

UNIFORM INTERCOUNTRY ADOPTION (HAGUE CONVENTION) ACT

(1993 Proceedings at page 35)

This Act lays the groundwork for an enacting jurisdiction to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. It includes the basic requirements of the Convention. It also points to matters that should be considered by an enacting jurisdiction, without setting out in detail what decisions should be made on those matters. For example, the accreditation and role of private adoption agencies may be treated differently by different provinces or territories within the limits of the Convention. Each jurisdiction will have to fit these terms into its existing legislation on the topics covered. The Uniform Law Conference did not consider itself competent to make judgements for each province and territory in Canada about how this should be done.

Definitions

s.1 (1) In this Act, "Convention" means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption set out in the Schedule.

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

Comment: These are normal provisions for uniform statutes to implement conventions.

Request for extension of Convention

s.2 The (*Minister of or*) shall request the Government of Canada to declare in accordance with Article 45 of the Convention that the Convention extends to (*enacting jurisdiction*).

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 came 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) of their action.

An enacting jurisdiction will have to indicate to the Department of Justice of Canada whether to make for that jurisdiction any of the declarations allowed by the Convention. Articles 22(2) and (4), 23, 25 and 45 should be reviewed for this purpose. While the Convention does not allow any reservations, Canada or an enacting jurisdiction may wish to consider an "interpretive declaration" on provisions of particular interest, such as customary adoptions among aboriginal peoples. A common position on such a declaration could be developed after consultation with all affected parties, including aboriginal organizations.

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 Articles 13 and 22(3).

Convention is law

s.3 (1) Starting on the date the Convention enters into force in respect of (*enacting jurisdiction*) as determined by the Convention, the Convention is in force in (*enacting jurisdiction*) and its provisions are law in (*enacting jurisdiction*).

Application where conflict

(2) The law of (*enacting jurisdiction*) applies, subject to the regulations, to an adoption to which the Convention applies but, where there is a conflict between the law of (*enacting jurisdiction*) and the Convention, the Convention prevails.

Comment: Under subsection (1), the Convention's rules will apply only to adoptions between the enacting jurisdiction and other countries that are parties to the Convention, as it comes into force between them (Article 41). These adoptions will involve a child habitually resident in a contracting state and adoptive parents habitually resident in another contracting state (one of these contracting states being the enacting jurisdiction). Other adoptions will continue to be governed by the existing law of the enacting jurisdiction. See Article 2 of the Convention.

Subsection (2) underlines the importance of verifying how the Convention's rules will affect existing local rules. The latter rules will continue to apply except to the extent that they are incompatible with the Convention.

Central Authority

s.4 The (*Minister of or*) is the Central Authority for (*enacting jurisdiction*) for the purpose of the Convention.

Comment: 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, especially in Chapters III and IV. This Act deals only with the options for allocating the functions of the Central Authority where the Convention allows those functions to be delegated.

Delegation to accredited bodies

s.5 (1) Where the (*Minister of or*) so authorizes, the functions of a Central Authority under Chapter IV of the Convention may, to the extent determined by the (*Minister of or*), be performed by public authorities or by bodies accredited under Chapter III of the Convention.

Other bodies or persons

(2) Where the (*Minister of or*) so authorizes, the functions of a Central Authority under Articles 15 to 21 of the Convention may, to the extent determined by the (*Minister of or*), be performed by a person or body who meets the requirements of subparagraphs (a) and (b) of paragraph 2 of Article 22 of the Convention.

Comment: This section spells out the limits of the role of public and private agencies in intercountry adoptions under the Convention. Public bodies and regulated not-for-profit agencies accredited under Chapter III of the Convention, notably Articles 10 and 11, may carry out all the functions of Central Authorities under Chapter III and under Chapter IV, which contains the main duties of the Central Authorities.

It will be noted that neither the Convention nor this Act gives the enacting jurisdiction legal authority to create or accredit public or private agencies, or sets procedures for their accreditation. Such matters need to be dealt with by local law. Many jurisdictions will already have such rules for this purpose.

Other bodies, notably for-profit agencies, and individuals may carry out the functions of Central Authorities under Chapter IV if they meet the standards of clauses 22(2)(a) and (b). They must also be "subject to the supervision of the competent authorities of that State", Art. 22(2).

An enacting jurisdiction that wishes to authorize for-profit bodies or individuals to act must inform the federal Department of Justice of this wish, and provide a list of the names and addresses of these bodies and persons. The Department will then make the appropriate declaration under Article 22(2) to the depositary, namely the Ministry of Foreign Affairs of the Netherlands, and submit the list of names and addresses to the Permanent Bureau of the Hague Conference. The list must be kept up to date. Provincial and territorial officials will have to keep in close touch with the federal government to avoid undue delay in submitting the updated lists to the Hague.

Some countries of origin may refuse to allow children from those countries to be adopted by processes involving for-profit agencies or individuals (Article 22(4)). Enacting jurisdictions should ensure that the authorized agencies and prospective adoptive parents are aware of this.

One of the basic functions of a Central Authority under the Convention is the preparation of reports on the prospective adoptive parents and on the child to be adopted. These reports must be done by the Central Authority itself or public or not-for-profit agencies (Article 22(5)).

Authorization of foreign accredited bodies

s.6. Where the (*Minster of or*) so authorizes, a body **accredited in a Contracting State** may act in (*enacting jurisdiction*).

Comment: This gives the responsible minister the authority to approve foreign not-for-profit [but not profit-making] bodies, other than the foreign Central Authority, to work in the enacting jurisdiction on intercountry adoptions. Article 12 of the Convention requires that for such bodies to act, they must be approved by the authorities in both countries.

Accredited bodies acting abroad

s.7. The (*Minister of or*) may authorize a body **accredited in** (*enacting jurisdiction*) to act in a Contracting State.

Comment: This is the converse of the previous section. It allows the responsible minister to authorize local accredited bodies to operate abroad, if the foreign country has so authorized them as well.

Access to information

[s.8. A child adopted pursuant to the Convention has, to the extent permitted by the law of (*enacting jurisdiction*), a right of access to information concerning the child's origin that is held in (*enacting jurisdiction*).]

Comment: This right to information is set out in Article 30 of the Convention. That article requires Contracting States to preserve information about the child, his or her family and their medical history. The accessibility of this information is subject to limits prescribed by local law (Article 30(2)) and its use subject to rules set out in Article 31.

This section is in square brackets because it is not strictly necessary for the implementation of the Convention, as it repeats what would be the law in any event once the Convention comes into force in the enacting jurisdiction. It was added because some enacting jurisdictions might wish to put this often sensitive issue directly in the public eye rather than having the rule simply remain among the other provisions of the Convention.

Publication of date

s.9 The (*Minister of or*) shall publish in the Gazette the date the Convention comes into force in (*enacting jurisdiction*).

Comment: This is the usual provision for uniform statutes to implement conventions. See also the note to s. 12.

Regulations

s.10. The (*Lieutenant Governor in Council*) may make regulations necessary to carry out the intent and purpose of this Act and, without limiting the generality of the foregoing, may

- (a) limit or vary the application of the law of (*enacting jurisdiction*) to an adoption in (*enacting jurisdiction*) to which the Convention applies; and
- (b) designate the competent authority for any provision of the Convention.

Comment: Regulations may be thought desirable, or may be necessary under existing law of the enacting jurisdiction, to designate public bodies or to accredit private bodies to act under the Convention, or to do other matters to carry it out.

Clause (a) allows the enacting jurisdiction to tailor by regulation its existing adoption laws for intercountry adoptions under the Convention, to the extent

that making the Convention part of the law does not do so already. Jurisdictions that would prefer to amend these laws by legislation rather than by regulation may do so by adding provisions starting at s. 11 of this Act.

Clause (b) allows for the designation of competent authorities. Enacting jurisdictions will have to decide under Article 36(c) which bodies should be designated to carry out the functions that the Convention assigns to "competent authorities". e.g. Articles 4, 5, 11(a), 22(2), 23, 30, 33, 34 and 35.

For example, Article 23(1) of the Convention speaks of adoptions being certified by competent authorities. Article 23(2) obliges a contracting state to inform the depositary of the "identity and functions" of these authorities. As a result, an enacting jurisdiction will have to give this information to the federal Department of Justice, and notify it of any changes to the list. Another example: the for-profit bodies or persons that may be allowed to carry out some of the functions of the Central Authority are to be supervised by "competent authorities" under Article 22(2).

Amending existing laws

s.11. *(Some jurisdictions may prefer to amend existing laws instead of exercising the authority in clause 10 (a).)*

Comment: If local laws are not expressly changed by the Convention but the enacting jurisdiction thinks they should be modified to suit Convention adoptions, this section is available. Clause 10(a) authorizes this to be done by regulation, if the enacting jurisdiction prefers to do it that way.

It will be noted that the Convention provides minimum rules to govern intercountry adoption. Jurisdictions that implement the Convention are free to enact stricter rules on the subject if they are consistent with the Convention.

Proclamation

s.12. *(Proclamation section)*

Comment: Some jurisdictions have legislation implementing a convention come into force on Royal Assent, with the understanding that the law has no effect until the convention comes into force for that jurisdiction. Other jurisdictions prefer to wait and proclaim the legislation in force on the day the convention comes into force, once that day is known. In either event the public has notice under s. 9 of the date that the convention becomes the law of the enacting jurisdiction.

[SCHEDULE: The Hague Convention on Intercountry Adoption]

See <http://www.hcch.net/e/conventions/menu33e.html>.