

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 17 October 1968.

Words struck out by the Committee are shown in italics within bold round brackets or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 3 December 1968.

Words struck out by the Committee are shown in italics within double bold round brackets; words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

Hon. Mr Hanan

GUARDIANSHIP

ANALYSIS

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A BILL INTITULED

An Act to define and regulate the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the Courts in relation to the custody and guardianship of children

No. 48—3

Price 15c

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Guardianship Act 1968. 5

(2) This Act shall come into force on the first day of January, nineteen hundred and seventy.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Child” means a person under the age of twenty-one 10
years:

“Child Welfare Officer” means a Child Welfare Officer for the purposes of the Child Welfare Act 1925:

“Court” means a Court having jurisdiction in the proceedings by virtue of section 4 of this Act: 15

“Magistrate’s Court” means a Magistrate’s Court presided over by a Magistrate appointed under the Domestic Proceedings Act 1968 to exercise the domestic jurisdiction of the Court:

“Near relative” means a step-parent, grandparent, aunt, 20
uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood:

“Prescribed” means prescribed by rules of Court or regulations:

“Superintendent of Child Welfare” means the Superintendent of the Child Welfare Division of the Department of Education: 25

“Supreme Court” includes a Judge thereof:

“Upbringing” includes education and religion.

Cf. 1908, No. 86, s. 2; 1967, No. 83, s. 2 30

3. Definition of custody and guardianship—For the purposes of this Act—

“Custody” means the right to possession and care of a child:

“Guardianship” means the custody of a child (except in 35
the case of a testamentary guardian and subject to any custody order made by the Court) and the right of control over the upbringing of a child, and includes all rights, powers, and duties in respect of the person and upbringing of a child that were at the commencement of this Act vested by any enactment or rule of 40
law in the sole guardian of a child; and “guardian” has a corresponding meaning.

Jurisdiction

4. Concurrent jurisdiction of Supreme Court and Magistrates' Courts—(1) The Supreme Court and a Magistrate's Court shall each have jurisdiction in respect of proceedings

5 under this Act:

Provided that a Magistrate's Court shall have no jurisdiction to entertain any application in respect of a child (other than an application for interim custody)—

10 (a) Where proceedings relating to or affecting the child are pending in the Supreme Court:

(b) Where an order of the Supreme Court relating to the custody or guardianship of, or access to, the child (other than an order under section 13 of this Act) is in force, unless the order has been removed into a

15 Magistrate's Court pursuant to section 26 of this Act:

(c) Who has been placed under the guardianship of the Supreme Court.

(2) Notwithstanding anything in subsection (1) of this section, if a Magistrate (*on the application of any party or of his own motion*) is of the opinion that any proceedings under this Act, or any question in any such proceedings, would be more appropriately or expeditiously dealt with in the Supreme Court, he may, upon application by any party to the

20 proceedings or without any such application, in the prescribed manner refer the proceedings or the question to that Court.

(3) The Supreme Court, upon application by any party to proceedings pending under this Act in a Magistrate's Court, may if it thinks fit, order that the proceedings be

30 removed into the Supreme Court. Where the proceedings have been so removed they shall be continued in the Supreme Court as if they had been properly and duly commenced in that Court.

Cf. 1926, No. 32, s. 7

35 **5. Personal jurisdiction**—(1) The Court shall have jurisdiction under this Act in any of the following cases:

(a) Where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction; or

40 (b) Where the child who is the subject of the application or order is present in New Zealand when the application is made; or

(c) Where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in New Zealand when the application is made.

(2) Notwithstanding the provisions of subsection (1) of this section the Court may decline to make an order under this Act if neither the person against whom it is sought nor the child is resident in New Zealand and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

Natural Guardianship

6. Guardianship of children—(1) Subject to the provisions of this Act, the father and the mother of a child shall each be a guardian of the child.

(2) Subject to the provisions of this Act, the mother of a child shall be the sole guardian of the child if—

Struck Out

(a) She is not and has never been married to the father of the child; and

New

(a) She is not married to the father of the child, and either:
 (i) Has never been married to the father; or
 (ii) Her marriage to the father of the child was dissolved before the child was conceived; and

(b) She and the father of the child were not living together as husband and wife at the time the child was born.

(3) Where the mother of a child is, or was at the time of her death, its sole guardian by virtue of subsection (2) of this section the father of the child may apply to the Court to be appointed as guardian of the child, either in addition to or instead of the mother or any guardian appointed by her, and the Court may in its discretion make such order on the application as it thinks proper.

(4) On the death of the father or the mother the surviving parent, if he or she was then a guardian of the child, shall, subject to the provisions of this Act, be the sole guardian of the child.

Appointment and Removal of Guardians

7. Testamentary guardians—(1) The father or the mother of a child (including an unborn child) may by deed or will appoint any person to be a guardian of the child after his or her death, and that person is in this Act referred to as a testamentary guardian.

(2) If the person appointing a guardian pursuant to subsection (1) of this section is himself a guardian of the child at his death, the testamentary guardian shall thereupon if he is of full age ((or capacity)) and capacity be either sole

5 guardian or a guardian in addition to any other guardian, as the case may be.

(3) If the person appointing a guardian pursuant to subsection (1) of this section is not himself a guardian at his death, the testamentary guardian may apply to the Court, and the Court may if it thinks fit appoint him as a guardian accordingly.

Struck Out

(4) Notwithstanding section 7 of the Wills Act 1837 of the United Kingdom Parliament, a person under the age of twenty-one years may appoint a guardian by will pursuant to subsection (1) of this section.

New

(4) Notwithstanding any enactment or rule of law, a person under the age of twenty-one years may appoint a guardian by deed or will pursuant to subsection (1) of this section.

Cf. 1926, No. 32, s. 5 (1)–(7)

8. Court-appointed guardians—(1) Subject to the provisions of this section, the Court may at any time, on application made for the purpose or on the making of an order under section 10 of this Act, appoint a guardian of a child either as sole guardian or in addition to any other guardian, and either generally or for any particular purpose, and either until the child attains the age of twenty-one years or sooner marries, or for any shorter period.

(2) The Supreme Court shall have exclusive jurisdiction to appoint and remove a guardian *ad litem* in respect of any proceedings before that or any higher Court, and may appoint or remove a guardian *ad litem* in respect of any proceedings before any other Court.

9. Wards of Court—(1) The Supreme Court may upon application order that any unmarried child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

(2) An application under subsection (1) of this section may be made—

- (a) By a parent, guardian, or near relative of the child:
- (b) By the Superintendent of Child Welfare:
- (c) By the child, who may apply without guardian *ad litem* or next friend: 5
- (d) With the leave of the Court, by any other person.

(3) Between the making of the application and its disposal, and thereafter if an order is made, the Court shall have the same rights and powers in respect of the person and property of the child as the Supreme Court possessed immediately before the commencement of this Act in relation to wards of Court: 10

Struck Out

Provided that the Court shall not have power to direct any child of or over the age of eighteen years to live with any person: 15

New

Provided that the Court shall not direct any child of or over the age of sixteen years to live with any person unless the circumstances are exceptional. 20

Provided also that where any child under the guardianship of the Court marries without the Court's consent the Court shall not have power to commit that (*person*) child or his or her spouse for contempt of Court for so marrying.

(4) A child who has been placed under the guardianship of the Supreme Court shall cease to be under such guardianship when the Court so orders or when the child reaches the age of twenty-one years or sooner marries, whichever first occurs. 25

10. Removal of guardian—(1) The Court may at any time on application by the other parent or by a guardian or near relative or, with the leave of the Court, by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court. 30

(2) No parent shall be deprived of the guardianship of his child pursuant to subsection (1) of this section unless the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian. 35

Cf. 1908, No. 86, s. 7

11. **Custody orders**—Subject to section 24 of this Act and to subsection (2) of section 15 of the Domestic Proceedings Act 1968, the Court may from time to time, on application by the father or mother, or a step-parent, or a guardian, of a child or with the leave of the Court by any other person, make such order with respect to the custody of the child as it thinks fit.

New

(2) Any order made under subsection (1) of this section may be made subject to such conditions as the Court thinks fit.

Cf. 1908, No. 86, s. 6; 1949, No. 51, s. 20 (2); 1967, No. 83, s. 2

12. **Orders in other proceedings**—(1) Subject to section 24 of this Act and to subsection (2) of section 15 of the Domestic Proceedings Act 1968, in any proceedings for nullity, separation, restitution of conjugal rights, dissolution of a voidable marriage, or divorce the Court may from time to time, before or by or after the principal decree or order, make such order (whether an interim order or a permanent order) as it thinks just with respect to the custody and upbringing of any child of the marriage.

(2) In any such case the Court may, if in all the circumstances it thinks appropriate, make a guardianship order vesting the sole guardianship of the child in one of the parents, or make such other order with respect to the guardianship of the child as it thinks fit.

(3) An order may be made under subsection (1) or subsection (2) of this section, and any such order may be varied or discharged, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Unless the Court makes a guardianship order (*the parents shall, if they are then guardians of the child, each*) every person who was a guardian of the child shall continue to be a guardian of the child.

(5) For the purpose of this section the term “child of the marriage” has the same meaning as in the Matrimonial Proceedings Act 1963.

Cf. 1908, No. 86, s. 6; 1910, No. 38, s. 18; 1926, No. 32, s. 6A (1); 1949, No. 51, s. 20; 1963, No. 71, s. 51

Disputes

13. Disputes between guardians—(1) When more than one person is a guardian of a child, and they are unable to agree on any matter concerning the exercise of their guardianship, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper. 5

(2) Where more than one person has custody of a child, and they are unable to agree on any matter affecting the welfare of the child, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper. 10

(3) Where pursuant to an order of the Supreme Court more than one person is a guardian or has custody of a child the Supreme Court shall have exclusive jurisdiction to settle disputes unless the order has been removed into a Magistrate's Court pursuant to section 26 of this Act. 15

Cf. 1926, No. 32, s. 6

14. Review of guardian's decision or refusal to give consent—(1) A child of or over the age of (*sixteen*) eighteen years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may (unless the child is under the guardianship of the Supreme Court) apply to a Magistrate who may, if he thinks it reasonable in all the circumstances to do so, review the decision or refusal and make such order in respect thereto as he thinks fit. 20 25

(2) Any consent given by a Magistrate pursuant to this section shall have the same effect as if it had been given by the parent or guardian.

(3) Nothing in this section shall limit or affect the provisions of the Marriage Act 1955 with respect to consents to the marriage of minors. 30

Access

15. Access rights—(1) On making any order with respect to the custody of a child the Court may (*subject to the provisions of this section,*) make such order with respect to access to the child by a parent who does not have custody of it under the order as it thinks fit. 35

(2) A parent who does not have custody of his child may apply to the Court for an order granting him access to the child, and (*subject to the provisions of this section*) the Court may make such order with respect thereto as it thinks fit. 40

Struck Out

(3) Where an order for access to a child is requested by a parent of the child, the Court may refuse to grant access if the parent is not a guardian of the child, and shall refuse to grant access if the grant of access is impracticable or would be harmful to the welfare of the child, and shall in any other case grant a parent reasonable access to the child.

Cf. 1937, No. 38, s. 9

16. **Access of other relatives on death of parent**—If a parent of a child has died, the Court may if it thinks fit order that the parents of the deceased parent, or either of them, or any brother or sister of the deceased parent, or any brother or sister of the child, shall have access to the child at such times and places as the Court thinks fit.

15 Cf. 1927, No. 30, s. 3

Variation and Enforcement of Orders

17. **Variation or discharge of orders**—(1) The Court may from time to time vary or discharge any order with respect to the custody or upbringing of a child, or with respect to access to a child.

20 (2) The Court may from time to time vary or discharge any order vesting the guardianship of a child in one parent or in any other person or persons. If any such guardianship order is discharged, and no other guardianship order is made, guardianship shall vest in the person (if any) who would be the guardian if the order discharged had not been made.

30 (3) An application to vary or discharge any order to which this section applies may be made by any person affected by the order, or by any person on behalf of the child who is the subject of the order.

35 (4) This section shall apply to every order of the kinds mentioned in subsections (1) and (2) of this section whether made before or after the commencement of this Act; but shall not apply to any order made under the Child Welfare Act 1925 or to any interim order or adoption order made under the Adoption Act 1955.

Cf. 1908, No. 86, s. 6; 1938, No. 20, s. 8; 1963, No. 71, s. 51 (2)–(3)

18. Effect of custody agreements—An agreement between the father and mother of a child with respect to the custody or upbringing of or access to the child shall be valid, whether or not either of the parties is a minor, but shall not be enforced if the Court is of opinion that it is not for the welfare of the child to give effect to it. 5

Cf. 1908, No. 86, s. 9

19. Enforcement of custody and access rights—(1) Where any person is entitled to the custody of a child, whether pursuant to this Act or to the order of a Court, the Court may at any time, on the application of the person so entitled to custody, issue a warrant authorising any constable or Child Welfare Officer or any other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody: 10 15

Provided that where more than one person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them. 20

(2) The Court may at any time, on the application of the person entitled to access to a child pursuant to an order of the Court, issue a warrant authorising any constable or Child Welfare Officer or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order. 25

(3) The powers conferred on a Court by subsections (1) and (2) of this section may, if the Court thinks fit, be exercised on the making of the order.

(4) For the purpose of executing any warrant issued under subsection (1) or subsection (2) of this section, any constable or Child Welfare Officer or any other person named in the warrant, may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance and by force if necessary. 30 35

(5) The constable, Child Welfare Officer, or other person executing any such warrant shall have it with him and shall produce it if required to do so.

(6) Every person who wilfully resists or obstructs any person in the execution of any such warrant, or who wilfully fails or refuses to afford to any person engaged in the execution of any such warrant immediate entrance to any premises or to any 40

part thereof, commits an offence and shall be liable on summary conviction to a fine not exceeding four hundred dollars.

(7) Nothing in subsections (1) to (3) of this section shall limit or affect any other power to enforce a right of custody or access exercisable by any Court at the commencement of this Act.

(8) Where the Court declines to enforce a right of custody or access it may of its own motion vary or discharge any existing order of custody or access accordingly.

10 (9) Subject to the first proviso to subsection (3) of section 9 of this Act, in considering an application under subsection (1) or subsection (2) of this section, or any other application to enforce a right of custody or access, the Court shall not grant the application contrary to the wishes of the child if the
15 child is of or over the age of sixteen years unless the child is under the age of eighteen years and the Court is satisfied that his moral welfare so requires.

Cf. 1926, No. 32, s. 6A (2)–(3); 1949, No. 51, s. 20 (1)

20. Preventing removal of child from New Zealand—

20 (1) Any Judge or Magistrate or, if no Judge or Magistrate is available, any Registrar of the Supreme Court or of a Magistrate's Court (not being a constable) who has reason to believe that any person is about to take a child out of New Zealand with intent to defeat the claim of any person
25 who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court as to custody of or access to the child from being complied with, may issue a warrant directing any constable or Child Welfare Officer to take the child (using such reasonable force as may
30 be necessary) and place it in the care of some suitable person pending the order or further order of the Court having jurisdiction in the case.

(2) Any person who without the leave of the Court takes or attempts to take any child out of New Zealand knowing
35 that proceedings are pending or are about to be commenced under this Act in respect of the child or that an order of any Court conferring custody of or access to the child on any other person is in force or with intent to prevent any order of any Court as to custody of or access to the child from being
40 complied with commits an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.

(3) No proceedings for contempt of Court shall be taken against any person in respect of any act to which this section applies.

Marriage of Child

21. Termination of guardianship—(1) Guardianship of a child shall terminate when the child attains the age of twenty-one years or marries under that age. 5

(2) Nothing in subsection (1) of this section shall limit or affect the appointment of a guardian *ad litem* or the powers of the Supreme Court in respect of any such guardian. 10

22. Domicile of married minor—The domicile of a minor who is or has been married shall be determined as if the minor were an adult.

Miscellaneous Provisions

23. Welfare of child paramount—(1) (*Subject to section 15 of this Act,*) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration. The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child. 15 20

(2) In any such proceedings the Court shall ascertain the wishes of the child, if the child is able to express them, and shall, subject to subsection (9) of section 19 of this Act, take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child. 25

New

(3) Nothing in this section shall limit the provisions of sections 64 and 64A of the Trustee Act 1956. 30

Cf. 1926, No. 32, s. 2

24. Custody of children over sixteen—(1) An order with respect to the custody of a child of or over the age of sixteen years shall not be made unless there are (*exceptional*) special circumstances. 35

(2) An order in respect of a child under the age of sixteen years in so far as it relates to custody shall expire when the child attains that age unless the Court in *(exceptional)* special circumstances otherwise orders at the time of making the
5 order or subsequently.

(3) Nothing in this section shall limit or affect the power of the Court to make orders in respect of the upbringing of a child, or to appoint or remove guardians.

(4) Nothing in this section shall apply in respect of children
10 who are under the guardianship of the Supreme Court.

25. Consents to operations—(1) Subject to subsection (6) of this section, the consent of a child of or over the age of sixteen years to any donation of blood by him, or to any medical, surgical, or dental procedure (including a blood
15 transfusion) to be carried out on him for his benefit by a person professionally qualified to carry it out, shall have the same effect as if he were of full age, *(if—)*

Struck Out

- 20 (a) It is reasonable having regard to the child's state at the time and to all the circumstances of the case; and
(b) The child may reasonably be supposed to appreciate adequately its nature and consequences; and
25 (c) Either it is necessary to prevent serious danger to the life of the child or serious and permanent impairment of his health, or it does not entail substantial risk to his life or health.

(2) The consent of or refusal to consent by a child to any donation of blood or to any medical, surgical, or dental procedure, (including a blood transfusion) whether to be carried
30 out on him or on any other person, shall if the child is or has been married have the same effect as if he were of full age.

Struck Out

(3) Subject to subsections (4) and (5) of this section, in any case to which subsections (1) and (2) of this section do
35 not apply, consent to any medical, surgical, or dental procedure to be carried out on a child may be given—

- (a) By a guardian of the child; or
40 (b) If there is no such person in New Zealand or no such person can be found with reasonable diligence, by a person in New Zealand who has been acting in the place of a parent; or
(c) If there is no person in New Zealand who has been so acting, by a Magistrate or the Superintendent of Child Welfare.

New

(3) Where the consent of any other person to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on a child is necessary or sufficient, consent may be given—

- (a) By a guardian of the child; or
- (b) If there is no guardian in New Zealand or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
- (c) If there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a Magistrate or the Superintendent of Child Welfare.

(4) Where a child has been lawfully placed for the purpose of adoption in the home of any person that person shall be deemed to be a guardian of the child for the purposes of subsection (3) of this section.

(5) Nothing in this section shall limit or affect any enactment or rule of law whereby in any circumstances—

- (a) No consent or no express consent is necessary; or
- (b) The consent of the child in addition to that of any other person is necessary; or
- (c) Subject to subsection (2) of this section the consent of any other person instead of the consent of the child is sufficient.

Struck Out

(6) Nothing in subsection (1) of this section shall apply to the administration of a blood transfusion within the meaning of section 126B of the Health Act 1956.

New

(6) Except to the extent that this section enables a blood transfusion (as defined in subsection (1) of section 126B of the Health Act 1956) to be administered to a child without the consent of any other person, nothing in this section shall affect the provisions of the said section 126B.

26. Removal of Supreme Court orders to Magistrate's Court—(1) Any party to any proceedings in the Supreme Court in which an order for the guardianship or custody of *(an infant)* a child has been made, whether that order was
5 made before or after the commencement of this Act, may make application to the Registrar of the Supreme Court at the place where the order was made to have a copy of the order filed in a Magistrate's Court, and shall forward with the application a copy of the order and of any order varying
10 or otherwise affecting it and the fees prescribed for sealing copies of orders. The Registrar shall thereupon transmit to the Registrar of the Magistrate's Court specified in the application a copy under the seal of the Supreme Court of the order and of every order varying or otherwise affecting it, and shall also
15 note on the original order a memorial to the effect that the copy has been so transmitted.

(2) The Registrar of the Magistrate's Court shall file the copy of any order transmitted to him under subsection (1) of this section. Thereafter a copy under the seal of the Court of
20 every order of the Supreme Court varying or otherwise affecting any such order shall be forwarded by the Registrar of that Court to the Registrar of the Magistrate's Court in which the earlier order is filed.

Cf. 1926, No. 32, s. 6A (4)–(7); 1961, No. 83, s. 2

27. Procedure and costs—(1) All proceedings under this Act shall, unless the Court otherwise directs, be heard in private.

(2) In any proceedings under this Act the Court may make such order as to costs as it thinks fit.

Cf. 1908, No. 86, s. 6

28. Evidence—In all proceedings under this Act (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a Court of law or not.

29. Reports from Superintendent of Child Welfare—
(1) *(A copy of every)* In any case where the Court so directs in respect of any application for guardianship or custody (other than an application for interim custody) a copy of the application shall (unless the Court otherwise directs) be served
35 on the Superintendent of Child Welfare in such manner as may be prescribed.
40

(2) The Superintendent or a Child Welfare Officer (*may, or, if the Court requests,*) shall report on the application, and may appear on any application by himself or by solicitor or counsel.

(3) A copy of the report shall be given by the Registrar of the Court to the solicitor or counsel appearing for each party to the proceedings or, if any party is not represented by solicitor or counsel, to that party: 5

Provided that the Court may order that a report given to a solicitor or counsel be not given or shown to the person for whom he is acting. 10

(4) Any party to the proceedings may tender evidence on any matter referred to in any such report which is given or shown to him or to his solicitor or counsel. The Court may if it thinks fit on the request of any party call the person making the report as a witness. 15

Cf. 1963, No. 71, s. 50

30. Solicitor or counsel may be appointed—The Court may appoint a solicitor or counsel to assist it or to represent any child who is the subject of or who is otherwise a party to proceedings under this Act, and where any solicitor or counsel is so appointed his fees and expenses shall be paid by such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be paid out of money appropriated for the purpose by Parliament. 20 25

31. Appeals—(1) An appeal shall lie to the Supreme Court from any order or decision of a Magistrate's Court under this Act, other than an order or decision under section 13 or section 14 of this Act. The decision of the Supreme Court upon any such appeal shall be final: 30

Provided that any party may, with the leave of the Court of Appeal, appeal to the Court of Appeal upon any question of law.

(2) An appeal shall lie to the Court of Appeal from any order or decision of the Supreme Court under this Act, other than an order or decision under section 13 of this Act: 35

Provided that if the order or decision was made on appeal from a Magistrate's Court an appeal shall lie to the Court of Appeal only in accordance with the proviso to subsection (1) of this section. 40

(3) Every appeal under this section, except an appeal upon a question of law, shall be by way of rehearing of the original proceedings as if the proceedings had been properly and duly commenced in the Supreme Court, or the Court of Appeal, as the case may be.

(4) The decision of the Court of Appeal shall in every case be final.

Cf. 1926, No. 32, s. 7 (2)

32. Rules of Court and regulations—(1) Rules may from time to time be made in the manner prescribed by the Judicature Act 1908 relating to the procedure of the Supreme Court under this Act and to appeals to the Court of Appeal under this Act.

(2) The Governor-General may from time to time, by Order in Council, make regulations under section 100A of the Judicature Act 1908 for the purposes of this Act.

New

(2A) The Governor-General may from time to time, by Order in Council, make regulations providing for the enforcement in New Zealand of orders with respect to the custody and upbringing of and access to children made in such other countries as may be prescribed, and relating to the enforcement in other countries of orders made in New Zealand with respect to the custody and upbringing of and access to children.

(3) In addition to all other powers conferred by the Magistrates' Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules under that Act providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

33. Act to be a code—(1) Except as otherwise expressly provided in this Act, the provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the guardianship and custody of children.

(2) Subject to section 9 of this Act, no person shall be appointed as or shall have any powers as guardian of the property of any child:

Provided that nothing in this Act shall limit or affect any power of the Supreme Court in relation to any property held upon trust or to the administration thereof.

(3) In matters not provided for by this Act, the Supreme Court shall continue to have all such powers in respect of the persons of children as the Court had immediately before the commencement of this Act.

34. Other Acts not affected—Except as expressly provided in this Act, nothing in this Act shall limit or affect the provisions of the Child Welfare Act 1925 or of the Matrimonial Proceedings Act 1963, or of Parts IV or V of the Infants Act 1908. 5

Cf. 1926, No. 32, s. 9

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35. Repeals and revocation—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) As from the commencement of this Act the enactment of the (*United Kingdom Parliament*) Parliament of England intituled the Tenures Abolition Act 1660, 12 Cha. II, c. 24, shall cease to have effect as part of the law of New Zealand. 15

(3) The rules for regulating the practice and procedure under Part I of the Infants Act 1908 contained in an Order in Council made on the second day of September, nineteen hundred and twelve, and published in the *Gazette* of the fifth day of that month at page 2657 are hereby revoked. 20

36. Consequential amendments—(1) Section 17 of the Judicature Act 1908 is hereby amended:

(a) By omitting the word “infants”:

(b) By omitting the words “guardians and”. 25

(2) The Matrimonial Proceedings Act 1963 is hereby amended:

Struck Out

(a) By omitting from subsection (1) of section 3 the words “and (if she is a minor) as if she were an adult”: 30

(b) By inserting in subsection (1) of section 51, after the word “make”, the words “under the Guardianship Act 1968”.

New

(3) Section 16 of the Child Welfare Act 1925 is hereby amended by omitting the words “Part 1 of the Infants Act 1908”, and substituting the words “the Guardianship Act 1968”. 35

37. (Transitional) Application of Act—The Act shall apply to children living at the date of the commencement of this Act and to children born thereafter.

New

- 5 **38. Transitional**—Every order relating to the custody or guardianship of, or access to, a child made under any provision of the Destitute Persons Act 1910 so far as the order is subsisting or in force immediately before the first day of January, nineteen hundred and seventy, and could have been
10 made under this Act, shall continue to have effect as if it had been made under the corresponding provision of this Act, and as if that provision had been in force when the order was made.

SCHEDULE

Section 35 (1)

ENACTMENTS REPEALED

- 1908, No. 86—The Infants Act 1908: Part I (1957 Reprint, Vol. 6, p. 587.)
1908, No. 89—The Judicature Act 1908: Section 98 (1957 Reprint, Vol. 6, p. 699.)
1926, No. 32—The Guardianship of Infants Act 1926. (1957 Reprint, Vol. 6, p. 613.)
1927, No. 30—The Guardianship of Infants Amendment Act 1927. (1957 Reprint, Vol. 6, p. 614.)
1949, No. 51—The Statutes Amendment Act 1949: Section 20. (1957 Reprint, Vol. 6, pp. 593, 614.)
1963, No. 71—The Matrimonial Proceedings Act 1963: Subsections (2) to (4) of section 51.
1967, No. 83—The Infants Amendment Act 1967.