

# CED: An Overview of the Law

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## Children – Adoption

### Notes for VIII: Adoption

#### VIII.6: Placement of Child for Adoption

FN1. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, s. 63(3) [am. 2003, c. 16, s. 69; 2009, c. 53, s. 35(4), (6)(b)].

FN2. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, s. 63(3)(a)(ii) [am. 2003, c. 16, s. 69; 2009, c. 53, s. 35(4)].

FN3. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, s. 69 [am. 2008, c. 31, s. 30; 2009, c. 53, s. 35(4), (10)].

FN4. K. (P.) v. M. (J.B.) (1990), 26 R.F.L. (3d) 410 (Alta. C.A.); leave to appeal refused (1991), 29 R.F.L. (3d) xxxvi (S.C.C.); see also K. (C.A.), Re (1998), 1998 CarswellMan 355 (Man. Q.B.) (notification of father of adoption proceeding).

FN5. Adoption Act, R.S.B.C. 1996, c. 5, s. 8(1) [am. 2004, c. 60, s. 34].

FN6. Adoption Act, R.S.B.C. 1996, c. 5, s. 8(2)(b)

FN7. Adoption Act, R.S.B.C. 1996, c. 5, s. 8(2)(d).

FN8. Adoption Act, R.S.B.C. 1996, c. 5, s. 9 [am. 2004, c. 60, s. 34; 2011, c. 25, ss. 263(b), 264, 265].

FN9. Adoption Act, R.S.B.C. 1996, c. 5, s. 12(2).

FN10. Adoption Act, R.S.B.C. 1996, c. 5, s. 12(1) [am. 2004, c. 60, s. 34].

FN11. Galbraith v. British Columbia (Superintendent of Family & Child Services) (1981), 1981 CarswellBC 414 (B.C. S.C.); S. (J.D.) v. S. (W.) (1983), 57 B.C.L.R. 201 (B.C. C.A.) (superintendent's exclusive guardianship of infant up for adoption immune from review as long as carried out in child's best interests).

FN12. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 10.

FN13. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 42; see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 43(1) (Manitoba placement preferred), (2) (proposed placement outside Manitoba), (3) (proposed placement outside Canada).

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FN14. Child and Family Services Act, S.M. 1985-86, c. 8, C.C.S.M., c. C80, s. 16 [am. 1997, c. 47, s. 131(10)-(15); 2002, c. 24, s. 10(6)].

FN15. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 44(1); see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 44(2) (placement before agreement signed), (3) (withdrawal of voluntary surrender of guardianship).

FN16. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 52(1) [re-en. 2002, c. 35, s. 32(7)]; see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 1(2) [en. 2002, c. 35, s. 32(4)] (determining appropriate child and family services agency).

FN17. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 52(3).

FN18. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 47(1); see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 47(2) (review of agency's action by director).

FN19. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 45.

FN20. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 48 [re-en. 2002, c. 35, s. 32(6)]; see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 1(2) [en. 2002, c. 35, s. 32(4)] (determining appropriate child and family services agency).

FN21. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 53(1) [re-en. 2002, c. 35, s. 32(8)]; see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 1(2) [en. 2002, c. 35, s. 32(4)] (determining appropriate child and family services agency).

FN22. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 54(1).

FN23. Child and Family Services Act, S.M. 1986-86, c. 8, C.C.S.M., c. C80, s. 16 [am. 1997, c. 47, s. 131(10)-(15); 2002, c. 24, s. 10(6)].

FN24. Child and Family Services Act, S.M. 1986-86, c. 8, C.C.S.M., c. C80, s. 79.

FN25. Child and Family Services Act, S.M. 1986-86, c. 8, C.C.S.M., c. C80, s. 81.

FN26. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 88 [am. 2002, c. 24, s. 1(43)].

FN27. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, ss. 24, 25.

FN28. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141(1).

FN29. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141(8); L. (C.) v. F. (A.) (1998), 43 R.F.L. (4th) 332 (Ont. Gen. Div.) (natural parents cannot lawfully place child for adoption with another non-related couple without intervention or participation of a "licensee" or "society").

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FN30. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 193(2).

FN31. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141(4).

FN32. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 142(5).

FN33. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141.2(1) [en. 2006, c. 5, s. 35].

FN34. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141.2(2) [en. 2006, c. 5, s. 35].

FN35. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 141.2(3) [en. 2006, c. 5, s. 35].

FN36. M. (K.), Re (2000), 2000 CarswellOnt 5840 (Ont. C.J.); L. (C.) v. F. (A.) (1998), 1998 CarswellOnt 5032 (Ont. Gen. Div.) (placement for adoption not having taken place where parents placing child with non-related couple for adoption without assistance of Children's Aid Society or licensee; one of objectives of legislation being strict monitoring of any placement of child for adoption); S. (K.D.) v. S. (K.M.) (2010), 2010 CarswellOnt 9836 (Ont. S.C.J.) (adoption process beginning earlier than date of placement of child).

FN37. Children's Aid Society of Durham (County) v. S. (J.) (2009), 2009 CarswellOnt 8777 (Ont. S.C.J.) (mother signing consent making child Crown ward with no access and entered into "openness agreement" with foster parents contemplating child's placement for adoption with them; foster parents eventually deciding not to proceed with adoption; mother bringing status review application of wardship order; question as to how and when child ceasing to be placed for adoption).

FN38. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 143(2).

FN39. M. (R.) v. M. (S.) (1994), 1994 CarswellOnt 478 (Ont. C.A.); see also S. (K.D.) v. S. (K.M.) (2010), 2010 CarswellOnt 9836 (Ont. S.C.J.) (custody application and motion for temporary custody served and filed prior to child's placement with adoptive parents; however, applicant not permitted to interfere with adoption process by way of an application for custody from time mother deciding to place child for adoption).

FN40. Adoption Act, 1998, S.S. 1998, c. A-5.2, s. 16(16), (17).

FN41. Adoption Act, 1998, S.S. 1998, c. A-5.2, s. 16(18).

## VIII.7 Consents Required for Adoption

FN1. Adoption Act, R.S.B.C. 1996, c. 5, s. 13(3) [rep. & sub. 2011, c. 25, s. 268(c)]; Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 12; Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137(2)(b), (6);

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Adoption Act, 1998, S.S. 1998, c. A-5.2, ss. 4(1)(a)(ii), 8 [am. 2004, c. 4, s. 6]; see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 13 (consents required for other adoptions).

FN2. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, s. 59 [am. 2009, c. 53, s. 35(3)]; Adoption Act, R.S.B.C. 1996, c. 5, ss. 13 [am. 2011, c. 25, s. 268], 17 [am. 2004, c. 60, s. 34]; Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, ss. 19, 20; Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137 [am. 1994, c. 27, s. 43(2); 2001, c. 13, s. 5(6); 2005, c. 25 s. 14]; Adoption Act, 1998, S.S. 1998, c. A-5.2, ss. 4 [am. 2004, c. 4, s. 4], 5 [am. 2004, c. 4, s. 5], 6, 24(1), (3); Kerr v. McWhannel (1974), [1974] 6 W.W.R. 543 (B.C. C.A.) (previous stepfather having access rights to child to whom he stood in loco parentis not a parent whose consent required); R., Re (1985), 1985 CarswellOnt 1633 (Ont. Dist. Ct.) (definition of "parent" in Child Welfare Act, s. 131(1) exhaustive); S. (D.M.), Re (1992), 1992 CarswellSask 448 (Sask. Q.B.) (mother's current husband applying to adopt child and dispense with consent of wife's former husband; blood and tissue tests indicating that current husband likely biological father of child; wife and former husband living together at time of conception and birth of child; former husband registered on birth certificate as father; former husband having access to child pursuant to court order and supporting child in accordance with divorce judgment; former husband to be considered "birth father" and his consent to adoption required); British Columbia Birth Registration No. 74-09-024793, Re (1994), 1994 CarswellBC 318 (B.C. Master) (parents of adult person seeking to be adopted entitled to notice of proceedings, although consent not required); E. (N.D.), Re (2001), 20 R.F.L. (5th) 358 (Alta. Q.B.) (biological parents having prima facie right to notice even where permanent guardianship order having been made; notice not required where no contact or attempt at contact between biological parents and child subsequent to making of permanent guardianship order); C. (D.G.) v. Y. (R.H.G.) (2003), 41 R.F.L. (5th) 245 (Ont. C.J.) (provision of Vital Statistics Act under which mother able to complete live birth without involving father unconstitutional; compliant legislation might have allowed biological father to be included in birth registration forms, giving him status as parent; father's consent required); W. (J.J.) v. B. (R.C.C.) (2006), 273 Sask. R. 308 (Sask. Q.B.) (birth father contesting validity of birth mother's consent; only coercion by birth father and his family attempting to convince her that birth father ought to have custody; birth mother's consent valid); British Columbia Birth Registration No. 06-014023, Re (2007), 2007 CarswellBC 2351 (B.C. S.C.) (no requirement under Adoption Act, s. 13 for consent to adoption by birth father where paternity not acknowledged or disclosed by the birth mother, where birth father not under any legal obligation to support child, or where birth father not registered with birth fathers' registry); H. (M.L.) v. A. (W.G.) (2009), 2009 CarswellOnt 9394 (Ont. C.J.) (applicant having lawful custody of child by way of consent of child's father; applicant also having "legal attestation" of court in Lebanon of father's declaration that he entrusted custodial care of child to applicant; child's mother residing in Lebanon and having permanent and incurable mental illness; giving notice to parents reasonably possible under circumstances).

FN3. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, s. 59(1)(b); Adoption Act, R.S.B.C. 1996, c. 5, s. 13(1)(a); Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, ss. 12(b), 13(b); Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137(6); Adoption Act, 1998, S.S. 1998,

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c. A-5.2, s. 4(1)(b); Children's Aid Society of London & Middlesex, Re (2010), 2010 CarswellOnt 1184 (Ont. S.C.J.) (seven-year-old child having ADHD and possibly afflicted with fetal alcohol spectrum disorder; child expressing that he desired foster home to be his "forever" home; sufficient consent existing); C. (A.) v. A. (V.) (2012), 2012 CarswellOnt 516 (Ont. C.J.) (Ontario legislation stressing importance of child's participation in adoption process); see also R., Re (1978), 1978 CarswellBC 533 (B.C. S.C.) (dispensing with consent where revelation of true parentage having adverse effect on child and entire family).

FN4. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137(10).

FN5. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137(2)(a); K. (V.), Re (2008), 2008 CarswellOnt 2736 (Ont. C.J.) (prior to removal from India, child in care of religious order; consent of member of order irrelevant when mother's identity known and father's identity likely known); S. (S.), Re (2010), 2010 CarswellOnt 4665 (Ont. C.J.) (biological father's consent not needed; father not required to be notified of adoption, even though his identity and location known; relationship between biological parents not of some permanence but more than casual); S. (J.C.) v. S. (C.B.R.) (2011), 2011 CarswellOnt 2845 (Ont. C.J.) (stepfather applying to adopt child and to dispense with consent of father; denying adoption would not put child's current stable and positive situation at risk; application dismissed).

FN6. Family Law Rules, O. Reg. 114/99, Rule 35.1 [en. O. Reg. 6/10, s. 9]; Child and Family Services Act, R.S.O. 1990, c. C.11; S. (K.D.) v. S. (K.M.) (2010), 2010 CarswellOnt 9836 (Ont. S.C.J.).

FN7. Child and Family Services Act, R.S.O. 1990, c. C.11, s. 137(1) "parent"; S. (K.D.) v. S. (K.M.) (2010), 2010 CarswellOnt 9836 (Ont. S.C.J.) (neither grandfather nor father falling under definition of "parent"; during twelve months before child placed for adoption neither party demonstrating settled intention to treat child as child of his or her family; grandfather's simple initiation of custody proceeding not a criterion or indication of "settled intention").

FN8. K. (A.) v. M. (A.) (1986), 3 R.F.L. (3d) 225 (Ont. H.C.).

## VIII.18: International Adoptions

FN1. Adoption Act, R.S.B.C. 1996, c. 5, ss. 51, 57 [am. 2004, c. 60, s. 43]; British Columbia Gazette, 1997, Pt. II, No. 40-6, at 103.

FN2. Intercountry Adoption (Hague Convention) Implementation Act, S.S. 1995, c. I-10.01.

FN3. Intercountry Adoption (Hague Convention) Act, S.M. 1995, c. 22, C.C.S.M., c. A3; L. (T.I.) v. F. (J.L.) (2001), 16 R.F.L. (5th) 173 (Man. C.A.) (inter-country adoption provisions not applicable as child not

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ward of agency outside Canada); see also Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, ss. 69, 70 (adoptions within scope of Hague Convention).

FN4. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, [hcch.e-vision.nl/index\\_en.php?act=conventions.text&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69), art. 6¶2.

FN5. Adoption Act, R.S.B.C. 1996, c. 5, s. 52 [am. 2004, c. 60, s. 43] (director of adoption); Intercountry Adoption (Hague Convention) Act, S.M. 1995, c. 22, C.C.S.M., c. A3, s. 4 (Director of Child and Family Services); Intercountry Adoption (Hague Convention) Implementation Act, S.S. 1995, c. I-10.01, s. 5(1) "minister".

FN6. Hague Convention on Intercountry Adoption, art. 14.

FN7. Hague Convention on Intercountry Adoption, art. 15.

FN8. Hague Convention on Intercountry Adoption, art. 16¶1a.

FN9. Hague Convention on Intercountry Adoption, arts. 4, 16¶1b-d.

FN10. Hague Convention on Intercountry Adoption, art. 16¶2.

FN11. Hague Convention on Intercountry Adoption, art. 17.

FN12. Hague Convention on Intercountry Adoption, art. 18.

FN13. Child, Youth and Family Enhancement Act [title re-en. 2003, c. 16, s. 2], R.S.A. 2000, c. C-12, Pt. 2, Div. 6 (ss. 92-105).

FN14. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 7.

FN15. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 71(1).

FN16. Adoption Act, S.M. 1997, c. 47, C.C.S.M., c. A2, s. 72(1).

FN17. Adoption Act, R.S.B.C. 1996, c. 5, s. 48(1) [am. 2004, c. 60, s. 34].

FN18. Adoption Act, R.S.B.C. 1996, c. 5, s. 49 [am. 2011, c. 25, s. 263(b)].