

APPENDIX G / ANNEXE G

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**UNIFORM PARENTAL RESPONSIBILITY AND MEASURES
FOR THE PROTECTION OF CHILDREN
(HAGUE CONVENTION) IMPLEMENTATION ACT**

**LOI HARMONISÉE DE MISE EN ŒUVRE DE LA
CONVENTION DE LA HAYE CONCERNANT LA
RESPONSABILITÉ PARENTALE ET LES MESURES
DE PROTECTION DES ENFANTS**

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**UNIFORM PARENTAL RESPONSIBILITY AND MEASURES
FOR THE PROTECTION OF CHILDREN
(HAGUE CONVENTION) IMPLEMENTATION ACT**

Comment: The purpose of this Act is to provide a model implementation Act to provinces and territories wishing to implement the *1996 Hague Convention on the International Protection of Children*.

Interpretation

Definitions

1.(1) In this Act, “Convention” means the *Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children*, the text of which is set out in the Schedule.

Comment: The Convention that is given the force of law is set out in the schedule to the Act.

(2) Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Convention.

Comment: This is a standard provision for uniform acts implementing international conventions (see subsection 1(2) of the *Uniform Intercountry Adoption Act* and subsection 1(2) of the *International Commercial Arbitration Act*).

Application of Convention

Request that Convention apply

2. The [Minister of _____] shall request the Government of Canada to declare in accordance with Article 59 of the Convention that the Convention extends to [name of province or territory].

Comment: An enacting jurisdiction will name the Minister responsible for the administration of the Act. In the normal course, the Act would take effect in an enacting jurisdiction when Canada’s ratification of the Convention comes into force (the first of the month following the expiry of three months after it deposits the instruments of ratification). Jurisdictions that enact the Act after Canada is a party will have the Convention apply to them a similar period after Canada notifies the depositary of the Convention (the Ministry of Foreign Affairs of the Netherlands).

An enacting jurisdiction will have to indicate to the Department of Justice of Canada whether to make for that jurisdiction any of the declarations and reservations allowed by the Convention. Articles 29 and 55, and paragraphs 34(2) and 54(2) should be reviewed for this purpose.

As noted later, the Convention also requires Contracting States to provide certain specific information to the depositary or to the Permanent Bureau of the Hague Conference, and this information must be provided by the enacting jurisdictions to the federal government for transmission abroad. See paragraphs 29 (1) and (2).

Comment: Some jurisdictions may not need this provision as they may already have adopted specific legislation with regard to treaty implementation.

Request for reservation

3. The [Minister of _____], at the time a request is made under section 2, may request that the Government of Canada, in accordance with Article 60 of the Convention, make a reservation provided for in paragraph 2 of Article 54 or in Article 55 of the Convention, in respect of [name of province or territory].

Comment: Without reservation, any communication sent to the Central Authority or to another authority of a Contracting 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 other State or, where that is not feasible, a translation into French or English. However, a jurisdiction may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Comment: Each jurisdiction will have to decide if it will

- a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory, and/or
- b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

Each jurisdiction will have to decide if it wants to further restrict this reservation to certain categories of property.

As noted and explained in paragraphs _____ (see new paragraphs 19 and 62) of the Report, this reservation is not present in the Adults' Convention.

Force of law

4. The Convention has the force of law in [name of province or territory].

Comment: This provision clearly indicates that the Convention has the force of law in the enacting jurisdiction.

Inconsistency with other laws

5. In the event of an inconsistency between this Act and any other law of [name of province or territory], this Act prevails to the extent of the inconsistency.

Comment: This is a standard provision (see section 3(1) of the *Uniform Intercountry Adoption (Hague Convention) Act* and Article 7 of the *Uniform Act respecting International Child Abduction (the Hague)*).

Designation of authorities

6.(1) The [Minister of _____] is the Central Authority for [name of province or territory] for the purpose of paragraph 2 of Article 29 of the Convention and may request the Government of Canada

Comment: An enacting jurisdiction will name the Minister responsible for the administration of the Act. This is a standard provision (see section 4 of the *Uniform Intercountry Adoption (Hague Convention) Act*).

The role of the Central Authority to be designated under the Convention by each province or territory is the key to much of the practical operation of the Convention. Its duties are not described in detail in this uniform Act, because they are set out in the Convention itself.

(a) to declare, in accordance with paragraph 2 of Article 34 of the Convention, that requests under paragraph 1 of Article 34 of the Convention be communicated only through the Central Authority in [name of province or territory]; and

Comment: Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

Each enacting jurisdiction may declare that requests under paragraph 1 of Article 34 shall be communicated to its authorities only through its Central Authority.

(b) to designate the authorities specified by the Central Authority as the authorities for [name of province or territory] for the purpose of Article 44 of the Convention.

Comment: The jurisdiction may also designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

(2) The [Minister of _____] may delegate his or her duties in relation to the Convention.

Regulations

Regulations

7. The [Lieutenant Governor in Council or Commissioner] may make any regulations that are necessary to give effect to this Act.

Comment: Regulations may be thought desirable, or may be necessary under existing law of the enacting jurisdiction, to enable to Minister to delegate some duties under the Convention, facilitate communications and make arrangements with public authorities or other bodies to act under the Convention, or to facilitate the operation of the Convention.

Comment: Each enacting jurisdiction must make provisions for the entry into force of the regulations. It is suggested that the date of entry into force for the regulations correspond with the date of entry into force of the Convention for the enacting jurisdiction according to section 4 and subsection 8(2) of this Act.

Coming into Force

Coming into force of Act and Convention

8.(1) Subject to subsection (2), this Act comes into force on a day fixed by proclamation of the [Lieutenant Governor in Council or Commissioner].

(2) Sections 4 and 5 come into force on the day on which the Convention enters into force for [name of province or territory], in accordance with Articles 59 and 61 of the Convention.

Comment: The Convention and its regulations will have force of law only when the Convention comes into force for the jurisdiction, that is, the first day of the month following the expiry of three months after it deposits the instruments of ratification. Jurisdictions that enact the Act after Canada is a party will have the Convention apply to them following a similar period after Canada notifies the depositary of the Convention (the Ministry of Foreign Affairs of the Netherlands).

Publication of date

9. The Minister of _____] shall publish in the [Gazette] the date that the Convention enters into force and that the Act and sections 4 and 5 come into force.

Comment: This is the usual provision for uniform statutes to implement conventions.

Schedule

Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children