

# *The Children's Law Act, 1997*



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Chapter C-8.2 of the *Statutes of Saskatchewan, 1997* (effective March 1, 1998) as amended by the *Statutes of Saskatchewan, 2001, c.34; 2004, c.66; and 2006, c.31.*

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER C-8.2

### An Act respecting Custody of, Access to and Guardianship of Property of Children, Child Status and Parentage and Related Matters

#### PART I

#### Short Title and Interpretation

##### Short title

1 This Act may be cited as *The Children's Law Act, 1997*.

##### Interpretation

2(1) In this Act:

“**agreement**” means an agreement with respect to a matter dealt with in this Act that is:

- (a) made in writing; and
- (b) signed by the parties; («*accord*»)

“**child**” means a person who:

- (a) is under 18 years of age; and
- (b) has never married; («*child*»)

“**court**” means the Family Law Division of the Court of Queen's Bench or a judge of that court sitting in chambers; («*tribunal*»)

“**custody**” means personal guardianship of a child and includes care, upbringing and any other incident of custody having regard to the child's age and maturity; («*garde*»)

“**director**” means a director appointed pursuant to *The Child and Family Services Act*; («*directeur*»)

“**father**” means the father of a child and includes:

- (a) a man declared to be the father pursuant to section 43 or 44; and
- (b) a man recognized as the father pursuant to section 50, 51, 55 or 56; («*père*»)

“**guardian of the property of a child**” means the person constituted or appointed as a guardian pursuant to section 30; («*tuteur aux biens d'un enfant*»)

“**legal custodian**” means a person having lawful custody of a child; («*gardien légitime*»)

“**mother**” means the mother of a child and includes:

- (a) a woman declared to be the mother pursuant to section 43 or 44; and
- (b) a woman recognized as the mother pursuant to section 50, 51, 55 or 56; («*mère*»)

**“parent”** means:

- (a) the father or mother of a child, whether born within or outside marriage; or
- (b) the father or mother of a child by adoption; (*«parent»*)

**“public guardian and trustee”** means the public guardian and trustee established pursuant to *The Public Guardian and Trustee Act*; (*«tuteur et curateur public»*)

**“registrar”** means the Registrar of the court or a local registrar of the court. (*«registraire»*)

- (2) Unless a contrary intention appears in any Act, regulation, instrument or law, a reference to the guardian of a child is deemed to be a reference to the legal custodian of the child.

1997, c.C-8.2, s.2; 2001, c.34, s.2.

## PART II Custody and Access

### Joint legal custodians

3(1) Unless otherwise ordered by the court and subject to subsection (2) and an agreement pursuant to subsection (3), the parents of a child are joint legal custodians of the child with equal rights, powers and duties.

(2) Where the parents of a child have never cohabited after the birth of the child, the parent with whom the child resides is sole legal custodian of the child.

(3) The parents of a child may enter into an agreement that may:

- (a) vary their status as joint legal custodians of the child;
- (b) specify the rights, powers and duties of each parent with respect to the child;
- (c) provide for access to the child by either parent or any other person;
- (d) authorize one of the parents to appoint, by written instrument, one or more other persons as legal custodian of the child and guardian of the property of the child for:
  - (i) any time specified in the instrument during the child's minority; or
  - (ii) the duration of the child's minority; and
- (e) provide for the custody of the child and guardianship of the property of the child after the death of either parent.

1997, c.C-8.2, s.3.

### Disposition of custody

4(1) Subject to subsection (3), if a parent is deceased, the surviving parent of a child:

- (a) is the legal custodian of that child; and
- (b) may appoint one or more persons as legal custodian of the child to take effect on the surviving parent's death.

- (2) An appointment pursuant to clause (1)(b) may be made:
- (a) if the parent is under the age prescribed in *The Wills Act, 1996* to make a valid will, by deed; or
  - (b) if the parent is of the age prescribed in *The Wills Act, 1996* to make a valid will, by will.
- (3) Where the parents of a child have entered into an agreement pursuant to clause 3(3)(d) or an order has been made by the court pursuant to subsection 6(2), the parent of the child authorized to do so by the order or agreement may appoint a person to have custody of the child on that parent's death.
- (4) The appointment of a legal custodian pursuant to subsection (3) takes precedence over any right of the surviving parent pursuant to subsection (1).

1997, c.C-8.2, s.4.

**Declaratory order**

- 5(1) A person who is appointed as a legal custodian pursuant to section 4 may apply to the court for an order confirming his or her entitlement to custody of the child.
- (2) The person making an application pursuant to this section shall serve notice of the application on all persons whom the court directs to be served.

1997, c.C-8.2, s.5.

**Custody or access application**

- 6(1) Notwithstanding sections 3 to 5, on the application of a parent or other person having, in the opinion of the court, a sufficient interest, the court may, by order:
- (a) grant custody of or access to a child to one or more persons;
  - (b) determine any aspect of the incidents of the right to custody or access; and
  - (c) make any additional order that the court considers necessary and proper in the circumstances.
- (2) Where the court grants custody of a child to a parent pursuant to subsection (1), the court, where in its opinion it would be in the best interests of the child to do so, may by order, authorize the parent to appoint a person:
- (a) to have custody of the child on the parent's death;
  - (b) to be the guardian of the property of the child on the parent's death; or
  - (c) to have both of the duties mentioned in clauses (a) and (b).
- (3) On an application and prior to making an order pursuant to subsection (1), the court may make or vary an interim order on any terms and conditions it considers appropriate.
- (4) On application, the court may vary or discharge any order made pursuant to this section where there has been a material change in circumstances since the date of the order.

- (5) When making an order pursuant to subsection (1), the court shall:
- (a) give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person seeking custody to facilitate that contact; and
  - (b) include in the order a condition requiring any person who has custody of a child and who intends to change the place of residence of that child to notify, as set out in subsection (6), any person who is granted access to that child or any other person who has custody of that child of:
    - (i) the change;
    - (ii) the time at which the change will be made; and
    - (iii) the new place of residence of the child.
- (6) Any notification required pursuant to clause (5)(b) is to be given:
- (a) at least 30 days before the change; or
  - (b) within any other period before the change that the court may specify.
- (7) When making an order pursuant to this section, the court, in the manner and on the conditions that the court considers appropriate, may provide for:
- (a) the division and sharing of parental responsibilities; and
  - (b) the granting of access.
- (8) Where an order is made for supervised access pursuant to this section, the court may specify in the order the amount of any cost for the supervision that each party is required to pay.

1997, c.C-8.2, s.6.

**Notice of application**

- 7(1) A person who makes an application pursuant to this Act shall serve a copy of the application on each parent of the child who is not an applicant.
- (2) The court may order that notice of the application be served on any person having an interest in the custody, care and upbringing of the child, and that person may be heard at the hearing of the application.
- (3) Notwithstanding subsection (1), the court may allow an application for an interim order to be made *ex parte*.

1997, c.C-8.2, s.7.

**Conditions for custody order**

- 8 In making, varying or rescinding an order for custody of a child, the court shall:
- (a) have regard only for the best interests of the child and for that purpose shall take into account:
    - (i) the quality of the relationship that the child has with the person who is seeking custody and any other person who may have a close connection with the child;
    - (ii) the personality, character and emotional needs of the child;

- (iii) the physical, psychological, social and economic needs of the child;
  - (iv) the capacity of the person who is seeking custody to act as legal custodian of the child;
  - (v) the home environment proposed to be provided for the child;
  - (vi) the plans that the person who is seeking custody has for the future of the child; and
  - (vii) the wishes of the child, to the extent the court considers appropriate, having regard to the age and maturity of the child;
- (b) not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child; and
- (c) make no presumption and draw no inference as between parents that one parent should be preferred over the other on the basis of the person's status as a father or mother.

1997, c.C-8.2, s.8.

**Conditions for access order**

**9(1)** In making, varying or rescinding an order for access to a child, the court shall:

- (a) have regard only for the best interests of the child and for that purpose shall take into account:
    - (i) the quality of the relationship that the child has with the person who is seeking access;
    - (ii) the personality, character and emotional needs of the child;
    - (iii) the capacity of the person who is seeking access to care for the child during the times that the child is in his or her care; and
    - (iv) the wishes of the child, to the extent the court considers appropriate, having regard to the age and maturity of the child; and
  - (b) not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to care for the child during the times that the child is in his or her care.
- (2) Unless otherwise ordered by the court, a parent who is granted access to a child has the same right as the custodial parent to make inquiries and be given information concerning the health, education and welfare of the child.
- (3) The right of a parent who is granted access described in subsection (2) is not, unless the court orders otherwise, a right to be consulted about or to participate in the making of decisions by the custodial parent.

1997, c.C-8.2, s.9.

**Mediation**

**10(1)** On an application by an applicant or respondent pursuant to this Part or Part III or IV, the court, by order, may appoint a person to mediate a matter that:

- (a) is dealt with in the application; and
- (b) is at issue between the parties.

(2) No person shall be appointed as a mediator without that person's consent.

(3) Evidence directly arising from anything said, of anything said or of an admission or communication made in the course of the mediation is not admissible in any civil, administrative, regulatory or summary conviction proceeding except with the written consent of all parties to the proceeding in which the mediator was appointed and the mediator.

(4) The court shall specify in an order made pursuant to subsection (1) the amount of the mediator's fees and expenses that each party is required to pay.

(5) The court may order that one party pay all of the mediator's fees and expenses where the court is satisfied that payment would cause the other party serious financial hardship.

(6) Where the mediator and the parties are unable to resolve the matter, either party, at any time after the first mediation session, may discontinue the mediation and proceed to have the matters at issue between the parties resolved by the court.

1997, c.C-8.2, s.10; 2006, c.31, s.3.

**Obligations of lawyer**

**11(1)** It is the duty of every lawyer who undertakes to act on behalf of an applicant or respondent in an application pursuant to this Part or Part III or IV to:

- (a) discuss with the applicant or respondent the advisability of negotiating the matters that are the subject of the application; and
- (b) inform the applicant or respondent of the mediation facilities known to him or her that might be able to assist the parties in resolving those matters.

(2) Every application presented to the court by a lawyer pursuant to this Part or Part III or IV is to contain a statement signed by the lawyer certifying that he or she has complied with subsection (1).

1997, c.C-8.2, s.11.

**Family service hearing**

**12(1)** Where a child is the subject of proceedings pursuant to Part III of *The Child and Family Services Act* and an application for custody of or access to the child is brought pursuant to this Act:

- (a) unless the court otherwise orders, the proceedings pursuant to *The Child and Family Services Act* are stayed pending the decision of the court with respect to custody or access;
- (b) the applicant for custody or access shall serve the director with notice of the application for custody or access; and
- (c) the minister responsible for the administration of that Act is not to be joined as a party to the proceedings for custody or access unless that minister applies to be joined as a party.



(2) Where the minister responsible for the administration of *The Child and Family Services Act* is a party to the proceedings for custody or access, the court may:

- (a) consolidate the actions in the court and make an order pursuant to section 37 of *The Child and Family Services Act*; or
- (b) refer the proceedings pursuant to *The Child and Family Services Act* back to the Provincial Court to be concluded after the custody or access application has been decided.

1997, c.C-8.2, s.12.

#### Closed hearings

13 Where, in the opinion of the court, the desirability of protecting against the consequences of possible disclosure of 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.

1997, c.C-8.2, s.13.

### PART III Jurisdiction of Court

#### Interpretation – Parts III and IV

14(1) In this Part and Part IV, “**extra-provincial tribunal**” means a court or tribunal established in a jurisdiction outside Saskatchewan with authority under the laws of that jurisdiction to make an order granting custody of or access to a child to any person. (*«tribunal extraprovincial»*)

(2) In sections 17 to 20, “**custody order**” means an order, or that part of an order, of an extra-provincial tribunal that grants custody of a child to any person and includes provisions, if any, granting another person a right of access or visitation to the child at specific times or on specific dates. (*«ordonnance de garde»*)

1997, c.C-8.2, s.14.

#### Jurisdiction

15(1) For the purposes of making a custody or access order or for the purposes of Part IV, a court has jurisdiction where:

- (a) the child is habitually resident in Saskatchewan at the commencement of the application for the order;
- (b) although the child is not habitually resident in Saskatchewan, the court is satisfied that:
  - (i) the child is physically present in Saskatchewan at the commencement of the application for the order;

- (ii) substantial evidence concerning the best interests of the child is available in Saskatchewan;
  - (iii) no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident;
  - (iv) no application pursuant to section 17 is pending before the court or may be made within a reasonable time;
  - (v) no extra-provincial order with respect to custody of or access to the child has been recognized by a court in Saskatchewan;
  - (vi) the child has a real and substantial connection with Saskatchewan; and
  - (vii) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Saskatchewan; or
- (c) the parties have consented to the court having jurisdiction.
- (2) A child is habitually resident in the place where he or she resided:
- (a) with both parents;
  - (b) where the parents are living separate and apart, with one parent under a custody agreement or order or with the consent, implied consent or acquiescence of the other; or
  - (c) with a person other than a parent on a permanent basis for a significant period of time;

whichever last occurred.

(3) Where the child's habitual residence cannot be determined pursuant to clause (2)(a), (b) or (c), the child is to be considered as habitually resident in the jurisdiction with which the child has the closest connection.

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

1997, c.C-8.2, s.15.

#### **Declining jurisdiction**

**16** A court having jurisdiction pursuant to this Act with respect to custody or access may decline to exercise its jurisdiction where, in the opinion of the court, it is more appropriate for jurisdiction to be exercised outside Saskatchewan.

1997, c.C-8.2, s.16.

#### **Enforcement of custody order**

**17(1)** Subject to subsection (2), on an application, a court:

- (a) shall enforce a custody order as if the custody order had been made by the court; and
- (b) may make any orders that it considers necessary to give effect to a custody order as if the custody order had been made by the court.

(2) The court may refuse to enforce the custody order and may make any other order for the custody of or access to the child that it considers necessary if the child is physically present in Saskatchewan and the court:

- (a) is satisfied that the person entitled to the custody of the child pursuant to the custody order:
  - (i) was not actually exercising the rights under the custody order at the time of the removal or retention of the child; or
  - (ii) had consented to or subsequently acquiesced in the removal or retention;
- (b) is satisfied, on the balance of probabilities, that the child would suffer serious harm if the child:
  - (i) remains in the custody of or subject to access by the person entitled to custody or access pursuant to the custody order;
  - (ii) is returned to the custody of the person entitled to custody pursuant to the custody order; or
  - (iii) is removed from Saskatchewan; or
- (c) is satisfied that the extra-provincial tribunal that made the custody order did not, at the time of making the order, have jurisdiction to do so in accordance with section 15.

1997, c.C-8.2, s.17.

**Power of court to make other orders**

**18** Where, on an application pursuant to section 17, the court orders the return of the child, it may:

- (a) make any interim orders with respect to custody or access in the best interests of the child to ensure the child's return to the person entitled to custody; and
- (b) make an order described in clause (a) conditional on prompt commencement of action in the jurisdiction of the habitual residence and attach any other conditions to the order the court considers appropriate, including conditions relating to payment of costs for reasonable travel and other expenses related to the proceedings.

1997, c.C-8.2, s.18.

**Applications**

**19(1)** A person making an application pursuant to section 17 shall file with the application a copy of the custody order to which the application relates, certified as a true copy by:

- (a) a judge or other presiding officer of the extra-provincial tribunal; or
- (b) the clerk or other official charged with the keeping of records and orders of the extra-provincial tribunal.

(2) No proof is required of the signature or appointment of a judge, presiding officer, clerk or other official with respect to any certificate produced as evidence pursuant to this section.

(3) For the purposes of an application pursuant to section 17, a court may take notice, without requiring formal proof, of:

- (a) the law of a jurisdiction outside Saskatchewan; and
- (b) a decision of an extra-provincial tribunal.

1997, c.C-8.2, s.19.

**Conflicting orders**

**20** Subject to subsection 17(2), the fact that a conflicting order for custody or access has been made in Saskatchewan is not a ground for refusing to enforce a previous custody order made outside Saskatchewan.

1997, c.C-8.2, s.20.

**S.S. 1996, c.I-10.11 to prevail**

**21** Where there is a conflict between this Act and *The International Child Abduction Act, 1996*, the latter Act prevails.

1997, c.C-8.2, s.21.

## PART IV Custody and Access Enforcement

**Interpretation – Part IV**

**22** In this Part:

“**access**” means access to a child at specific times or on specific dates; (*«access»*)

“**agreement**” means an agreement that is enforceable under the laws of the jurisdiction in which it was made and that includes a provision for custody or access; (*«accord»*)

“**order**” means an order of a court or an extra-provincial tribunal that includes a provision for custody or access. (*«ordonnance»*)

1997, c.C-8.2, s.22.

**Order restraining harassment**

**23(1)** On application pursuant to this subsection, a court may make an interim or final order restraining a person from:

- (a) molesting the applicant or a child in the lawful care or custody of the applicant;
- (b) annoying the applicant or a child in the lawful care or custody of the applicant;
- (c) harassing the applicant or a child in the lawful care or custody of the applicant;
- (d) communicating with the applicant or a child in the lawful care or custody of the applicant; or
- (e) otherwise interfering with the applicant or a child in the lawful care or custody of the applicant.

(2) On an application pursuant to subsection (1), a court may require the respondent to enter into any recognizance, with or without sureties, or post any bond that the court considers appropriate.

1997, c.C-8.2, s.23.

**Order where child unlawfully withheld**

**24(1)** A court, by order, may direct a sheriff, peace officer or other person that it considers appropriate to locate, apprehend and deliver a child to a person specified by the court for the purpose of giving effect to the rights of the applicant to custody or access where the court is satisfied on application that there are reasonable grounds for believing that a person:

- (a) is unlawfully withholding the child from a person entitled to custody of or access to the child pursuant to an order or agreement;
  - (b) who is prohibited by order or agreement from removing the child from Saskatchewan intends to remove the child or have the child removed from Saskatchewan; or
  - (c) who is entitled to access to the child pursuant to an order or agreement intends to remove the child or to have the child removed from Saskatchewan and that the child is not likely to return.
- (2) For the purpose of enforcing an order made pursuant to subsection (1), the court may authorize the sheriff, peace officer or other person to enter and search any place where the sheriff, peace officer or other person has reasonable grounds for believing that the child may be.
- (3) An application pursuant to subsection (1) may be made *ex parte* where the court is satisfied that it is necessary that action be taken without delay.
- (4) The sheriff, peace officer or other person directed to act by an order made pursuant to subsection (1) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.
- (5) Neither the minister responsible for the administration of *The Child and Family Services Act* nor any employee of the minister's department who is acting in the course of his or her responsibilities pursuant to that Act are to be named in an order made pursuant to this section without the person's prior written consent.

1997, c.C-8.2, s.24.

**Application to prevent removal of child**

**25(1)** A court may make an order pursuant to subsection (2), to prevent the removal of a child from Saskatchewan or secure the child's prompt safe return to Saskatchewan where the court, on application, is satisfied on reasonable grounds that a person:

- (a) prohibited by order or agreement from removing the child from Saskatchewan intends to remove the child from Saskatchewan; or
- (b) entitled to access to the child pursuant to an order or agreement intends to remove the child from Saskatchewan and is not likely to return the child to Saskatchewan.

(2) For the purposes of subsection (1), a court may make any one or more of the following orders:

- (a) order a person to transfer specific property to a named trustee to be held subject to any terms and conditions that the court considers appropriate;
  - (b) in the case of a person from whom payments have been ordered to be made for the maintenance of the child, order that person to make the payments to a specified trustee subject to any terms and conditions that the court considers appropriate;
  - (c) order a person to post a bond, with or without sureties, payable to the applicant in the amount the court considers appropriate;
  - (d) order a person to 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 a person specified by the court;
  - (e) vary the custody or access order or, where the custody or access provisions are contained in an agreement, make a custody order or an access order.
- (3) In an order made pursuant to subsection (2), the court may:
- (a) specify terms and conditions for the return or disposition of the property or payments; or
  - (b) give directions with respect to the safe keeping of the property, passports or travel documents.

1997, c.C-8.2, s.25.

#### **Enforcement of access**

**26(1)** Where a court, on application, is satisfied that a person entitled to access to a child pursuant to an order or agreement has been wrongfully denied access to the child by the respondent and is of the opinion that it is in the best interests of the child, the court may, by order, direct that all or any combination of the following be done:

- (a) require the respondent to give the applicant compensatory access to the child for the period:
  - (i) agreed to by the parties; or
  - (ii) that the court considers appropriate if the parties do not agree;
- (b) require supervision of the access in any manner that the court considers appropriate;
- (c) require the respondent to give security for the performance of the obligation to give the applicant access to the child;
- (d) appoint a mediator pursuant to section 10 to assist the applicant and the respondent in resolving the issue;
- (e) make or vary a custody order or access order.

(2) Where a court, on application, is satisfied that a person entitled to access to a child pursuant to an order or agreement has wrongfully failed to exercise the right of access or to return the child as the order or agreement requires, and is of the opinion that it is in the best interests of the child, the court may, by order, direct that all or any combination of the following be done:

- (a) require supervision of the access in any manner that the court considers appropriate;
- (b) require the respondent to give security for the performance of the obligation to:
  - (i) exercise the right of access; or
  - (ii) return the child as the order or agreement requires;
- (c) appoint a mediator pursuant to section 10 to assist the applicant and respondent in resolving the issue;
- (d) require the respondent to provide the respondent's address and telephone number to the applicant;
- (e) make or vary a custody order or an access order.

(3) A denial of access or failure to exercise the right of access or to return the child as the order or agreement requires is wrongful unless:

- (a) it is justified by a legitimate reason; and
- (b) the respondent gave the applicant reasonable notice of the failure and of the reason.

(4) At the hearing of an application pursuant to this section, unless the court orders otherwise, evidence is admissible only if it is directly related to:

- (a) the alleged wrongful denial of access or failure to exercise the right of access or to return the child as the order or agreement requires; or
- (b) the respondent's reasons for the denial of access or failure to exercise the right of access or to return the child as the order or agreement requires.

(5) This section does not apply to a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that occurred before December 1, 1990.

(6) Where the court is satisfied that a person has made a frivolous or vexatious application pursuant to this section, the court may prohibit that person from making further applications without leave of the court.

(7) No person shall be ordered to supervise access pursuant to clause (1)(b) or (2)(a) without his or her consent.

1997, c.C-8.2, s.26.

#### **Payment of expenses**

**27** On an application pursuant to this Part or *The International Child Abduction Act, 1996*, a court may order a respondent to pay necessary expenses incurred or to be incurred by the applicant, including:

- (a) travel expenses;
- (b) the costs of locating and returning a child;

- (c) lost wages;
- (d) expenses reimbursed pursuant to section 7 of *The Child and Family Services Act*;
- (e) legal fees; and
- (f) any other expenses the court may allow.

1997, c.C-8.2, s.27.

**Information as to address**

**28(1)** A court may order any person or public body, including the Crown, to provide the applicant or any other person who the court considers appropriate with any information in the possession or control of the person or public body with respect to the location, address or place of employment of the person against whom a custody or access order is sought to be obtained or an order or agreement is sought to be enforced where, on application, the court is satisfied that a person requires an order pursuant to this section in aid of an application to:

- (a) obtain or enforce a custody or access order; or
  - (b) enforce a custody or access agreement.
- (2) Subsection (1) does not apply to information that is subject to solicitor-client privilege.
- (3) Subject to subsection (2), an order made pursuant to subsection (1) applies notwithstanding any other Act or law restricting the disclosure of the information.
- (4) Where the court makes an order pursuant to subsection (1), it may make any order with respect to the confidentiality to be maintained in connection with the information released that it considers appropriate.

1997, c.C-8.2, s.28.

**Contempt of court**

**29(1)** Where a court on its own motion or on application by notice of motion is satisfied that any person has displayed wilful contempt of its orders or resistance to its process or orders with respect to custody of or access to a child, the court, in addition to any other remedy including variation of the custody or access order, may impose:

- (a) in the case of a first finding of contempt:
  - (i) a fine of not more than \$5,000;
  - (ii) imprisonment for a term of not more than 90 days; or
  - (iii) both that fine and imprisonment; and
- (b) in the case of a second or subsequent finding of contempt:
  - (i) a fine of not more than \$10,000;
  - (ii) imprisonment for a term of not more than two years; or
  - (iii) both that fine and imprisonment.



- (2) Where the court imposes a sentence of imprisonment pursuant to subsection (1) that does not exceed 90 days, it may:
- (a) order that the sentence be served intermittently at those times that are specified in the order; and
  - (b) direct that at all times when not in confinement pursuant to the order, the person comply with conditions prescribed in the order.
- (3) The court may order that if a person defaults in payment of a fine imposed pursuant to subsection (1) that person shall be imprisoned for a period not exceeding six months.
- (4) Proceedings pursuant to subsection (1) may be taken without having taken any other step for the enforcement of the order.
- (5) The sheriff, or any other officer or person by his or her direction or by direction of the court, may convey any person to be committed to a prison without any further warrant other than a copy of the minutes of the court certified by a judge or the registrar.
- (6) The keeper of the prison and all other persons whose duty it is to receive the person to be committed into custody are authorized to and shall:
- (a) receive the person to be committed into custody; and
  - (b) carry out and execute the order according to its tenor and effect.

1997, c.C-8.2, s.29.

## PART V Guardianship of the Property of a Child

### Joint guardianship

- 30(1)** Unless otherwise ordered by the court and subject to the provisions of this Act, the parents of a child are joint guardians of the property of the child with equal rights, powers and duties.
- (2) The court, by order, may appoint one or more guardians of the property of a child.
- (3) Subject to subsection (5) and any order made pursuant to subsection (2), if a parent is deceased, the surviving parent:
- (a) is the guardian of the property of his or her child; and
  - (b) may appoint one or more persons as guardian of the property of the child to take effect on the surviving parent's death.
- (4) An appointment for the purposes of clause (3)(b) shall be made:
- (a) if the surviving parent is under the age prescribed in *The Wills Act, 1996* to make a valid will, by deed;
  - (b) if the surviving parent is of the full age prescribed in *The Wills Act, 1996* to make a valid will, by will.

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(5) The parent of the child authorized to do so by an agreement or order may appoint a person to be the guardian of the property of his or her child on the parent's death where:

- (a) the parents of a child have entered into that agreement pursuant to clause 3(3)(d); or
- (b) that order has been made by the court pursuant to subsection 6(2).

(6) The appointment of the guardian of the property of a child pursuant to subsection (5) takes precedence over any right of the surviving parent pursuant to subsection (3).

1997, c.C-8.2, s.30.

**Conditions for guardianship order**

**31(1)** In making an order for the appointment of a guardian of the property of a child, the court:

- (a) shall take into account:
  - (i) the ability of the proposed guardian of the property of the child to manage that property;
  - (ii) the merits of the plan indicated by the proposed guardian of the property of the child for the care and management of the property;
  - (iii) the personal relationship between the proposed guardian of the property of the child and the child;
  - (iv) the wishes of the parents of the child; and
  - (v) the views, if any, of the public guardian and trustee; and
- (b) may make any order respecting the remuneration, if any, to be received by the guardian of the property of the child.

(2) Unless the court orders otherwise, no person is to be appointed guardian of the property of a child who is 12 years of age or older without the consent of the child.

1997, c.C-8.2, s.31; 2001, c.34, s.2.

**Guardian's authority**

**32** Unless the court orders otherwise, the guardian of the property of a child appointed or constituted pursuant to section 30:

- (a) after furnishing the security ordered by the court pursuant to section 34, shall have:
  - (i) the care and management of the property of the child; and
  - (ii) the right to receive any moneys due and payable to the child and give a release for them; and
- (b) may appear in court and prosecute or defend any action or proceeding in which the property of the child is or may be affected.

1997, c.C-8.2, s.32.

**Testamentary appointment**

**33(1)** Where a person appoints a trustee of property that the person has devised, bequeathed or given to a child, the trustee is entitled to receive and hold that property for the child in accordance with the settlor's instructions, subject to subsection (2).

(2) Where a trustee other than an executor is appointed to hold property devised or bequeathed to a child in a will, the public guardian and trustee may apply to the court for an order requiring the trustee to furnish security and, on an application, section 34 applies with any necessary modification.

1997, c.C-8.2, s.33; 2001, c.34, s.2.

**Security by guardian**

**34(1)** Unless otherwise ordered, the guardian of the property of a child, including the child's parents, shall furnish security:

- (a) in the form of a bond of a guarantee company; and
- (b) in the name of the child.

(2) Security furnished by the guardian of the property of a child must be in the amount and on the terms that the court may approve.

(3) A court may make any order it considers appropriate with respect to security, where the court is of the opinion that a bond:

- (a) is not required; or
- (b) is not an appropriate form of security;

(4) The security required to be furnished pursuant to this section is to be filed with the registrar.

(5) The requirement of this section to file security does not apply to the public guardian and trustee.

1997, c.C-8.2, s.34; 2001, c.34, s.2.

**Notice to public trustee**

**35** The registrar shall:

- (a) keep a record of every order:
  - (i) appointing or removing a guardian of the property of a child; or
  - (ii) regarding security to be furnished by a guardian or trustee;
- (b) forward a copy of the order to the public guardian and trustee;
- (c) certify, to the public guardian and trustee, the date on which the appointment, removal or order regarding security was made; and
- (d) where a bond or other security is ordered to be filed, state the amount of the bond or security filed.

1997, c.C-8.2, s.35; 2001, c.34, s.2.

**Passing of accounts**

**36(1)** On the application of any person considered by the court as a proper person to represent the interests of a child, the court may require that a guardian or trustee of the property of a child, other than the public guardian and trustee, submit his or her accounts with respect to the administration of the property to the court.

(2) The court may examine and pass the accounts submitted pursuant to subsection (1).

(3) The power of the court granted by this section extends to a final passing of accounts after the child has attained the age of majority.

(4) A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of majority.

1997, c.C-8.2, s.36; 2001, c.34, s.2.

**Directions**

**37** Where guardians or trustees of the property of a child are unable to agree on a matter respecting the management or administration of the property of the child:

(a) any of the guardians or trustees may apply to the court for directions; and

(b) on an application pursuant to clause (a), the court may make any order it considers appropriate.

1997, c.C-8.2, s.37.

***The Trustee Act and The Public Guardian and Trustee Act apply***

**38** A guardian or trustee of the property of a child is subject to *The Trustee Act* and *The Public Guardian and Trustee Act*.

1997, c.C-8.2, s.38; 2001, c.34, s.2.

**Removal of guardian**

**39(1)** Any guardian or trustee of the property of a child is removable by the court for the same causes for which trustees are removable.

(2) A guardian or trustee of the property of a child, with leave of the court, may resign his or her office on any terms and conditions that the court may prescribe.

1997, c.C-8.2, s.39.

## PART VI Child Status and Parentage

**Child of natural parents**

**40(1)** Subject to section 17 of *The Adoption Act, 1998*, for all purposes of the law of Saskatchewan:

(a) a person is the child of his or her parents; and

(b) a person's status as a child of his or her parents is independent of whether he or she is born inside or outside marriage.

(2) Kindred relationships are to be determined according to the relationships described in subsection (1).

(3) All distinctions between the status of a child born inside marriage and a child born outside marriage are abolished and the relationship of parent and child, and kindred relationships flowing from that relationship, are to be determined in accordance with this section.

1997, c.C-8.2, s.40; 2004, c.66, s.3.

**Construction of instruments and statutes**

**41** For the purpose of construing an instrument or Act, a reference to a person or group or category of persons described in terms of relationship to another person by blood or marriage is to be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined pursuant to section 40.

1997, c.C-8.2, s.41.

**Application**

**42** Sections 40 and 41 apply to Acts enacted before, on or after December 1, 1990 and to instruments made on or after December 1, 1990, but do not affect:

- (a) an instrument made before December 1, 1990; or
- (b) a disposition of property made before December 1, 1990.

1997, c.C-8.2, s.42.

**Parentage**

**43(1)** In this section and in section 44, “**placed for adoption**” means placed for adoption within the meaning of *The Adoption Act, 1998*. (*«placé en adoption»*)

(2) Any person having an interest may apply to the court for a declaratory order that:

- (a) a man is recognized in law to be the father of a child; or
- (b) a woman is recognized in law to be the mother of a child.

(3) Where the court finds on the balance of probabilities that a woman is or is not in law the mother of a child, the court may make a declaratory order to that effect.

(4) Subject to subsection (5), where the court finds that a presumption of paternity exists pursuant to section 45 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court may make a declaratory order confirming that the paternity is recognized in law.

(5) The court may make a declaratory order of paternity where:

- (a) either:
  - (i) there is no man recognized in law pursuant to section 45 to be the father of a child or circumstances exist that give rise pursuant to section 45 to conflicting presumptions as to the paternity of the child; or
  - (ii) the presumed father is found not to be the father of the child; and
- (b) the court finds on the balance of probabilities that a man is the father.

(6) Subject to subsection (7), an application pursuant to this section shall be made in the court.

(7) An application pursuant to this section may be made in the Provincial Court of Saskatchewan if it is joined with an application for support or maintenance for the child.

(8) An application pursuant to this section may be made whether or not the person and the child whose relationship is sought to be established are alive.

(9) No application may be made pursuant to this section where the child has been adopted or placed for adoption.

(10) Notwithstanding any other Act or law, no extension of the time for the commencement of an appeal from a declaratory order shall be granted where the child has been adopted or placed for adoption.

1997, c.C-8.2, s.43; 2004, c.66, s.3.

#### **New hearing**

**44(1)** The court, on application, may discharge or vary the previous order and make any other orders or directions that it considers appropriate where:

(a) a declaratory order has been made pursuant to section 43 or an application for that type of order has been dismissed; and

(b) evidence becomes available that was not reasonably available at the previous hearing.

(2) Where an order is discharged or varied pursuant to subsection (1):

(a) rights and duties that have been exercised and observed are not affected; and

(b) interests in property that have been distributed as a result of the order before its discharge are not affected.

(3) No application may be made pursuant to this section where the child has been adopted or placed for adoption.

1997, c.C-8.2, s.44.

#### **Presumptions**

**45(1)** Unless the contrary is proven on a balance of probabilities, there is a presumption that a man is, and that a man is to be recognized in law to be, the father of a child in any one of the following circumstances:

(a) at the time of the child's birth or conception the man was cohabiting with the mother, whether or not they were married to each other;

(b) the man and the mother of the child have filed a statutory declaration, acknowledging that the man is the father of the child, with the Director of Vital Statistics or an equivalent official in another jurisdiction in Canada;

(c) the man signed the birth registration form pursuant to *The Vital Statistics Act, 1995* or a form of similar effect pursuant to a similar Act in another jurisdiction in Canada;

(d) the man married the mother after the child's birth and acknowledges that he is the father;

(e) the man and the mother have acknowledged in writing that the man is the father of the child;

(f) the man has been found or recognized by a court in Canada to be the father of the child.

- (2) For the purpose of subsection (1), where a man and a woman in good faith go through a form of marriage with each other that is void and cohabit:
- (a) they are deemed to be married during the time they cohabit; and
  - (b) the marriage is deemed to terminate when they cease to cohabit.
- (3) Where circumstances exist that give rise pursuant to subsection (1) to conflicting presumptions as to the paternity of a child:
- (a) no presumption is to be made as to paternity; and
  - (b) no person is to be recognized in law to be the father by virtue of this section.

1997, c.C-8.2, s.45.

**Written acknowledgment**

**46** A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is admissible as proof, in the absence of evidence to the contrary, of the facts contained in it.

1997, c.C-8.2, s.46.

**Statement to Vital Statistics**

**47(1)** The registrar shall furnish the Director of Vital Statistics with a certificate in the form prescribed in the regulations respecting every order made pursuant to section 43 or 44.

(2) On receipt of a certificate described in subsection (1), the Director of Vital Statistics shall amend the register of births accordingly.

(3) The Director of Vital Statistics is not liable for any consequences resulting from filing, pursuant to this section or section 53, material that is apparently regular on its face.

1997, c.C-8.2, s.47.

**Blood tests**

**48(1)** On the application of a party to a proceeding pursuant to section 43 or 44, the court, subject to any conditions it considers appropriate, may give the party leave to:

- (a) obtain blood or other genetic tests of the persons named in the order; and
- (b) submit the results in evidence.

(2) Where a person named by the court is not capable of consenting to having the test taken, the consent is deemed to be sufficient:

- (a) where the person is a child, if the legal custodian of the child consents; and
- (b) where the person is not capable of consenting for any reason other than minority, if another person having charge of the person consents and a medical practitioner certifies that the giving of a blood or tissue sample would not be prejudicial to his or her proper care and treatment.

(3) No test is to be performed on a person without his or her consent, but the court may draw whatever inferences appear to be reasonable having regard to all the circumstances where a person named in the order refuses:

- (a) to submit to a blood or other genetic test; or
  - (b) to allow a person under his or her charge to submit to a blood or other genetic test.
- (4) The court may:
- (a) make an order as to which party shall bear the cost of blood or other genetic tests; or
  - (b) apportion the cost of tests between the parties.

1997, c.C-8.2, s.48.

**Interpretation – sections 50 to 58**

**49** In sections 50 to 58:

**“extra-provincial declaratory order”** means an order in the nature of a declaratory order provided for in section 43 but made by a court outside Saskatchewan; (*«ordonnance déclaratoire extraprovinciale»*)

**“extra-provincial finding”** means a judicial finding of paternity or maternity that:

- (a) is made incidentally in the determination of another issue by a court outside Saskatchewan; and
- (b) is not an extra-provincial declaratory order. (*«reconnaissance extraprovinciale»*)

1997, c.C-8.2, s.49.

**Recognition of orders made elsewhere in Canada**

**50** An extra-provincial declaratory order that is made in Canada is to be recognized and have the same effect as if made in Saskatchewan.

1997, c.C-8.2, s.50.

**Recognition of orders made outside Canada**

**51** An extra-provincial declaratory order that was made outside Canada is to be recognized and have the same effect as if made in Saskatchewan if:

- (a) at the time the proceeding was commenced or the order was made, either parent was domiciled:
  - (i) in the territorial jurisdiction of the court making the order; or
  - (ii) in a territorial jurisdiction in which the order is recognized;
- (b) the court that made the order would have had jurisdiction to do so under the conflict of laws rules that are applicable in Saskatchewan;
- (c) the child was habitually resident in the territorial jurisdiction of the court making the order at the time the proceeding was commenced or the order was made; or



(d) the child or either parent had a real and substantial connection with the territorial jurisdiction in which the order was made at the time the proceeding was commenced or the order was made.

1997, c.C-8.2, s.51.

#### **Exceptions**

**52** A court may decline to recognize an extra-provincial declaratory order and may make a declaratory order pursuant to section 43 where:

- (a) new evidence that was not available at the hearing becomes available; or
- (b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress.

1997, c.C-8.2, s.52.

#### **Filing**

**53(1)** A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, may be filed with the Director of Vital Statistics, but where the extra-provincial declaratory order is made outside of Canada, the copy shall be accompanied by:

- (a) the opinion of a lawyer authorized to practise in Saskatchewan that the declaratory order is entitled to recognition under the law of Saskatchewan;
- (b) a sworn statement by a lawyer or public official in the extra-provincial territorial jurisdiction as to the effect of the declaratory order; and
- (c) any translation, verified by affidavit, that the Director of Vital Statistics requires.

(2) Where the extra-provincial declaratory order contradicts paternity or maternity found by an order already filed, the most recent order in time prevails.

1997, c.C-8.2, s.53.

#### **Evidence**

**54(1)** A copy of an order or judgment in which an extra-provincial finding is made, certified under the seal of the court that made it, is admissible in evidence without proof of the signature or office of any person executing the certificate.

(2) A copy of an extra-provincial declaratory order certified under the seal of the court that made it is admissible in evidence without proof of the signature or office of any person executing the certificate.

1997, c.C-8.2, s.54.

#### **Findings elsewhere in Canada**

**55** An extra-provincial finding that is made in Canada is to be recognized and have the same effect as if made in Saskatchewan under the same circumstances.

1997, c.C-8.2, s.55.

**Findings outside Canada**

**56** An extra-provincial finding that is made outside Canada by a court that has jurisdiction to determine the matter in which the finding was made, as determined by the conflict of laws rules of Saskatchewan, is to be recognized and have the same effect as if made in Saskatchewan under the same circumstances.

1997, c.C-8.2, s.56.

**Presumption where conflicting findings**

**57** There is to be no presumption of paternity pursuant to section 45 where contradictory findings of paternity exist, whether extra-provincial or otherwise.

1997, c.C-8.2, s.57.

**Application**

**58** Sections 49 to 57 apply to extra-provincial declaratory orders and extra-provincial findings, whether made before or after December 1, 1990.

1997, c.C-8.2, s.58.

**Prohibition**

**59** No parent shall bring an action:

- (a) for the enticement, harbouring, seduction or loss of services of his or her child; or
- (b) for any damages resulting from any of the things mentioned in clause (a).

1997, c.C-8.2, s.59.

## PART VII

### Repeal, Transitional and Coming into Force

**S.S. 1990-91, c.C-8.1 repealed**

**60** *The Children's Law Act* is repealed.

1997, c.C-8.2, s.60.

**Transitional**

**61** Notwithstanding the repeal of *The Children's Law Act* and *The Infants Act*:

- (a) an order for custody or access pursuant to one of those Acts may be varied or enforced pursuant to this Act as if that order were made pursuant to this Act;
- (b) an application for:
  - (i) custody;
  - (ii) access; or
  - (iii) guardianship of the property of a child;

pursuant to one of those Acts but not completed before this Act comes into force is to be continued and dealt with pursuant to this Act as if that application were made pursuant to this Act;

(c) an order for the guardianship of the property of a child, including an order fixing or dispensing with security, made pursuant to one of those Acts is deemed to be an order made pursuant to this Act and may be enforced or dealt with pursuant to this Act.

1997, c.C-8.2, s.61.

