

## ADOPTION PROCEDURES

### A. INTRODUCTION

1. The custom of loving, caring and bringing up another's child as one's own is part of the Jamaican culture. It is an accepted practice in this country for couples, single women and, to a lesser extent, single men to take into their care and possession children whose parents are either incapable, unwilling or for reasons unable to fulfill their parental responsibilities and to rear such children as their own.

1.1 This informal arrangement which in common parlance is referred to as "adoption" does not create the legal relationship of parent and child and one serious disadvantage is, the natural parent may at any time remove the child from that family, thereby depriving the de facto parent of control and the child the security of a family of which it has become a part.

1.2 In response to representations by welfare agencies the Children (Adoption of) Act was enacted in 1958 for the purpose of regulating the adoption of children. The provisions of this Act were, at that time, considered revolutionary as, subject to certain restrictions, persons wishing to bring up another's child as his own, was entitled to apply to a court of competent jurisdiction for an adoption order which, if made, would sever the legal relationship between that child and its natural parents and create in its place a similar relationship between that child and its adoptive parents.

security for both the

## B. ARRANGEMENTS FOR ADOPTION

2.1 In recognition of the need to safeguard the interests of children in adoption matters, the Act created the Adoption Board with responsibility to administer adoption services.

### 2.2 THE ADOPTION BOARD

The Board which consists of a Chairman and nine other members falls within the ambit of the Children's Services Division of the Ministry of Local Government, Youth and Sports and is staffed by an Adoption Officer and three Assistant Adoption Officers who provide adoption services in all parishes in the Island.

2.3 The duties of the Board are:-

- (a) to make arrangements for the adoption of children and for that purpose to receive applications from parents, guardians and adopters;
- (b) to do such things and make such investigations concerning the adoption of children for the consideration of the Court as may be prescribed.

2.4 It is to be noted that the power to make arrangements for the adoption of children vests in the Adoption Board as under Section 4 of the Act an offence is committed "if a person takes part in arranging an adoption for gain or reward or in the management or control of a body of persons other than the Adoption Board which exists wholly or in part for the purpose of making arrangements for the adoption of children."

2.5 This restriction is designed to prohibit a 'black market'

adoption of that child. What the Act contemplates is, the prospective adopter must apply to the Board and be subjected to the scrutiny of the Board.

## 2.7 THE APPLICANT

Subject to the restriction as to age and gender contained in section 10 of the Act any person domiciled in Jamaica may apply to adopt a child. A mother or father of a child either alone or jointly with a spouse may apply to adopt that child; as also any relative who has attained the age of 18 years either alone or jointly with a spouse and any person who has attained the age of twenty-five years either alone or jointly with a spouse.

2.8 An application for an order by a sole male applicant in respect of a female child will not be made unless a court is satisfied there are special circumstances which justify as an exceptional measure the making of an adoption order.

2.9 It is to be noted that an adoption order will only be made to a single person or to two spouses on their joint application. Couples living together in common-law unions are not within the meaning of "spouse" and are therefore not eligible to adopt jointly but either member of the union may as a single person adopt under the Act. Persons who are legally married may also adopt as individuals but in this case the Act requires the consent of the other spouse to the adoption.

2.10 The requirement for consent is a recognition of the legal status of marriage and the legal rights and responsibilities which the spouses have vis-a-vis each other.

adopted by parents or relatives and significantly larger numbers of girls rather than boys are adopted as reflected in Appendix 'X' and Appendix 'Y' attached hereto.

2.12 A fair number of adoptable children are to be found in Places-of-Safety, Children's Homes and Foster Homes, having been adjudged by a court to be in need of care or protection and given Fit Person Orders. Although these children are wards of the State and are being cared for at the expense of the State, it appears that the power to consent to adoption is not exercised unless the Children's Services Division of the Ministry of Local Government, Youth and Sport is satisfied that the parents cannot be found or are incapable of giving consent or have persistently failed without reasonable cause to demonstrate interest in the child.

## C PROCEDURE FOR ADOPTION

### (i) Application to Adoption Board

3.1 Every person desirous of adopting a child must apply to the Adoption Board and submit along with such application a medical certificate as to his or her physical and mental health. However, if the adopter is the father or mother of the child to be adopted a medical certificate is not required unless requested by the Board.

[Copies of the form of Application and Medical Report are circulated herewith]

3.2 It is the Board's duty to

(a) interview the applicant;

- applicant is not the parent;
- (d) investigate and obtain reports on the health and other matters relating to the welfare of the child and
  - (e) refer the case for consideration by a Case Committee comprising not less than 3 members of the Board.

To maintain as confidential the identity of a parent or guardian the Board may assign a serial number in respect of that parent or guardian for the purpose of the negotiations and any subsequent proceedings in court relative to the adoption.

(ii) CARE AND POSSESSION

3.3 Provided the Board is satisfied as to the arrangements, the child is delivered into the care and possession of the applicant for a probationary period of three months or for six months if the applicant is not ordinarily resident in Jamaica. During the period of probation the child is closely supervised by a representative of the Board who visits at least once each month and reports on such visits to the Case Committee. If the Case Committee recommends the removal of the child, the Board shall immediately remove the child from the care and possession of the applicant and, from which decision, a right of appeal lies to a Judge in Chambers.

3.4 The period of probation is necessary as it provides the opportunity for the applicant and the child to adjust to each other and it ensures as far as possible the suitability of the applicant to adopt the child.

(iii) COURT HEARING

3.5 Any applicant who has successfully completed the

if a Family Court is not established in that parish, to the Resident Magistrate's Court. Additionally, the applicant shall present to the Court:-

(a) a written statement in duplicate as in Form A of the Appendix to the Second Schedule to the Act;

(b) a statement of particulars as in Form B of the said Appendix;

and

(c) unless the applicant is the parent, the written consent of the parent or guardian or other specified person.

[Copies of Form A, and Form B are circulated herewith]

3.6 Any applicant who desires his identity to be kept confidential may apply to the Registrar or Clerk of the appropriate Court for a serial number to be assigned to him for purposes of the proposed application and such a number shall be so assigned to him.

3.7 It is the Court's duty to fix the date and time of hearing and to direct the Board to serve notice thereof on the respondents i.e.

(i) the child to be adopted;

(ii) the parent or guardian or person having actual custody or person liable to contribute to the child's maintenance

and

(iii) the spouse of the applicant, unless the spouse is an applicant.

The Court may, however, waive the personal attendance of any respondent at the hearing.

3.9 Before an adoption order is made the Court must be satisfied that

- (a) the persons required to consent have done so with knowledge of the nature and effect of the adoption order or consent is dispensed with on any of the specified grounds
- (b) the order, if made, will be for the welfare of the child and
- (c) no unauthorised payments or reward in consideration of the adoption have been agreed upon or made.

3.10 Upon the making of an adoption order the Court may impose such terms and conditions as it deems necessary or the Court may make an interim order for a specific period or refuse to make an order. Within seven days of the making of an adoption order the Registrar or Clerk shall send a certified copy of the order to the Registrar General who is obliged to make the appropriate entry in the Adopted Children Register and to mark with the word "adopted" any entry relating to that adopted child in the Register of Births.

3.11 An appeal to the Court of Appeal lies from an order made by the Court or from the refusal of the Court to make an order.

#### D. PROCEDURE FOR GRANTING LICENCE

4.1 Section 23 of the Act prohibits the transfer of the care and possession of a child, who is a citizen of Jamaica, to a person resident outside the Island with a view to adoption, unless that person has been granted a licence in respect of that child.

specified in the Fifth Schedule to the Act as:-

- (1) Any Commonwealth country
- (2) The United States of America
- (3) Sweden; and
- (4) Denmark

4.3 An application for a licence may be made to a Judge of the Family Court or a Resident Magistrate by a parent or guardian of the child or by the Adoption Board. Notice of the application is sent to a Jamaican or British Consular officer or to some other person abroad who appears to the Judge or Resident Magistrate to be trustworthy with the request for the officer or person to report whether the person to whom the care and possession of the child is proposed to be transferred is a suitable person. Upon receipt of the report the Judge or Resident Magistrate fixes the time and date of hearing and accordingly notifies the applicant who notifies the child, the Board, the parent or guardian or other person specified by the Act.

4.4 The procedure for hearing an application for a licence is similar to that of an application for an adoption order.

4.5 Section 24 of the Act gives the Judge or the Resident Magistrate a discretionary power to grant a licence on being satisfied:-

- (i) that the application is made by or with the consent of every person required to consent or that consent is dispensed with on any of the specified grounds;

and

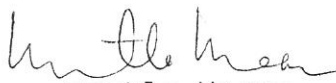
- (ii) by the report of the Jamaican or British consular officer or other person who appears trustworthy, that the citizen



## CONCLUSION

5.1 It is a criticism that the adoption process is tedious, unnecessarily long and at times unduly delayed, thereby causing suitable prospective adopters to be lost, children denied parents and the burden of maintaining and educating the children remains that of the state. Bearing in mind the legal implications of an adoption order and the psychological effects of an unwholesome placement on a child, the Board through its investigations and the Court in the exercise of its discretion must be satisfied that the adoption order will be in the child's best interest.

5.2 Not every adoption is a success story as there are instances where, upon the serious breakdown in the relationship, adoptive parents have sought to return children after adoption orders have been made. Nevertheless, adoption has provided the opportunity for a better life for many children who would otherwise be required to remain in institutions and has contributed much joy and happiness to many childless couples.

  
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APPENDIX

The Adoption Board received a total of 703 Adoption Applications in the year 1992.

Application for Adoption Order

652

Application for Licence

51

A Total of 297 Adoption Orders were granted during 1992. Below is the Parish distribution of Adoption Orders granted during 1992.

Kingston & St. Andrew -	139
St. Catherine	83
Westmoreland	18
Clarendon	12
St. Ann	11
Manchester	9
St. Mary	8
St. James	5
St. Elizabeth	4
St. Thomas	4
Portland	4
Trelawny	-
	297

Below is the number of males and females adopted in 1992.

<u>Males</u>	<u>Females</u>	<u>Total</u>
102	195	97

Relationship to adopters

Non-relative -	136
Aunt -	88
G/Parents -	30
Mother -	15
G/Mother -	10
Uncle -	9
Father -	5
Sister -	3
Brother -	1
	297

Licence to Scheduled Countries

A total of 31 licences were issued to Scheduled countries:

<u>Males</u>	<u>Females</u>
21	10

MEDICAL REPORT ON PROPOSED ADOPTER

Confidential: On completion forward promptly to Secretary, Adoption Board

NAME: ..... AGE: .....
(Surname) (Christian Names)

ADDRESS: ..... OCCUPATION: .....

DATE OF APPEARANCE AND EXAMINATION: .....

HAS HE/SHE SUFFERED AT ANY TIME FROM:

FITS OF ANY KIND: .....

TUBERCULOSIS: ..... ANY NERVOUS OR MENTAL DISORDER: .....

IS THERE ANY RELEVANT FAMILY HISTORY OF MENTAL OR PHYSICAL DISEASE? .....

IS THERE ANY DETECTABLE ABNORMALITY IN: (If yes give particulars)

CARDIO-VASCULAR SYSTEM: .....
(including blood pressure)

RESPIRATORY SYSTEM: .....
(including chest x-ray if necessary)

GENITO-URINARY SYSTEM: .....
(including urine test for sugar and albumen)

ALIMENTARY SYSTEM: .....

CENTRAL NERVOUS SYSTEM: .....

SKIN: ..... EYES: .....

EARS: ..... HEARING: .....

IS HE/SHE IN GOOD HEALTH? .....

GIVE YOUR GENERAL OPINION OF HIS/HER:

PHYSIQUE: .....

MENTAL AND EMOTIONAL STABILITY: .....

PSYCHOLOGICAL SUITABILITY TO ADOPT A CHILD: .....

IN YOUR PROFESSIONAL OPINION IS THERE ANY REASON TO EXPECT THAT THE EXAMINEE'S HEALTH MAY DETERIORATE BEFORE THE CHILD HAS REACHED THE AGE OF INDEPENDENCE? .....

SIGNATURE: ..... ADDRESS: .....

NOTICE OF MOTION FOR ATTACHMENT FOR DISOBEDIENCE  
OF ORDER MADE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 19\_\_\_\_

Suit No E \_\_\_\_\_ of 19\_\_\_\_

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY

IN THE MATTER of Matrimonial Causes Act

A N D

IN THE MATTER of the Maintenance Act

BETWEEN

PLAINTIFF

(P A R T I E S)

A N D

RESPONDENT

TAKE NOTICE that this Honourable Court will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at 10:00 O'clock in the forenoon at the Supreme Court, Public Building, Eastern Block, King Street, Kingston for an Order:-

1. That the Plaintiff do have leave to issue a Writ of Attachment against the Respondent for his contempt in disobeying the Order of the Court granted on the day of \_\_\_\_\_ 19\_\_\_\_ by the Honourable Mr. Justice \_\_\_\_\_ in breach of which Order the Respondent,

(a) Refused and/or failed to (state breach)

The Plaintiff will at the hearing hereof refer to and rely on the Affidavit sworn to by her on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ filed herein proving the said contempt a copy of which Affidavit is served with the Notice of Motion.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Per:.....

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION FOR  
ATTACHMENT FOR DISOBEDIENCE OF ORDER MADE FOR  
THE DAY OF 19

Suit No E of 19

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY

IN THE MATTER of Matrimonial Causes Act

A N D

IN THE MATTER of the Maintenance Act

BETWEEN

(P A R T I E S)

PLAINTIFF

A N D

RESPONDENT

I being duly sworn make oath  
and say as follows:-

1 Usual residual particulars, occupation and status in  
matter.

2 Refer to Order, date made and by whom and reproduce that  
part which it is alleged has been breached

3 Depone to service of the Order on the Respondent and  
exhibit Affidavit of service if any.

4 Depone to circumstances of the alleged breach or breaches

5 I make this Affidavit in support of my Notice of Motion  
for attachment for disobedience of Order filed herein

NOTE: That a copy of the Order should be included in  
the Judge's Bundle