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LAWS OF DOMINICA ADOPTION OF INFANTS ACT CHAPTER 37:03

Act

13 of 1948 Amended by
24 of 1982

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ADOPTION OF INFANTS ACT

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SCHEDULE.

CHAPTER 37:03

ADOPTION OF INFANTS ACT

1961 Ed.
Cap 159.
13 of 1948.

AN ACT to make provision for the adoption of infants.

Commencement,

[9th May 1949]

Short title.

1. This Act may be cited as the -
ADOPTION OF INFANTS ACT.

Power to make adoption orders.

2. (1) Upon an application in the prescribed manner by any person desirous of being authorised to adopt an infant who has never been married, the Court may, subject to this Act, make an order (in this Act referred to as "an adoption order") authorising the applicant to adopt that infant.

(2) A person so authorised to adopt the infant and an infant authorised to be adopted are in this Act referred to as an "adopter" and an "adopted child" respectively, and "infant" means a person under the age of eighteen.

(3) Where an application for an adoption order is made by two spouses jointly, the Court may make the order authorising the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorising more than one person to adopt an infant

Restrictions on making adoption orders.
[24 of 1982].

3. (1) An adoption order shall not be made in any case where
 - (a) the applicant is under the age of twenty-five years; or
 - (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made; but where the applicant and the infant are within the prohibited degrees of consanguinity, the Court may, if it thinks fit, make the order notwithstanding that the applicant is less than twenty-one years older than the infant.
- (2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

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(3) An adoption order shall not be made except with the consent of every person who is a parent or guardian of the infant in respect of whom the application is made, or who has the actual custody of the infant or who is liable to contribute to the support of the infant; but the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the Court and in all the circumstances of the case, to be dispensed with.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them; but the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent, or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who not being a citizen of Dominica, is not resident or domiciled in Dominica, or in respect of any infant who is not so resident; and before making an adoption order in favour of any applicant who is not resident or domiciled in Dominica the Court shall be satisfied from information emanating from the country in which the applicant is domiciled or resident that he is a fit and proper person in favour of whom an adoption order may be made.

4. The Court before making an adoption order shall be satisfied -

Matters with respect to which Court to be satisfied.

- (a) that every person whose consent is necessary under this Act and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and
- (b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

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- (c) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward. in consideration of the adoption except such as the Court may sanction.

Terms and conditions of order.

5. The Court in an adoption order may impose such terms and conditions as the Court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the Court is just and expedient.

Effect of adoption order. [24 of 1982].

6. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock. and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock; and in any case where two spouses are the adopters, such spouses shall, in respect of the matters aforesaid and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively

(2) An adoption order shall operate to deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under an intestacy occurring after the making of the adoption order.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

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(4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will.

Power to make interim orders.

7. (1) Upon any application for an adoption order, the Court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period, upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

Power to make subsequent order in respect of infant already subject to an order.

8. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

9. (1) The Court having jurisdiction to make adoption orders under this Act shall be the Eastern Caribbean Supreme Court.

Jurisdiction and procedure. [24 of 1982].

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the Court are to be made, and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect, shall be made by the Chief Justice of the Court. Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(3) For the purpose of any application under this Act and subject to any rules under this section, the Court shall appoint some person to act as guardian *ad litem* of the infant upon the hearing of the application with the Court.

(4) No adoption order shall be made unless the applicant, or in the case of spouses at least one spouse, is present at the hearing of the application.

Restriction on payments.

10. It shall not be lawful for any adopter, or for any parent or guardian except with the sanction of the Court, to receive any payment

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or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give any adopter or to any parent or guardian any such payment or reward.

Provisions as to existing *de facto* adoptions.

11. Where at the date of the commencement of this Act any infant is in the custody of, and is being brought up, maintained and educated by any person or by two spouses jointly as his, her or their own child under any *de facto* adoption, and has for a period of not less than two years before such commencement been in such custody and been so brought up, maintained and educated, the Court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorising him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

Adopted children register.

12. (1) The Registrar General shall establish and maintain at the public registry at Roseau a register to be called the adopted children register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) Every adoption order shall contain a direction to the Registrar General to make in the adopted children register an entry recording the adoption in the Form set out in the Schedule.

Schedule.

(3) If upon any application for an adoption order there is proved to the satisfaction of the Court-

- (a) the date of the birth of the infant; and
- (b) the identity of the infant with a child to which any entry or entries in the register of births relates,

the adoption order shall contain a further direction to the Registrar General to cause such birth, entry or entries in the register of births to be marked with the word "Adopted". and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule.

(4) The Registrar of the Court shall cause every adoption order to be communicated in the prescribed manner to the Registrar General, and upon receipt of such communication the Registrar General shall cause compliance to be made with the directions contained in such

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order in regard both to marking any entry in the register of births with the word "Adopted", and in regard to making the appropriate entry in the adopted children register.

(5) A certified copy of any entry in the adopted children register if purporting to be sealed or stamped with the seal of the Registrar General shall, without any further or other proof of such entry-

- (a) where the entry does not contain any record of the date of the birth of the adopted child, be received as evidence of the adoption to which the entry- relates; and
- (b) where the entry contains a record of the date of the birth of the adopted child, shall be received not only as evidence of the adoption to which the entry relates, but also as evidence of the date of the birth of the adopted child to which the entry relates in all respects as though the entry were a certified copy of an entry in the register of births.

Ch. 35:30

(6) The Registrar General shall cause an index of the adopted children register to be made and kept, and every person is entitled to search the index and to have a certified copy of any entry in the adopted children register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Registration of Births and Deaths Act in respect of searches in registers kept in the public registry office, and in respect of the supply from such office of certified copies of entries in the registers of births and deaths.

(7) The Registrar General shall, in addition to the adopted children register and the index thereof, keep such other registers and books, and make such entries therein as may be necessary to record and make traceable the connection between any entry in the register of births which has been marked "Adopted" pursuant to this Act, and any corresponding entry in the adopted children register, but such last-mentioned registers and books shall not be nor shall any index thereof be open to public inspection or search nor, except under an order of a court of competent jurisdiction, shall the Registrar General furnish any person with any information contained in or with any copy or extract from such registers or books.

SCHEDULE

No of Entry	Date of Entry	Name of Adopted Child. (Enter name as stated in Adoption	Sex of Adopted Child. (Enter sex as stated in Adoption Order)	Name and Surname, Address and Occupation of Adopter or Adopters. (Enter name, address occupation as stated in Adoption Order)	Date of Birth of Child. (Enter date of Birth (if any) directed by the Adoption Order to be entered, but oth- erwise no entry)	Date of Adop- tion Order and Description of Court by which made. (Entry to be made as appearing in the Adoption Order	Signature of Officer deputed by Registrar General to attest the Entry
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SUBSIDIARY LEGISLATION

ADOPTION OF INFANTS RULES ARRANGEMENT OF RULES

RULE

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10. Costs.
11. Forms.

SCHEDULE.

S.R.O. 36/1949

SUBSIDIARY LEGISLATION
ADOPTION OF INFANTS RULES
made under section 9

Commencement

[24th October 1949]

Short Title

1. These Rules may be cited as the -
ADOPTION OF INFANTS RULES.

Interpretation

2. In these Rules -
"Court" means the Eastern Caribbean Supreme Court; "infant" means the child proposed for adoption; "Judge" means a Judge of the Court;
"petitioner" means the person or persons applying for an adoption order;
"Registrar" means the Registrar of the Court and includes an acting Registrar and a Deputy Registrar.

Application by petition

Schedule Forms.

3. An application for an adoption order shall be made by petition to the Court, intituled in the matter of the Act and in the matter of the infant. The petitioner shall present the petition *ex parte* in person or by solicitor to a Judge sitting in Chambers and the Judge shall give such directions as to service, appointment of guardian *ad litem*, consents, date of hearing and otherwise as may be necessary. The petition shall be in accordance with the Forms in the Schedule to these Rules with such variations as the circumstances may require.

Filing of petition

4. The petition shall be filed in the Court in accordance, so far as practicable, with the practice in civil proceedings in the Court.

Who are to be served

5. The petition shall be served on-
 - (a) the parent or parents of the infant, if any; or if none
 - (b) the guardian or guardians of the infants; or if none
 - (c) the person or persons having the actual custody of the infant; or if none

(d) the person or persons liable to contribute to the support of the infant;

but the Judge may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

Mode of service

6. Every petition, notice or document shall, unless the Judge otherwise directs, be served by delivering or tendering a copy thereof signed by the Registrar and sealed with the seal of the Court to the person to be served. The service of every petition, notice or other document shall be verified by affidavit, unless the Judge otherwise directs.

Verification by affidavit

7. The statements contained in the petition shall be verified by affidavit. There shall be exhibited to the affidavit all certificates and other documents proper for proving the allegations in the petition.

Secrecy

8. All documents filed in the Court shall be confidential, and shall be kept secret by the Registrar. Every petition and every application shall be heard and determined *in camera*.

No copies of order.

9. No copy or duplicate of any order made by the Court shall be given to or served upon any person other than the petitioner and the Registrar General, unless the Judge otherwise directs.

Costs

10. The Judge may make such orders as to costs as he thinks fit. The Judge may direct that all the costs of a petition under the Act shall be borne and paid by the petitioner.

Forms Schedule

11. The Forms in the Schedule to these Rules, with such variation as shall in the circumstances of each case be necessary, shall be used on application under the Act.

SCHEDULE

FORM 1

Rule 3.

PETITION

In the Eastern Caribbean Supreme Court at Dominica.

In the matter of the Adoption of Infants Act, Ch. 37:03, and in the matter of A. B. (name of infant) of (address) an infant.

The petition of C. D. of (address) (and E. D. his wife, of the same address) sheweth:

1. Your petitioner(s) is (are) desirous of adopting the said A. B. under the provisions of the Adoption of Infants Act, Ch. 37:03.
2. Your petitioner(s) is (are) resident at
in Dominica and is (are) a Commonwealth subject(s).
3. Your petitioner C. D. is unmarried (was married to your petitioner E. D. at on the day of).
4. Your petitioner C. D. is by occupation a
5. Your petitioner C. D. is years of age (and your petitioner E. D. is years of age).
6. Your petitioner(s) has (have) resident with them the following persons, namely: (X. D. son aged years, Y. D. daughter aged years).
7. Your petitioner C. D. (E. D.) is related to the said A. B. as follows:
..... (or, your petitioner(s) is not (are not nor is either of *them*) related to the said A. B.).
8. The said A. B. is-
 - (a) of the sex;
 - (b) unmarried;
 - (c) a child of of (address) and of (address);
 - (d) a Dominican;
 - (e) years of age, having been born at

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(f) resident at.....:

(g) now in the actual custody ofof (address);

(h) under the guardianship ofof (address);

(i) entitled to the following property, namely

.....
.....

9 of (address) (andof
.....) are liable to contribute to the support of the said A. B.

10. The said A. B. has not been the subject of an adoption order or of an application or petition for an adoption order save that (state order and application or petition, if any).

11. Your petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A. B. (except as follows -
.....).

12. It is proposed that the costs of this petition shall be paid by
.....

Your petitioner(s) prays (pray) -

- (i) that an order for the adoption of the said A. B. by your petitioner(s) may be made in pursuance of the Adoption of Infants Act, Ch. 37:03 with the necessary directions;
- (ii) that the costs of this petition may be provided as above-mentioned or otherwise as the Court may direct;
- (iii) such further or other order as the nature of the case may require.

Dated the day of , 19 .

Signature(s) of Petitioner(s)
.....

Note. - The statements contained in this petition must be verified by affidavit.

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Rule 3.

FORM 2

FORM OF NOTICE OF DAY APPOINTED FOR HEARING OF PETITION

(Title as in Petition)

To of

TAKE NOTICE that a petition has been presented in the above matter praying that an order may be made for the adoption of the above-named by of; that, of has been appointed guardian *ad litem* to the said infant and that the said petition will be held by the Court at on the day of 19 .., at o'clock in the noon.

Dated the day of, 19 ..

.....
Registrar.

Section 2.

FORM 3

FORM OF ADOPTION ORDER

(Title as in Petition)

Upon reading the petition of (and) and upon reading the affidavit) of and and the exhibits thereto (refer to the affidavit filed in the matter and the exhibits thereto) and upon bearing and the evidence of (state names and addresses of witnesses examined orally).

And the Court being satisfied that the allegations in the said petition are true and being also satisfied with the undertakings of the said and as to the provisions to be made for the above-named infant and with the securing thereof and being further satisfied that it is for the benefit

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of the said infant that he/she should be adopted by the said and and that all the requirements of the Adoption of Infants Act, Ch, 37:03 have been complied with.

It is ordered that the said(and) be authorised to adopt the said infant.

(And the following payment or reward is sanctioned namely:

.....).

And it is further ordered that the parties to these proceedings other than the said (and) do recover their costs against the said (and such costs to be taxed by the Registrar, and that the said (and) do pay the amount of the said costs when taxed to the Registrar of this Court within fourteen days after the date of the certificate of taxation.

And it is directed that the Registrar General shall make an entry recording this adoption in the Adopted Infants Register in the form set out in the Schedule to the said Act.

(And it having been proved to the satisfaction of the Court that the said infant was born on the day of 19and is identical withto whom an entry numbered and made on theday of19..... in the Register of Births for the registration district of relates it is further directed that the Registrar General shall cause such birth entry or entries to be marked with the word "Adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act)

(Any terms and conditions imposed by the Court under section 5 of the said Act should be inserted here).

Dated the day of , 19

.....

Judge of the Court.

Section 7.

FORM 4

FORM OF INTERIM ORDER

(Title as in Petition)

Upon reading, etc.
And upon reading, etc.
And upon hearing, etc.
And the evidence, etc.

} (As in Adoption Order)

And the Court being satisfied that the allegations in the said petition are true and also being satisfied with the undertaking of the said (and) as to the provisions to be made for the above-named infant and with the security thereof and being further satisfied that it is for the benefit of the said infant that he/she should for the present be in the custody of the said (and) and that all the requirements of the Adoption of the Infants Act, Ch. 37:03 have been complied with.

The following payment or reward is sanctioned, namely -

.....

And it is ordered that the determination of the said petition be postponed and that the custody of the said infant be given to the said (and) for the period of from the date of this order by way of a probationary period.

And as regards costs it is ordered that

.....

.....

Any of the parties including the guardian *ad litem* of the said infant shall be at liberty to apply as they may be advised.

Dated the day of 19 .

.....

Judge of the Court.