

EXPLANATORY NOTES

BILL

No. 16

An Act to amend *The Adoption Act, 1998*

Clause

of Bill

1 *The Adoption Amendment Act, 2016*

2 *The Adoption Act, 1998*

3 **Interpretation**

2 In this Act:

“**adoptive parent**” means a person who adopts a child pursuant to:

- (a) this Act;
- (b) any predecessor to this Act; or
- (c) an order of the court made pursuant to section 28; («*mère ou père adoptif*»)

“**agency**” means a body corporate that is approved by the minister pursuant to section 37; («*agence*»)

“**agency adoption**” means an adoption in which an agency has placed a child for adoption; («*adoption institutionnelle*»)

“**applicant**” includes joint applicants where a child is placed with more than one person; («*demandeur*»)

“**birth father**” means:

- (a) in the case of a child who has not been previously adopted:
 - (i) the biological father of the child;
 - (ii) a man who has access to or custody of the child by order of a court having jurisdiction over the matter or by agreement; or
 - (iii) a person who has been declared by the court to be the father of the child pursuant to Part VI of *The Children’s Law Act, 1997*; or
- (b) in the case of a child who has been previously adopted, a person who is the father of the child by virtue of an order of adoption; («*père de sang* »)

“birth mother” means:

- (a) in the case of a child who has not been previously adopted:
 - (i) the biological mother of the child;
 - (ii) a woman who has access to or custody of the child by order of a court having jurisdiction over the matter or by agreement; or
 - (iii) a person who has been declared by the court to be the mother of the child pursuant to Part VI of *The Children’s Law Act, 1997*; or
- (b) in the case of a child who has been previously adopted, a person who is the mother of the child by virtue of an order of adoption; (« *mère de sang* »)

“birth parent” means:

- (a) a birth mother; or
- (b) a birth father; (« *mère ou père de sang* »)

“child” means a person who:

- (a) is under 18 years of age; and
- (b) has never been married; (« *enfant* »)

“court” means the Court of Queen’s Bench; (« *tribunal* »)

“Crown ward” means a child who has been permanently committed:

- (a) to the minister pursuant to *The Child and Family Services Act, The Family Services Act* or *The Child Welfare Act*, by court order;
- (b) to the minister pursuant to *The Child and Family Services Act, The Family Services Act* or *The Child Welfare Act*, by voluntary committal; or
- (c) to a child welfare authority of another jurisdiction if the minister accepts the responsibility pursuant to this Act, any former Act or *The Child and Family Services Act*, for the custody or guardianship of the child; (« *pupille de la Couronne* »)

“director” means a person appointed pursuant to section 38 and, in the absence of any appointment, the minister; (« *directeur* »)

“former Act” means:

- (a) *The Adoption Act*;
- (b) *The Family Services Act*;
- (c) *The Child Welfare Act*;
- (d) *The Adoption of Children Act, 1922*; (« *loi antérieure* »)

“foster home” means a foster home approved pursuant to *The Child and Family Services Act* or *The Family Services Act* for the care of children; (« *foyer nourricier* »)

“independent adoption” means an adoption in which the child is placed for adoption by a birth parent; (« *adoption indépendante* »)

“minister” means the member of the Executive Council to whom for the time being the administration of this Act is assigned; (« *minister* »)

“ministry” means the ministry over which the minister presides; (« *ministère* »)

“prescribed” means prescribed in the regulations; (« *prescrit* » ou « *réglementaire* »)

“registrar” means the local registrar of the court or the registrar of the Court of Appeal; (« *registraire* »)

“**simple adoption order**” means an order of adoption granted in a jurisdiction other than Saskatchewan that does not necessarily for all purposes:

- (a) terminate all the rights and responsibilities that exist at law between a child and the child’s birth parents; or
- (b) make an adopted child the child of the adopting parents as if born to them; («*ordonnance d’adoption simple*»)

“**spouse**” means the legally married spouse of a person or a person with whom that person is cohabiting as spouses; («*conjoint*»)

“**status Indian**” means:

- (a) a registered Indian pursuant to the *Indian Act* (Canada); or
- (b) a person entitled to be registered as an Indian pursuant to the *Indian Act* (Canada); («*statut d’Indien*»)

“**step-parent adoption**” means an adoption pursuant to section 23; («*adoption d’un enfant de conjoint*»)

“**transfer of guardianship**” means the transfer of guardianship to an agency pursuant to section 11; («*transfert de la tutelle*»)

“**voluntary committal**” means a voluntary committal pursuant to any former Act or *The Child and Family Services Act* or any other previous similar Act.

(«*placement volontaire*»)

1998, c.A-5.2, s.2; 2001, c.51, s.2; 2004, c.4, s.3;
2014, c.11, s.2.

Explanation

This section defines most of the terms used in the Act and regulations. Definitions are arranged in alphabetical order. Amendment to clause (a) in the definition of “adoptive parent” is respecting repeal of section 28, ‘simple adoptions’.

The definition of “crown ward” is repealed and replaced, in alphabetical order by “permanent ward”.

The definition of “simple adoption” is repealed.

4 Determination of child’s best interests

- 3 Where, pursuant to this Act, a person or the court is required to determine the best interests of the child, the person or the court shall take the following into account:
 - (a) the child’s physical, cultural, mental, emotional, psychological and spiritual needs;
 - (b) the child’s physical, mental and emotional level of development;
 - (c) the religious faith, if any, in which the child has been raised;
 - (d) the importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family;
 - (e) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity;
 - (f) the child’s wishes, having regard to the child’s age and level of development;
 - (g) the effect on the child of not making the order;

(h) in the case of a step-parent adoption, the effect that the order may have on the relationship, if any, that the child has or may have with the parent who is not the spouse of the applicant;

(i) any other relevant fact or circumstance.

1998, c.A-5.2, s.3.

Explanation

Updates to this section include modernization of language. For example, prior to the 1970s adoptive parents were required to be of the same 'religious faith' as the child before they could adopt. This is no longer a policy or consideration; rather, adoptive parents are considered based on their willingness to support a child's own cultural and spiritual upbringing or needs.

5 Consent to adoption and transfer of guardianship

- 4** (1) Subject to section 5, an order of adoption of a child pursuant to section 16 or 23 shall not be made unless:
- (a) the application for an order of adoption includes the consent to adoption, in the prescribed form, of:
 - (i) subject to subclauses (ii), (iii) and (v):
 - (A) the birth mother of the child; and
 - (B) the birth father of the child;
 - (ii) in the case of a Crown ward, the minister or the director acting on behalf of the minister;
 - (iii) in the case of a child with respect to whom guardianship has been transferred to or vested in an agency, the agency;
 - (iv) in the case of a child who has no birth parent who is alive, the guardian or person having lawful custody of the child; or
 - (v) in the case of a child whose guardianship is vested in:
 - (A) a minister or other official of a government of a jurisdiction other than Saskatchewan; or
 - (B) another child and family services agency outside Saskatchewan; the minister, official or agency, as the case may be;
 - (b) in the case of a child who is 12 years of age or more, the child has given consent in the prescribed form; and
 - (c) except in the case of a Crown ward under 12 years of age, the director has certified to the court, in writing, that, to the director's knowledge, the consent of any person who may revoke his or her consent was not revoked within the time during which it was revocable.
- (2) A child is to be at least 72 hours old prior to a consent to adoption or transfer of guardianship being made.
- (3) **Repealed.**

2004, c.4, s.4.

Explanation

This change represents an update in language from ‘Crown ward’ to ‘permanent ward’ since it is proposed that the term ‘Crown’ is outdated and not referenced in any other child welfare legislation.

6 Revocation of consent or transfer of guardianship

- 7 (1) Subject to subsections (2) and (5), a consent to adoption or transfer of guardianship may not be revoked.
- (2) Subject to subsection (5), a consent to adoption or transfer of guardianship of the child may be revoked by the person who made it by delivering to the director a written notice of revocation:
- (a) at any time within 14 days after the day on which the consent to adoption or transfer of guardianship was signed; and
 - (b) after the expiry of the period described in clause (a), at any time prior to the child being placed for adoption pursuant to section 14.
- (3) In the case of an agency adoption, the court shall make an order for interim custody of the child if, following the delivery of a written notice of revocation pursuant to subsection (2), a dispute arises as to which birth parent is to have custody of the child and one of the birth parents makes an application for interim custody.
- (4) In the case of an agency adoption where no application is made pursuant to subsection (3) by a birth parent, the agency shall make an application pursuant to section 6 of *The Children’s Law Act, 1997* as soon as is practicable.
- (5) Prior to an order of adoption being made, the court may, having regard to the child’s best interests, allow a child who has consented to be adopted to revoke the consent.
- (6) Where a birth parent revokes a consent or transfer of guardianship pursuant to subsection (2), the director shall inform the agency and, where practicable, the other birth parent of the revocation.

1998, c.A-5.2, s.7.

Explanation

The time to revoke consent to an independent adoption or voluntary committal was decreased from 30 to 14 days in 1988-89. This reduced timeframe for birth parents made Saskatchewan inconsistent with other jurisdictions. For example, British Columbia, New Brunswick, Nunavut, and the Northwest Territories each have a 30-day revocation period, while Manitoba, Ontario, Newfoundland, and Yukon have a 21-day revocation period. Besides Saskatchewan, the only other jurisdiction with a 14-day revocation period is Prince Edward Island. The remainder have either no prescribed timeline, or require a separate court application.

To ensure Saskatchewan birth parents receive adequate time to consider their consent to adoption and protection for their rights, it is recommended the time to revoke consent be increased to 21 days to align with the majority of other jurisdictions.

7 Placement of a Crown ward

- 8 (1) A resident of Saskatchewan who wishes to have a Crown ward placed in his or her home for the purpose of adopting the Crown ward shall apply, in writing, to the director.
- (2) The director, on being satisfied that the applicant is suitable and that it is in the best interests of the Crown ward to do so, may:
- (a) give responsibility for the care and supervision of the Crown ward to the applicant mentioned in subsection (1); or
 - (b) subject to section 14, place the Crown ward with the applicant mentioned in subsection (1) for the purpose of adoption.
- (3) **Repealed.** 2004, c.4, s.6.
- (4) The director shall:
- (a) prepare a report for the use of the court in every case where the director places a Crown ward in a home for the purpose of adoption; and
 - (b) submit that report to the court when the application to the court for an order of adoption is made.
- (5) Subject to subsection (6), the director shall provide a copy of the report prepared pursuant to subsection (4) to the applicant mentioned in subsection (1) and to the birth parents on their written requests, if those written requests are made prior to the order of adoption.
- (6) Unless the director has received a written acknowledgement from the birth parents and the applicant mentioned in subsection (1) stating that the identities of the birth parents and the applicant are known to each other, the director shall, when providing a copy of a report pursuant to subsection (5), remove, obliterate or withhold those portions of the report that would, in the director's opinion, be likely to disclose the identities of the birth parents or the applicant to each other.
- (7) The director may, at the request of and on behalf of an applicant mentioned in subsection (1), submit the materials for an application for adoption to the court.

1998, c.A-5.2, s.8; 2004, c.4, s.6.

Explanation

'Permanent ward' will replace 'Crown ward'.

8 Assisted adoption of Crown wards

- 9** (1) The minister may provide financial assistance by way of grant or other similar means in accordance with the regulations to any person who adopts a Crown ward where, in the opinion of the minister, financial assistance is required by reason of:
- (a) the special needs of the Crown ward; or
 - (b) the special circumstances of the adoption of the Crown ward.
- (2) Where financial assistance is provided pursuant to subsection (1), the minister may:
- (a) review the financial assistance from time to time; and
 - (b) vary or terminate the financial assistance in accordance with the regulations.

1998, c.A-5.2, s.9.

Explanation

The current provision does not allow the Minister to continue Assisted Adoption benefit payments to subsequent legal guardians if the adoptive parents both pass away. In such cases, supports should follow the adoptee. The amendment will allow benefits to continue to the subsequent guardian subject to the regulations (regulation amendments required to support this change).

This amended provision will also allow the Minister to enter into payment agreements directly with a youth between ages 18-21 if the youth is engaged in an educational or vocational plan (to be supported through regulation amendments). Note that current regulations allow the Minister to extend assisted adoption payments between ages 18-21, but payments can only be made to the adoptive parents via their agreement with the Minister. The provision to allow agreement- making with the youth will recognize the youth's independence from the family unit, and will also allow the Minister to continue to support a transition plan if the adoptive parents pass away after the youth turns 18.

9 Transfer of guardianship

- 11** (1) Where a birth parent or the guardian of a child who has no living birth parent wishes to place his or her child for adoption through an agency, the birth parent or guardian may transfer guardianship of the child to the agency by executing a transfer of guardianship in the prescribed form.
- (2) Subject to subsection 5(3), on the execution of a transfer of guardianship by each birth parent in accordance with subsection (1), the agency has all the rights and responsibilities of a parent of the child.
- (3) On an application for adoption, where a consent to adoption executed by an agency is filed with the court, the transfer of guardianship must also be filed.
- (4) Where, pursuant to subsection 5(1), the court has dispensed with the requirement for a person to transfer guardianship, that person's consent to adoption is not required.
- (5) An agency shall notify the director of each transfer of guardianship within 30 days after a birth parent signs the document.

- (6) Unless the child has been placed for adoption, an agency that has guardianship of a child pursuant to this Act:
- (a) may apply to the court for an order pursuant to subsection (7) at any time within one year after transfer of guardianship; and
 - (b) shall apply to the court for an order pursuant to subsection (7) at the end of one year after transfer of guardianship.
- (7) On hearing an application pursuant to subsection (6) or (10), the court shall, having regard to the best interests of the child:
- (a) order that the child be permanently committed as a Crown ward as if an order had been made pursuant to *The Child and Family Services Act*; or
 - (b) give directions as to the custody of the child.
- (8) An agency that applies pursuant to subsection (6) shall serve a copy of the application at least 15 days prior to making the application on:
- (a) unless the court orders otherwise, the birth parent; and
 - (b) the director.
- (9) On receipt of the copy of the application, the director may file with the court any information that the director considers relevant, and the judge hearing the matter shall receive the information.
- (10) Where a child placed for adoption by an agency is returned to the agency pursuant to subsection 16(10):
- (a) the agency shall notify the director within 10 days after the return of the child to the agency; and
 - (b) the transfer of guardianship is continued for 90 days from the day of the return of the child to the agency, and:
 - (i) the agency may place the child for adoption; or
 - (ii) if the agency has not placed the child for adoption within 90 days after the return of the child to the agency, the agency shall apply to the court for an order pursuant to subsection (7).
- (11) Where an application is made pursuant to clause (6)(b) or subclause (10)(b)(ii) and the transfer of guardianship expires:
- (a) the transfer of guardianship is continued until an order is made pursuant to subsection (7), unless the court orders otherwise; and
 - (b) the agency shall not place the child for adoption.

1998, c.A-5.2, s.11.

Explanation

‘Permanent ward’ will replace ‘Crown ward’.

10 Proof of placement

- 14 (1) Subject to subsection (3), when a child is deemed to be placed for adoption pursuant to subsections (4) and (5), the director or an agency shall execute a certificate of placement in the prescribed form.
- (2) A certificate of placement is admissible in evidence as proof, in the absence of evidence to the contrary, that a child was placed for adoption on the date specified in the certificate of placement.
- (3) No certificate of placement is required in the case of an independent adoption or step-parent adoption.
- (4) Subject to subsection (5), a child is deemed to be placed for adoption when:
- (a) every birth parent whose consent to adoption or transfer of guardianship or signature to a voluntary committal is required has executed a consent to adoption, transfer of guardianship or voluntary committal and the time for revocation by each birth parent has expired with respect to:
 - (i) the consent to adoption or transfer of guardianship, as the case may be; or
 - (ii) the voluntary committal, pursuant to clause 50(1)(a) of *The Child and Family Services Act*;
 - (b) the court has dispensed with the requirement of the consent to adoption, transfer of guardianship or with the signature to the voluntary committal and:
 - (i) the time for appealing the order dispensing with consent to adoption, transfer of guardianship or voluntary committal, as the case may be, has expired; or
 - (ii) the order mentioned in clause (a) has been appealed and the appeal has been discontinued or dismissed.
- (5) A child shall be deemed to have been placed for adoption pursuant to subsection (4) only where:
- (a) the child begins to reside with the prospective adoptive parent; or
 - (b) the care and supervision of the child has been given to and accepted by the prospective adoptive parent, but the child is not yet residing with the prospective adoptive parent.
- (6) Where notice of an application for a declaration of paternity pursuant to Part VI of *The Children's Law Act, 1997* is served on the mother of the child, the child with respect to whom the application is made is not to be deemed to be placed for adoption until the application is finally determined.

1998, c.A-5.2, s.14.

Explanation

'Permanent ward' will replace 'Crown ward'. There is also a language change to provide clarity in 14(4)(c); no change in purpose or intent.

11 Adoption Order

- 16 (1) The court may, on application pursuant to this section or section 23, grant an order of adoption of a child only if, in the opinion of the court, it is in the best interests of the child.
- (2) Subject to subsection (3), an application to the court for an order of adoption of a child may be made pursuant to this section by:
- (a) married adults jointly;
 - (b) an unmarried adult; or
 - (c) any other person or persons that the court may allow, having regard to the best interests of the child.
- (3) Subject to subsection (5), no person mentioned in subsection (2) is entitled to apply unless the person is a resident of Saskatchewan.
- (4) The court may name the surviving applicant and the deceased applicant as the adoptive parents of the child where:
- (a) an application for adoption is made jointly by more than one person; and
 - (b) one of the persons mentioned in clause (a) dies prior to the order of adoption being made.
- (5) The court may waive the residency requirement of subsection (3) if, in the opinion of the court, it is in the best interests of the child to do so.
- (6) An applicant for adoption may make the application for adoption to the court in any judicial centre.
- (7) An applicant for adoption shall file:
- (a) the prescribed material; and
 - (b) any additional material that the court requires in the court's rules or that the judge may request.
- (8) Unless the court or the director has extended the time for applying, every applicant for adoption of a child who was placed for adoption pursuant to section 8, 10, 13 or 27 shall apply to court within one year of the date on which the child was placed for adoption.
- (9) The court shall not extend the time for making an application mentioned in subsection (8) unless the applicant has first applied to the director for an extension and has been refused.
- (10) The child shall be returned to the director or the agency, as the case may be, if:
- (a) an application for adoption of a child who was placed for adoption pursuant to section 8 or 10 is not made within one year of the date on which the child was placed for adoption; and
 - (b) no extension of time has been granted pursuant to subsection (8).
- (11) If an application for adoption of a child who was placed for adoption pursuant to section 13 is not made within one year of the date on which the child was placed for adoption and no extension of time has been granted pursuant to subsection (8), the consent to adoption pursuant to section 4 expires and an order of adoption shall not be made unless another consent to adoption pursuant to section 4 is obtained or the court dispenses with the requirement of consent to adoption pursuant to section 5.
- (12) An application for adoption is:
- (a) to be heard by a judge in the judge's chambers; and

- (b) to be held without the presence of the public.
- (13) Every application for adoption must contain a statement of all fees, expenses and disbursements paid in connection with the adoption.
- (14) On an application for adoption, the court may do all or any of the following:
 - (a) require that the child be brought before the court and may interview the child or require that another person interview the child and report the findings of the interview to the court;
 - (b) require the presence of the applicant or any other person whose presence is considered necessary by the court;
 - (c) direct that a formal hearing be held.
- (15) Where the court directs that a formal hearing be held pursuant to clause (14)(c), the court shall give directions as to who is required to be served with notice of the hearing and the procedure to be followed in conducting the hearing.
- (16) Unless the application is made by the director on behalf of an applicant, the applicant for adoption shall serve on the director a copy of:
 - (a) the application; and
 - (b) any supporting material.
- (17) The application and materials mentioned in subsection (16) must be served:
 - (a) at least 30 days before the application is filed in court; or
 - (b) within any period, other than the period mentioned in clause (a), that the director may allow.
- (18) Where the director is served pursuant to subsection (16), the director may file with the court any information that, in the director's opinion, may be relevant to the application, and the judge hearing the application shall receive the information.

1998, c.A-5.2, s.16; 2004, c.4, s.7.

Explanation

Amendment restricts the court's ability to hear/take into consideration a child's voice in court to age seven and up. The regulations will describe who can complete the report, and what information the report shall contain. Most provinces/territories have provisions for hearing a child's wishes or understanding of adoption in court that typically follow developmental milestones. This provision supports recommendations made by the Legislative Review Task Team and community engagement responses.

The public and legal professionals often find subsection 16(17) confusing. The amendment will clarify the director must be served notice of an adoption 30 days prior to submitting an application to court. This is not a change in requirement. Subsection 16(17) is being collapsed into new subsection 16(16) for language efficiency.

12 Adoption of an Adult

- 24 (1) A person who is 18 years of age or more may be adopted if:
- (a) subject to subsection (3), the person consents; and
 - (b) the court considers the reason for the adoption to be acceptable.
- (2) An application for an order of adoption of a person mentioned in subsection (1) may be made by:
- (a) married adults jointly;
 - (b) an unmarried adult; or
 - (c) any other person or persons that the court may allow, having regard to the reasons for the adoption.
- (3) If the person to be adopted pursuant to this section is unable to give or understand consent, the court may dispense with the requirement of the person's consent.
- (4) Sections 3 to 7, 27, 28, 30 and 34 do not apply to an adoption pursuant to this section.
- (5) In applying any provision of this Act in relation to an adoption of an adult pursuant to this section, a reference to the person being adopted as a 'child' is to be read as if the provision referred to the person being adopted as a "person".

1998, c.A-5.2, s.24; 2004, c.4, s.9.

Explanation

This removes reference to section 28, which is being repealed. See also section 28 explanation regarding repeal of provisions relating to 'simple adoptions'.

13 None

27.1 Adoption orders from non-Convention countries

Explanation

The Province has legislation that identifies how to support adoptions if a country is signatory to the *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, but it does not identify how to support non-*Convention* cases. This gap creates issues when the Province is asked to take a position on a case by Citizenship and Immigration Canada (CIC).

When a child from another country is adopted (or is to be adopted) by a Saskatchewan resident, CIC will seek a position from the Ministry on the placement. In a non-*Convention* case, the Province is asked to respond with what is known as a 'Letter of No Objection'. The letter signifies the Province's agreement to the placement as well as agreement that all criteria have been met. The Ministry must exercise due diligence in reviewing documentation and evidence provided by the adoptive parents and the child's country of origin to ensure it is consistent with the laws and requirements for adoption in both jurisdictions.

The proposed subsections 27.1(1) and (2) lay the foundation to strengthen the minister's position when considering such cases.

The language for this section is modeled on Article 4 of the *Convention*, and is consistent with the requirements for any type adoption granted in the province.

14 Simple Adoption Orders

- 28** (1) A resident of Saskatchewan may apply to the court for an order to recognize a simple adoption order where:
- (a) the resident adopts a child in a jurisdiction outside Canada; and
 - (b) the order granted is a simple adoption order.
- (2) An applicant pursuant to subsection (1) shall serve a copy of the application on the director in accordance with subsections 16(16) and (17), and the director may file with the court pursuant to subsection 16(18) any information that the director considers relevant.
- (3) The court may make an order to recognize a simple adoption order if the court is satisfied that the applicant:
- (a) is a suitable adoptive parent; and
 - (b) in the case of a simple adoption order to be granted after the coming into force of this Act, has complied with the laws of Saskatchewan and Canada and the laws of the jurisdiction where the simple adoption order was issued.
- (4) Where the court recognizes a simple adoption order, the child is, for all purposes, including rights to succession of property, deemed to be the adopted child of the adoptive parent as if the child had been adopted in Saskatchewan pursuant to this Act.

1998, c.A-5.2, s.28.

Explanation

This provision is to be repealed. The provision for recognizing 'simple adoptions' granted outside the province was introduced in legislation in the early 1990s. It was a means to reconcile placement of foreign children with Saskatchewan families at a time when formal legislation governing such activity did not exist.

The requirements for 'simple adoptions' are incompatible with the legal requirements for intercountry adoption because they do not require the severing of parental ties, (or informed consent by the birth parents) and because birth parents are able to apply to revoke their consent to this type of order. This creates risk in an intercountry context because it is not clear who has authority over the affairs of the child, or what would happen if a birth parent requested return of the child. Saskatchewan and Quebec are the only two Canadian jurisdictions with such a provision.

There is little to no history of this provision being used in the province. Such cases, when brought before the Ministry, can be more appropriately considered under the proposed new section 27.1, which is compatible with Saskatchewan's laws regarding adoption.

15 Act prevails

29 (1) Subject to subsection (2), where there is a conflict between this Act and any provision of *The Child and Family Services Act* with respect to the release of adoption records, this Act prevails.

(2) Where an adopted child becomes a Crown ward, the provisions of *The Child and Family Services Act* with respect to confidentiality and the disclosure of information apply to that child.

1998, c.A-5.2, s.29.

Explanation

'Permanent ward' will replace 'Crown ward'.

16 Duties of Registrar

29.3(1) Not more than 10 days after a fiat or decision to grant an order of adoption pursuant to section 16, 23 or 24 is made, or a fiat or decision refusing to grant an order of adoption pursuant to section 16, 23 or 24 is made, the registrar shall send notice of the fiat or decision, in the prescribed form, by ordinary mail to:

- (a) each applicant pursuant to section 16, 23 or 24;
- (b) the director; and
- (c) the agency, if any, that placed the person for adoption.

(2) The registrar shall not issue an order of adoption pursuant to section 16, 23 or 24 until:

- (a) 30 days have expired from the day on which the fiat or decision to grant an order of adoption was made by the judge; and
- (b) if an appeal has been commenced against the fiat or decision to grant the order of adoption or against an order dispensing with a consent to adoption or transfer of guardianship or signature to a voluntary committal, the appeal has been disposed of or discontinued.

(3) On issuing an order of adoption pursuant to section 16, 23 or 24, the registrar shall send a certified copy of the order of adoption by ordinary mail to:

- (a) each adoptive parent;
- (b) the Registrar of Vital Statistics, together with any other information that the Registrar of Vital Statistics requires to carry out the requirements of *The Vital Statistics Act, 2009*;

- (c) if the adopted person is a status Indian, the Registrar within the meaning of the *Indian Act* (Canada), together with any other information that the Registrar requires to carry out the requirements of the *Indian Act* (Canada);
 - (d) the director; and
 - (e) the agency, if any, that placed the person for adoption.
- (4) The Registrar of Vital Statistics shall provide the Registrar, within the meaning of the *Indian Act* (Canada), with a copy of the registration of live birth of the person where:
- (a) a person adopted pursuant to this Act or any former Act is a status Indian; and
 - (b) the person or the adoptive parent of the person requests the Registrar of Vital Statistics to do so.
- (5) Where an order is made by the court pursuant to section 28, the registrar shall send a certified copy of the order by ordinary mail to:
- (a) each adoptive parent;
 - (b) **Repealed.** 2009, c.V-7.21, s.115.
 - (c) the director.

2004, c.4, s.10; 2009, c.V-7.21, s.115.

Explanation

Subsection 29.3(5) is repealed. This relates to repeal of section 28, simple adoptions. See also section 28 explanation regarding repeal of provisions relating to ‘simple adoptions’.

17 Appeals

- 29.6(1)** An appeal from a fiat or decision to grant an order of adoption or a fiat or decision refusing to make an order of adoption may be made to the Court of Appeal by:
- (a) an applicant mentioned in section 16, 23 or 24;
 - (b) a person whose consent is required for an order pursuant to section 23 but was not obtained and not dispensed with; or
 - (c) the minister.
- (2) An appeal from the making of an order pursuant to section 5 or the refusal to make an order pursuant to section 5 may be made to the Court of Appeal by:
- (a) a person whose signature to a consent to adoption or transfer of guardianship was dispensed with; or
 - (b) an applicant pursuant to section 5, where the court refuses to dispense with a person’s signature to the consent to adoption or transfer of guardianship.
- (3) An appeal may be made to the Court of Appeal from:
- (a) a refusal to make an order recognizing a simple adoption order pursuant to section 28;
 - (b) an order respecting an application for termination of access pursuant to subsection 15(3);
 - (c) an order pursuant to subsection 23(8).

- (4) A person entitled to appeal pursuant to this section shall serve and file the notice of the appeal within 30 days after the date on which the fiat, decision or order appealed from was made, but no appeal shall be commenced after an order of adoption has been issued pursuant to subsection 29.3(2).
- (5) Notwithstanding any other Act or law, no extension of the time for the commencement of an appeal shall be granted.
- (6) The Court of Appeal may receive further evidence on questions of fact by:
- (a) oral examination before the Court of Appeal;
 - (b) affidavit; or
 - (c) deposition taken before a person authorized to take oaths.
- (7) Except in the case of an appeal by the minister, a person making an appeal shall serve notice of the appeal on the director.
- (8) The Court of Appeal may:
- (a) make:
 - (i) any order that, in the Court of Appeal's opinion, ought to have been made; and
 - (ii) any further or other order as the case may require; or
 - (b) by order directed to the judge of the first instance, require that judge to:
 - (i) make any order that the circumstances of the case require; or
 - (ii) rehear the application.
- (9) Where the requirements of this Act have been substantially complied with, the Court of Appeal shall not set aside an order of adoption by reason only of a defect or irregularity in matters of procedure.
- (10) Not later than 10 days after the decision of the Court of Appeal, the registrar shall send a certified copy of any order made by the Court of Appeal to:
- (a) the director;
 - (b) the parties to the appeal;
 - (c) the agency, in the case of an agency adoption; and
 - (d) any other person to whom the Court of Appeal directs that the order should be sent.
- (11) Subject to subsection (12), the tariff of costs established in *The Queen's Bench Rules* applies to all proceedings on appeal and the costs are in the discretion of the Court of Appeal.
- (12) The Court of Appeal shall not award costs against the minister or any employee of the ministry.
- (13) The order or decision of the Court of Appeal is not subject to further appeal without leave of the Court of Appeal.
- (14) An applicant for leave to appeal an order or decision of the Court of Appeal shall apply for that leave within 15 days after the date of the order or decision appealed from.
- (15) Notwithstanding any other Act or law, the Court of Appeal shall not grant an extension of the time to make an appeal pursuant to subsection (14).

2004, c.4, s.10; 2014, c.11, s.2.

Explanation

This transitional provision relates to the repeal of section 28, ‘simple adoptions’. See also section 28 explanation regarding repeal of provisions relating to ‘simple adoptions’.

18 No payment or reward

- 33** (1) In this section and section 34, “**adoption**” includes an adoption by virtue of a simple adoption order.
- (2) Except where otherwise permitted pursuant to this Act or the regulations, no person shall give or receive any payment or reward, whether directly or indirectly, for any purpose related to the adoption of a child.
- (3) Except where otherwise permitted pursuant to this Act or the regulations, no person shall agree to give or receive any payment or reward, whether directly or indirectly, for any purpose related to the adoption of a child.

1998, c.A-5.2, s.33.

Explanation

This section is repealed as it relates to repeal of section 28, simple adoptions. See also section 28 explanation regarding repeal of provisions relating to ‘simple adoptions’.

19 Offences and penalties

- 35** (1) A person who contravenes any provision of section 32, 33 or 34 is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000, imprisonment for not more than one year or both.
- (2) No prosecution shall be commenced pursuant to this section except on the written authority of the Minister of Justice.
- (3) No prosecution shall be commenced for an offence mentioned in subsection (1) after the expiration of two years from the date of the alleged offence.

1998, c.A-5.2, s.35.

Explanation

Amendment to Section 35(1) deals with an update to *The Adoption Regulations, 2003* and release of identifying information on an adult adoptee’s birth registration.

20 None

35.1 Minister may apply for compliance order

Explanation

The primary function of this new section 35.1(1) is to support regulation amendments regarding ‘contact preferences’ that come into effect January 1, 2017. In scope, however, it will allow the Minister to apply for an order against any person who is not complying with any provision of the Act, the regulations or a decision or order issued pursuant to the Act or regulations.

With respect to the aforementioned regulation changes, adult adoptees and birth parents will be eligible to receive identifying birth information subject to the terms of a contact preference submitted by the other individual for adoptions granted on or after January 1, 2017. The purpose is to allow adult adoptees and birth parent to mitigate privacy concerns they may have. If the person receiving the identifying information does not agree to the terms of the contact preference, then they are not entitled to receive that information.

If a person contravenes the terms of a contact preference, it is proposed the Minister would, as a first stage, write that individual a letter reminding them of their agreement. If further contraventions were made, the Minister (Child and Family Programs) would engage Civil Law in making application to court for a compliance order.

Of the jurisdictions that have contact preferences, none reported a high rate of contravention. It is anticipated the Minister would make few applications pursuant to this section, and matters of contravention could be effectively dealt with through the proposed first stage of response.

21 Review respecting decisions

- 41** (1) Any person may request that a decision be reviewed by the minister or, with the approval of the minister, by the Family Services Board established pursuant to *The Child and Family Services Act*, if that person is aggrieved by that decision made by:
- (a) the director pursuant to this Act or the regulations; or
 - (b) any person acting on behalf of the minister or the director pursuant to this Act or the regulations.
- (2) A request for review pursuant to subsection (1) does not stay or otherwise affect the validity of the decision with respect to which the review is requested.
- (3) The Family Services Board mentioned in subsection (1) shall, on completing a review, submit its recommendations respecting the decision to the minister.
- (4) On completing a review pursuant to subsection (1) or on receiving a recommendation pursuant to subsection (3) from the Family Services Board, the minister may confirm, reverse or vary the decision with respect to which the review was requested.

1998, c.A-5.2, s.41.

Explanation

Family Services Boards were never established according to *The Child and Family Services Act*, so repealing this provision aligns *The Adoption Act, 1998* with current practice. Provisions in *The Child and Family Services Act* regarding Family Services Boards will also be repealed in the future.

22 Regulations – minister

- 42** Subject to the approval of the Lieutenant Governor in Council, the minister may make regulations:
- (a) governing agencies that provide services related to international adoptions;
 - (b) respecting any matter or thing that the minister considers necessary to fulfil the purposes of section 27 or 28.

1998, c.A-5.2, s.42.

Explanation

This amendment relates to the repeal of ‘simple adoptions’. In Section 42 (b) the reference to “or 28” is removed.

23 Regulations – Lieutenant Governor in Council

- 43** The Lieutenant Governor in Council may make regulations:
- (a) defining, enlarging or restricting the meaning of any word used in this Act but not defined in this Act;
 - (b) prescribing the materials to be filed on any application made pursuant to this Act;
 - (c) prescribing any forms required for this Act or the regulations;
 - (d) governing the provision of financial assistance pursuant to section 9;
 - (e) prescribing the form for a transfer of guardianship pursuant to section 11;
 - (f) prescribing the procedure to be followed on an application pursuant to section 24;
 - (g) governing the operation of the registry pursuant to section 30 and the provision of post-adoption services pursuant to clause 30(1)(b);
 - (g.1) governing the confidentiality of information and records and the release of information pursuant to clause 30(2)(b) or otherwise;
 - (h) fixing or prescribing the fees applicable for anything done pursuant to this Act or the regulations, specifying by whom, and to whom, those fees are payable, requiring the payment of those fees and prescribing the circumstances under which those fees may be waived;
 - (i) prescribing the contents of any report or notice required pursuant to this Act;

- (j) providing for the licensing of agencies and prescribing the standards for licensing and types of licences and any restrictions that apply to the activities that an agency may carry on;
- (k) prescribing terms and conditions of licences;
- (l) governing the suspension and cancellation of licences;
- (m) governing the records to be kept by any person or category of persons who provide any type of services pursuant to this Act or the regulations;
- (n) governing the access of any person or category of persons to any records made or kept pursuant to this Act or the regulations;
- (o) prescribing and requiring compliance with conditions governing the confidentiality of records of:
 - (i) agencies approved by the minister pursuant to this Act; or
 - (ii) persons who provide services pursuant to this Act;
- (p) prescribing any other matter or thing required or authorized to be prescribed by this Act;
- (q) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1998, c.A-5.2, s.43; 2004, c.4, s.11.

Explanation

New clause (e.1) supports amendments to subsection 16(14) and provides regulation making authority. To support amendments to Subsection 16(14), the regulations will describe who may complete a report for the court with respect to a child who is proposed for adoption, as well as what contents the report shall contain. See also the explanation for subsection 16(14).

Regulation making authority is added after clause (g.1) for the purposes of section 35, offences and penalties.

24 Transitional

- 46** (1) A consent to adoption validly obtained pursuant to any former Act is a valid consent to adoption for the purposes of this Act.
- (2) An order that is in force on the day before this Act comes into force and that was made pursuant to any former Act continues in force until it is varied pursuant to this Act.

1998, c.A-5.2, s.46.

Explanation

A subsection (3) is added as a transitional provision to support applications to recognize simple adoption orders made prior to the coming into force of *The Adoption Amendment Act, 2016*.

25 Coming into force

Prepared by the Ministry of Social Services