



PLEASE NOTE

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For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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CHAPTER C-33

CUSTODY JURISDICTION AND ENFORCEMENT ACT

- 1.** (1) In this Act Interpretation
- (a) “court” means the Supreme Court (Family Section); court
- (b) “extra-provincial order” means an order, or that part of an order of an extra-provincial tribunal that grants to a person custody of or access to a child; extra-provincial order
- (c) “extra-provincial tribunal” means a court or tribunal outside the province that has jurisdiction to grant to a person custody of or access to a child; extra-provincial tribunal
- (d) “the province” means the province of Prince Edward Island. the province
- (2) A reference in this Act to a child is a reference to the child while a minor. 1984, c.17, s.1. Child
- 2.** The purposes of this Act are Purposes
- (a) to ensure that applications to the court in respect of custody of, incidents of custody of and access 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 respect of the custody of the same child ought to be avoided, and to make provision so that the courts of the province 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 custody rights by due process; and
- (d) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside the province. 1984, c.17, s.2.

CUSTODY AND ACCESS

- 3.** (1) Except as otherwise ordered by a court, the father and the mother of a child are joint guardians of a child and are equally entitled to custody of the child. Father and mother entitled to custody
- (2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child, including Rights and responsibilities

(a) the right to care and control of the child;
 (b) the right to direct the education and moral and religious training of the child,
 in the best interests of the child.

Authority to act (3) Where more than one person is entitled to custody of 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.

Where parents separate (4) Where 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 of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides.

Access includes certain information (5) The entitlement to access to a child includes the right to make reasonable inquiries and to be given information as to the health, education and welfare of the child.

Marriage of child (6) The entitlement to custody of or access to a child terminates on the marriage of the child.

Entitlement subject to agreement or order (7) Any entitlement to custody or access or incidents of custody under this section is subject to alteration by an order of the court or by separation agreement. 1984, c.17, s.3.

Application for order **4** (1) A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

Idem (2) On an application under this section, the court may require the Director of Child Welfare to cause an investigation to be made and to report to the court on all matters relating to the custody, maintenance and education of the child. 1984, c.17, s.4.

Assessment of needs of child **4.1** (1) The court before which an application is brought in respect of custody of or access 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.

When order may be made (2) An order may be made under subsection (1) on or before the hearing of the application in respect of custody of or access to the child and with or without a request by a party to the application.

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.

(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.

Consent to act

(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.

Attendance for assessment

(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.

Refusal to attend

(7) The person appointed under subsection (1) shall file his report with the registrar of the court.

Report

(8) The registrar of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child.

Copies of report

(9) The report mentioned in subsection (7) is admissible in evidence in the application.

Admissibility of report

(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.

Assessment may be witnessed

(11) Upon motion, the court by order may give such directions in respect of the assessment as the court considers appropriate.

Directions

(12) 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. 1992, c.15, s.1.

Other expert evidence

5. (1) The court to which an application is made under section 4

Powers of court

(a) by order may grant the custody of or access to the child to one or more persons;

(b) by order may determine any aspect of the incidents of the right to custody or access; and

(c) may make such additional order as the court considers necessary and proper in the circumstances.

Variation

(2) The court may vary an order where there has been a material change in circumstances that affects or is likely to affect the best interests of the child. 1984, c.17, s.5.

Effect of divorce proceedings **6.** Where an action for divorce is commenced under the *Divorce Act* 1985 (Canada), Stats. Can. 1986, c.4, any application under this Act in respect of custody of or access to a child that has not been determined is stayed except by leave of the court. 1984, c.17, s.6.

PROCEDURE

Joinder of proceedings **7.** (1) An application under this Act may be made in the same proceeding and in the same manner as an application under the *Family Law Reform Act* R.S.P.E.I. 1988, Cap. F-3 or in another proceeding.

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

Parties (3) The parties to an application under this Act in respect of a child shall include

- (a) the mother and the father of the child;
- (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.

Combining of applications (4) Where, in an application under this Act, it appears to the court that it is necessary or desirable in the best interests of the child to have other matters first or simultaneously determined, the court may direct that the application stand over until such other proceedings are brought or determined as the court considers appropriate. 1984, c.17, s.7.

Child entitled to be heard **8.** (1) In considering an application under this Act, 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.

Interview by court (2) The court may interview the child to determine the views and preferences of the child. 1984, c.17, s.8.

Closed hearings **9.** The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court by order may prohibit the publication of any matter connected with the application or given in evidence at the hearing. 1984, c.17, s.9.

10. (1) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of the child. Consent orders

(2) Any matter provided for in this Act and in a domestic contract as defined in the *Family Law Reform Act* may be incorporated in an order made under this Act. 1984, c.17, s.10. Incorporation of contract in order

11. Where a domestic contract as defined in the *Family Law Reform Act* makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in Part IV of the *Family Law Reform Act*. 1984, c.17, s.11. Act subject to contracts

JURISDICTION

12. (1) A court shall only exercise its jurisdiction to make an order for custody of or access to a child where Jurisdiction

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

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

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

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

(iii) that no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,

(iv) that no extra-provincial order in respect of custody of or access to the child has been recognized by a court in the province,

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

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

(2) A child is habitually resident in the place where he resided Habitual residence

(a) with both parents;

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

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

whichever last occurred.

- Abduction (3) The removal or withholding of a child without the consent of the person having custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process by the person from whom the child is removed or withheld. 1984, c.17, s.12.
- Serious harm to child **13.** Notwithstanding sections 12 and 17, a court may exercise its jurisdiction to make or to vary an order in respect of the custody of or access to a child where
- (a) the child is physically present in the province; and
 - (b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if
 - (i) the child remains in the custody of the person legally entitled to custody of the child,
 - (ii) the child is returned to the custody of the person legally entitled to custody of the child, or
 - (iii) the child is removed from the province. 1984, c.17, s.13.
- Declining jurisdiction **14.** A court having jurisdiction in respect of custody or access may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the province. 1984, c.17, s.14.
- Application determined on best interests of the child **15.** The merits of an application under this Act in respect of custody of or access to a child shall be determined on the basis of the best interests of the child. 1984, c.17, s.15.

EXTRA-PROVINCIAL ORDERS

- Interim powers of court **16.** Upon application, a court
- (a) that is satisfied that a child has been wrongfully removed to or is being wrongfully retained in the province; or
 - (b) that may not exercise jurisdiction under section 12 or that has declined jurisdiction under section 14 or 18,
- may do any one or more of the following:
1. Make such interim order in respect of custody or access as the court considers is in the best interests of the child.
 2. Stay the application subject to
 - (a) the condition that a party to the application promptly commence or proceed expeditiously with a similar proceeding before an extra-provincial tribunal; or
 - (b) 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. 1984, c.17, s.16.

17. (1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, a court shall recognize the order unless the court is satisfied that

Enforcement of foreign orders

- (a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
- (b) the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;
- (c) the law of the 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) the order of the extra-provincial tribunal is contrary to public policy in the province; or
- (e) in accordance with section 12, the extra-provincial tribunal would not have jurisdiction if it were a court in the province.

(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.

Effect of recognition of order

(3) A court presented with conflicting orders made by extra-provincial tribunals for the custody of or access 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.

Conflicting orders

(4) A court that has recognized an extra-provincial order may make such further orders as the court considers necessary to give effect to the order. 1984, c.17, s.17.

Further orders

18. (1) Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access 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

Superseding order, material change in circumstances

- (a) the child is habitually resident in the province at the commencement of the application for the order; or
- (b) although the child is not habitually resident in the province, the court is satisfied that
 - (i) the child is physically present in the province at the commencement of the application for the order,
 - (ii) the child no longer has a real and substantial connection with the place where the extra-provincial order was made,
 - (iii) substantial evidence concerning the best interests of the child is available in the province,

- (iv) the child has a real and substantial connection with the province, and
- (v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the province.

Declining jurisdiction

(2) 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 the province. 1984, c.17, s.18.

Superseding order, serious harm

19. Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access to a child if the court is satisfied that the child would, on the balance of probability, suffer serious harm if the child

- (a) remains in the custody of the person legally entitled to custody of the child;
- (b) is returned to the custody of the person entitled to custody of the child; or
- (c) is removed from the province. 1984, c.17, s.19.

ENFORCEMENT

Order restraining harassment

20. Upon application, a court may make an order restraining any person from molesting, annoying or harassing the applicant or a child in the lawful custody of the applicant and may require the respondent to enter into such recognizance, with or without sureties, or to post such bond as the court considers appropriate. 1984, c.17, s.20.

Order where child unlawfully withheld

21. (1) Where a court is satisfied upon application by a person in whose favour an order has been made for custody of or access 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 behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody or access, as the case may be.

Order to locate and take child

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

- (a) any person is unlawfully withholding a child from a person entitled to custody of or access to the child;
- (b) a person who is prohibited by court order or separation agreement from removing a child from the province proposes to remove the child or have the child removed from the province; or
- (c) a person who is entitled to access to a child proposes to remove the child or to have the child removed from the province and that the child is not likely to return,

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

(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.

Application without notice

(4) The sheriff or police force 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.

Duty to act

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a sheriff or a member of a police force may enter and search any place where he has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances.

Entry and search

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

Time

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

Expiration of order

(8) An application under subsection (1) or (2) may be made in an application for custody or access or at any other time. 1984, c.17, s.21.

When application may be made

22. (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 the province proposes to remove the child from the province, the court in order to prevent the removal of the child from the province may make an order under subsection (3).

Application to prevent unlawful removal of child

(2) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from the province and is not likely to return the child to the province, the court in order to secure the prompt, safe return of the child to the province may make an order under subsection (3).

Application to ensure return of child

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

Order by court

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.

Terms and conditions	(4) 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.
Safekeeping	(5) 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.
Directions	(6) 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. 1984, c.17, s.22.
Further evidence	<p>23. (1) Where a court is of the opinion that it is necessary to receive further evidence from a place outside the province before making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside the province such supporting material as may be necessary together with a request,</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(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.</p>
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. 1984, c.17, s.23.
Referral to court	24. (1) Where the Attorney General receives from an extra-provincial tribunal a request similar to that referred to in section 23 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.
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. 1984, c.17, s.24.

25. (1) Where, upon application to a court, it appears to the court that for the purpose of Information as to address

(a) bringing an application in respect of custody or access; or

(b) the enforcement of an order for custody or access,

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 as the court considers appropriate.

(2) A court shall not make an order on an application under subsection (1) where 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 custody of a child, rather than to learn or confirm the whereabouts of the proposed respondent or the enforcement of an order for custody or access. Exception

(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. Compliance with order
1984, c.17, s.25.

26. 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 *prima facie* evidence 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. 1984, c.17, s.26. True copy of extra-provincial order

27. For the purposes of an application under this Act, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside the province and of a decision of an extra-provincial tribunal. Court may take notice of foreign law
1984, c.17, s.27.

28. (1) In this section, “convention” means the Convention on the Civil Aspects of International Child Abduction, set out in the Schedule to this Act. Interpretation

Convention on Civil Aspects of International Child Abduction	(2) On, from and after the date the convention enters into force in respect of Prince Edward Island as set out in Article 43 of the convention, the convention is in force in Prince Edward Island and the provisions thereof are law in Prince Edward Island.
Central Authority	(3) The Attorney General shall be the Central Authority for Prince Edward Island for the purpose of the convention.
Application to court	(4) An application may be made to the court in pursuance of a right or an obligation under the convention.
Request to ratify convention	(5) 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 Prince Edward Island.
Publication of date	(6) The Attorney General shall publish in the Gazette the date the convention comes into force in Prince Edward Island.
Regulations	(7) The Lieutenant Governor in Council may make such regulations as he considers necessary to carry out the intent and purpose of this section.
Conflict	(8) Where there is a conflict between this section and any other enactment, this section prevails. 1984,c.17,s.28; 1993,c.29,s.4; 1997,c.20,s.3; 2000,c.5,s.3.

GENERAL

Does not affect <i>Child Protection Act</i>	29. For the avoidance of doubt, it is declared that nothing in this Act applies in respect of a child who is committed permanently to the custody and guardianship of the Director of Child Welfare pursuant to the <i>Child Protection Act</i> R.S.P.E.I. 1988, Cap. C-5.1 or the enforcement of any equivalent order made by an extra-provincial tribunal. 2000(2nd),c.3,s.62.
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SCHEDULE

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I - SCOPE OF THE CONVENTION

ARTICLE 1

The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

ARTICLE 2

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

ARTICLE 3

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

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

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

ARTICLE 4

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

ARTICLE 5

For the purposes of this Convention:

- (a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- (b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

ARTICLE 6

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

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

ARTICLE 7

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

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

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III - RETURN OF CHILDREN

ARTICLE 8

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

The application shall contain:

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by:

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

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

ARTICLE 9

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

ARTICLE 10

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

ARTICLE 11

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

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

ARTICLE 12

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

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

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

ARTICLE 13

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

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

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

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

ARTICLE 14

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

ARTICLE 15

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

ARTICLE 16

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

ARTICLE 17

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

ARTICLE 18

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

ARTICLE 19

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

ARTICLE 20

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

CHAPTER IV - RIGHTS OF ACCESS

ARTICLE 21

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

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

ARTICLE 22

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

ARTICLE 23

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

ARTICLE 24

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

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

ARTICLE 25

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

ARTICLE 26

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

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

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

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

ARTICLE 27

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

ARTICLE 28

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

ARTICLE 29

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

ARTICLE 30

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

ARTICLE 31

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

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

ARTICLE 32

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

ARTICLE 33

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

ARTICLE 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 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 between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

ARTICLE 39

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

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

ARTICLE 40

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

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

ARTICLE 41

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

ARTICLE 42

Any State may, no later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

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

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

ARTICLE 43

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

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

ARTICLE 44

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

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

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

ARTICLE 45

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

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accessions referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciations referred to in Article 44.

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