Uniform Custody Jurisdiction and Enforcement Act

Interpretation

1.—(1) In this Act,

(*a*) "court" means a (*provincial family court of enacting jurisdiction*), a county or district court, or (*Superior Court of enacting jurisdiction*);

(*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;

(*c*) "extra-provincial tribunal" means a court or tribunal outside (*enacting jurisdiction*) that has jurisdiction to grant to a person custody of or access to a child.

Child

(2) A reference in this Act to a child is a reference to the child while a minor.

Purposes

2. The purposes of this Act are,

(*a*) to ensure that application to the courts in respect of custody of, incidents of custody of, access to and guardianship for 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 (*enacting jurisdiction*) 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 (*enacting jurisdiction*).

Jurisdiction

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

(*a*) the child is habitually resident in (*enacting jurisdiction*) at the commencement of the application for the order;

(*b*) although the child is not habitually resident in (*enacting jurisdiction*), the court is satisfied,

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

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

(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 (*enacting jurisdiction*),

(v) that the child has a real and substantial connection with (*enacting jurisdiction*), and

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

Habitual residence

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

(*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.

Serious harm to child

4. Notwithstanding sections 3 and 7, 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 (*enacting jurisdiction*); 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 (*enacting jurisdiction*).

Declining jurisdiction

5. 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 (*enacting jurisdiction*).

Interim powers of court

6. Upon application, a court

(*a*) that is satisfied that a child has been wrongfully removed to or is being wrongfully retained in (*enacting jurisdiction*); or

(*b*) that may not exercise jurisdiction under section 3 or that has declined jurisdiction under section 5 or 8,

may do any one or more of the following:

1. Make such interim order in respect of the custody or access as the court considers is in the best interests of the child.
2. Stay the application subject to,
   i. the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or
   ii. 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.

Enforcement of foreign orders

7.—(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,

(*a*) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;

(*b*) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(*c*) that 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*) that the order of the extra-provincial tribunal is contrary to public policy in (*enacting jurisdiction*); or

(*e*) that, in accordance with section 3, the extra-provincial tribunal would not have jurisdiction if it were a court in (*enacting jurisdiction*).

Effect of recognition of order

(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.

Conflicting orders

(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.

Further orders

(4) A court that has recognized an extra-provincial order may make such further orders under (*Act governing custody and access*) as the court considers necessary to give effect to the order.

Superseding order, material change in circumstances

8.—(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,

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

(*b*) although the child is not habitually resident in (*enacting jurisdiction*), the court is satisfied,

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

(ii) that the child no longer has a real and substantial connection with the place where the extra-provincial order was made,

(iii) that substantial evidence concerning the best interests of the child is available in (*enacting jurisdiction*),

(iv) that the child has a real and substantial connection with (*enacting jurisdiction*), and

(v) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in (*enacting jurisdiction*).

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 (*enacting jurisdiction*).

Superseding order, serious harm

9. 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,

(*a*) the child remains in the custody of the person legally entitled to custody of the child;

(*b*) the child is returned to the custody of the person entitled to custody of the child; or

(*c*) the child is removed from (*enacting jurisdiction*).

Order restraining harassment

10. 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 a bond as the court considers appropriate.

Order where child unlawfully withheld

11.—(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,

(*a*) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child;

(*b*) that a person who is prohibited by court order or separation agreement from removing a child from (*enacting jurisdiction*) proposes to remove the child or have the child removed from (*enacting jurisdiction*); or

(*c*) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from (*enacting jurisdiction*) 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.

Application without notice

(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.

Duty to act

(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.

Entry and search

(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.

Time

(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.

Expiration of order

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

When application may be made

(8) An application under subsection (1) or (2) may be made in an application for custody or access or at any other time.

Application to prevent unlawful removal of child

12.—(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 (*enacting jurisdiction*) proposes to remove the child from (*enacting jurisdiction*), the court in order to prevent the removal of the child from (*enacting jurisdiction*) may make an order under subsection (3).

Application to ensure return 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 (*enacting jurisdiction*) and is not likely to return the child to (*enacting jurisdiction*), the court in order to secure the prompt, safe return of the child to (*enacting jurisdiction*) may make an order under subsection (3).

Order by court

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

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.

Idem, provincial court

(4) A (*provincial court*) shall not make an order under paragraph 1 of subsection (3).

Terms and conditions

(5) 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

(6) 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

(7) 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.

Further evidence

13.—(1) Where a court is of the opinion that it is necessary to receive further evidence from a place outside (*enacting jurisdiction*) before making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside (*enacting jurisdiction*) such supporting material as may be necessary together with a request,

(*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

(*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.

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.

Referral to court

14.—(1) Where the Attorney General receives from an extra-provincial tribunal a request similar to that referred to in section 13 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.

Information as to address

15.—(1) Where, upon application to a court, it appears to the court that,

(*a*) for the purpose of bringing an application in respect of custody or access; or

(*b*) for the purpose of 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 or persons as the court considers appropriate.

Exception

(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.

Compliance with order

(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.

Section binds Crown

(4) This section binds the Crown in right of (*enacting jurisdiction*).

Contempt of orders of provincial court

16.—(1) In addition to its powers in respect of contempt, every (*provincial court*) may punish by fine or imprisonment, or both, any wilful contempt of or resistance to its process or orders in respect of custody of or access to a child, but the fine shall not in any case exceed $1,000 nor shall the imprisonment exceed ninety days.

Conditions of imprisonment

(2) An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

True copy of extra-provincial order

17. 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.

Court may take notice of foreign law

18. 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 (*enacting jurisdiction*) and of a decision of an extra-provincial tribunal.