless the court orders otherwise, a person referred to in subsection (1) is deemed, as of the date on which this section comes into force, to be a person who is entitled to have contact with a child under a contact order. *2020,c.59,s.93.*

94. Notice not required

A person who is deemed under section 92 to be a person to whom parenting time or decision-making responsibility has been allocated is not required to give notice under either section 45 or 46 if a custody order to which they are a party specifies that no notice is required in respect of a change in the place of residence by the person or child to whom the order relates. *2020,c.59,s.94.*

95. No change in circumstances

For the purposes of Part 5 and Part 6 of this Act, the coming into force of this Act does not constitute a change in the circumstances of the child. *2020,c.59,s.95.*

96. to 102

(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)

103. Repeal, Child Status Act

(1) The *Child Status Act* R.S.P.E.I. 1988, Cap. C-6, is repealed.

Repeal, *Custody Jurisdiction and Enforcement Act*

(2) The *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33, is repealed.

SCHEDULE

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

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

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

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

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

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

Article 3

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

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

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

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

Article 4

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

Article 5

For the purposes of this Convention:

(a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

(b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 6

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

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

Article 7

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

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

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III - RETURN OF CHILDREN

Article 8

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

The application shall contain:

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by:

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(g) any other relevant document.

Article 9

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

Article 10

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

Article 11

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

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

Article 12

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

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

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

Article 13

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

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

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

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

Article 14

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

Article 15

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

Article 16

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

Article 17

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

Article 18

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

Article 19

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

Article 20

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

CHAPTER IV - RIGHTS OF ACCESS

Article 21

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

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

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

CHAPTER V - GENERAL PROVISIONS

Article 22

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

Article 23

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

Article 24

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

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

Article 25

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

Article 26

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

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

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

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

Article 27

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

Article 28

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

Article 29

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

Article 30

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

Article 31

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

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

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

Article 32

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

Article 33

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

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 196l concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

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

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

Article 36

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

CHAPTER VI - FINAL CLAUSES

Article 37

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

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

Article 38

Any other State may accede to the Convention.

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

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

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

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

Article 39

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

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

Article 40

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

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

Article 41

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

Article 42

Any State may, no later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

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

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

Article 43

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

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

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

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

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

Article 45

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

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

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

2020,c.59.