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Children’s Law Reform Act

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Part I  
Parentage

Interpretation and Application

Definitions and interpretation, Part I

Definitions

**1** (1)  In this Part,

“assisted reproduction” means a method of conceiving other than by sexual intercourse; (“procréation assistée”)

“birth” means birth as defined in the Vital Statistics Act and includes a still-birth as defined in that Act; (“naissance”)

“birth parent” means, in relation to a child, the person who gives birth to the child; (“parent de naissance”)

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

“embryo” means embryo as defined in the Assisted Human Reproduction Act (Canada); (“embryon”)

“insemination by a sperm donor” means an attempt to conceive a child through sexual intercourse in the circumstances described in subsection 7 (4); (“insémination par un donneur de sperme”)

“reproductive material” means all or any part of a sperm, ovum or other human cell or a human gene; (“matériel reproductif”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage; (“conjoint”)

“surrogate” means a person who agrees to carry a child conceived through assisted reproduction if, at the time of conception, the person intends to relinquish entitlement to parentage of the child, once born, to one or more persons. (“substitut”) 2016, c. 23, s. 1 (1).

If marriage is void

(2)  For the purposes of the definition of “spouse” in subsection (1), two persons who, in good faith, go through a form of marriage with each other that is void but who live in a conjugal relationship are deemed to be married during the time they live in a conjugal relationship, and the marriage is deemed to be terminated when they cease to do so. 2016, c. 23, s. 1 (1).

Interpretation, conception through assisted reproduction

(3)  For the purposes of this Part, a child conceived through assisted reproduction is deemed to have been conceived on the day the reproductive material or embryo used in the assisted reproduction is implanted in the birth parent. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Rules of construction

Relationship by blood or marriage

**2** (1)  For the purposes of construing any Act, regulation or, subject to subsection (3), instrument, unless a contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person,

(a) includes a person who comes within that description by reason of the relationship of parent and child set out in this Part; and

(b) in respect of a child conceived through assisted reproduction or through insemination by a sperm donor, does not include,

(i) a person who provided reproductive material or an embryo for use in the conception if that person is not a parent of the child, or

(ii) a person related to a person referred to in subclause (i). 2016, c. 23, s. 1 (1).

Application to Acts, statutory instruments

(2)  Subsection (1) applies to an Act, regulation or other instrument made under an Act, regardless of when it was enacted or made. 2016, c. 23, s. 1 (1).

Application to other instruments

(3)  In the case of an instrument that is not made under an Act,

(a) subsection (1) applies to the instrument if it was made on or after the day subsection 1 (1) of the All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016 came into force;

(b) subsection (1) as it read immediately before the day subsection 1 (1) of the All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016 came into force continues to apply to an instrument made before that day, if it was made on or after March 31, 1978. 2016, c. 23, s. 1 (1).

References assuming two parents

(4)  If, under this Part, a child has more than two parents, a reference in any Act or regulation to the parents of the child that is not intended to exclude a parent shall, unless a contrary intention appears, be read as a reference to all of the child’s parents, even if the terminology used assumes that a child would have no more than two parents. 2016, c. 23, s. 1 (1).

References to “le père ou la mère”, “le père et la mère”, etc.

(5)  For the purposes of construing the French version of any Act or regulation, unless a contrary intention appears, the terms “père” and “mère” used together, conjunctively or disjunctively, in relation to a child, shall be construed as referring to a parent or parents of the child as set out in this Part. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Application

**3** This Part governs the determination of parentage for all purposes of the law of Ontario. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Rules of Parentage

Person is child of parents

**4** (1)  A person is the child of his or her parents. 2016, c. 23, s. 1 (1).

Determining parent of a child

(2)  A parent of a child is,

(a) a person who is a parent of the child under sections 6 to 13, except in the case of an adopted child;

(b) in the case of an adopted child, a parent of the child as provided for under section 217 or 218 of the Child, Youth and Family Services Act, 2017. 2016, c. 23, s. 1 (1); 2017, c. 14, Sched. 4, s. 4 (1).

Kindred relationships

(3)  The relationship of parent and child set out in subsections (1) and (2) shall be followed in determining the kindred relationships that flow from it. 2016, c. 23, s. 1 (1).

For all purposes of Ontario law

(4)  For greater certainty, this section applies for all purposes of the law of Ontario. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[2017, c. 14, Sched. 4, s. 4 (1)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s1) - 30/04/2018

Provision of reproductive material, embryo not determinative

**5** A person who provides reproductive material or an embryo for use in the conception of a child through assisted reproduction is not, and shall not be recognized in law to be, a parent of the child unless he or she is a parent of the child under this Part. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Birth parent

**6** (1)  The birth parent of a child is, and shall be recognized in law to be, a parent of the child. 2016, c. 23, s. 1 (1).

Exception, surrogacy

(2)  Subsection (1) is subject to the relinquishment of an entitlement to parentage by a surrogate under section 10, or to a declaration by a court to that effect under section 10 or 11. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Other biological parent, if sexual intercourse

**7** (1)  The person whose sperm resulted in the conception of a child conceived through sexual intercourse is, and shall be recognized in law to be, a parent of the child. 2016, c. 23, s. 1 (1).

Presumption

(2)  Unless the contrary is proven on a balance of probabilities, there is a presumption in respect of a child conceived through sexual intercourse that a person is, and shall be recognized in law to be, the parent referred to in subsection (1) if any of the following circumstances applies:

1. The person was the birth parent’s spouse at the time of the child’s birth.

2. The person was married to the child’s birth parent by a marriage that was terminated by death or judgment of nullity within 300 days before the child’s birth or by divorce where the judgment of divorce was granted within 300 days before the child’s birth.

3. The person was living in a conjugal relationship with the child’s birth parent before the child’s birth and the child is born within 300 days after they cease to live in a conjugal relationship.

4. The person has certified the child’s birth, as a parent of the child, under the Vital Statistics Act or a similar Act in another jurisdiction in Canada.

5. The person has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child. 2016, c. 23, s. 1 (1).

Conflicting presumptions

(3)  If circumstances exist that give rise to a presumption by more than one person under subsection (2), no presumption shall be made under that subsection. 2016, c. 23, s. 1 (1).

Non-application, insemination by a sperm donor

(4)  This section is deemed not to apply to a person whose sperm is used to conceive a child through sexual intercourse if, before the child is conceived, the person and the intended birth parent agree in writing that the person does not intend to be a parent of the child. 2016, c. 23, s. 1 (1).

Same, sperm donor not a parent

(5)  A person to whom subsection (4) applies is not, and shall not be recognized in law to be, a parent of a child conceived in the circumstances set out in that subsection. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Birth parent’s spouse, if assisted reproduction or insemination by sperm donor

Assisted reproduction

**8** (1)  If the birth parent of a child conceived through assisted reproduction had a spouse at the time of the child’s conception, the spouse is, and shall be recognized in law to be, a parent of the child. 2016, c. 23, s. 1 (1).

Insemination by a sperm donor

(2)  If the birth parent of a child conceived through insemination by a sperm donor had a spouse at the time of the child’s conception, the spouse is, and shall be recognized in law to be, a parent of the child. 2016, c. 23, s. 1 (1).

Non-application, lack of consent

(3)  This section does not apply if, before the child’s conception,

(a) the spouse did not consent to be a parent of the child; or

(b) the spouse consented to be a parent of the child but withdrew the consent. 2016, c. 23, s. 1 (1).

Non-application, surrogacy or posthumous conception

(4)  This section does not apply if the birth parent is a surrogate or if the child is conceived after the death of a person declared under section 12 to be his or her parent. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Parents under pre-conception parentage agreements

Definition

**9** (1)  In this section,

“pre-conception parentage agreement” means a written agreement between two or more parties in which they agree to be, together, the parents of a child yet to be conceived. 2016, c. 23, s. 1 (1).

Application

(2)  This section applies with respect to a pre-conception parentage agreement only if,

(a) there are no more than four parties to the agreement;

(b) the intended birth parent is not a surrogate, and is a party to the agreement;

(c) if the child is to be conceived through sexual intercourse but not through insemination by a sperm donor, the person whose sperm is to be used for the purpose of conception is a party to the agreement; and

(d) if the child is to be conceived through assisted reproduction or through insemination by a sperm donor, the spouse, if any, of the person who intends to be the birth parent is a party to the agreement, subject to subsection (3). 2016, c. 23, s. 1 (1).

If spouse intends to not be a parent

(3)  Clause (2) (d) does not apply if, before the child is conceived, the birth parent’s spouse provides written confirmation that he or she does not consent to be a parent of the child and does not withdraw the confirmation. 2016, c. 23, s. 1 (1).

Recognition of parentage

(4)  On the birth of a child contemplated by a pre-conception parentage agreement, together with every party to a pre-conception parentage agreement who is a parent of the child under section 6 (birth parent), 7 (other biological parent) or 8 (birth parent’s spouse), the other parties to the agreement are, and shall be recognized in law to be, parents of the child. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Surrogacy, up to four intended parents

Definitions

**10** (1)  In this section and in section 11,

“intended parent” means a party to a surrogacy agreement, other than the surrogate; (“parent d’intention”)

“surrogacy agreement” means a written agreement between a surrogate and one or more persons respecting a child to be carried by the surrogate, in which,

(a) the surrogate agrees to not be a parent of the child, and

(b) each of the other parties to the agreement agrees to be a parent of the child. (“convention de gestation pour autrui”) 2016, c. 23, s. 1 (1).

Application

(2)  This section applies only if the following conditions are met:

1. The surrogate and one or more persons enter into a surrogacy agreement before the child to be carried by the surrogate is conceived.

2. The surrogate and the intended parent or parents each received independent legal advice before entering into the agreement.

3. Of the parties to the agreement, there are no more than four intended parents.

4. The child is conceived through assisted reproduction. 2016, c. 23, s. 1 (1).

Recognition of parentage

(3)  Subject to subsection (4), on the surrogate providing to the intended parent or parents consent in writing relinquishing the surrogate’s entitlement to parentage of the child,

(a) the child becomes the child of each intended parent and each intended parent becomes, and shall be recognized in law to be, a parent of the child; and

(b) the child ceases to be the child of the surrogate and the surrogate ceases to be a parent of the child. 2016, c. 23, s. 1 (1).

Limitation

(4)  The consent referred to in subsection (3) must not be provided before the child is seven days old. 2016, c. 23, s. 1 (1).

Parental rights and responsibilities

(5)  Unless the surrogacy agreement provides otherwise, the surrogate and the intended parent or parents share the rights and responsibilities of a parent in respect of the child from the time of the child’s birth until the child is seven days old, but any provision of the surrogacy agreement respecting parental rights and responsibilities after that period is of no effect. 2016, c. 23, s. 1 (1).

Failure to give consent

(6)  Any party to a surrogacy agreement may apply to the court for a declaration of parentage with respect to the child if the consent referred to in subsection (3) is not provided by the surrogate because,

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

(b) the surrogate cannot be located after reasonable efforts have been made to do so; or

(c) the surrogate refuses to provide the consent. 2016, c. 23, s. 1 (1).

Declaration

(7)  If an application is made under subsection (6), the court may,

(a) grant the declaration that is sought; or

(b) make any other declaration respecting the parentage of a child born to the surrogate as the court sees fit. 2016, c. 23, s. 1 (1).

Child’s best interests

(8)  The paramount consideration by the court in making a declaration under subsection (7) shall be the best interests of the child. 2016, c. 23, s. 1 (1).

Effect of surrogacy agreement

(9)  A surrogacy agreement is unenforceable in law, but may be used as evidence of,

(a) an intended parent’s intention to be a parent of a child contemplated by the agreement; and

(b) a surrogate’s intention to not be a parent of a child contemplated by the agreement. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Surrogacy, more than four intended parents

**11** (1)  If the conditions set out in subsection 10 (2) are met other than the condition set out in paragraph 3 of that subsection, any party to the surrogacy agreement may apply to the court for a declaration of parentage respecting a child contemplated by the agreement. 2016, c. 23, s. 1 (1).

Time limit

(2)  An application under subsection (1) may not be made,

(a) until the child is born; and

(b) unless the court orders otherwise, after the first anniversary of the child’s birth. 2016, c. 23, s. 1 (1).

Parental rights and responsibilities

(3)  Unless the surrogacy agreement provides otherwise, the surrogate and the intended parents share the rights and responsibilities of a parent in respect of the child from the time of the child’s birth until the court makes a declaration of parentage respecting the child. 2016, c. 23, s. 1 (1).

Declaration

(4)  If an application is made under subsection (1), the court may make any declaration that the court may make under section 10 and, for the purpose, subsections 10 (8) and (9) apply with necessary modifications. 2016, c. 23, s. 1 (1).

Post-birth consent of surrogate

(5)  A declaration naming one or more intended parents as a parent of the child and determining that the surrogate is not a parent of the child shall not be made under subsection (4) unless, after the child’s birth, the surrogate provides to the intended parents consent in writing relinquishing the surrogate’s entitlement to parentage of the child. 2016, c. 23, s. 1 (1).

Waiver

(6)  Despite subsection (5), the court may waive the consent if any of the circumstances set out in subsection 10 (6) apply. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Posthumous conception

**12** (1)  A person who, at the time of a deceased person’s death, was his or her spouse, may apply to the court for a declaration that the deceased person is a parent of a child conceived after his or her death through assisted reproduction. 2016, c. 23, s. 1 (1).

Time limit

(2)  An application under subsection (1) may not be made,

(a) until the child is born; and

(b) unless the court orders otherwise, later than 90 days after the child’s birth. 2016, c. 23, s. 1 (1).

Declaration

(3)  The court may grant the declaration if the following conditions are met:

1. The deceased person consented in writing to be, together with the applicant, the parents of a child conceived posthumously through assisted reproduction, and did not withdraw the consent before his or her death.

2. If the child was born to a surrogate, the applicant is a parent of the child under section 10, and there is no other parent of the child. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Declaration of parentage, general

**13** (1)  At any time after a child is born, any person having an interest may apply to the court for a declaration that a person is or is not a parent of the child. 2016, c. 23, s. 1 (1).

Exception, adopted child

(2)  Subsection (1) does not apply if the child is adopted. 2016, c. 23, s. 1 (1).

Declaration

(3)  If the court finds on the balance of probabilities that a person is or is not a parent of a child, the court may make a declaration to that effect. 2016, c. 23, s. 1 (1).

Restriction

(4)  Despite subsection (3), the court shall not make any of the following declarations of parentage respecting a child under that subsection unless the conditions set out in subsection (5) are met:

1. A declaration of parentage that results in the child having more than two parents.

2. A declaration of parentage that results in the child having as a parent one other person, in addition to his or her birth parent, if that person is not a parent of the child under section 7, 8 or 9. 2016, c. 23, s. 1 (1).

Conditions

(5)  The following conditions apply for the purposes of subsection (4):

1. The application for the declaration is made on or before the first anniversary of the child’s birth, unless the court orders otherwise.

2. Every other person who is a parent of the child is a party to the application.

3. There is evidence that, before the child was conceived, every parent of the child and every person in respect of whom a declaration of parentage respecting that child is sought under the application intended to be, together, parents of the child.

4. The declaration is in the best interests of the child. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Reopening on new evidence

**14** (1)  If a declaration is made by the court under this Part and evidence becomes available that was not available at the hearing of the application, the court may, on application, set aside or vary the order and make any other orders or give any directions that the court considers necessary. 2016, c. 23, s. 1 (1).

No effect on rights, property interests

(2)  Setting aside an order under subsection (1) does not affect rights and duties that were exercised or performed, or interests in property that were distributed, before the order was set aside. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Effect of declaration

**15** (1)  A declaration made under this Part shall be recognized for all purposes. 2016, c. 23, s. 1 (1).

Deemed effective from birth

(2)  A declaration made under this Part is deemed to have been effective from the child’s birth. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Extra-Provincial Declaratory Orders

Extra-provincial declaratory orders

**16** (1)  In this section,

“extra-provincial declaratory order” means an order, or part of an order, that makes a declaration of parentage similar to a declaration that may be made under section 13, if it is made by a court or tribunal outside Ontario that has jurisdiction to make such an order. 2016, c. 23, s. 1 (1).

Recognition of Canadian orders

(2)  Subject to subsection (3), a court shall recognize an extra-provincial declaratory order made in another jurisdiction in Canada. 2016, c. 23, s. 1 (1).

Exception

(3)  A court may decline to recognize an extra-provincial declaratory order made in another jurisdiction in Canada if,

(a) evidence becomes available that was not available during the proceeding that led to the making of the extra-provincial declaratory order; or

(b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress. 2016, c. 23, s. 1 (1).

Recognition of non-Canadian orders

(4)  Subject to subsection (5), a court shall recognize an extra-provincial declaratory order that was made in a jurisdiction outside Canada if,

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

(b) the child or at least one parent of the child had a real and substantial connection with the jurisdiction of the court or tribunal that made the extra-provincial declaratory order at the time the proceeding that led to its making was commenced or at the time the extra-provincial declaratory order was made. 2016, c. 23, s. 1 (1).

Exception

(5)  A court may decline to recognize an extra-provincial declaratory order made in a jurisdiction outside Canada,

(a) in the circumstances described in clause (3) (a) or (b); or

(b) if the extra-provincial declaratory order is contrary to public policy in Ontario. 2016, c. 23, s. 1 (1).

Effect of recognition of order

(6)  An extra-provincial declaratory order that is recognized by the court shall be deemed to be an order of the court under section 13, and shall be treated for all purposes as if it were an order made under that section. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Other Matters

Corresponding change of surname

**17** (1)  Any person declared under section 10, 11 or 13 to be a parent of a child may apply to the court for an order that the child’s surname be changed to any surname that the child could have been given under subsection 10 (3) or (3.1) of the Vital Statistics Act if the child had been born at the time of the declaration. 2016, c. 23, s. 1 (1, 2).

Same

(2)  An application under subsection (1) to change a child’s surname may be made at the same time as an application for a declaration under section 10, 11 or 13. 2016, c. 23, s. 1 (1).

Best interests of the child

(3)  An order under subsection (1) changing a child’s surname may be made only if it is in the best interests of the child. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1, 2)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

Admissibility in evidence of acknowledgment against interest

**17.1**A written acknowledgment of parentage that is admitted in evidence in any proceeding against the interest of the person making the acknowledgment is proof, in the absence of evidence to the contrary, of the fact. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Blood, DNA tests

**17.2**(1)  On the application of a party in a proceeding in which the court is called on to determine a child’s parentage, the court may give the party leave to obtain a blood test, DNA test or any other test the court considers appropriate of a person named in the order granting leave, and to submit the results in evidence. 2016, c. 23, s. 1 (1).

Conditions

(2)  The court may impose conditions, as it thinks proper, on an order under subsection (1). 2016, c. 23, s. 1 (1).

Consent to procedure

(3)  The Health Care Consent Act, 1996 applies to the test as if it were treatment under that Act. 2016, c. 23, s. 1 (1).

Inference from refusal

(4)  If a person named in an order under subsection (1) refuses to submit to the test, the court may draw such inferences as it thinks appropriate. 2016, c. 23, s. 1 (1).

Exception

(5)  Subsection (4) does not apply if the refusal is the decision of a substitute decision-maker as defined in section 9 of the Health Care Consent Act, 1996. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Confidentiality

**17.3**Section 70 applies with necessary modifications if a proceeding includes an application under this Part. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Court statement

**17.4**On the making of a declaratory order under this Part that a person is or is not a parent of a child, the clerk of the court shall file with the Registrar General a statement, in the form provided by the Ministry of the Attorney General, respecting the order. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Certified copies of documents filed with the Registrar General

Court statement

**17.5**(1)  On application and payment of the required fee under the Vital Statistics Act, any person may obtain from the Registrar General a certified copy of a statement filed under section 17.4. 2016, c. 23, s. 1 (1).

Statutory declaration of parentage

(2)  On application and payment of the required fee under the Vital Statistics Act, any person who has an interest, provides substantially accurate particulars and satisfies the Registrar General as to the reason for requiring it may obtain from the Registrar General a certified copy of a statutory declaration filed under section 12 of this Act as it read before the day subsection 1 (1) of the All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016 came into force. 2016, c. 23, s. 1 (1).

Certified copy as evidence

(3)  A certified copy obtained under this section that is signed by the Registrar General or Deputy Registrar General, or on which the signature of either is reproduced by any method, is admissible in any court in Ontario as proof, in the absence of evidence to the contrary, of the filing and contents of the statement. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Duties of Registrar General

**17.6**Nothing in this Act shall be construed as requiring the Registrar General to amend a registration showing parentage other than in recognition of an order made under this Part and in accordance with the requirements of the Vital Statistics Act. 2016, c. 23, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

[CTS 13 DE 16 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Part II (s. 3-17) Repealed: 2016, c. 23, s. 1 (1).

**Section amendments with date in force (d/m/y)**

3.

1996, c. 25, s. 3 (1) - 31/10/1996

[2001, c. 9, Sched. B, s. 4 (7)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s7) - 29/06/2001

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

4.-6.

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

6.1

[2009, c. 11, s. 4](http://www.ontario.ca/laws/statute/S09011" \l "s4) - 1/03/2010

[2016, c. 5, Sched. 33, s. 8](http://www.ontario.ca/laws/statute/S16005" \l "sched33s8) - no effect - see [2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

7.

[2009, c. 11, s. 5](http://www.ontario.ca/laws/statute/S09011" \l "s5) - 01/03/2010

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

8., 9.

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

10.

1996, c. 2, s. 63 - 29/03/1996

[2006, c. 19, Sched. B, s. 4](http://www.ontario.ca/laws/statute/S06019" \l "schedbs4) - 22/06/2006

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

**11.**Repealed: 2006, c. 19, Sched. B, s. 4.

[2006, c. 19, Sched. B, s. 4](http://www.ontario.ca/laws/statute/S06019" \l "schedbs4) - 22/06/2006

12.

[2009, c. 33, Sched. 2, s. 12 (1, 2, 5)](http://www.ontario.ca/laws/statute/S09033" \l "sched2s12s1) - 15/12/2009

[2012, c. 8, Sched. 7, s. 1](http://www.ontario.ca/laws/statute/S12008" \l "sched7s1) - no effect - see [2016, c. 23, s. 75](http://www.ontario.ca/laws/statute/S16023" \l "s75) - 05/12/2016

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

13.

[2009, c. 33, Sched. 2, s. 12 (5)](http://www.ontario.ca/laws/statute/S09033" \l "sched2s12s5) - 15/12/2009

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

14.

1993, c. 27, Sched. - 31/12/1991

[2009, c. 33, Sched. 2, s. 12 (3, 5)](http://www.ontario.ca/laws/statute/S09033" \l "sched2s12s3) - 15/12/2009

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

15., 16.

[2009, c. 33, Sched. 2, s. 12 (5)](http://www.ontario.ca/laws/statute/S09033" \l "sched2s12s5) - 15/12/2009

[2016, c. 23, s. 1 (1)](http://www.ontario.ca/laws/statute/S16023" \l "s1s1) - 01/01/2017

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

[2009, c. 33, Sched. 2, s. 12 (4)](http://www.ontario.ca/laws/statute/S09033" \l "sched2s12s4) - 15/12/2009

Part III  
Decision-making Responsibility, parenting Time, Contact and Guardianship

Interpretation and Purposes

Definitions and interpretation, Part III

**18** (1)  In this Part,

“contact” means the time a child spends in the care of a person other than the child’s parent, whether or not the child is physically with the person during that time; (“contact”)

“contact order” means an order made under section 28 respecting contact with respect to a child; (“ordonnance de contact”)

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

“decision-making responsibility” means responsibility for making significant decisions about a child’s well-being, including with respect to,

(a) health,

(b) education,

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

(d) significant extra-curricular activities; (“responsabilité décisionnelle”)

“extra-provincial order” means an order of an extra-provincial tribunal, and includes part of an order; (“ordonnance extraprovinciale”)

“extra-provincial tribunal” means a court or tribunal outside Ontario that has jurisdiction to make orders respecting decision-making responsibility, parenting time or contact with respect to a child; (“tribunal extraprovincial”)

“family member” includes a member of a household of a child or of a parent, as well as a dating partner of a parent who participates in the activities of the household; (“membre de la famille”)

“family violence” means any conduct by a family member towards another family member that is violent or threatening, that constitutes a pattern of coercive and controlling behaviour, or that causes the other family member to fear for their own safety or for that of another person, and, in the case of a child, includes direct or indirect exposure to such conduct; (“violence familiale”)

“parenting order” means an order made under section 28 respecting decision-making responsibility or parenting time with respect to a child; (“ordonnance parentale”)

“parenting time” means the time a child spends in the care of a parent of the child, whether or not the child is physically with the parent during that time; (“temps parental”)

“relocation” means a change in residence of a child, or of a person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, that is likely to have a significant impact on the child’s relationship with,

(a) another person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, or

(b) a person who has contact with respect to the child under a contact order; (“déménagement”)

“separation agreement” means an agreement that is a valid separation agreement under Part IV of the Family Law Act. (“accord de séparation”) 2020, c. 25, Sched. 1, s. 2.

“Family violence”

(2)  For the purposes of the definition of “family violence” in subsection (1), the conduct need not constitute a criminal offence, and includes,

(a) physical abuse, including forced confinement but excluding the use of reasonable force to protect oneself or another person;

(b) sexual abuse;

(c) threats to kill or cause bodily harm to any person;

(d) harassment, including stalking;

(e) the failure to provide the necessaries of life;

(f) psychological abuse;

(g) financial abuse;

(h) threats to kill or harm an animal or damage property; and

(i) the killing or harming of an animal or the damaging of property. 2020, c. 25, Sched. 1, s. 2.

Child

(3)  A reference in this Part to a child is a reference to the child while a minor. 2020, c. 25, Sched. 1, s. 2.

Not material change in circumstances

(4)  The enactment or coming into force of any provision of Schedule 1 to the Moving Ontario Family Law Forward Act, 2020 does not in itself constitute a material change in circumstances under this Part. 2020, c. 25, Sched. 1, s. 2.

References to custody, etc.

(5)  Unless the context requires otherwise, a reference in an Act or regulation to custody of a child, including lawful custody or legal custody of a child, includes reference to decision-making responsibility with respect to the child under this Act. 2020, c. 25, Sched. 1, s. 2.

References to access, etc.

(6)  Unless the context requires otherwise, a reference in an Act or regulation to access to a child, including a right of access, a legal right of access, a lawful right of access or a lawful entitlement to access to a child, includes reference to parenting time or contact, as the case may be, with respect to the child under this Act. 2020, c. 25, Sched. 1, s. 2.

**Section amendments with date in force (d/m/y)**

1996, c. 25, s. 3 (2) - 31/10/1996

[2001, c. 9, Sched. B, s. 4 (7, 8)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s7) - 29/06/2001

[2020, c. 25, Sched. 1, s. 2](http://www.ontario.ca/laws/statute/S20025" \l "sched1s2) - 01/03/2021

Purposes, Part III

**19** The purposes of this Part are,

(a) to ensure that applications to the courts respecting decision-making responsibility, parenting time, contact and guardianship with respect to children will be determined on the basis of the best interests of the children;

(b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in relation to the determination of decision-making responsibility with respect to the same child ought to be avoided, and to make provision so that the courts of Ontario will, unless there are exceptional circumstances, refrain from exercising or decline jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection;

(c) to discourage the abduction of children as an alternative to the determination of decision-making responsibility by due process; and

(d) to provide for the more effective enforcement of parenting orders and contact orders, and for the recognition and enforcement of orders made outside Ontario that grant decision-making responsibility, parenting time or contact with respect to a child. 2020, c. 25, Sched. 1, s. 2.

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 2](http://www.ontario.ca/laws/statute/S20025" \l "sched1s2) - 01/03/2021

Decision-Making Responsibility, Parenting Time and Contact

Equal entitlement to decision-making responsibility

**20** (1)  Except as otherwise provided in this Part, a child’s parents are equally entitled to decision-making responsibility with respect to the child. 2020, c. 25, Sched. 1, s. 2.

Rights and responsibilities

(2)  A person entitled to decision-making responsibility with respect to a child has the rights and responsibilities of a parent in respect of the child, and must exercise those rights and responsibilities in the best interests of the child. 2020, c. 25, Sched. 1, s. 2.

Authority to act

(3)  If more than one person is entitled to decision-making responsibility with respect to a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child. 2020, c. 25, Sched. 1, s. 2.

If parents separate

(4)  If the parents of a child live separate and apart and the child lives with one of them with the consent, implied consent or acquiescence of the other, the right of the other to exercise the entitlement to decision-making responsibility with respect to the child, but not the entitlement to parenting time, is suspended until a separation agreement or order provides otherwise. 2020, c. 25, Sched. 1, s. 2.

Parenting time

(5)  The entitlement to parenting time with respect to a child includes the right to visit with and be visited by the child, and includes the same right as a parent to make inquiries and to be given information about the child’s well-being, including in relation to the child’s health and education. 2020, c. 25, Sched. 1, s. 2.

Marriage of child

(6)  The entitlement to decision-making responsibility or parenting time with respect to a child terminates on the marriage of the child. 2020, c. 25, Sched. 1, s. 2.

Entitlement subject to agreement or order

(7)  Any entitlement to decision-making responsibility or parenting time under this section is subject to alteration by an order of the court or by a separation agreement. 2020, c. 25, Sched. 1, s. 2.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 77 - See: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2016, c. 23, s. 2 (1-4)](http://www.ontario.ca/laws/statute/S16023" \l "s2s1) - 01/01/2017

[2020, c. 25, Sched. 1, s. 2](http://www.ontario.ca/laws/statute/S20025" \l "sched1s2) - 01/03/2021

Application for parenting order or contact order

Parenting order, application by parent

**21** (1)  A parent of a child may apply to a court for a parenting order respecting,

(a) decision-making responsibility with respect to the child; and

(b) parenting time with respect to the child. 2020, c. 25, Sched. 1, s. 2.

Parenting order, application by non-parent

(2)  Any person other than the parent of a child, including a grandparent, may apply to a court for a parenting order respecting decision-making responsibility with respect to the child. 2020, c. 25, Sched. 1, s. 2.

Contact order

(3)  Any person other than the parent of a child, including a grandparent, may apply to a court for a contact order with respect to the child. 2020, c. 25, Sched. 1, s. 2.

Affidavit

(4)  An application under subsection (1) or (2) for a parenting order or subsection (3) for a contact order shall be accompanied by an affidavit, in the form specified for the purpose by the rules of court, of the person applying for the order, containing,

(a) the person’s proposed plan for the child’s care and upbringing;

(b) information respecting the person’s current or previous involvement in any family proceedings, including proceedings under Part V of the Child, Youth and Family Services Act, 2017, or in any criminal proceedings; and

(c) any other information known to the person that is relevant to the factors to be considered by the court under section 24 in determining the best interests of the child. 2020, c. 25, Sched. 1, s. 2.

**Section amendments with date in force (d/m/y)**

[2009, c. 11, s. 6](http://www.ontario.ca/laws/statute/S09011" \l "s6) - 01/03/2010

[2016, c. 23, s. 3](http://www.ontario.ca/laws/statute/S16023" \l "s3) - 01/01/2017; [2016, c. 28, s. 1](http://www.ontario.ca/laws/statute/S16028" \l "s1)- 08/12/2016

[2017, c. 14, Sched. 4, s. 4 (2)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s2) - 30/04/2018

[2020, c. 25, Sched. 1, s. 2](http://www.ontario.ca/laws/statute/S20025" \l "sched1s2) - 01/03/2021

Police records checks, non-parents

**21.1**(1)  Every person who applies under section 21 for a parenting order respecting decision-making responsibility with respect to the child and who is not a parent of the child shall file with the court the results of a recent police records check respecting the person in accordance with the rules of court. 2009, c. 11, s. 7; 2016, c. 23, s. 4; 2020, c. 25, Sched. 1, s. 3 (1).

Admissibility

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

Use of evidence

(3)  Subject to subsection 24 (5), evidence that is determined by the court to be admissible under subsection (2) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 7; 2020, c. 25, Sched. 1, s. 3 (2).

Regulations

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

**Section amendments with date in force (d/m/y)**

[2009, c. 11, s. 7](http://www.ontario.ca/laws/statute/S09011" \l "s7) - 01/03/2010

[2016, c. 23, s. 4](http://www.ontario.ca/laws/statute/S16023" \l "s4) - 01/01/2017

[2020, c. 25, Sched. 1, s. 3 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s3s1) - 01/03/2021

CAS records search, non-parents

Definition

**21.2**(1)  In this section,

“society” means an agency designated as a children’s aid society under the Child, Youth and Family Services Act, 2017. 2017, c. 14, Sched. 4, s. 4 (3).

Request for report

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

(a) whether a society has records relating to the applicant; and

(b) if there are records and the records indicate that one or more files relating to the applicant have been opened, the date on which each file was opened and, if the file was closed, the date on which the file was closed. 2020, c. 25, Sched. 1, s. 4 (1).

Request to be filed

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

Report required

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

Duty of clerk

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

(a) give a copy of the report to every other party and to counsel, if any, representing the child; and

(b) file the report in the court file. 2009, c. 11, s. 8.

Exception

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

(a) that the time period referred to in subsection (5) be lengthened; or

(b) that all or part of the report be sealed in the court file and not disclosed if,

(i) the court determines that some or all of the information contained in the report is not relevant to the application, or

(ii) the party withdraws the application. 2009, c. 11, s. 8.

Admissibility

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

Use of evidence

(8)  Subject to subsection 24 (5), evidence that is determined by the court to be admissible under subsection (7) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 8; 2020, c. 25, Sched. 1, s. 4 (2).

Interpretation

(9)  Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 87 (8) of the Child, Youth and Family Services Act, 2017or an order under clause 70 (1) (b) of this Act. 2017, c. 14, Sched. 4, s. 4 (4).

Regulations

(10)  The Lieutenant Governor in Council may make regulations for the purposes of subsection (2),

(a) specifying one or more societies or other bodies or persons to whom a request must be submitted;

(b) governing the manner and scope of the search required to be undertaken in response to a request;

(c) specifying classes of files that shall be excluded from the report. 2009, c. 11, s. 8.

**Section amendments with date in force (d/m/y)**

[2009, c. 11, s. 8](http://www.ontario.ca/laws/statute/S09011" \l "s8) - 01/03/2010

[2016, c. 23, s. 4](http://www.ontario.ca/laws/statute/S16023" \l "s4) - 01/01/2017

[2017, c. 14, Sched. 4, s. 4 (3, 4)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s3) - 30/04/2018

[2020, c. 25, Sched. 1, s. 4 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s4s1) - 01/03/2021

Other proceedings, non-parents

**21.3**(1)  If an application for a parenting order respecting decision-making responsibility with respect to a child is made by a person who is not a parent of the child, the clerk of the court shall provide to the court and to the parties information in writing respecting any current or previous family proceedings involving the child or any person who is a party to the application and who is not a parent of the child. 2020, c. 25, Sched. 1, s. 5 (1).

Same

(2)  If an application for a parenting order respecting decision-making responsibility with respect to a child is made by a person who is not a parent of the child, the court may require the clerk of the court to provide to the court and to the parties information in writing respecting any current or previous criminal proceedings involving any person who is a party to the application and who is not a parent of the child. 2020, c. 25, Sched. 1, s. 5 (1).

Same

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

Admissibility

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

Use of evidence

(5)  Subject to subsection 24 (5), evidence that is determined by the court to be admissible under subsection (4) shall be considered in determining the best interests of the child under section 24. 2009, c. 11, s. 9; 2020, c. 25, Sched. 1, s. 5 (2).

Interpretation

(6)  Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 87 (8) of the Child, Youth and Family Services Act, 2017 or an order under clause 70 (1) (b) of this Act. 2017, c. 14, Sched. 4, s. 4 (5).

Regulations

(7)  The Attorney General may make regulations for the purposes of this section,

(a) defining “family proceeding” and “criminal proceeding”;

(b) prescribing the scope, content and form of the written information that shall or may be provided under this section;

(c) providing for a process for removing from the written information provided under subsection (1) or (2) information respecting a proceeding that does not involve the child who is the subject of the application or a person who is a party and is not a parent of the child, as the case may be. 2009, c. 11, s. 9; 2016, c. 23, s. 5 (2).

**Section amendments with date in force (d/m/y)**

[2009, c. 11, s. 9](http://www.ontario.ca/laws/statute/S09011" \l "s9) - 01/03/2010

[2016, c. 23, s. 5 (1, 2)](http://www.ontario.ca/laws/statute/S16023" \l "s5s1) - 01/01/2017

[2017, c. 14, Sched. 4, s. 4 (5)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s5) - 30/04/2018

[2020, c. 25, Sched. 1, s. 5 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s5s1) - 01/03/2021

Jurisdiction

**22** (1)  A court shall only exercise its jurisdiction to make a parenting order or contact order with respect to a child if,

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

(b) the child is not habitually resident in Ontario, but the court is satisfied that,

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

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

(iii) no application respecting decision-making responsibility, parenting time or contact with respect to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,

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

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

(vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario. 2020, c. 25, Sched. 1, s. 6.

Habitual residence

(2)  A child is habitually resident in the place where the child resided in whichever of the following circumstances last occurred:

1. With both parents.

2. If the parents are living separate and apart, with one parent under a separation agreement or with the consent, implied consent or acquiescence of the other or under a court order.

3. With a person other than a parent on a permanent basis for a significant period of time. 2020, c. 25, Sched. 1, s. 6.

Abduction

(3)  The removal or withholding of a child without the consent of all persons having decision-making responsibility with respect to 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. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 6 (1-3)](http://www.ontario.ca/laws/statute/S16023" \l "s6s1) - 01/01/2017

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Serious harm to child

**23** Despite sections 22 and 41, a court may exercise its jurisdiction to make or vary a parenting order or contact order with respect to a child if,

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

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

(i) the child remains with a person legally entitled to decision-making responsibility with respect to the child,

(ii) the child is returned to a person legally entitled to decision-making responsibility with respect to the child, or

(iii) the child is removed from Ontario. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Best interests of the child

**24** (1)  In making a parenting order or contact order with respect to a child, the court shall only take into account the best interests of the child in accordance with this section. 2020, c. 25, Sched. 1, s. 6.

Primary consideration

(2)  In determining the best interests of a child, the court shall consider all factors related to the circumstances of the child, and, in doing so, shall give primary consideration to the child’s physical, emotional and psychological safety, security and well-being. 2020, c. 25, Sched. 1, s. 6.

Factors

(3)  Factors related to the circumstances of a child include,

(a) the child’s needs, given the child’s age and stage of development, such as the child’s need for stability;

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

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

(d) the history of care of the child;

(e) the child’s views and preferences, giving due weight to the child’s age and maturity, unless they cannot be ascertained;

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

(g) any plans for the child’s care;

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

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, in particular with one another, on matters affecting the child;

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

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

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

(k) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child. 2020, c. 25, Sched. 1, s. 6.

Factors relating to family violence

(4)  In considering the impact of any family violence under clause (3) (j), the court shall take into account,

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

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

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

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

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

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

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

(h) any other relevant factor. 2020, c. 25, Sched. 1, s. 6.

Past conduct

(5)  In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person, unless the conduct is relevant to the exercise of the person’s decision-making responsibility, parenting time or contact with respect to the child. 2020, c. 25, Sched. 1, s. 6.

Allocation of parenting time

(6)  In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child. 2020, c. 25, Sched. 1, s. 6.

Application to related orders

(7)  This section applies with respect to interim parenting orders and contact orders, and to variations of parenting orders and contact orders or interim parenting orders and contact orders. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 78 (1) - no effect - see [2006, c. 1, s. 3 (2)](http://www.ontario.ca/laws/statute/S06001" \l "s3s2) - 23/02/2006

1999, c. 6, s. 7 (1) - 31/03/2000

[2005, c. 5, s. 8 (1-3)](http://www.ontario.ca/laws/statute/S05005" \l "s8s1) - 09/03/2005

[2006, c. 1, s. 3 (1)](http://www.ontario.ca/laws/statute/S06001" \l "s3s1) - 23/02/2006

[2009, c. 11, s. 10](http://www.ontario.ca/laws/statute/S09011" \l "s10) - 01/03/2010

[2016, c. 23, s. 7 (1-3)](http://www.ontario.ca/laws/statute/S16023" \l "s7s1) - 01/01/2017; [2016, c. 28, s. 2](http://www.ontario.ca/laws/statute/S16028" \l "s2) - 08/12/2016

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Declining jurisdiction

**25** A court having jurisdiction under this Part in relation to decision-making responsibility, parenting time or contact with respect to a child may decline to exercise its jurisdiction if it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Ontario. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Delay

**26** (1)  If an application under this Part in relation to decision-making responsibility, parenting time or contact with respect to a child has not been heard within six months after the commencement of the proceedings, the clerk of the court shall list the application for the court and give notice to the parties of the date and time when and the place where the court will fix a date for the hearing of the application. 2020, c. 25, Sched. 1, s. 6.

Exception

(2)  Subsection (1) does not apply to an application under this Part in relation to decision-making responsibility, parenting time or contact with respect to a child if the child is the subject of an application or order under Part V of the Child, Youth and Family Services Act, 2017, unless the application under this Part relates to,

(a) an order in respect of the child that was made under subsection 102 (1) of the Child, Youth and Family Services Act, 2017;

(b) an order referred to in subsection 102 (3) of the Child, Youth and Family Services Act, 2017 that was made at the same time as an order under subsection 102 (1) of that Act; or

(c) an access order in respect of the child under section 104 of the Child, Youth and Family Services Act, 2017 that was made at the same time as an order under subsection 102 (1) of that Act. 2020, c. 25, Sched. 1, s. 6.

Directions

(3)  At a hearing of a matter listed by the clerk in accordance with subsection (1), the court may by order fix a date for the hearing of the application and may give such directions in respect of the proceedings and make such order in respect of the costs of the proceedings as the court considers appropriate. 2020, c. 25, Sched. 1, s. 6.

Early date

(4)  If the court fixes a date under subsection (3), the court shall fix the earliest date that, in the opinion of the court, is compatible with a just disposition of the application. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

[2006, c. 5, s. 51 (1)](http://www.ontario.ca/laws/statute/S06005" \l "s51s1) - 30/11/2006

[2009, c. 11, s. 11 (1, 2)](http://www.ontario.ca/laws/statute/S09011" \l "s11s1) - 14/05/2009

[2017, c. 14, Sched. 4, s. 4 (6)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s6) - 30/04/2018

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Effect of divorce proceedings

**27** If an action for divorce is commenced under the Divorce Act (Canada), any application under this Part in relation to decision-making responsibility, parenting time or contact with respect to a child that has not been determined is stayed except by leave of the court. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Parenting Orders and Contact Orders

Parenting orders and contact orders

**28** (1)  The court to which an application is made under section 21,

(a) may by order grant,

(i) decision-making responsibility with respect to a child to one or more persons, in the case of an application under clause 21 (1) (a) or subsection 21 (2),

(ii) parenting time with respect to a child to one or more parents of the child, in the case of an application under clause 21 (1) (b), or

(iii) contact with respect to a child to one or more persons other than a parent of the child, in the case of an application under subsection 21 (3);

(b) may by order determine any aspect of the incidents of the right to decision-making responsibility, parenting time or contact, as the case may be, with respect to a child; and

(c) may make any additional order the court considers necessary and proper in the circumstances, including an order,

(i) limiting the duration, frequency, manner or location of contact or communication between any of the parties, or between a party and the child,

(ii) prohibiting a party or other person from engaging in specified conduct in the presence of the child or at any time when the person is responsible for the care of the child,

(iii) prohibiting a party from changing the child’s residence, school or day care facility without the consent of another party or an order of the court,

(iv) prohibiting a party from removing the child from Ontario without the consent of another party or an order of the court,

(v) requiring the delivery, to the court or to a person or body specified by the court, of the child’s passport, the child’s health card within the meaning of the Health Insurance Act or any other document relating to the child that the court may specify,

(vi) requiring a party to give information or to consent to the release of information respecting the child’s well-being, including in relation to the child’s health and education, to another party or other person specified by the court, or

(vii) requiring a party to facilitate communication by the child with another party or other person specified by the court in a manner that is appropriate for the child. 2020, c. 25, Sched. 1, s. 6.

Exception

(2)  If an application is made under section 21 with respect to a child who is the subject of an order made under section 102 of the Child, Youth and Family Services Act, 2017, the court shall treat the application as if it were an application to vary an order made under this section. 2020, c. 25, Sched. 1, s. 6.

Same

(3)  If an order for access to a child was made under Part V of the Child, Youth and Family Services Act, 2017 at the same time as an order for custody of the child was made under section 102 of that Act, the court shall treat an application under section 21 of this Act relating to parenting time or contact with respect to the child as if it were an application to vary an order made under this section. 2020, c. 25, Sched. 1, s. 6.

Allocation of decision-making responsibility

(4)  The court may allocate decision-making responsibility with respect to a child, or any aspect of it, to one or more persons. 2020, c. 25, Sched. 1, s. 6.

Allocation of parenting time

(5)  The court may allocate parenting time with respect to a child by way of a schedule. 2020, c. 25, Sched. 1, s. 6.

Parenting time, day-to-day decisions

(6)  Unless the court orders otherwise, a person to whom the court allocates parenting time with respect to a child has exclusive authority during that time to make day-to-day decisions affecting the child. 2020, c. 25, Sched. 1, s. 6.

Parenting plan

(7)  The court shall include in a parenting order or contact order any written parenting plan submitted by the parties that contains the elements relating to decision-making responsibility, parenting time or contact to which the parties agree, subject to any changes the court may specify if it considers it to be in the best interests of the child to do so. 2020, c. 25, Sched. 1, s. 6.

Right to ask for and receive information

(8)  Unless a court orders otherwise, a person to whom decision-making responsibility or parenting time has been granted with respect to a child under a parenting order is entitled to ask for and, subject to any applicable laws, receive information about the child’s well-being, including in relation to the child’s health and education, from,

(a) any other person to whom decision-making responsibility or parenting time has been granted with respect to the child under a parenting order; and

(b) any other person who is likely to have such information. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 79 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2006, c. 5, s. 51 (2)](http://www.ontario.ca/laws/statute/S06005" \l "s51s2) - 30/11/2006

[2009, c. 11, s. 12](http://www.ontario.ca/laws/statute/S09011" \l "s12) - 15/10/2009

[2017, c. 14, Sched. 4, s. 4 (7)](http://www.ontario.ca/laws/statute/S17014" \l "sched4s4s7) - 30/04/2018

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Variation of orders

**29** (1)  A court shall not make an order under this Part that varies a parenting order or contact order unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child who is the subject of the order. 2020, c. 25, Sched. 1, s. 6.

Relocation

(2)  For the purposes of subsection (1), the relocation of a child in accordance with section 39.4 constitutes a material change in circumstances unless the relocation had been prohibited by a court, in which case the relocation does not, in itself, constitute a material change in circumstances. 2020, c. 25, Sched. 1, s. 6.

Corresponding variation of parenting order

(3)  If the court varies a contact order, it may also vary the parenting order to take into account the variation of the contact order. 2020, c. 25, Sched. 1, s. 6.

Corresponding variation of contact order

(4)  If the court varies a parenting order, it may also vary any contact order to take into account the variation of the parenting order. 2020, c. 25, Sched. 1, s. 6.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 80 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2020, c. 25, Sched. 1, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched1s6) - 01/03/2021

Decision-Making Responsibility, Parenting Time and Contact — Assistance to Court

Assessment of needs of child

**30** (1)  The court before which an application is brought for a parenting order or contact order with respect to a child, by order, may appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child. R.S.O. 1990, c. C.12, s. 30 (1); 2020, c. 25, Sched. 1, s. 8 (1).

When order may be made

(2)  An order may be made under subsection (1) on or before the hearing of the application and with or without a request by a party to the application. R.S.O. 1990, c. C.12, s. 30 (2); 2020, c. 25, Sched. 1, s. 8 (2).

Agreement by parties

(3)  The court shall, if possible, appoint a person agreed upon by the parties, but if the parties do not agree the court shall choose and appoint the person. R.S.O. 1990, c. C.12, s. 30 (3).

Consent to act

(4)  The court shall not appoint a person under subsection (1) unless the person has consented to make the assessment and to report to the court within the period of time specified by the court. R.S.O. 1990, c. C.12, s. 30 (4).

Attendance for assessment

(5)  In an order under subsection (1), the court may require the parties, the child and any other person who has been given notice of the proposed order, or any of them, to attend for assessment by the person appointed by the order. R.S.O. 1990, c. C.12, s. 30 (5).

Refusal to attend

(6)  Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the court may draw such inferences in respect of the ability and willingness of any person to satisfy the needs of the child as the court considers appropriate. R.S.O. 1990, c. C.12, s. 30 (6).

Report

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

Copies of report

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

Admissibility of report

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

Assessor may be witness

(10)  Any of the parties, and counsel, if any, representing the child, may require the person appointed under subsection (1) to attend as a witness at the hearing of the application. R.S.O. 1990, c. C.12, s. 30 (10).

Directions

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

Fees and expenses

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

Same, proportions or amounts

(13)  The court shall specify in the order the proportions or amounts of the fees and expenses that the court requires each party to pay. R.S.O. 1990, c. C.12, s. 30 (13).

Same, serious financial hardship

(14)  The court may relieve a party from responsibility for payment of any of the fees and expenses of the person appointed under subsection (1) where the court is satisfied that payment would cause serious financial hardship to the party. R.S.O. 1990, c. C.12, s. 30 (14).

Other expert evidence

(15)  The appointment of a person under subsection (1) does not prevent the parties or counsel representing the child from submitting other expert evidence as to the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child. R.S.O. 1990, c. C.12, s. 30 (15).

**Section amendments with date in force (d/m/y)**

1990, c. C.12,s. 81 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2009, c. 11, s. 13 (1, 2)](http://www.ontario.ca/laws/statute/S09011" \l "s13s1) - 14/05/2009

[2020, c. 25, Sched. 1, s. 8 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s8s1) - 01/03/2021

Mediation

**31** (1)  Upon an application for a parenting order or contact order, the court, at the request of the parties, by order may appoint a person selected by the parties to mediate any matter specified in the order. R.S.O. 1990, c. C.12, s. 31 (1); 2020, c. 25, Sched. 1, s. 9.

Consent to act

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

(a) has consented to act as mediator; and

(b) has agreed to file a report with the court within the period of time specified by the court. R.S.O. 1990, c. C.12, s. 31 (2).

Duty of mediator

(3)  It is the duty of a mediator to confer with the parties and endeavour to obtain an agreement in respect of the matter. R.S.O. 1990, c. C.12, s. 31 (3).

Form of report

(4)  Before entering into mediation on the matter, the parties shall decide whether,

(a) the mediator is to file a full report on the mediation, including anything that the mediator considers relevant to the matter in mediation; or

(b) the mediator is to file a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter. R.S.O. 1990, c. C.12, s. 31 (4).

Filing of report

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

Copies of report

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

Admissions made in the course of mediation

(7)  Where the parties have decided that the mediator’s report is to be in the form described in clause (4) (b), evidence of anything said or of any admission or communication made in the course of the mediation is not admissible in any proceeding except with the consent of all parties to the proceeding in which the order was made under subsection (1). R.S.O. 1990, c. C.12, s. 31 (7).

Fees and expenses

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

Same, proportions or amounts

(9)  The court shall specify in the order the proportions or amounts of the fees and expenses that the court requires each party to pay. R.S.O. 1990, c. C.12, s. 31 (9).

Same, serious financial hardship

(10)  The court may relieve a party from responsibility for payment of any of the fees and expenses of the mediator where the court is satisfied that payment would cause serious financial hardship to the party. R.S.O. 1990, c. C.12, s. 31 (10).

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 82 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2009, c. 11, s. 14 (1, 2)](http://www.ontario.ca/laws/statute/S09011" \l "s14s1) - 14/05/2009

[2020, c. 25, Sched. 1, s. 9](http://www.ontario.ca/laws/statute/S20025" \l "sched1s9) - 01/03/2021

Further evidence from outside Ontario

**32** (1)  Where a court is of the opinion that it is necessary to receive further evidence from a place outside Ontario before making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside Ontario such supporting material as may be necessary together with a request,

(a) that the Attorney General, Minister of Justice or similar officer take such action as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application; and

(b) that the Attorney General, Minister of Justice or similar officer or the tribunal send to the court a certified copy of the evidence produced or given before the tribunal. R.S.O. 1990, c. C.12, s. 32 (1).

Cost of obtaining evidence

(2)  A court that acts under subsection (1) may assess the cost of so acting against one or more of the parties to the application or may deal with such cost as costs in the cause. R.S.O. 1990, c. C.12, s. 32 (2).

Request from outside Ontario for further evidence

**33** (1)  Where the Attorney General receives from an extra-provincial tribunal a request similar to that referred to in section 32 and such supporting material as may be necessary, it is the duty of the Attorney General to refer the request and the material to the proper court. R.S.O. 1990, c. C.12, s. 33 (1).

Obtaining evidence

(2)  A court to which a request is referred by the Attorney General under subsection (1) shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request. R.S.O. 1990, c. C.12, s. 33 (2).

Decision-Making Responsibility, Parenting Time and Contact — Duties

Parties

Best interests of the child

**33.1**(1)  A person to whom decision-making responsibility, parenting time or contact has been granted with respect to a child under a parenting order or contact order shall exercise the decision-making responsibility, parenting time or contact in a manner that is consistent with the best interests of the child within the meaning of section 24. 2020, c. 25, Sched. 1, s. 10.

Protection of children from conflict

(2)  A party to a proceeding under this Part shall, to the best of the party’s ability, protect any child from conflict arising from the proceeding. 2020, c. 25, Sched. 1, s. 10.

Alternative dispute resolution process

(3)  To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Part through an alternative dispute resolution process, such as negotiation, mediation or collaborative law. 2020, c. 25, Sched. 1, s. 10.

Complete, accurate and up-to-date information

(4)  A party to a proceeding under this Part, or a person who is subject to an order made under this Part, shall provide complete, accurate and up-to-date information if required to do so under this Part. 2020, c. 25, Sched. 1, s. 10.

Duty to comply with orders

(5)  For greater certainty, a person who is subject to an order made under this Part shall comply with the order until it is no longer in effect. 2020, c. 25, Sched. 1, s. 10.

Certification

(6)  Every document that commences a proceeding under this Part, or that responds to such a document, that is filed with a court by a party to a proceeding shall contain a statement by the party certifying that the party is aware of the duties to which the party is subject under subsections (1) to (5). 2020, c. 25, Sched. 1, s. 10.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 10](http://www.ontario.ca/laws/statute/S20025" \l "sched1s10) - 01/03/2021

Legal adviser

Definitions

**33.2**(1)  In this section,

“family justice services” means public or private services intended to help persons deal with issues arising from separation or divorce; (“services de justice familiale”)

“legal adviser” means a person authorized under the Law Society Act to practise law or provide legal services to another person in a proceeding under this Part. (“conseiller juridique”) 2020, c. 25, Sched. 1, s. 10.

Duty to discuss and inform

(2)  It is the duty of every legal adviser who undertakes to act on a person’s behalf in any proceeding under this Part,

(a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Part through an alternative dispute resolution process, as provided for under subsection 33.1 (3), unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;

(b) to inform the person of the family justice services known to the legal adviser that might assist the person,

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

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

(c) to inform the person of the parties’ duties under this Part. 2020, c. 25, Sched. 1, s. 10.

Certification

(3)  Every document that commences a proceeding under this Part, or that responds to such a document, that is filed with a court by a legal adviser shall contain a statement by the legal adviser certifying that the legal adviser has complied with subsection (2). 2020, c. 25, Sched. 1, s. 10.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 10](http://www.ontario.ca/laws/statute/S20025" \l "sched1s10) - 01/03/2021

Court

**33.3**(1)  The purpose of this section is to facilitate,

(a) the identification of orders, undertakings, recognizances, agreements or measures that may conflict with a parenting order or contact order; and

(b) the co-ordination of proceedings. 2020, c. 25, Sched. 1, s. 10.

Information regarding other orders or proceedings

(2)  The court has a duty to consider if any of the following are pending or in effect in relation to any party to a proceeding under this Part, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so:

1. A restraining order under section 35, the Family Law Act or the Child, Youth and Family Services Act, 2017, or any other civil order made to protect a person’s safety, including an order that prohibits a person from,

i. being in physical proximity to a specified person or following a specified person from place to place,

ii. contacting or communicating with a specified person, either directly or indirectly,

iii. attending at or being within a certain distance of a specified place or location,

iv. engaging in harassing or threatening conduct directed at a specified person,

v. occupying a family home or a residence, or

vi. engaging in family violence.

2. A child protection order, proceeding, agreement or measure.

3. An order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature. 2020, c. 25, Sched. 1, s. 10.

Inquiries

(3)  In order to carry out its duty under subsection (2), the court may make inquiries of the parties or review information that is readily available and that has been obtained through a lawful search. 2020, c. 25, Sched. 1, s. 10.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 10](http://www.ontario.ca/laws/statute/S20025" \l "sched1s10) - 01/03/2021

Decision-Making Responsibility, Parenting Time and Contact — Enforcement

Supervision of parenting orders and contact orders

**34** (1)  A court may give such directions as it considers appropriate for the supervision, by a person, a children’s aid society or other body, of decision-making responsibility, parenting time or contact with respect to a child under a parenting order or contact order. 2020, c. 25, Sched. 1, s. 11.

Consent to act

(2)  A court shall not direct a person, a children’s aid society or other body to supervise the exercise of decision-making responsibility, parenting time or contact under subsection (1) unless the person, society or body has consented to act as supervisor. 2020, c. 25, Sched. 1, s. 11.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 83 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

[2001, c. 9, Sched. B, s. 4 (8, 9)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s8) - 29/06/2001

[2020, c. 25, Sched. 1, s. 11](http://www.ontario.ca/laws/statute/S20025" \l "sched1s11) - 01/03/2021

Restraining order

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

Provisions of order

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

1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant’s lawful custody.

2. Restraining the respondent from coming within a specified distance of one or more locations.

3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.

4. Any other provision that the court considers appropriate. 2009, c. 11, s. 15.

Transition

(3)  This section, as it read on October 14, 2009, continues to apply to,

(a) any prosecution or other proceeding begun under this section before October 15, 2009; and

(b) any order made under this section that was in force on October 14, 2009. 2009, c. 11, s. 15; 2014, c. 7, Sched. 4, s. 1.

**Section amendments with date in force (d/m/y)**

[2000, c. 33, s. 21 (1, 2)](http://www.ontario.ca/laws/statute/S00033" \l "s21s2) - no effect - see [2000, c. 33, s. 21 ( 2)](http://www.ontario.ca/laws/statute/S00033" \l "s21s2) - 14/05/2009

[2009, c. 11, s. 15](http://www.ontario.ca/laws/statute/S09011" \l "s15) - 15/10/2009

[2014, c. 7, Sched. 4, s. 1](http://www.ontario.ca/laws/statute/S14007" \l "sched4s1s1) - 24/07/2014

Order where child unlawfully withheld

**36** (1)  Where a court is satisfied upon application by a person in whose favour a parenting order or contact order has been made with respect to a child that there are reasonable and probable grounds for believing that any person is unlawfully withholding the child from the applicant, the court by order may authorize the applicant or someone on his or her behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to decision-making responsibility, parenting time or contact, as the case may be. R.S.O. 1990, c. C.12, s. 36 (1); 2020, c. 25, Sched. 1, s. 12 (1).

Order to locate and take child

(2)  Where a court is satisfied upon application that there are reasonable and probable grounds for believing,

(a) that any person is unlawfully withholding a child from a person entitled to decision-making responsibility, parenting time or contact with respect to the child;

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

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

the court by order may direct a police service, having jurisdiction in any area where it appears to the court that the child may be, to locate, apprehend and deliver the child to the person named in the order. R.S.O. 1990, c. C.12, s. 36 (2); 2020, c. 25, Sched. 1, s. 12 (2); 2019, c. 1, Sched. 4, s. 5 (1).

Application without notice

(3)  An order may be made under subsection (2) upon an application without notice where the court is satisfied that it is necessary that action be taken without delay. R.S.O. 1990, c. C.12, s. 36 (3).

Duty to act

(4)  The police service directed to act by an order under subsection (2) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order. R.S.O. 1990, c. C.12, s. 36 (4); 2019, c. 1, Sched. 4, s. 5 (2).

Entry and search

(5)  For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a member of a police service may enter and search any place where he or she has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances. R.S.O. 1990, c. C.12, s. 36 (5); 2019, c. 1, Sched. 4, s. 5 (3).

Time

(6)  An entry or a search referred to in subsection (5) shall be made only between 6 a.m. and 9 p.m. standard time unless the court, in the order, authorizes entry and search at another time. R.S.O. 1990, c. C.12, s. 36 (6).

Expiration of order

(7)  An order made under subsection (2) shall name a date on which it expires, which shall be a date not later than six months after it is made unless the court is satisfied that a longer period of time is necessary in the circumstances. R.S.O. 1990, c. C.12, s. 36 (7).

When application may be made

(8)  An application under subsection (1) or (2) may be made in an application for a parenting order or contact order or at any other time. R.S.O. 1990, c. C.12, s. 36 (8); 2020, c. 25, Sched. 1, s. 12 (3).

**Section amendments with date in force (d/m/y)**

[2018, c. 3, Sched. 5, s. 6 (1-3)](http://www.ontario.ca/laws/statute/S18003" \l "sched5s6s1) - no effect - see [2019, c. 1, Sched. 3, s. 5](http://www.ontario.ca/laws/statute/S19001" \l "sched3s5) - 26/03/2019

[2019, c. 1, Sched. 4, s. 5 (1-3)](http://www.ontario.ca/laws/statute/S19001" \l "sched4s5s1) - 01/04/2024

[2020, c. 25, Sched. 1, s. 12 (1-3)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s12s1) - 01/03/2021

Court orders, removal and return of children

To prevent unlawful removal of child

**37** (1)  Where a court, upon application, is satisfied upon reasonable and probable grounds that a person prohibited by court order or separation agreement from removing a child from Ontario proposes to remove the child from Ontario, the court in order to prevent the removal of the child from Ontario may make an order under subsection (3). R.S.O. 1990, c. C.12, s. 37 (1).

To ensure return of child

(2)  Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to parenting time or contact with respect to a child proposes to remove the child from Ontario and is not likely to return the child to Ontario, the court in order to secure the prompt, safe return of the child to Ontario may make an order under subsection (3). R.S.O. 1990, c. C.12, s. 37 (2); 2020, c. 25, Sched. 1, s. 13.

Order by court

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

1. Transfer specific property to a named trustee to be held subject to the terms and conditions specified in the order.

2. Where payments have been ordered for the support of the child, make the payments to a specified trustee subject to the terms and conditions specified in the order.

3. Post a bond, with or without sureties, payable to the applicant in such amount as the court considers appropriate.

4. Deliver the person’s passport, the child’s passport and any other travel documents of either of them that the court may specify to the court or to an individual or body specified by the court. R.S.O. 1990, c. C.12, s. 37 (3); 2009, c. 11, s. 16.

Same, Ontario Court of Justice

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

Terms and conditions

(5)  In an order under paragraph 1 of subsection (3), the court may specify terms and conditions for the return or the disposition of the property as the court considers appropriate. R.S.O. 1990, c. C.12, s. 37 (5).

Safekeeping

(6)  A court or an individual or body specified by the court in an order under paragraph 4 of subsection (3) shall hold a passport or travel document delivered in accordance with the order in safekeeping in accordance with any directions set out in the order. R.S.O. 1990, c. C.12, s. 37 (6).

Directions

(7)  In an order under subsection (3), a court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate. R.S.O. 1990, c. C.12, s. 37 (7).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (8)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s8) - 29/06/2001

[2009, c. 11, s. 16](http://www.ontario.ca/laws/statute/S09011" \l "s16) - 14/05/2009

[2020, c. 25, Sched. 1, s. 13](http://www.ontario.ca/laws/statute/S20025" \l "sched1s13) - 01/03/2021

Contempt of orders of Ontario Court of Justice

**38** (1)  In addition to its powers in respect of contempt, the Ontario Court of Justice may punish by fine or imprisonment, or both, any wilful contempt of or resistance to its process or orders under this Act, other than orders under section 35, but the fine shall not in any case exceed $5,000 nor shall the imprisonment exceed ninety days. R.S.O. 1990, c. C.12, s. 38 (1); 2001, c. 9, Sched. B, s. 4 (8); 2014, c. 7, Sched. 4, s. 2 (1).

Conditions of imprisonment

(2)  An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. R.S.O. 1990, c. C.12, s. 38 (2).

Transition

(3)  This section, as it read on October 14, 2009, continues to apply to orders referred to in clause 35 (3) (b). 2014, c. 7, Sched. 4, s. 2 (2).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (8)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s8) - 29/06/2001

[2014, c. 7, Sched. 4, s. 2 (1, 2)](http://www.ontario.ca/laws/statute/S14007" \l "sched4s2s1) - 24/07/2014

Information as to address

**39** (1)  Where, upon application to a court, it appears to the court that,

(a) for the purpose of bringing an application in respect of decision-making responsibility, parenting time or contact under this Part; or

(b) for the purpose of enforcing a parenting order or contact order,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in clause (b) is made, the court may order any person or public body to provide the court with such particulars of the address of the proposed respondent or person against whom the order referred to in clause (b) is made as are contained in the records in the custody of the person or body, and the person or body shall give the court such particulars as are contained in the records and the court may then give the particulars to such person or persons as the court considers appropriate. R.S.O. 1990, c. C.12, s. 39 (1); 2020, c. 25, Sched. 1, s. 14 (1).

Exception

(2)  A court shall not make an order on an application under subsection (1) if it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has decision-making responsibility with respect to a child, rather than to learn or confirm the whereabouts of the proposed respondent or for the enforcement of a parenting order or contact order. 2020, c. 25, Sched. 1, s. 14 (2).

Compliance with order

(3)  The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality. R.S.O. 1990, c. C.12, s. 39 (3).

Section binds Crown

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

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 14 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s14s1) - 01/03/2021

Decision-Making Responsibility, Parenting Time and Contact — Residence and Relocation

Change in residence, person with decision-making responsibility or parenting time

**39.1**(1)  A person who has decision-making responsibility or parenting time with respect to a child and who intends to make a change in residence, or in the child’s residence, shall notify any other person who has decision-making responsibility, parenting time or contact under a contact order with respect to the child of the intention. 2020, c. 25, Sched. 1, s. 15; CTS 12 AU 22 -1.

Notice requirements

(2)  The notice shall be in writing and shall set out,

(a) the date on which the change is expected to occur; and

(b) the address of the new residence and contact information of the person or child, as the case may be. 2020, c. 25, Sched. 1, s. 15.

Exception

(3)  On application, the court may in any circumstance provide that subsections (1) and (2) do not apply, or apply with any changes the court specifies, if the court is of the opinion that it is appropriate to do so, including if there is a risk of family violence. 2020, c. 25, Sched. 1, s. 15.

Same

(4)  An application under subsection (3) may be made without notice to any other party. 2020, c. 25, Sched. 1, s. 15.

Non-application

(5)  This section does not apply with respect to relocations. 2020, c. 25, Sched. 1, s. 15.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 15](http://www.ontario.ca/laws/statute/S20025" \l "sched1s15) - 01/03/2021

[CTS 12 AU 22 -1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Change in residence, person with contact

**39.2**(1)  A person who has contact under a contact order with respect to a child and who intends to make a change in residence shall notify any person who has decision-making responsibility or parenting time with respect to the child of the intention. 2020, c. 25, Sched. 1, s. 15.

Notice requirements

(2)  The notice shall be in writing and shall set out,

(a) the date on which the change is expected to occur; and

(b) the address of the new residence and contact information of the person. 2020, c. 25, Sched. 1, s. 15.

Significant impacts, additional requirements

(3)  If the change in residence is likely to have a significant impact on the child’s relationship with the person, the following additional requirements apply with respect to the notice:

1. The notice shall be given at least 60 days before the date on which the change is expected to occur.

2. The notice shall be in the form prescribed by the regulations or, if no form is prescribed, shall be in writing and shall set out,

i. a proposal as to how contact could be exercised, and

ii. any other information that may be prescribed by the regulations. 2020, c. 25, Sched. 1, s. 15.

Exception

(4)  On application, the court may in any circumstance provide that subsections (1), (2) and (3) or anything prescribed by the regulations for the purposes of paragraph 2 of subsection (3) do not apply, or apply with any changes the court specifies, if the court is of the opinion that it is appropriate to do so, including if there is a risk of family violence. 2020, c. 25, Sched. 1, s. 15.

Same

(5)  An application under subsection (4) may be made without notice to any other party. 2020, c. 25, Sched. 1, s. 15.

Regulations

(6)  The Attorney General may make regulations prescribing anything in this section that may be prescribed by the regulations. 2020, c. 25, Sched. 1, s. 15.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 15](http://www.ontario.ca/laws/statute/S20025" \l "sched1s15) - 01/03/2021

Relocation

**39.3**(1)  A person who has decision-making responsibility or parenting time with respect to a child and who intends a relocation shall, at least 60 days before the expected date of the proposed relocation, notify any other person who has decision-making responsibility, parenting time or contact under a contact order with respect to the child of the intention. 2020, c. 25, Sched. 1, s. 15.

Notice requirements

(2)  The notice shall be in the form prescribed by the regulations or, if no form is prescribed, shall be in writing and shall set out,

(a) the expected date of the proposed relocation;

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

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

(d) any other information that may be prescribed by the regulations. 2020, c. 25, Sched. 1, s. 15.

Exception

(3)  On application, the court may in any circumstance provide that subsections (1) and (2) or anything prescribed by the regulations for the purposes of subsection (2) do not apply, or apply with any changes the court specifies, if the court is of the opinion that it is appropriate to do so, including if there is a risk of family violence. 2020, c. 25, Sched. 1, s. 15.

Same

(4)  An application under subsection (3) may be made without notice to any other party. 2020, c. 25, Sched. 1, s. 15.

Objection

(5)  A person with decision-making responsibility or parenting time who receives notice of the proposed relocation under subsection (1) may, no later than 30 days after receiving the notice, object to the relocation by,

(a) notifying the person who gave the notice of proposed relocation of the objection to the relocation; or

(b) making an application under section 21. 2020, c. 25, Sched. 1, s. 15.

Notice requirements

(6)  A notice under clause (5) (a) shall be in writing and shall set out,

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

(b) the reasons for the objection;

(c) the person’s views on the proposal referred to in clause (2) (c); and

(d) any other information that may be prescribed by the regulations. 2020, c. 25, Sched. 1, s. 15.

Regulations

(7)  The Attorney General may make regulations,

(a) prescribing anything in this section that may be prescribed by the regulations;

(b) requiring that a notice under this section be given in a manner specified by the regulations. 2020, c. 25, Sched. 1, s. 15.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 15](http://www.ontario.ca/laws/statute/S20025" \l "sched1s15) - 01/03/2021

Authorization of relocation

**39.4**(1)  In this section,

“family arbitration award” has the same meaning as in the Arbitration Act, 1991. 2020, c. 25, Sched. 1, s. 15.

Same

(2)  A person who has given notice of a proposed relocation in accordance with section 39.3 and who intends to relocate a child may do so as of the date referred to in the notice if,

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

(b) no objection to the relocation is made in accordance with subsection 39.3 (5) and there is no order prohibiting the relocation. 2020, c. 25, Sched. 1, s. 15.

Best interests of the child

(3)  In determining whether to authorize the relocation of a child, the court shall take into account the best interests of the child in accordance with section 24, as well as,

(a) the reasons for the relocation;

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

(c) the amount of time spent with the child by each person who has parenting time or is an applicant for a parenting order with respect to the child, and the level of involvement in the child’s life of each of those persons;

(d) whether the person who intends to relocate the child has complied with any applicable notice requirement under section 39.3 and any applicable Act, regulation, order, family arbitration award and agreement;

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

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of decision-making responsibility, parenting time or contact, taking into consideration, among other things, the location of the new residence and the travel expenses; and

(g) whether each person who has decision-making responsibility or parenting time or is an applicant for a parenting order with respect to the child has complied with their obligations under any applicable Act, regulation, order, family arbitration award or agreement, and the likelihood of future compliance. 2020, c. 25, Sched. 1, s. 15.

Factor not to be considered

(4)  In determining whether to authorize a relocation of the child, the court shall not consider whether, if the child’s relocation were to be prohibited, the person who intends to relocate the child would relocate without the child or not relocate. 2020, c. 25, Sched. 1, s. 15.

Burden of proof

(5)  If the parties to the proceeding substantially comply with an order, family arbitration award or agreement that provides that a child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child. 2020, c. 25, Sched. 1, s. 15.

Same

(6)  If the parties to the proceeding substantially comply with an order, family arbitration award or agreement that provides that a child spend the vast majority of time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child. 2020, c. 25, Sched. 1, s. 15.

Same

(7)  In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child. 2020, c. 25, Sched. 1, s. 15.

Burden of proof, exception

(8)  If an order referred to in subsection (5) or (6) is an interim order, the court may determine that the subsection does not apply. 2020, c. 25, Sched. 1, s. 15.

Costs of relocation

(9)  If a court authorizes the relocation of a child, it may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child. 2020, c. 25, Sched. 1, s. 15.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 15](http://www.ontario.ca/laws/statute/S20025" \l "sched1s15) - 01/03/2021

Decision-Making Responsibility, Parenting Time and Contact — Extra-Provincial Matters

Interim powers of court

**40** Upon application, a court,

(a) that is satisfied that a child has been wrongfully removed to or is being wrongfully retained in Ontario; or

(b) that may not exercise jurisdiction under section 22 or that has declined jurisdiction under section 25 or 42,

may do any one or more of the following:

1. Make such interim parenting order or contact order as the court considers is in the best interests of the child.

2. Stay the application subject to,

i. the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or

ii. such other conditions as the court considers appropriate.

3. Order a party to return the child to such place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application. R.S.O. 1990, c. C.12, s. 40; 2020, c. 25, Sched. 1, s. 17.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 17](http://www.ontario.ca/laws/statute/S20025" \l "sched1s17) - 01/03/2021

Enforcement of extra-provincial orders

**41** (1)  Upon application by any person in whose favour an order granting decision-making responsibility, parenting time or contact with respect to a child has been made by an extra-provincial tribunal, a court shall recognize the order unless the court is satisfied,

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

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

(c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child;

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

(e) that, in accordance with section 22, the extra-provincial tribunal would not have jurisdiction if it were a court in Ontario. R.S.O. 1990, c. C.12, s. 41 (1); 2020, c. 25, Sched. 1, s. 18 (1).

Effect of recognition of order

(2)  An order made by an extra-provincial tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such. R.S.O. 1990, c. C.12, s. 41 (2).

Conflicting orders

(3)  A court presented with conflicting orders made by extra-provincial tribunals granting decision-making responsibility, parenting time or contact with respect to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1) shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child. R.S.O. 1990, c. C.12, s. 41 (3); 2020, c. 25, Sched. 1, s. 18 (2).

Further orders

(4)  A court that has recognized an extra-provincial order may make such further orders under this Part as the court considers necessary to give effect to the order. R.S.O. 1990, c. C.12, s. 41 (4).

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 18 (1, 2)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s18s1) - 01/03/2021

Superseding order, material change in circumstances

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

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

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

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

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

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

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

(v) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario. R.S.O. 1990, c. C.12, s. 42 (1); 2020, c. 25, Sched. 1, s. 19.

Declining jurisdiction

(2)  A court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Ontario. R.S.O. 1990, c. C.12, s. 42 (2).

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 19](http://www.ontario.ca/laws/statute/S20025" \l "sched1s19) - 01/03/2021

Superseding order, serious harm

**43** Upon application, a court may by order supersede an extra-provincial order in relation to decision-making responsibility, parenting time or contact with respect to a child if the court is satisfied that the child would, on the balance of probability, suffer serious harm if,

(a) the child remains with a person legally entitled to decision-making responsibility with respect to the child;

(b) the child is returned to a person legally entitled to decision-making responsibility with respect to the child; or

(c) the child is removed from Ontario. 2020, c. 25, Sched. 1, s. 20.

**Section Amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 20](http://www.ontario.ca/laws/statute/S20025" \l "sched1s20) - 01/03/2021

True copy of extra-provincial order

**44** A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is proof, in the absence of evidence to the contrary, of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person. R.S.O. 1990, c. C.12, s. 44.

Court may take notice of foreign law

**45** For the purposes of an application under this Part, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside Ontario and of a decision of an extra-provincial tribunal. R.S.O. 1990, c. C.12, s. 45.

Convention on Civil Aspects of International Child Abduction

Definition

**46** (1)  In this section,

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

Convention in force

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

Crown, legal costs under convention

(3)  The Crown is not bound to assume any costs resulting under the convention from the participation of legal counsel or advisers or from court proceedings except in accordance with the Legal Aid Services Act, 2020. R.S.O. 1990, c. C.12, s. 46 (3); 1998, c. 26, s. 101; 2020, c. 11, Sched. 15, s. 52.

Central Authority

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

Application to court

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

Request to ratify convention

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

Regulations

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

Conflict

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

**Section amendments with date in force (d/m/y)**

1998, c. 26, s. 101 - 01/04/1999

[2020, c. 11, Sched. 15, s. 52](http://www.ontario.ca/laws/statute/S20011" \l "sched15s52) - 18/10/2021

SCHEDULE

Convention on the Civil Aspects of International Child Abduction

The States signatory to the present Convention,

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

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

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

Chapter I — Scope of the Convention

Article 1

The objects of the present Convention are:

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

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

Article 2

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

Article 3

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

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

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

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

Article 4

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

Article 5

For the purposes of this Convention:

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

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

Chapter II — Central Authorities

Article 6

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

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

Article 7

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

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

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

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

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

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

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

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

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

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

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

Chapter III — Return of Children

Article 8

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

The application shall contain:

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

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

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

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

The application may be accompanied or supplemented by:

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

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

(g) any other relevant document.

Article 9

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

Article 10

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

Article 11

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

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

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Despite the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child’s habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

Chapter IV — Rights of Access

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V — General Provisions

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units:

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

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

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

Chapter VI — Final Clauses

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;

2. the accessions referred to in Article 38;

3. the date on which the Convention enters into force in accordance with Article 43;

4. the extensions referred to in Article 39;

5. the declarations referred to in Articles 38 and 40;

6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7. the denunciations referred to in Article 44.

Done at The Hague, on the 25th day of October, 1980.

R.S.O. 1990, c. C.12, s. 46 (8).

Guardianship

Appointment of guardian

**47** (1)  Upon application by a child’s parent or by any other person, on notice to the Children’s Lawyer, a court may appoint a guardian of the child’s property. 2001, c. 9, Sched. B, s. 4 (1); 2016, c. 23, s. 8.

Responsibility of guardian

(2)  A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 47 (2).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (1)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s1) - 29/06/2001

[2016, c. 23, s. 8](http://www.ontario.ca/laws/statute/S16023" \l "s8) - 01/01/2017

Parents and joint guardians

Parents as guardians

**48** (1)  As between themselves and subject to any court order or any agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians of the property of the child. R.S.O. 1990, c. C.12, s. 48 (1); 2016, c. 23, s. 9 (1).

Parent and other person

(2)  As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child. R.S.O. 1990, c. C.12, s. 48 (2); 2016, c. 23, s. 9 (2).

More than one guardian

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

Guardians jointly responsible

(4)  Where more than one guardian is appointed of the property of a child, the guardians are jointly responsible for the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 48 (4).

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 9 (1, 2)](http://www.ontario.ca/laws/statute/S16023" \l "s9s1) - 01/01/2017

Criteria

**49** In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the circumstances, including,

(a) the ability of the applicant to manage the property of the child;

(b) the merits of the plan proposed by the applicant for the care and management of the property of the child; and

(c) the views and preferences of the child, where such views and preferences can reasonably be ascertained. R.S.O. 1990, c. C.12, s. 49; 2001, c. 9, Sched. B, s. 4 (2).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (2)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s2) - 29/06/2001

Effect of appointment

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

Payment of debt due to child if no guardian

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

(a) the child, if the child has a legal obligation to support another person;

(b) a parent with whom the child resides; or

(c) a person who has lawful custody of the child. 2001, c. 9, Sched. B, s. 4 (3); 2016, c. 23, s. 10 (1).

Same

(1.1)  The total of the amount of money paid and the value of personal property delivered under subsection (1) shall not exceed the prescribed amount. 2001, c. 9, Sched. B, s. 4 (3); 2021, c. 4, Sched. 2, s. 1 (1).

Included amounts

(2)  Subsection (1) includes money payable on an intestacy or under a judgment or order of a court. 2021, c. 4, Sched. 2, s. 1 (2).

Receipt for payment

(3)  A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child resides or a person who has lawful custody of the child has the same validity as if a court had appointed the parent or the person as a guardian of the property of the child. R.S.O. 1990, c. C.12, s. 51 (3); 2016, c. 23, s. 10 (2).

Responsibility for money or property

(4)  A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian for the care and management of the money or personal property. R.S.O. 1990, c. C.12, s. 51 (4); 2016, c. 23, s. 10 (3).

Regulations

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

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (3, 4)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s3) - 29/06/2001

[2016, c. 23, s. 10 (1-3)](http://www.ontario.ca/laws/statute/S16023" \l "s10s1) - 01/01/2017

[2021, c. 4, Sched. 2, s. 1 (1, 2)](http://www.ontario.ca/laws/statute/S21004" \l "sched2s1s1) - 19/04/2021

Accounts

**52** A guardian of the property of a child may be required to account or may voluntarily pass the accounts in respect of the care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass the accounts in respect of the trusteeship. R.S.O. 1990, c. C.12, s. 52.

Transfer of property to child

**53** A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of eighteen years. R.S.O. 1990, c. C.12, s. 53.

Management fees and expenses

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

Bond by guardian

**55** (1)  A court that appoints a guardian of the property of a child shall require the guardian to post a bond, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child. R.S.O. 1990, c. C.12, s. 55 (1).

Where parent appointed guardian

(2)  Subsection (1) does not apply where the court appoints a parent of a child as guardian of the property of the child and the court is of the opinion that it is appropriate not to require the parent to post a bond. R.S.O. 1990, c. C.12, s. 55 (2); 2016, c. 23, s. 11.

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 11](http://www.ontario.ca/laws/statute/S16023" \l "s11) - 01/01/2017

Where child has support obligation

**56** Upon application by a child who has a legal obligation to support another person, the court that appointed a guardian of the property of the child or a co-ordinate court by order shall end the guardianship for the child. R.S.O. 1990, c. C.12, s. 56.

Removal and resignation of guardian

Removal

**57** (1)  A guardian of the property of a child may be removed by a court for the same reasons for which a trustee may be removed. R.S.O. 1990, c. C.12, s. 57 (1).

Resignation

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

Notice to Estate Registrar for Ontario

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

**Section amendments with date in force (d/m/y)**

1993, c. 27, Sched. - 31/12/1991

[2009, c. 11, s. 17](http://www.ontario.ca/laws/statute/S09011" \l "s17) - 14/05/2009

Disposition of Property

Court order re property of child

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

(a) the disposition or encumbrance of all or part of the interest of the child in land;

(b) the sale of the interest of the child in personal property; or

(c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both. R.S.O. 1990, c. C.12, s. 59 (1); 2001, c. 9, Sched. B, s. 4 (5); 2016, c. 23, s. 12.

Criteria

(2)  An order shall be made under subsection (1) only where the Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child. R.S.O. 1990, c. C.12, s. 59 (2).

Conditions

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

Limitation

(4)  The Court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest. R.S.O. 1990, c. C.12, s. 59 (4).

Execution of documents

(5)  The Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment. R.S.O. 1990, c. C.12, s. 59 (5).

Directions

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

Validity of documents

(7)  Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was eighteen years of age or, if executed by another person in accordance with the order, as if the child had executed it and had been eighteen years of age at the time. R.S.O. 1990, c. C.12, s. 59 (7).

Liability

(8)  No person incurs or shall be deemed to incur liability by making a payment in accordance with an order under clause (1) (c). R.S.O. 1990, c. C.12, s. 59 (8).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (5)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s5) - 29/06/2001

[2016, c. 23, s. 12](http://www.ontario.ca/laws/statute/S16023" \l "s12) - 01/01/2017

Order for maintenance where power of appointment in favour of children

**60** (1)  Upon application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his or her children, the Superior Court of Justice may order that such part of the proceeds of the property as the Court considers proper be used for the support, education or benefit of one or more of the children. R.S.O. 1990, c. C.12, s. 60 (1); 2001, c. 9, Sched. B, s. 4 (7).

Same

(2)  An order may be made under subsection (1) whether or not,

(a) there is a gift over in the event that there are no children to take under the power; or

(b) any person could dispose of the property in the event that there are no children to take under the power. R.S.O. 1990, c. C.12, s. 60 (2).

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (7)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s7) - 29/06/2001

Testamentary Decision-Making Responsibility and Guardianship

Appointments by will

Disposition of decision-making responsibility

**61** (1)  A person entitled to decision-making responsibility with respect to a child may appoint by will one or more persons to have decision-making responsibility with respect to the child after the death of the appointor. 2020, c. 25, Sched. 1, s. 22 (1).

Guardianship

(2)  A guardian of the property of a child may appoint by will one or more persons to be guardians of the property of the child after the death of the appointor. R.S.O. 1990, c. C.12, s. 61 (2).

Appointment by minor

(3)  An unmarried parent who is a minor may make an appointment mentioned in subsection (1) or (2) by a written appointment signed by the parent. R.S.O. 1990, c. C.12, s. 61 (3); 2016, c. 23, s. 13.

Limitation

(4)  An appointment under subsection (1), (2) or (3) is effective only,

(a) if the appointor is the only person entitled to decision-making responsibility with respect to the child or who is the guardian of the property of the child, as the case requires, on the day immediately before the appointment is to take effect; or

(b) if the appointor and any other person entitled to decision-making responsibility with respect to the child or who is the guardian of the property of the child, as the case requires, die at the same time or in circumstances that render it uncertain which survived the other. R.S.O. 1990, c. C.12, s. 61 (4); 2020, c. 25, Sched. 1, s. 22 (2).

Where more than one appointment

(5)  Where two or more persons are appointed to have decision-making responsibility with respect to a child or to be guardians of the property of a child by appointors who die as mentioned in clause (4) (b), only the appointments of the persons appointed by both or all of the appointors are effective. R.S.O. 1990, c. C.12, s. 61 (5); 2020, c. 25, Sched. 1, s. 22 (3).

Consent of appointee

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

Expiration of appointment

(7)  An appointment under subsection (1), (2) or (3) for decision-making responsibility with respect to a child or guardianship of the property of a child expires ninety days after the appointment becomes effective or, where the appointee applies under this Part for decision-making responsibility with respect to the child or guardianship of the property of the child within the ninety-day period, when the application is disposed of. R.S.O. 1990, c. C.12, s. 61 (7); 2020, c. 25, Sched. 1, s. 22 (4).

Application or order under ss. 21, 47

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

Application

(9)  This section applies in respect of,

(a) any will made on or after the 1st day of October, 1982; and

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

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 13](http://www.ontario.ca/laws/statute/S16023" \l "s13) - 01/01/2017

[2020, c. 25, Sched. 1, s. 22 (1-4)](http://www.ontario.ca/laws/statute/S20025" \l "sched1s22s1) - 01/03/2021

Procedure

Procedure, general

Joinder of proceedings

**62** (1)  An application under this Part may be made in the same proceeding and in the same manner as an application under the Family Law Act, or in another proceeding. R.S.O. 1990, c. C.12, s. 62 (1).

Nature of order

(2)  An application under this Part may be an original application or for the variance of an order previously given or to supersede an order of an extra-provincial tribunal. R.S.O. 1990, c. C.12, s. 62 (2).

Parties

(3)  The parties to an application under this Part in respect of a child shall include,

(a) the child’s parents;

(b) a person who has demonstrated a settled intention to treat the child as a child of his or her family;

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

(d) any other person whose presence as a party is necessary to determine the matters in issue. R.S.O. 1990, c. C.12, s. 62 (3); 2016, c. 23, s. 14.

Combining of applications

(4)  Where, in an application under this Part, it appears to the court that it is necessary or desirable in the best interests of the child to have other matters first or simultaneously determined, the court may direct that the application stand over until such other proceedings are brought or determined as the court considers appropriate, subject to section 26. R.S.O. 1990, c. C.12, s. 62 (4).

If identity of other biological parent not known

(5)  Where, in respect of a child conceived through sexual intercourse but not through insemination by a sperm donor, there is no presumption of parentage and the identity of the person whose sperm resulted in the conception of the child is not known or is not reasonably capable of being ascertained, the court may order substituted service or may dispense with service of documents on the person whose sperm resulted in the conception of the child in the proceeding. 2020, c. 25, Sched. 1, s. 23.

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 14](http://www.ontario.ca/laws/statute/S16023" \l "s14) - 01/01/2017

[2020, c. 25, Sched. 1, s. 23](http://www.ontario.ca/laws/statute/S20025" \l "sched1s23) - 20/11/2020

Application or response by minor

**63** (1)  A minor who is a parent may make an application under this Part without a next friend and may respond without a litigation guardian. R.S.O. 1990, c. C.12, s. 63 (1); 2016, c. 23, s. 15.

Consent by minor

(2)  A consent in respect of a matter provided for by this Part is not invalid by reason only that the person giving the consent is a minor. R.S.O. 1990, c. C.12, s. 63 (2).

**Section amendments with date in force (d/m/y)**

[2016, c. 23, s. 15](http://www.ontario.ca/laws/statute/S16023" \l "s15) - 01/01/2017

Child entitled to be heard

**64** (1)  In considering an application under this Part, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them. R.S.O. 1990, c. C.12, s. 64 (1).

Interview by court

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

Recording

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

Counsel

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

Where child is sixteen or more years old

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

All proceedings in one court

**66** Except as otherwise provided, where an application is made to a court under this Part, no person who is a party to the proceeding shall make an application under this Part to any other court in respect of a matter in issue in the proceeding, but the court may order that the proceeding be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time. R.S.O. 1990, c. C.12, s. 66.

Consent and domestic contracts

Consent orders

**67** (1)  Upon the consent of the parties in an application under this Part, the court may make any order that the court is otherwise empowered to make by this Part, subject to the duty of the court to have regard to the best interests of the child. R.S.O. 1990, c. C.12, s. 67 (1).

Incorporation of contract in order

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

Part subject to contracts

**68** Where a domestic contract as defined in the Family Law Act makes provision in respect of a matter that is provided for in this Part, the contract prevails except as otherwise provided in Part IV of the Family Law Act. R.S.O. 1990, c. C.12, s. 68.

Jurisdiction of Superior Court of Justice

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

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (7)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s7) - 29/06/2001

Confidentiality

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

(a) that access to all or part of the court file be limited to,

(i) the court and authorized court employees,

(ii) the parties and their counsel,

(iii) counsel, if any, representing the child who is the subject of the application, and

(iv) any other person that the court may specify; or

(b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file. 2009, c. 11, s. 18.

Considerations

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

(a) the nature and sensitivity of the information contained in the documents relating to the application under this Part that appear in the court file; and

(b) whether not making the order could cause physical, mental or emotional harm to any person referred to in those documents. 2009, c. 11, s. 18.

Order on application

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

Varying or discharging order

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

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (6)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s6) - 29/06/2001

[2009, c. 11, s. 18](http://www.ontario.ca/laws/statute/S09011" \l "s18) - 01/03/2010

Where to apply for interim orders and variations

Place of application for interim order

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

Place of application to vary order

(2)  An application under this Part to vary an order may be made to the court in which the original proceeding was taken or to a co-ordinate court in another part of Ontario. R.S.O. 1990, c. C.12, s. 71 (2).

Interim order

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

Appeal

**73** (1)  Subject to subsection (2),

(a) an appeal from an order of the Ontario Court of Justice under this Part lies to the Superior Court of Justice;

(b) an appeal from an order of the Family Court under this Part lies to the Divisional Court; and

(c) an appeal from an order of the Superior Court of Justice under this Part, other than an order of the Family Court, lies to the proper appellate court as determined under the Courts of Justice Act. 2020, c. 25, Sched. 2, s. 6.

Matters that must be appealed to the Court of Appeal

(2)  An appeal from an order made in accordance with section 22, 41, 42 or 43, or made in accordance with the Schedule to section 46, lies to the Court of Appeal. 2020, c. 25, Sched. 2, s. 6.

Transition

(3)  This section, as it read immediately before the day section 6 of Schedule 2 to the Moving Ontario Family Law Forward Act, 2020 came into force, continues to apply to,

(a) any case in which a notice of appeal was filed before that day; and

(b) any further appeals or proceedings arising from a case described in clause (a). 2020, c. 25, Sched. 2, s. 6.

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (7, 8)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s7) - 29/06/2001

[2020, c. 25, Sched. 2, s. 6](http://www.ontario.ca/laws/statute/S20025" \l "sched2s6) - 01/03/2021

Order effective pending appeal

**74** An order under this Part is effective even if an appeal is taken from the order, unless the court that made the order or the court to which the appeal is taken orders otherwise. R.S.O. 1990, c. C.12, s. 74.

Rule of construction, guardianship of person and property

**75** (1)  For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a guardian with respect to the person of a child shall be construed to refer to decision-making responsibility with respect to the child and a reference to a guardian with respect to property of a child shall be construed to refer to guardianship of the property of the child. R.S.O. 1990, c. C.12, s. 75 (1); 2020, c. 25, Sched. 1, s. 24.

Application

(2)  Subsection (1) applies to any instrument, any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the 1st day of October, 1982. R.S.O. 1990, c. C.12, s. 75 (2).

**Section amendments with date in force (d/m/y)**

[2020, c. 25, Sched. 1, s. 24](http://www.ontario.ca/laws/statute/S20025" \l "sched1s24) - 01/03/2021

Transition, Moving Ontario Family Law Forward Act, 2020

**76** (1)  In this section,

“transition date” is the day on which section 25 of Schedule 1 to the Moving Ontario Family Law Forward Act, 2020 comes into force. 2020, c. 25, Sched. 1, s. 25.

Custody deemed to be decision-making responsibility

(2)  Unless the court orders otherwise, a person who, immediately before the transition date, had custody of a child in accordance with an order under this Part or a separation agreement is deemed, as of the transition date, to have decision-making responsibility with respect to the child under the order or separation agreement, and references in the order or separation agreement to custody shall be read as references to decision-making responsibility. 2020, c. 25, Sched. 1, s. 25.

Access deemed to be parenting time, contact

(3)  Unless the court orders otherwise, a person who, immediately before the transition date, had access to a child in accordance with an order under this Part or a separation agreement is deemed, as of the transition date, to have parenting time with respect to the child if the person is a parent of the child, or contact with respect to the child if the person is not a parent of the child, and references in the order or separation agreement to access shall be read as references to parenting time or contact, as the case may be. 2020, c. 25, Sched. 1, s. 25.

Extent, terms, etc. of decision-making responsibility and parenting time

(4)  For the purposes of subsections (2) and (3), a person’s decision-making responsibility, parenting time or contact with respect to a child is as described in the order or separation agreement respecting custody, access or both, as it applied immediately before the transition date. 2020, c. 25, Sched. 1, s. 25.

Non-application of ss. 39.1, 39.3

(5)  A person who is deemed under subsection (2) or (3) to have decision-making responsibility or parenting time with respect to a child is not required to give notice under section 39.1 or 39.3 if a court order made before the transition date specifies that no notice is required in respect of a change in residence by the person or by the child. 2020, c. 25, Sched. 1, s. 25.

**Section amendments with date in force (d/m/y)**

[2001, c. 9, Sched. B, s. 4 (6)](http://www.ontario.ca/laws/statute/S01009" \l "schedbs4s6) - 29/06/2001

[2020, c. 25, Sched. 1, s. 25](http://www.ontario.ca/laws/statute/S20025" \l "sched1s25) - 01/03/2021

**77** Repealed. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 77 - see: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

78 Repealed: 2006, c. 1, s. 3 (2).

**Section amendments with date in force (d/m/y)**

[2006, c. 1, s. 3 (2)](http://www.ontario.ca/laws/statute/S06001" \l "s3s2) - 23/02/2006

79.-83Repealed. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

**Section amendments with date in force (d/m/y)**

1990, c. C.12, s. 79-83 - See: [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011

84Omitted (provides for amendments to this Act). R.S.O. 1990, c. C.12, s. 84.

85 Omitted (provides for coming into force of provisions of this Act). R.S.O. 1990, c. C.12, s. 85.

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