



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **ADOPTION ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 31, 2020. 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 Queen'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](http://www.princeedwardisland.ca)).

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## ADOPTION ACT

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## ADOPTION ACT CHAPTER A-4.1

### INTERPRETATION

#### 1. Definitions

In this Act

- (a) “**adopted person**” means a person 18 years of age or older who was adopted as a child;
- (a.1) “**adoption order**” means an order for the adoption of a child issued under section 38 and, in sections 48.1 to 50, includes an order for the adoption of a child issued under a previous Act governing adoption in the province;
- (b) repealed by 2000(2nd),c.3,s.62;
- (c) “**applicant**” means a person applying to the court for an adoption order;
- (d) “**best interests of the child**” means the best interests of the child under the circumstances, having regard, in addition to all other relevant considerations, to
  - (i) the need of the child for continuing parental care and guidance,
  - (ii) the mental, emotional and physical health and level of development of the child including any special needs for care and treatment,
  - (iii) the views and preferences of the child, where such views and preferences can be reasonably ascertained,
  - (iv) the love, affection and ties that exist between the child and each person to whom the custody of the child is or might be entrusted,
  - (v) the capacity of the persons involved to properly discharge parental obligations,
  - (vi) the material, intellectual and spiritual well-being of the child,
  - (vii) the child’s cultural background,
  - (viii) the importance of family relationships in the life, growth and development of the child,
  - (ix) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity,
  - (x) the effects on the child of delay in the disposition of the case;
- (d.1) “**birth parent**” means a parent listed on the original birth registration of a child;
- (e) “**child**” means a person under the age of 18 years, except where otherwise indicated;
- (f) “**court**” means the Family Section of the Supreme Court;
- (e.1) “**contact preference**” means a document filed under section 48.2 or a similar document filed under legislation in another jurisdiction, in which a person states

- whether the person is willing to have contact with another person and, if so, the manner in which the person is willing to have contact with the other person;
- (g) “**custody**” means the authority and responsibility for possessing the child physically and providing for the daily requirements related to life and development of the child;
  - (h) “**Director**” means the Director of Child Protection appointed pursuant to the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1 and includes a delegate of the Director;
  - (h.1) “**disclosure veto**” means a document filed under section 48.1 or a similar document filed under legislation in another jurisdiction, prohibiting the disclosure of identifying information about the person who files it;
  - (i) “**guardian**” means a person lawfully vested with the function of taking decisions concerning the person of the child;
  - (j) “**guardianship**” means the authority and responsibility for taking decisions concerning the person of the child, including such matters as residence, education, non-routine health care, legal proceedings;
  - (j.1) “**identifying information**” means information that, directly or indirectly, identifies or may identify a person;
  - (k) “**license**” means a general authorization for making placements, issued to a person whose qualification to arrange placements and adoptions is recognized by the Director;
  - (k.1) “**non-identifying information**” means information that does not or is not likely to identify a person;
  - (l) “**permit**” means an authorization issued, in accordance with such requirements as may be prescribed, to the birth parent or parents or guardian to make a particular placement where the birth parent or parents or guardian and prospective adoptive parent or parents directly make the arrangements together without intermediary;
  - (m) “**place**” or “**make a placement**” means to transfer the custody of a child from one person to another where the purpose is, or may reasonably be expected to be, adoption;
  - (n) “**resident**” means a person who is ordinarily resident in the province;
  - (o) “**undertaking**” means a document completed in accordance with subsection 48.2(4) or a similar document completed under legislation in another jurisdiction, in which a person undertakes to act in accordance with another person’s contact preference. *1992, c.1, s.1; 1995, c.1, s.1; 2000(2nd), c.3, s.62; 2008, c.20, s.72(1); 2010, c.28, s.33; 2019, c.17, s.2.*

## 2. Principles

This Act is to be administered with respect for the following principles:

- (a) there is a balance of rights and interests among the three parties in placement and adoption, the birth parent or parents, the child and the adoptive parent or parents, but the best interests of the child must be the paramount consideration;
- (b) decisions to place and to adopt a child must be made with clear information, full awareness of the implications and careful consideration, with the benefit of knowledgeable guidance;
- (c) a birth parent and an adoptive parent may choose to conceal or disclose their identity at the time of an adoption;
- (d) the Director must exercise standards and controls in order to protect the rights and interests of those involved in placements and adoptions;
- (e) reliable records of placements and adoptions must be maintained;





- (f) an adopted person has a right to non-identifying information concerning his or her background and heritage;
- (g) the interest of an adopted person or a birth parent in obtaining identifying information respecting the other should be balanced to the extent possible with the other person's interest in protecting his or her privacy. *1992,c.1,s.2; 2019,c.17,s.3.*

## CUSTODY, GUARDIANSHIP AND PLACEMENT

### 3. Who may place

No one may place a child, or act as an intermediary in or arrange the placement of a child, except

- (a) the Director of Child Protection; or
- (b) a person authorized by the Director in accordance with the regulations,

and no one may receive a placed child except from a person referred to in clause (a) or (b).  
*1992,c.1,s.3; 2000(2nd),c.3,s.62; 2010,c.28,s.33.*

#### 3.1 Temporary custody agreement

- (1) The Director may enter into an agreement in the prescribed form with a parent of a child transferring to the Director all of the rights of custody of the parent for the period specified in the agreement.

#### Temporary custody and guardianship agreement

- (2) The Director may enter into an agreement in the prescribed form with a parent of a child transferring to the Director all of the rights and obligations of the parent as custodian and guardian of the child for the period specified in the agreement.

#### Parent's consent

- (3) During the period of an agreement made under this section, the parent of the child to whom the agreement applies retains his or her right to give or withhold his or her consent to the adoption of the child.

#### More than one child

- (4) An agreement made under this section may apply to more than one child.

#### Period of agreement

- (5) The period of an agreement made under this section shall not exceed three months, but the period that the child is in the continuous custody or custody and guardianship of the Director may, subject to subsection (6), be extended by subsequent agreements made under this section.

#### Maximum period of custody

- (6) The maximum period that the Director may, pursuant to agreements made under this section, have the continuous custody of a child is six months.

#### Termination of agreement

- (7) Any party to an agreement made under this section may, at any time during the period of the agreement or any extension thereof, terminate the agreement by giving, in accordance with

section 3.3, a notice of termination to the other parties at least three days before the effective date of the termination.

**Return of child**

- (8) After a notice of termination is given to the Director or a parent in accordance with subsection (7) and section 3.3, the Director shall, in accordance with the notice of termination, return the child to the parent in whose custody the child was at the time the agreement was made. *2004, c.25, s.1.*

**3.2 Permanent custody and guardianship agreement**

- (1) Subject to subsection (3), the Director may enter into a permanent custody and guardianship agreement in the prescribed form with the parent of a child transferring permanently the custody and guardianship of the child from the parent to the Director.

**More than one child**

- (2) An agreement made under this section may apply to more than one child.

**Minimum age of child, parent must sign**

- (3) Unless the court otherwise orders, no agreement made under this section is valid unless
- (a) each child who is a subject of the agreement is at least 14 days of age at the time the agreement is executed; and
  - (b) each parent who has rights of custody and guardianship respecting a child who is a subject of the agreement has signed the agreement.

**Effect of agreement**

- (4) Where the Director has custody and guardianship of a child by reason of an agreement made under this section, all of the rights and obligations of a parent with respect to the child are extinguished and the Director has all rights to custody and guardianship of the child, including the right to give or withhold consent to the adoption of the child.

**Termination of agreement**

- (5) A parent of a child who makes an agreement with the Director described in subsection (1) may terminate the agreement by giving, in accordance with section 3.3, a notice of the termination to the Director not later than 14 days after the day the parent signed the agreement.

**Return of child**

- (6) After a notice of termination is given to the Director in accordance with subsection (5) and section 3.3, the Director shall, in accordance with the notice of termination, return the child to the parent in whose custody the child was at the time the agreement was made. *2004, c.25, s.1.*

**3.3 Notice of termination of an agreement**

- (1) A notice of termination given under section 3.1 or 3.2 shall be made in the prescribed form and shall be delivered in person or by registered mail.

**Notices sent by registered mail**

- (2) A notice of termination that is given by registered mail is deemed,
- (a) for the purposes of subsection 3.1(7), to have been given to the Director or parent, as the case may be, five days after the date it was mailed; and



- (b) for the purposes of subsection 3.2(5), to have been given to the Director on the date it was mailed. *2004,c.25,s.1.*

#### **4. Placement standards**

A person placing a child shall comply with such standards, requirements and procedures as may be prescribed in the regulations, and shall

- (a) subject to such conditions as may be prescribed, ensure that the parent or parents, if entitled to give consent under clause 22(b) or (c) and such consent has not been dispensed with by the court in accordance with section 26,
- (i) receives professional counselling by a person authorized by the Director in order to
- (A) ascertain that the placement is being voluntarily sought,
- (B) describe options to and implications of placing the child,
- (C) offer psychological support to the parent or parents, and
- (ii) signs a formal consent to the placement in the prescribed form;
- (b) ensure that a person authorized by the Director ascertains that there is no apparent risk to the child's basic welfare in the proposed placement; and
- (c) ensure proper documentation of background information required by section 7 and of guardianship in accordance with section 9. *1992,c.1,s.4; 1995,c.1,s.2; 2008,c.8,s.1(2); 2019,c.17,s.5.*

#### **5. Out-of-province placement**

No person may place a child out-of-province except with the permission of the Director in accordance with such criteria and requirements as may be prescribed in the regulations. *1992,c.1,s.5.*

#### **6. Notice to Director**

A person, other than the Director, placing a child shall

- (a) notify the Director of the intention to place or, if it is not immediately known that the purpose is adoption, notify the Director of the placement as soon as practicable after it becomes evident that the child is in fact being placed for adoption; and
- (b) provide the Director with such information about identification and circumstances as may be prescribed in the regulations or otherwise specified by the Director. *1992,c.1,s.6; 1995,c.1,s.3.*

#### **7. Information with placement**

- (1) Any person placing a child shall provide in writing to the person receiving the child a summary of non-identifying information concerning the background and circumstances of the child including cultural heritage, medical history, family history as it might affect the child's rearing, reasons for the placement, and such other information as may be prescribed in the regulations.

##### **Identification of child**

- (2) The person placing the child shall not provide to any person information that identifies the parentage of the child except when
- (a) it is agreed by the person or persons who give up the child for placement; or

- (b) the release of the information is authorized or required by the regulations or written policy of the Director if not in conflict with the regulations.

**Copy to Director**

- (3) The person placing the child shall provide to the Director a copy of whatever information is given pursuant to subsections (1) and (2). *1992,c.1,s.7; 1995,c.1,s.4.*

**8. Agreement for continuing contact**

- (1) Where the birth parent or parents or guardian and the prospective adoptive parent or parents wish to arrange for continuing contact between any of the parties to the adoption, such arrangement shall have legal force only if it is recorded in a formal written agreement, reached after both parties have had independent legal advice, and a copy of the agreement is deposited with the Director and included with documents provided to the court when application is made for an adoption order.

**Idem**

- (2) An amendment or termination of an agreement for continuing contact shall have legal force only if deposited with the Director and with the court. *1992,c.1,s.8; 1995,c.1,s.5.*

**9. Custody, guardianship during placement**

During the period between the commencement of the placement and the making of the adoption order or other termination of the placement,

- (a) custody of the child lies with the person with whom the placement is made; and  
(b) guardianship, whether full or partial, of the child is to be specified in a written agreement, registered in the prescribed form with the Director, agreed to by both the person having guardianship at the time of the placement and the person with whom the placement is made and, if no such agreement is made, guardianship shall be deemed to rest with the Director. *1992,c.1,s.9; 1995,c.1,s.6; 2019,c.17,s.6.*

## ADOPTION

### Application To Adopt

**10. PEI court jurisdiction**

The court has jurisdiction to make an adoption order if

- (a) the child to be adopted is a resident or was born in the province;  
(b) the child's guardian is the Director, or otherwise is a resident; or  
(c) the applicant is a resident. *1992,c.1,s.10; 1995,c.1,s.7; 2000(2nd),c.3,s.62.*

**11. Application to adopt**

- (1) A person seeking to adopt a child shall apply to the court for an adoption order.

**Copy to Director**

- (2) The applicant shall send a notice of the application to the Director together with such supporting documentation as may be prescribed by the regulations. *1992,c.1,s.11; 1995,c.1,s.8.*



**12. Minimum placement**

A person may apply to adopt a child if the child has been placed with that person for at least three months prior to the application, or such shorter period as may be authorized by the court. *1992,c.1,s.13; 1995,c.1,s.9.*

**13. Minimum time before hearing**

The court shall not hear an application until at least three months after submission of the application, or such shorter period as the court, with the concurrence of the Director, may authorize. *1992,c.1,s.13; 1995,c.1,s.10.*

**14. Age of applicant**

No person shall apply to adopt unless he or she has attained the age of majority, and is older than the person to be adopted. *1992,c.1,s.14.*

**15. Applicant, one person**

An order shall not be made for the adoption of a child by more than one person, except in the case of a joint application by spouses. *1992,c.1,s.15; 2008,c.8,s.1(3).*

**16. Joint application**

- (1) Spouses may together make a joint application.

**Step-parent application**

- (2) Subsection (1) does not apply where one of the spouses is the parent of and has guardianship of the child, and in that case the adoption order does not affect the parental relationship of that person to the child. *1992,c.1,s.16; 2008,c.8,s.1(4).*

**17. Director's assistance**

The Director may

- (a) advise and assist an applicant, including preparing such legal forms and other documents as may be required; and
- (b) appear and be heard at the hearing of an application. *1992,c.1,s.17.*

**18. Application documents**

- (1) An application shall include copies of the following supporting documentation, as applicable:
- (a) either
    - (i) the child's birth certificate, where the identities of the parties are known to one another, or
    - (ii) the following documents, where the identities of the parties are not known to one another:
      - (A) a statement indicating the number of the child's birth registration and the child's given name, sex, date and place of birth, and
      - (B) an extract from the child's birth registration showing the child's surname at birth or parent names, sealed and not disclosed to the applicant;

- (b) marriage certificate in the case of joint applicants who are married;
- (c) decrees of divorce where either applicant or parent is divorced;
- (d) any agreement or court order regarding custody or guardianship of the child;
- (e) information about the applicant, including name, age, marital status, and any relationship to the child to be adopted;
- (f) a description of the circumstances by which the placement occurred, and the length of time the child has been placed;
- (g) the consents required for the adoption pursuant to section 22;
- (h) any agreement about continuing contact made under section 8;
- (i) a statement by the Director that all applicable placement requirements set by the Act and regulations appear to have been met;
- (j) such other information or documentation as may be prescribed by regulations or required by the court.

**Dispensation**

- (2) The court may dispense with the need to provide anything required by subsection (1).

**Documents not to identify birth parent**

- (3) Where it is required pursuant to subsection 7(2) to keep the parentage or surname of a child secret, the documents referred to in clauses (1)(d) and (g) shall be sealed or masked to prevent the identification of the birth parent of the child or disclosure of the surname of the child. *1992,c.1,s.18; 1995,c.1,s.11; 2008,c.8,s.1(5); 2019,c.17,s.8.*

**Pre-Hearing Study**

**19. Adoption study**

Except in the case of the adoption of a competent adult, an applicant seeking an adoption order shall arrange that there is provided to the court, at least ten days before the hearing of the application, the report of a pre-hearing adoption study which has been completed or updated within the six-month period preceding the hearing by

- (a) the Director;
- (b) repealed by 2000(2nd),c.3,s.62;
- (c) a person authorized by the Director; or
- (d) a person or agency in another jurisdiction, acceptable to the Director. *1992,c.1,s.19; 1995,c.1,s.12; 2000(2nd),c.3,s.62.*

**20. Idem**

The report of the adoption study required by section 19 shall provide information and professional assessment concerning the apparent suitability of the placement and the likelihood that the child's welfare will be satisfactorily provided for in the long term, including

- (a) relevant circumstances of the placement;
- (b) the relations between child and the applicant and members of the household;
- (c) the care the child is receiving;
- (d) the present and likely future capacity of the applicant to provide for the best interests of the child; and



- (e) such further information and professional opinion as may seem helpful for the consideration of the court or as the court may require for purposes of considering the application. *1992,c.1,s.20.*

## 21. Right to see report

An applicant is entitled to access to the report provided under section 19 unless the court otherwise directs or imposes conditions relating to access. *1992,c.1,s.21.*

## Consent

## 22. Consents required

Except as otherwise provided in this Act or ordered by the court, no order for adoption shall be made without the consent, within the year preceding the hearing, of

- (a) the child, if twelve years of age or more and competent to make an informed decision, or if the court believes it appropriate in any other case;
- (b) the mother of the child unless guardianship has been permanently transferred from her pursuant to an agreement or order under the *Child Protection Act*;
- (c) a parent of the child who is
- (i) the spouse of the mother,
  - (ii) registered as a parent in accordance with the *Vital Statistics Act R.S.P.E.I. 1988, Cap. V-4.1*, or corresponding legislation of another jurisdiction,
  - (iii) declared to be a parent under the *Child Status Act R.S.P.E.I. 1988, Cap. C-6*, or corresponding legislation of another jurisdiction, or
  - (iv) named by the child's mother as the child's father and acknowledges that he is the child's father,

unless guardianship has been permanently transferred from that parent pursuant to an agreement or order under the *Child Protection Act*;

- (d) the legal guardian, if any; and
- (e) the Director, if
- (i) there is no other person entitled to give or withhold consent, or
  - (ii) the applicant resides out-of-province. *1992,c.1,s.22; 1995,c.1,s.13; 2000(2nd),c.3,s.62; 2008,c.8,s.1(6); 2019,c.17,s.9.*

## 23. Consent to adoption, nature

- (1) A consent to adoption shall be given in the prescribed form.

### *Idem*

- (2) The consent shall state that it is freely and voluntarily given, and that the effects of the consent and of the proposed adoption have been explained to and understood by the person consenting.

### *Idem*

- (3) A parent who is under the age of majority may give a valid consent. *1992,c.1,s.23; 1995,c.1,s.14,16; 2008,c.8,s.1(7); 2019,c.17,s.10.*

**24. Fourteen day delay**

A consent to adoption is not valid unless the child was at least fourteen days old at the time of the execution of the consent. *1992, c.1, s.24; 1995, c.1, s.15, 16.*

**25. Withdrawal of consent**

A person who has given a consent to adoption may withdraw the consent within fourteen days of having given it, but not thereafter, by providing a written statement to the person to whom the consent was originally given and also to the Director. *1992, c.1, s.25; 1995, c.1, s.16.*

**26. Dispensing with consent**

The court may dispense with the need for the consent to adoption of any person except that of the Director or the child proposed to be adopted if it is satisfied that

- (a) the person does not have clear entitlement to give consent in accordance with section 22;
- (b) the person cannot competently make a decision to consent;
- (c) the person does not wish to exercise the entitlement to consent;
- (d) the person has not demonstrated responsibility or clear intention to contribute to the care and well-being of the child;
- (e) the person cannot be contacted, despite reasonable efforts to do so; or
- (f) the best interests of the child should override an entitlement to consent. *1992, c.1, s.26; 1995, c.1, s.16.*

### Special Provisions

**27. Step-parent exemption**

The step-parent of a child may apply to adopt the child without having to comply with the requirements regarding placement in sections 3 to 9. *1992, c.1, s.27.*

**28. Adult adoptee**

- (1) A person may apply to adopt a competent adult and the court may so order.

*Idem*

- (2) Unless the court determines that the person to be adopted is not competent to make such a decision, the requirements of this Act relating to

- (a) placement;
- (b) adoption study;
- (c) consent, other than that of the person to be adopted;
- (d) notice of hearing and entitlement to appear,

are not applicable and the court will determine what documentation and considerations are appropriate. *1992, c.1, s.28.*





## Hearing

### 29. Hearing

Where an application for adoption is made and it appears that the requirements will be met, the court shall set a date for and hold a hearing of the application. *1992,c.1,s.29.*

### 30. Notice of hearing

The applicant shall ensure that, at least thirty days before the date set for the hearing of the application, written notice of the time, place and purpose is sent to

- (a) the Director;
- (b) anyone else entitled to give consent under section 22 if that person has not given it and if it has not been dispensed with pursuant to section 26. *1992,c.1,s.30.*

### 31. Dispensing with notice

The court may dispense with the requirement that notice of the hearing be given to anyone other than the Director or the child if it is satisfied that

- (a) the person does not have clear entitlement to consent or withhold consent in accordance with section 22;
- (b) the person cannot competently make a decision to be involved;
- (c) the person does not wish to be involved;
- (d) the person cannot be contacted, despite reasonable efforts to do so; or
- (e) the best interests of the child should override an entitlement to be involved. *1992,c.1,s.31.*

### 32. Hearing private

The hearing shall be held in private, and access to the court's files concerning an application to adopt shall be restricted, unless the court determines otherwise, having regard for the best interests of the child. *1992,c.1,s.32.*

### 33. Applicant entitled to be heard

The applicant is entitled to be heard at the hearing, personally or by counsel, and may also have the Director act on behalf of the applicant. *1992,c.1,s.33.*

### 34. Child's wishes

The court shall inquire into the child's capacity to understand and appreciate the nature of the application, and consider the child's views and wishes if they can be reasonably ascertained, and where it is practical to do so, the court shall give the child the opportunity to be heard. *1992,c.1,s.34.*

### 35. Witnesses, documents

The court may require at the hearing

- (a) the appearance of any person believed to have relevant information; and
- (b) the production of any relevant documents related to the application. *1992,c.1,s.35.*

**36. Entitlement to be heard**

Any person entitled to receive notice of the hearing pursuant to section 30, and whose entitlement to notice has not been dispensed with pursuant to section 31, is entitled to be heard, personally or by counsel, at it. *1992,c.1,s.36; 1995,c.1,s.17.*

**37. Delay to obtain consent**

- (1) If a required consent has not been obtained by the time of the hearing and the court does not dispense with it, the court may adjourn the hearing and direct that the person whose consent is required be served, in such manner as the court considers appropriate, with a notice of the application and the requirement of his or her consent or attendance at the hearing.

**Dispensing with consent**

- (2) If the person whose consent is required cannot be contacted or does not provide consent or does not appear at the time appointed, or within such further time as the court may allow, or if, appearing, the person does not show cause why the adoption order should not be made, then the court may dispense with the consent of that person. *1992,c.1,s.37.*

## Adoption Order

**38. Adoption order**

Upon completion of the hearing, the court may make an order of adoption of the child by the applicant, if satisfied that

- (a) the requirements of the Act and regulations have been complied with;
- (b) the applicant is able to fulfil the obligations and perform the duties of parent toward the child; and
- (c) the best interests of the child will be served thereby. *1992,c.1,s.38.*

**39. Secrecy of previous identity**

- (1) Where the child's previous identity or parentage has, pursuant to subsection 7(2), been kept secret prior to the adoption order, the adoption order shall not show the previous surname, but rather identify the child by the given name prior to the adoption and a number or other code referring to the registration of the child's birth.

**Idem**

- (2) Subsection (1) does not apply if the court is satisfied that the person or persons who gave the child up for placement subsequently agreed to the revealing of the child's previous identity and parentage, and the applicant agrees. *1992,c.1,s.39.*

**40. Child's name**

- (1) The court shall in an adoption order specify the surname the child is to have.

**Idem**

- (2) The surname shall be, subject to subsection (3), the surname requested by the applicant in accordance with the rules for registering a child's birth under the *Vital Statistics Act*.



**Idem**

- (3) The choice of name is subject to the consent of the child if twelve years old or more and competent to make an informed decision, and subject to any consultation by the court with the child if under twelve.

**Idem**

- (4) Upon the request of the applicant, subject to subsection (3), the court may also in the order change the child's given name. *1992,c.1,s.40; 1995,c.1,s.18.*

**41. Dispensing with consent**

Within thirty days of an adoption order, the court shall provide certified copies of the order to

- (a) the adopting parent or parents;
- (b) the Director;
- (c) repealed by 2000(2nd),c.3,s.62;
- (d) the Director of Vital Statistics,

and, where the adopted child was born outside Prince Edward Island, the court shall provide two certified copies together with such information as is required to enable the Director of Vital Statistics to provide notification to the registration authority where the child was born. *1992,c.1,s.41; 2000(2nd),c.3,s.62.*

## Effect of Adoption

**42. Effect of adoption**

- (1) Subject to subsection (2), and notwithstanding whatever hereditary, social, emotional and other forms of relationship may be possible, an adoption order has effect as follows:
- (a) for all purposes of law, an adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child;
  - (b) for all purposes of law, the adopted person ceases to be the child of the person who was his or her parent, whether by birth or through previous adoption, prior to the adoption order, except that a parent who is the spouse of an adopting parent continues to be a parent of the child;
  - (c) the previous relationships to other relatives prior to the adoption cease, and new relationships have effect on the date of the adoption order, in accordance with the relationships of the adopting parent.

**Exception, incest**

- (2) For purposes of laws related to incest and the prohibited degrees of marriage, subsection (1) does not remove a person from a relationship in consanguinity which, but for this section, would have existed between that person and another person. *1992,c.1,s.42.*

**43. Effect *re* will**

- (1) In a will, conveyance or other such document made at any time before or after the day this section comes into force, and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may

be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

**Vested interests**

- (2) Nothing in subsection (1) affects an interest in property that has vested in a person before the making of the adoption order. *1992,c.1,s.43.*

**44. Effect of out-of-province adoption**

An adoption that was ordered, whether before or after this Act comes into force, under the corresponding law in another jurisdiction has the same effect in Prince Edward Island as an adoption ordered under this Act. *1992,c.1,s.44.*

**45. Notification**

The Director of Vital Statistics shall notify the Director of any adoption in another jurisdiction of a child born in Prince Edward Island of which the Director of Vital Statistics learns. *1992,c.1,s.45.*

## Security of Records

**46. Adopted Children Register**

- (1) The Director of Vital Statistics shall keep an Adopted Children Register in which shall be recorded all adoption orders, both Prince Edward Island adoption orders and those received from other jurisdictions.

**Notation of adoption on birth registration**

- (2) The Director of Vital Statistics shall cause the original birth registration of a child who is adopted to be marked “adopted” and cross-referenced with the Adopted Children Register, and shall mark the new registration, if any, in accordance with clause 13(2)(c) or 13(4)(b) of the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1 so as to permit subsequent location of the original registration if necessary.

**Idem**

- (3) In making these entries, the Director of Vital Statistics shall make a notation as to whether the adoption order makes the previous identity or parentage open or indicates if it is intended to be kept secret. *1992,c.1,s.46; 1996,c.48,s.42; 1999,c.48,s.3.*

**47. Security**

- (1) All records and documents kept by the court, by the Director and by the Director of Vital Statistics relating to the placement and adoption of a child are confidential, and shall be kept indefinitely in a secure place, and the information in them shall not be disclosed, except as provided in this Act or ordered by the court.

**Idem**

- (2) Original records and documents may be destroyed if microfilmed or electronically or otherwise preserved, and if the copies in this other form are kept confidential as required by subsection (1).



**Idem**

- (3) The court, the Director or the Director of Vital Statistics may allow access to or disclosure of information from adoption records and documents for purposes of genealogical or historical research if
- (a) it is apparent that all parties to the adoption (birth parents, child, adoptive parents) have been deceased for at least twenty years; and
  - (b) there is no reason to believe that the access or disclosure will be harmful to other living persons.

**Idem**

- (4) The Director of Vital Statistics may disclose information from, or provide a copy of, an original birth registration
- (a) where the notation referred to in subsection 46(3) indicates that the identity or parentage is open; or
  - (b) where the notation indicates that the identity or parentage is to be kept secret but
    - (i) the information is not of a confidential nature or is known to or available to the adopted person from another source,
    - (ii) disclosure is authorized or required by the *Vital Statistics Act*, or
    - (iii) the information is communicated only to a person authorized under a license or permit or an agency of the Government of Canada, a province or a state, or a territorial unit of a state for purposes of performing functions authorized by law.

**Prescribed information from birth registration**

- (5) On the request of the Director, the Director of Vital Statistics shall provide to the Director prescribed information from the original birth registration of an adopted person who was born in the province. *1992,c.1,s.47; 1995,c.1,s.19; 2000(2nd),c.3,s.62; 2017,c.17,s.11.*

**POST-ADOPTION****Disclosure of Non-Identifying Information****48. Disclosure of non-identifying information**

The Director, a person who placed a child or the court may at any time disclose to a party to a placement or adoption non-identifying information in respect of the background or circumstances of the child, including cultural heritage, medical history, family history and reasons for placement. *1992,c.1,s.48; 2000(2nd),c.3,s.62; 2019,c.17,s.12.*

**Disclosure of Identifying Information*****Disclosure Veto*****48.1 Persons who may file disclosure veto**

- (1) Where an adoption order was made in the province before January 31, 2020, the following persons may file with the Director a disclosure veto in the form required by the Director:

- (a) the adopted person;
- (b) a birth parent of the adopted person.

**Attached statement**

- (2) A person who files a disclosure veto under subsection (1) may file with it a written statement that includes any of the following information:
  - (a) the reasons the person does not want identifying information disclosed;
  - (b) non-identifying information, including information about the medical or social history of the person and the person's family.

**Provision of notice and copy of statement**

- (3) Where a person applies under section 48.3 or 48.5 for information or a copy of the adoption order to which a disclosure veto relates, the Director shall notify the person that a disclosure veto has been filed and provide the person with a copy of any written statement filed with the disclosure veto.

**Modification or cancellation of disclosure veto**

- (4) A person who files a disclosure veto may modify or cancel the disclosure veto by giving notice to the Director in the form required by the Director.

**Effect of death on disclosure veto**

- (5) A disclosure veto filed under this section ceases to have effect one year after the death of the person who filed it. *2019,c.17,s.13.*

***Contact Preference***

**48.2 Persons who may file contact preference**

- (1) Where an adoption order was made in the province, at any time, the following persons may file a contact preference with the Director in the form required by the Director:
  - (a) the adopted person;
  - (b) a birth parent of the adopted person.

**Attached statement**

- (2) A person who files a contact preference under subsection (1) may file with it a written statement that includes any of the following information:
  - (a) the reasons the person does not want to be contacted or wants to be contacted only in a specified manner, as the case may be;
  - (b) non-identifying information, including information about the medical or social history of the person and the person's family.

**Provision of notice and copy of statement**

- (3) Where a person applies under section 48.3 or 48.5 for information or a copy of the adoption order to which a contact preference relates, the Director shall notify the person that a contact preference has been filed and of the preference stated in it and provide the person with a copy of any written statement filed with the contact preference.



**Undertaking**

- (4) For the purpose of section 48.3 or 48.5, a person who is notified of a contact preference under subsection (3) may complete an undertaking, in the form required by the Director, stating that the person undertakes not to
- (a) knowingly fail to comply with the contact preference, either directly or through another person;
  - (b) intimidate or harass the person who filed the contact preference, either directly or through another person; or
  - (c) publish any identifying information about the person who provided the contact preference.

**Modification or cancellation of contact preference**

- (5) A person who files a contact preference under subsection (1) may modify or cancel the contact preference by giving notice to the Director in the form required by the Director. *2019,c.17,s.13.*

**Sections 48.3 to 48.6 Not proclaimed.**

***Disclosure to Third Party*****48.7 Disclosure, indigenous status**

On the request of an adopted person or a parent or guardian of an adopted child, the Director may disclose identifying information about the adopted person or adopted child or a birth parent of the adopted person or adopted child, as the case may be, and any other information the Director considers relevant, to the Registrar under the *Indian Act* (Canada) or the appropriate federal or provincial official for the purpose of determining the adopted person's or adopted child's entitlement to registration or benefits under that Act. *2019,c.17,s.13.*

**48.8 Disclosure to adoption authority**

The Director may disclose non-identifying or identifying information to the authority responsible for adoption records in another jurisdiction for the purpose of determining whether a disclosure veto or contact preference has been filed under this Act or in that jurisdiction, as the case may be. *2019,c.17,s.13.*

**48.9 Disclosure to medical practitioner or other health professional**

The Director, a person who placed a child or the court may at any time disclose to a medical practitioner or other health professional non-identifying or identifying information for the purpose of providing health care to an adopted child. *2019,c.17,s.13.*

**Post-Adoption Register****49. Post-adoption register**

- (1) The Director shall keep a post-adoption register, formerly known as the Reciprocal Search Register, to provide for information-sharing or contact, on mutual consent, between persons who have been affected, directly or indirectly, by an adoption order.

**Registration**

- (2) A person who is 18 years of age or older may apply to the Director, in the form required by the Director, to be registered and matched with other persons registered in relation to an adoption order.

**Director's duties on match**

- (3) Where two persons are matched on the register, the Director shall, subject to subsections (4) and (5),
- (a) inform each person of the match;
  - (b) determine whether there is mutual consent to exchange non-identifying or identifying information or arrange contact; and
  - (c) on request, assist the persons to exchange non-identifying or identifying information or arrange contact.

**Disclosure veto or contact preference**

- (4) Where a person with whom a match is sought has filed a disclosure veto or a contact preference for no contact, the Director shall not take any action under subsection (3).

**Consent withdrawn**

- (5) Where a person withdraws consent to exchanging non-identifying or identifying information or arranging contact, the Director shall advise the other person and not take any further action in respect of the match. *1992,c.1,s.49; 2019,c.17,s.14.*

**50. Active search**

- (1) The Director shall, on request, provide post-adoption search services in relation to an adoption order to the following:
- (a) the adopted person, for the purpose of locating a birth parent, the biological father or a birth sibling of the adopted person;
  - (b) a birth parent or a person who may be the biological father of the adopted person, for the purpose of locating the adopted person.

**Search of records**

- (2) The Director shall, subject to subsection (3),
- (a) search records kept by or accessible to the Director; and
  - (b) if possible, make contact on a confidential basis with the person who is the subject of the search.

**Disclosure veto or contact preference**

- (3) Where the records indicate that the person who is the subject of the search has filed a disclosure veto or a contact preference for no contact, the Director shall not take any further action under subsection (2).

**Disclosure**

- (4) Where the person who is the subject of the search consents, the Director shall assist the persons to exchange non-identifying or identifying information or to make contact, as the case may be. *1992,c.1,s.50; 1995,c.1,s.20; 2000(2nd),c.3,s.62; 2019,c.17,s.15.*





**50.1 Provision of information by public body**

- (1) For the purpose of section 50, a public body, as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, shall provide to the Director, on request, any information in the custody or control of the public body that is relevant to a search.

**Provision of information by Director of Vital Statistics**

- (2) For the purpose of section 50, the Director of Vital Statistics shall provide to the Director, on request, prescribed information in the custody and control of the Director of Vital Statistics in respect of the birth, adoption, marriage or death of an adopted person or a birth parent that is relevant to a search. *2019, c.17, s.16.*

**51. Appeal**

Where a person making a request pursuant to section 49 or 50 has reason to believe that the Director has not dealt properly with the request, the person may apply to the court and the court, having given both the person making the request and the Director the opportunity to be heard, may order that the Director carry out the actions referred to in the relevant section. *1992, c.1, s.51; 2000(2nd), c.3, s.62.*

**52. Registration or search requested by child**

- (1) An adopted child, with the written consent of a parent or guardian, or the parent or guardian of an adopted child, with the written consent of the adopted child, may apply to register the adopted child under section 49 or make a request under section 50, and the Director may register the adopted child or conduct a search, as the case may be, if the Director believes it is in the best interests of the adopted child.

**Director may dispense with consent**

- (2) Notwithstanding subsection (1), the Director may dispense with consent required under subsection (1), if the Director determines that consent cannot practically be obtained or is being unreasonably withheld and the adopted child would suffer significant harm if the registration or request were not permitted. *1992, c.1, s.52; 2000(2nd), c.3, s.62; 2019, c.17, s.17.*

**53. Refusal by other party**

Where the person about whom a request was made pursuant to section 50 is contacted but is not willing to have the identifying information released or contact arranged with the person making the request, the Director shall not proceed. *1992, c.1, s.53; 2000(2nd), c.3, s.62.*

**54. Application of sections 47 to 53**

For greater certainty, sections 47 to 53 apply in respect of adoptions effected under this Act or any previous Act governing adoptions in the province. *1992, c.1, s.54; 1995, c.1, s.21; 2019, c.17, s.18.*

## GENERAL

### 55. Payment prohibited

- (1) Any person who gives or receives, or agrees to give or receive, any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of placement or adoption is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding one year.

#### *Idem, exceptions*

- (2) Subsection (1) does not preclude
- (a) reimbursement for reasonable costs incurred;
  - (b) a fee for service charged by the Director or, with the Director's approval or authorization in regulations, by a person authorized to make a placement; or
  - (c) fees charged by a barrister, solicitor or attorney, within a range considered by the Council of the Law Society of Prince Edward Island to be reasonable for such legal services. *1992,c.1,s.55; 1995,c.1,s.22; 2000(2nd),c.3,s.62.*

### 55.1 Prohibition, advertisement

- (1) A person who publishes or causes to be published in any form or by any means an advertisement concerning the placement or adoption of a child is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months.

#### **Exceptions**

- (2) Subsection (1) does not apply to the publication of
- (a) a notice under the authority of a court order;
  - (b) a notice or advertisement authorized by the Director;
  - (c) an announcement of a placement or adoption of a child;
  - (d) a notice, advertisement or similar publication specified in the regulations. *2019,c.17,s.20.*

### 55.2 Prohibition, undertaking

A person who fails to comply with an undertaking completed by the person pursuant to subsection 48.2(4) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months. *2019,c.17,s.20.*

### 56. Subsidized adoption

Where the Director believes it necessary or important in terms of the best interests of the child, the Director may authorize and make an agreement for subsidizing a placement or an adoption, in accordance with the regulations. *1992,c.1,s.56.*

### 56.1 Intercountry adoption

In relation to an intercountry adoption other than one to which the *Intercountry Adoption (Hague Convention) Act* R.S.P.E.I. 1988, Cap. I-4.1 applies, the court may waive or modify any requirement imposed by this Act. *1995,c.1,s.23.*



**57. Regulations**

The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary for carrying out the purposes and provisions of this Act, including prescribing forms for the purposes of sections 3.1 to 3.3. *1992,c.1,s.57; 2004,c.25,s.2.*