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Important Information

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Statutes of Newfoundland 1998

CHAPTER C-12.1

AN ACT RESPECTING CHILD, YOUTH AND FAMILY SERVICES

(Assented to December 15, 1998)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

- 1. This Act may be cited as the *Child, Youth and Family Services Act*.

**PART I
INTERPRETATION**

Interpretation

- 2. (1) In this Act

(a) "board" means a regional community health board constituted under the *Health and Community Services Act* or a board constituted under the *Hospitals Act* to which responsibilities under this Act are delegated;

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- (b) "care" means the physical daily care and nurturing of a child;
- (c) "caregiver" means a person with whom a child is placed for care with the approval of a director and who, by agreement with a director, has assumed responsibility for the care of the child but does not include a parent;
- (d) "child" means a person actually or apparently under the age of 16 years;
- (e) "custody" means the rights and responsibilities of a parent in respect of a child;
- (f) "director" means the Director of Child, Youth and Family Services employed by a board;
- (g) "judge" means a judge of the Unified Family Court or a Provincial Court judge;
- (h) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (i) "parent of a child" means
- (i) the custodial mother of a child,
 - (ii) the custodial father of a child,
 - (iii) a custodial step-parent,
 - (iv) a non-custodial parent who regularly exercises or attempts to exercise rights of access,
 - (v) a person to whom custody of a child has been granted by a written agreement or by a judge, or
 - (vi) a person with whom a child resides, except a caregiver;
- (j) "peace officer" means a member of the Royal Newfoundland Constabulary or a member of the Royal Canadian Mounted Police, and includes a person approved by the Attorney General to perform the duties of a peace officer;
- (k) "presentation hearing" means an interim hearing at which a judge may give an interim or final order;
- (l) "provincial director" means an employee of the government having the title of the Provincial Director of Child, Youth and Family Services;
- (m) "qualified health practitioner" means a physician, a nurse or other person designated by the minister by class or profession as a qualified health practitioner;
- (n) "social worker" means a person
- (i) registered under the *Social Workers Association Act*, and
 - (ii) employed by a board,
- and includes a person authorized by a director under subsection 4(2) to carry out duties under this Act; and
- (o) "youth" means a person who is 16 years of age or over but under 18 years of age, and where an intervention, including an agreement under section 11, is provided to a youth, Part II applies to youth as well as to a child.

(2) Notwithstanding paragraph (1)(h), in the expanded service area as defined in the *Unified Family Court Act* "judge" means a Provincial Court judge.

Responsibilities of minister

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3. Where, as a result of a report of the provincial director, the minister believes that a director is not carrying out his or her duties and responsibilities in accordance with this Act or the policies established by the provincial director under paragraph 5(a), the minister may direct the board which employs the director to take remedial action or other action the minister considers appropriate, and the board shall comply with the minister's direction.

Director in a region

4. (1) Each board shall appoint a director of child, youth and family services to exercise the powers and perform the duties given to a director under this Act.

(2) Where a social worker is not available, a director may authorize another person to perform the duties or exercise the powers of a social worker under this Act for the period and subject to the conditions the director considers necessary.

Provincial director

5. The Lieutenant-Governor in Council may appoint an employee of the government to be the provincial director who shall be responsible for

- (a) establishing province-wide policies, programs and standards;
- (b) monitoring, evaluation and research of the established policies, programs and standards;
- (c) representing the province in interprovincial and territorial and other discussions and agreements;
- (d) a province wide, computerized child, youth and family service information system; and
- (e) advising and reporting to the minister on matters related to child, youth and family services.

Protection from liability

6. A person is not liable for anything done or omitted to be done in good faith in the exercise or performance or intended exercise or performance of a power, duty or function conferred by or under this Act.

PART II PRINCIPLES

General principles

7. This Act shall be interpreted and administered in accordance with the following principles:

- (a) the overriding and paramount consideration in any decision made under this Act shall be the best interests of the child;
- (b) every child is entitled to be assured of personal safety, health and well-being;
- (c) the family is the basic unit of society responsible for the safety, health and well-being of the child;
- (d) the community has a responsibility to support the safety, health and well-being of a child and may require assistance in fulfilling this responsibility;
- (e) prevention activities are integral to the promotion of the safety, health and well-being of a child;
- (f) kinship ties are integral to a child's self-development and growth and if a child's safety, health and well-being cannot be assured in the context of the family, the

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extended family shall be encouraged to care for the child provided that a director can be assured that the child's safety, health and well-being will not be at risk;

(g) the cultural heritage of a child shall be respected and connections with a child's cultural heritage shall be preserved; and

(h) in the absence of evidence to the contrary, there shall be a presumption that a child 12 years of age or over is capable of forming and expressing an opinion regarding his or her care and custody.

Child, youth and family service principles

8. The following principles apply to the provision of services under this Act:

(a) families shall be provided, to the extent possible, with services which support the safety, health and well-being of their children;

(b) services shall be provided using the least intrusive means of intervention;

(c) wherever possible, having regard to a child's age and level of development, the views and wishes of the child shall be sought and considered in providing services;

(d) families shall be informed of the services which may be available to them to assist them in supporting a child's safety, health and well-being;

(e) families shall be encouraged to participate in the identification, planning, provision and evaluation of services available to them; and

(f) services shall be provided in a manner that acknowledges a child's overall needs for safety, health and well-being.

Best interests of child

9. All relevant factors shall be considered in determining a child's best interests, including

(a) the child's safety;

(b) the child's developmental needs;

(c) the child's cultural heritage;

(d) where possible, the child's views and wishes;

(e) the importance of stability and continuity in the child's care;

(f) the continuity of a child's relationship with his or her family, including siblings or others with whom the child has a significant relationship;

(g) the child's geographic and social environment;

(h) the child's supports outside the family, including child care and the school environment; and

(i) the effect upon the child of a delay in the disposition of a judicial or other proceeding with respect to the child.

PART III SERVICES AND AGREEMENTS

Family services

10. (1) A director or social worker may provide services to children, youth and families, and may enter into written agreements with respect to the services to be provided and the responsibilities of each party to an agreement.

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(2) Where services are provided, they shall be provided in a manner which reflects the principles of this Act.

Youth care agreement

11. (1) A director or social worker may make a written agreement for services with a youth who

(a) cannot in the opinion of the director or social worker remain with or be re-established in the youth's family, temporarily or permanently; or

(b) has no parent or other person willing or able to provide care to the youth.

(2) The initial term of an agreement shall not exceed 6 months but the agreement may be renewed for additional terms of up to 6 months each.

(3) An agreement under this section may be made, even if the youth is not or has not been in the custody of a director, but shall not continue beyond the youth's eighteenth birthday unless the young person has been in the care of a director prior to his or her sixteenth birthday in which case the agreement may be extended until his or her twenty-first birthday or school leaving, whichever event occurs first.

(4) Where a youth is provided with services, the cost of those services may be recovered by the board that provided them and an action or other proceeding for the recovery of the cost may be instituted in the name of the board.

(5) Before the agreement is signed, the director or social worker shall explain the effect of the agreement to the youth.

Effect of agreement

12. Where a director or social worker enters into an agreement with a youth under this Act, the agreement is binding on the youth and enforceable against him or her notwithstanding he or she is less than 19 years of age.

Alternate dispute resolution

13. A director or social worker may use alternate dispute resolution mechanisms to resolve a conflict, including family group conferences, pre-trial settlement conferences and mediation.

PART IV PROTECTIVE INTERVENTION

Definition of child in need of protective intervention

14. A child is in need of protective intervention where the child

(a) is, or is at risk of being, physically harmed by the action or lack of appropriate action by the child's parent;

(b) is, or is at risk of being, sexually abused or exploited by the child's parent;

(c) is emotionally harmed by the parent's conduct;

(d) is, or is at risk of being, physically harmed by a person and the child's parent does not protect the child;

(e) is, or is at risk of being, sexually abused or exploited by a person and the child's parent does not protect the child;

(f) is being emotionally harmed by a person and the child's parent does not protect the child;

(g) is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child

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when recommended by a qualified health practitioner;

(h) is abandoned;

(i) has no living parent or a parent is unavailable to care for the child and has not made adequate provision for the child's care;

(j) is living in a situation where there is violence; or

(k) is actually or apparently under 12 years of age and has

(i) been left without adequate supervision,

(ii) allegedly killed or seriously injured another person or has caused serious damage to another person's property, or

(iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation.

Duty to report

15. (1) Where a person has information that a child is or may be in need of protective intervention, the person shall immediately report the matter to a director, social worker or a peace officer.

(2) Where a person makes a report under subsection (1), the person shall report all the information in his or her possession.

(3) Where a report is made to a peace officer under subsection (1), the peace officer shall, as soon as possible after receiving the report, inform a director or social worker.

(4) This section applies, notwithstanding the provisions of another Act, to a person referred to in subsection (5) who, in the course of his or her professional duties, has reasonable grounds to suspect that a child is or may be in need of protective intervention.

(5) Subsection (4) applies to every person who performs professional or official duties with respect to a child, including,

(a) a health care professional;

(b) a teacher, school principal, social worker, family counsellor, member of the clergy or religious leader, operator or employee of a child care service and a youth and recreation worker;

(c) a peace officer; and

(d) a solicitor.

(6) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.

(7) A person shall not interfere with or harass a person who gives information under this section.

(8) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

(9) Notwithstanding section 7 of the *Provincial Offences Act*, an information or complaint under this section may be laid or made within 3 years from the day when the matter of the information or complaint arose.

Determining the need for protective intervention

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16. (1) Upon receiving information that a child is or may be in need of protective intervention, a director or social worker shall assess the information to determine if there are reasonable grounds to believe that a child is in need of protective intervention.

(2) After the assessment, a director or social worker may

- (a) determine that protective intervention is not required;
- (b) offer support services to the child and family;
- (c) refer the child and family to other resources; or
- (d) investigate further the child's need for protective intervention.

Interview of child

17. (1) A person who has custody of a child or a person who is entrusted with the care of a child shall permit the child to be visited and interviewed by a director or social worker, in private where in the opinion of the director or social worker it is appropriate to do so, at a place where the child is located.

(2) A director or social worker shall notify the parent of the interview before or after the interview takes place.

Director denied access to child

18. (1) Where a director or social worker is denied access to a child where he or she believes that access to the child is necessary to determine if the child needs protective intervention, the director or social worker may apply without notice to a judge for an order and the judge may grant an order

- (a) that a person disclose the location of the child;
- (b) requiring a person to allow the director or social worker or another person to interview or visually examine the child;
- (c) authorizing the director or social worker to remove the child from the place where the child is located for an interview or medical examination; and
- (d) authorizing a medical practitioner or other qualified health practitioner to examine the child.

(2) The judge may attach terms or conditions to an order under this section that the judge considers appropriate.

(3) Where a child is removed from the place where the child was located for an interview or medical examination, a director or social worker shall return the child to the parent or other person from whom the child was removed unless the director or social worker proceeds under section 23.

(4) At the request of a director or social worker, a peace officer shall assist in enforcing an order made under subsection (1).

Location of child not disclosed

19. (1) Where a person does not comply with an order under section 18, a judge may issue a warrant for the person's arrest to bring him or her before the judge to explain why the order should not be enforced.

(2) Where a person referred to in subsection (1) appears before a judge and the judge believes that the person's reasons for being unable or unwilling to comply with the order are not valid, the judge may order that the person be imprisoned for 30 days or until the person complies with the order, whichever is the shorter period of time.

Order to produce record

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20. (1) On application by a director or social worker a judge may order a person to produce information that is written, photographed, recorded or stored by other means, or a certified copy of the record, for inspection by the director or social worker where

- (a) there are reasonable grounds to believe that the information is necessary for determining whether a child needs protective intervention;
- (b) there are reasonable grounds to believe that the person has possession or control of the information; and
- (c) the person has neglected or refused, upon request of the director or social worker to produce the information.

(2) Not later than 2 days before the date set for hearing an application under subsection (1), notice of the time, date and place of the hearing shall be served on the person against whom the order is sought.

(3) Notwithstanding subsection (2), where a director or social worker believes on reasonable grounds that the information may be destroyed if notice is given, application may be made under subsection (1) without notice.

Child who needs to be protected from contact with someone

21. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, a director or social worker may apply to a judge for an order to prohibit contact between the child and that person.

(2) The date set for hearing the application under subsection (1) shall be not later than 2 days after the application is made and notice of the hearing shall be served on the day the application is made.

(3) Notice of the time, date and place of the hearing shall be served on

- (a) the person against whom the order is sought;
- (b) the child, where 12 years of age or over; and
- (c) a parent of the child.

(4) Where a judge is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the judge may do one or more of the following:

- (a) prohibit the person against whom the order is sought for a period of up to 6 months from contacting or interfering with or trying to contact or interfere with the child or from entering a place where the child is located;
- (b) prohibit the person against whom the order is sought for a period of up to 6 months from residing with the child or entering premises where the child resides, including premises that the person owns or has a right to occupy;
- (c) where the judge believes the person against whom the order is sought may not comply with an order under paragraph (a) or (b), order that person to
 - (i) enter into a recognizance, with or without sureties, in an amount the judge considers appropriate, or
 - (ii) report to a judge, or to a person named by the judge, for the period of time and at the times and places the judge directs; and
- (d) impose those terms and conditions that the judge considers appropriate for implementing the order and protecting the child.

(5) Before an order to prohibit contact between a child and another person expires, a director or social worker or a person named in the order may apply to a judge and the judge may

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- (a) vary the order;
- (b) rescind the order; or
- (c) extend the term of the order for one period of up to 6 months.

(6) At the request of a director or social worker, a peace officer shall assist in enforcing an order made under subsection (4).

(7) An order made under this section may be made at any time, including before, at or after another hearing.

Care in the home

22. (1) Where a director or social worker believes a child is without adequate supervision when premises are entered under this Act, the director or social worker may arrange for short term care in the home to be provided until other supervision considered adequate by the director or social worker is available for the child but the period of care shall not exceed 72 hours.

(2) Where services are provided under subsection (1), a person approved by the director or social worker may enter the premises where the child is located and care for the child.

(3) A director or social worker shall make all reasonable efforts to notify the child's parents of an action taken by the director or social worker under this section.

Removal of child

23. (1) Where a director or social worker believes

- (a) that a child is in need of protective intervention; and
- (b) a less intrusive course of action is not available or will not adequately protect the child,

he or she shall obtain a warrant to remove a child.

(2) Where satisfied on the basis of a director's or social worker's sworn information that there are reasonable grounds to believe that

- (a) a child is in need of protective intervention; and
- (b) a less intrusive course of action is not available or will not adequately protect the child,

a judge may issue a warrant authorizing the director or social worker to enter a premise or vehicle or board a vessel or aircraft, by force if necessary, to remove a child.

(3) Notwithstanding subsection (1), where a director or social worker has reasonable grounds to believe there would be an immediate risk to the child's health and safety if no action were taken during the time required to obtain a warrant, the director or social worker may enter a premise or vehicle or board a vessel or aircraft, by force if necessary, to remove a child without a warrant.

(4) At the request of a director or social worker, a peace officer shall assist in enforcing a warrant issued under subsection (2), or if a warrant is not obtained, the peace officer shall assist a director or social worker under subsection (3).

(5) A warrant issued under subsection (2) need not describe the child by name or specify a particular premises.

Removal of youth in exceptional circumstances

24. (1) Where a director or social worker believes on reasonable grounds that

- (a) a youth is in need of protective intervention as defined in section 14;

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(b) a less intrusive course of action is not available or will not adequately protect the youth; and

(c) the director or social worker considers the circumstances to be of an exceptional nature,

the director or social worker may remove the youth.

(2) In case of the removal of a youth, the provisions of this Act that apply to the removal of a child, except section 36, apply as if the youth were a child.

Telewarrants

25. (1) Where, in the opinion of a director or social worker it would not be practical to appear in person before a judge to apply for a warrant, the director or social worker may make the application by telephone or other means of telecommunication.

(2) Where the information on which an application for a warrant is submitted by telephone or other means of telecommunication, the information shall be given under oath or affirmation and the oath or affirmation may be administered by telephone or other means of telecommunication.

(3) The information submitted by telephone or other means of telecommunications shall include

(a) a statement of the circumstances that make it impracticable for the director or social worker to appear personally before a judge;

(b) a statement of the director's or social worker's grounds for believing that a child is in need of protective intervention and the identity of the child, if known; and

(c) a statement explaining that a less intrusive course of action is not available or will not adequately protect the child.

(4) The sworn information submitted by telephone or other means of telecommunication by a director or social worker shall specify the name of the person giving evidence, the facts ascertained and the manner and location in which the evidence was received, and a record of that information shall be filed by the judge with the clerk of the court over which the judge presides.

(5) Where a director or social worker removes a child under the authority of a warrant obtained under this section, the director or social worker shall provide the person from whom the child is removed with a facsimile of the warrant.

(6) In subsection (5), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

Notice of removal of child

26. (1) Where a child is removed, with or without a warrant, from the care of a parent or other person, a director or social worker shall provide written notice to the parent and the child, where the child is 12 years of age or over, within 24 hours of the removal stating the reason why the child was removed.

(2) A parent who is given a notice under subsection (1) shall be informed that he or she may be represented by legal counsel.

(3) Notices under subsections (1) and (2) shall be by personal service.

(4) Where personal service cannot be reasonably effected, substitute service may be made by registered mail.

Care of child after removal

27. (1) Where a child is removed under section 23, a director has interim care of the child until

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(a) the child is returned under section 47 to the parent from whom the child was removed; or

(b) a judge makes an order at a presentation hearing under section 33.

(2) While a child is in a director's care, the director or a social worker may

(a) authorize a qualified health practitioner to examine the child; and

(b) consent to necessary routine health care for the child where the parent cannot be contacted if, in the opinion of a qualified health practitioner, the health care should be provided without delay.

(3) On consenting to health care for the child, a director or social worker shall notify the parent from whom the child was removed.

(4) Where a child is removed, while hospitalized, from his or her parent by a director or social worker, the chief executive officer of the hospital and the attending physician shall be advised of the child's removal and that the child's care is the responsibility of the director.

PART V COURT PROCEEDINGS

Where child is not removed

28. (1) Where a director or social worker believes on reasonable grounds that

(a) a child is in need of protective intervention;

(b) the child's safety could be assured without removing the child with the provision of protective intervention services; and

(c) a parent of the child is unwilling to accept protective intervention services for the child,

the director or social worker shall file an application for an order of a judge that the child is in need of protective intervention and for a protective intervention hearing.

(2) A hearing under this section shall be held within 30 days of the filing of the application under subsection (1).

(3) Notice of the time and place of a hearing under this section shall be served not later than 3 days after the date for holding the hearing is obtained from the court on

(a) a parent of the child; and

(b) the child, where the child is 12 years of age or older.

(4) Where an application is made under this section, a judge may make an order under section 34.

Where child has been removed

29. Where a child has been removed, the director or social worker shall within the next day after the removal of the child file an application for an order of a judge that the child is in need of protective intervention and for a protective intervention hearing which shall be held not later than 30 days after the child's removal.

Presentation hearing

30. (1) Where a director or social worker applies for a protective intervention hearing, he or she shall at the same time be given a date for a presentation hearing, which shall be held not later than 10 days after the date on which the application is filed.

(2) Notice of the time and place of a protective intervention hearing and a presentation hearing shall be served not later than 3 days after the dates for holding the hearings are obtained on

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- (a) a parent of the child; and
- (b) the child, where the child is 12 years of age or over.

(3) Information to be served with a notice shall include

- (a) a copy of the originating application;
- (b) a written report of the circumstances that led to the removal of the child; and
- (c) the director's or social worker's plan for the child until the protective intervention hearing.

Plan for the child

31. (1) Not later than 10 days prior to a protective intervention hearing, a director or social worker shall file with the court a written plan for the child and provide a copy to those persons to whom notice of the hearing has been given.

(2) Not later than 3 days before the protective intervention hearing those persons to whom a copy of a plan has been given under subsection (1) may respond to the plan and file an alternate written plan with the court and provide a copy to the director or social worker.

Medical treatment

32. (1) Where a director or social worker believes a child to be in need of protective intervention because of his or her parent's refusal to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended by a qualified health practitioner for the child, the director or social worker may apply for an order of a judge authorizing the treatment.

(2) A parent of a child, and the child, where he or she is 12 years of age or over, shall be notified of the time and place of a hearing under this section which shall be held within one day after filing the application.

(3) A judge may

- (a) hear the application at any time or place;
- (b) receive evidence by telephone or other means of telecommunication; and
- (c) administer an oath or affirmation by telephone or other means of telecommunication.

(4) Where a judge finds that a child needs protective intervention for a reason referred to in subsection (1), the judge may so declare and grant an order authorizing the treatment recommended by a qualified health practitioner.

(5) Where a child is treated under an order under this section, no liability attaches to the person treating the child by reason only that the parent of the child did not consent to the treatment.

Presentation hearing

33. (1) A presentation hearing

- (a) may be conducted by a judge in an informal manner; and
- (b) shall be concluded within one day, unless extended by the judge.

(2) At the conclusion of a presentation hearing, a judge may

- (a) dismiss the application for a protective intervention hearing;
- (b) order that the child be returned to the parent under the supervision of a director or social worker until the conclusion of the protective intervention hearing;

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(c) order that the child be placed in the care of a person other than the parent from whom the child was removed under the supervision of a director until the conclusion of the protective intervention hearing;

(d) order that the child remain in the care of a director until the conclusion of the protective intervention hearing; or

(e) make a declaration that the child is in need of protective intervention and make an order under subsection 34(2).

(3) A presentation hearing under this Act may be conducted by means of a teleconference.

(4) At a presentation hearing a judge may give the parties to the hearing directions with respect to those matters that are relevant at a protective intervention hearing.

(5) A judge may attach those conditions to an order made under subsection (2) that he or she considers appropriate.

(6) When a judge makes an order under this section, the judge may grant a parent, or a person significant to the child, access to the child.

Protective intervention hearing

34. (1) At a protective intervention hearing a judge shall determine whether a child needs protective intervention.

(2) Where a judge finds that a child needs protective intervention, the judge shall so declare and order

(a) that the child be returned to or remain with the parent and under a director's supervision for a specified period of up to 6 months;

(b) that the child be placed in the custody of a person other than the parent from whom the child was removed, with the consent of the other person and under a director's supervision, for a specified period in accordance with section 36;

(c) that the child be placed in the custody of a director on a temporary basis for a specified period in accordance with section 36; or

(d) that the child be placed in the continuous custody of a director.

(3) A judge may attach those conditions to an order made under subsection (2) that he or she considers appropriate.

(4) Where a judge makes an order under paragraph (2)(b), (c) or (d), the judge may grant a parent or a person significant to the child access to the child.

(5) Where the judge finds that the child does not need protective intervention, the judge shall so declare and order that the child remain with or be returned to the parent from whom the child was removed.

Financial responsibility

35. (1) Where a child is committed temporarily or continuously to the custody of a director, upon application by a director or social worker, a judge may order that the obligation of the parents to provide support to the child shall continue subject to Part III of the *Family Law Act*.

(2) An order under subsection (1) shall be for the benefit of the board that is the employer of the director or social worker or some other person on the terms and conditions and for the period the judge considers appropriate.

Time limits for temporary orders

36. (1) Where a judge grants a temporary order under paragraph 34(2)(b) or (c), the term of the order shall not exceed

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- (a) 3 months, if the child who is the subject of the order is under 5 years of age when the order is made, to a maximum of 3 orders in total;
- (b) 4 months, if the child who is the subject of the order is 5 years of age or over but under 12 years of age when the order is made, to a maximum of 3 orders in total; and
- (c) 6 months, if the child who is the subject of the order is 12 years of age or over when the order is made, to a maximum of 3 orders in total.

(2) Notwithstanding subsection (1), an order may be extended if

- (a) there are exceptional circumstances that in the opinion of the judge warrant an extension; and
- (b) the parent may reasonably be expected to resume the custody of the child within a reasonable period,

but an extension shall not exceed,

- (c) 3 months if the child is under 5 years of age;
- (d) 4 months if the child is 5 years of age or over but under 12 years of age; or
- (e) 6 months if the child is 12 years of age or over.

Alternate dispute resolution or assessment

37. (1) Notwithstanding section 36, a judge may adjourn a proceeding under this Act one or more times, for a total period of up to 3 months, to allow

- (a) a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution to proceed; or
- (b) where an assessment is considered necessary by a judge, director or social worker, an assessment to be completed.

(2) Where a proceeding is adjourned under subsection (1), a time limit applicable to the proceeding is suspended.

(3) Where, as a result of a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution, a written agreement is made, a director or social worker shall file the agreement with the court.

When time limits expire

38. Where all of the time limits contained in section 36 have expired, a judge shall make one of the following orders:

- (a) that the child be placed in the continuous custody of a director;
- (b) that the child be placed in the custody of a person other than a parent, with the consent of that person; or
- (c) that the child be returned to the parent from whom the child was removed.

Extension of temporary and supervision orders

39. (1) Before a supervision order or temporary order expires, a director or social worker may file an application with a judge for an extension of the existing order or for an order for continuous custody.

(2) An application filed under subsection (1) shall be accompanied with a copy of the director's or social worker's plan for the child.

(3) Notice of the time and place of a hearing with respect to an application under subsection (1) shall be given not later than 10 days prior to the hearing on

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- (a) a parent; and
- (b) a child, where the child is 12 years of age or older.

(4) At least 3 days before the date set for a hearing those receiving notice may respond to the director's or social worker's plan and provide an alternate written plan to the judge with a copy to the director or social worker.

Bridging provision

40. Where a child is in the custody of a director or another person under a temporary order and an application for an extension of that order is filed but not heard prior to the expiration of the order, the child shall remain in the custody of the director or other person to whom the custody was granted under the temporary order until the application for the extension is heard.

Effect of temporary order

41. Where a director has been granted a temporary order under section 34, the director has custody of the child for the specified period and has the right to make all decisions regarding the child during that specified period, but the director shall not consent to medical treatment, other than to necessary routine medical treatment, unless a parent consents or the director is granted an order under section 32, or to an adoption under the *Adoption of Children Act* without the consent of the parent from whom the child was removed.

Effect of continuous order

42. (1) When an order for continuous custody is made under paragraph 34(2)(d), the director named in the order becomes the sole custodian of the child and may consent to the child's adoption in accordance with the *Adoption of Children Act* and to the provision of medical treatment to the child.

(2) An order for continuous custody of a child does not affect the child's rights respecting inheritance or succession to property.

(3) At least 30 days before consenting under the *Adoption of Children Act* to a child's adoption, a director shall inform any person who under subsections 33(6) and 34(4) has been given access to the child of the director's intention to consent to the adoption.

When continuous order ends

43. An order for continuous custody ceases to have effect when

- (a) the child reaches 16 years of age;
- (b) the child marries; or
- (c) the court rescinds the order.

Rescind continuous order

44. (1) With the leave of a judge and

- (a) where circumstances have changed significantly since the time an order for continuous custody was made; and
- (b) where the child has not been placed for adoption

a party to a hearing at which the order was made may apply to the judge for the rescission of the order.

(2) Where a judge grants leave under subsection (1), notice of an application for a hearing shall be served not later than 10 days prior to the hearing on

- (a) the director concerned;
- (b) a parent;

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- (c) a child, where the child is 12 years of age or older; and
- (d) another party who was present at the original hearing.

(3) The judge may grant an order to rescind an order for continuous custody, where he or she believes it is in the best interest of the child to do so.

Transfer of custody or supervision between directors

45. (1) A director who has care, supervision or custody of a child may transfer care, supervision or custody to another director.

- (2) Where the care, supervision or custody of a child is transferred by one director to another director,
- (a) the other director has care, supervision or custody of the child with the same rights and responsibilities as the director who made the transfer; and
 - (b) the director who made the transfer ceases to have care, supervision or custody of the child.

(3) The transfer of supervision or custody is effective upon the filing of an amended order in the registry of the court which granted the original order.

Return of child at any time

46. A child may be returned to the parent from whom the child was removed at any time where

- (a) circumstances have changed so that the child in the opinion of a director or social worker no longer needs protective intervention; or
- (b) the parent enters into an agreement that is considered by a director or social worker to be adequate to protect the child.

Child returned within 72 hours

47. (1) Where a child is returned to the parent from whom the child was removed within 72 hours of removal, a director or social worker shall

- (a) file a notice of discontinuance where an application has been made to a judge for a protective intervention hearing; and
- (b) provide notice of the discontinuance of the application to the persons given notice of the application for a protective intervention hearing.

(2) A written explanation of the change of circumstances referred to in paragraph 46(a) or a copy of the agreement referred to in paragraph 46(b) shall be filed with the notice of discontinuance and provided to all persons receiving notice of the discontinuance.

(3) Where a child is returned to the parent from whom the child was removed within 72 hours of the removal, a director shall strike an interdisciplinary panel to review the action of removing and returning the child.

Child returned after 72 hours

48. (1) Where a child is returned 72 hours or longer after having been removed but before the date set for a protective intervention hearing, a director or social worker shall

- (a) seek leave of a judge to withdraw the application for a protective intervention hearing;
- (b) provide notice of the intention to seek leave to withdraw the application to the persons previously given notice of the application for a protective intervention hearing; and

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(c) file with the court and provide to all persons receiving notice a written explanation of the circumstances referred to in paragraph 46(a) or a copy of the agreement referred to in paragraph 46(b).

(2) Where leave of a judge is sought under this section, the matter shall be heard no later than the date set for the protective intervention hearing and the judge may rescind an outstanding order made in relation to the child.

Child returned after protective intervention hearing

49. (1) Where a child is returned to the parent from whom the child was removed after a protective intervention hearing but before the expiration of a temporary order made under section 34, a director shall apply to a judge to rescind or vary an outstanding order made in relation to the child and shall

(a) not later than 10 days prior to the date set for a hearing, provide notice of the application

(i) to the parent, and

(ii) to the child, where the child is 12 years of age or older; and

(b) file with the court and provide to all persons receiving notice a written explanation of the circumstances referred to in paragraph 46(a) or a copy of the agreement referred to in paragraph 46(b).

(2) Where an application is made under this section, the judge may rescind or vary an outstanding order made with respect to the child.

PART VI GENERAL COURT MATTERS

Hearings and evidence

50. (1) A hearing under this Act

(a) is civil in nature;

(b) may be as informal as a judge may allow; and

(c) shall be held in private, unless otherwise ordered by the judge.

(2) In any proceeding under this Act, a judge may admit and act upon

(a) the evidence, including hearsay, that the judge considers relevant and reliable in the circumstances;

(b) an oral or written statement which may be video-taped; and

(c) a report the judge considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding.

Appearance in court

51. A director or social worker may appear in court in respect of a matter arising out of a provision of this Act.

Application to be heard

52. A person significant to a child may apply to be heard at a hearing under this Act.

Judge shall hear child

53. A judge shall permit a child who is the subject of a hearing under this Act to be heard at the hearing where the child requests to be heard.

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Power to vary notice requirements

54. A judge may

- (a) shorten the time period to serve a notice under this Act; or
- (b) dispense with a requirement to serve notice of a hearing under this Act.

Service of documents

55. (1) Where a director, social worker or another person is required under this Act to serve a document on a person, personal service may be made by showing the original to the person and giving a copy of the original document to the person to be served.

(2) Personal service under subsection (1) may be proved by a written or oral statement under oath by the person who effected the service.

Full disclosure to parties

56. (1) A party to a hearing under this Act shall disclose in a timely manner all the information relevant to the hearing in his or her possession where requested to do so by another party to the hearing.

(2) Information identifying a person who has made a complaint to a director or social worker, or who provided information to a director or social worker with respect to a child, shall not be disclosed unless the person who provided the information consents or a judge orders its disclosure.

Confidentiality of information

57. A person shall not disclose, or be compelled to disclose, at a hearing under this Act, information obtained in a family conference, mediation or other means of alternate dispute resolution, except

- (a) with the consent of everyone who participated in the family conference, mediation or other means of alternate dispute resolution;
- (b) to the extent necessary to make or implement an agreement with respect to a child;
- (c) where the information is disclosed in an agreement filed under subsection 37(3); or
- (d) where the disclosure is necessary for a child's safety or is required under section 15.

Consent orders

58. (1) Where a parent consents to an order made under this Act, a judge shall be satisfied

- (a) that the wishes of the child have been considered; and
- (b) that the parent consenting to the order has been informed that he or she may be represented by legal counsel and understands the nature and consequences of the consent.

(2) A consent by a parent under this Act is not an admission by the parent of a ground alleged by a director or social worker for protective intervention.

Custody application under another Act

59. Where a hearing under this Act is proceeding at the same time as custody of a child is being determined under another Act, a party may apply to have the 2 matters heard together, whether the different proceedings are heard by the Provincial Court, the Trial Division or the Unified Family Court, but if a matter relates to an application made under the *Divorce Act* (Canada), the combined matter shall only be heard by the Trial Division or Unified Family Court.

Variance

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60. Where an order has been made under this Act, a judge may, upon application accompanied by evidence to the satisfaction of the judge that the circumstances relating to the child have changed since the original order was given, vary the order.

Out of province order

61. Where an order has been made by a judge in another province of Canada under provisions similar in effect to the provisions of this Act, the order has the same effect in this province as if it were an order made under this Act, unless the judge otherwise orders.

PART VII PLACEMENT OF CHILDREN

Placement considerations

62. (1) The placement of a child shall be conducted in a manner which is least disruptive to a child and recognizes the importance of placement with siblings and contact with family or other persons who are significant to the child.

(2) A director or social worker shall first consider placement of a child with a relative or person with whom the child has a significant relationship.

(3) Where a child is removed by a director or social worker from a custodial parent and the non-custodial parent is considered by the director or social worker to be suitable to provide care, the child may be placed with the non-custodial parent pending final determination of the application before the court.

(4) Where a child cannot be placed in accordance with subsection (2) or (3), the child may be placed with a caregiver.

Agreements

63. (1) A director or social worker may make an agreement for services including financial support, with a person providing care to or entrusted with the care of a child.

(2) Where an agreement is made under subsection (1) with a non-custodial parent, the non-custodial parent is not entitled to financial support.

(3) A person who provides care under this Part shall be approved by a director or social worker.

Information re child's care

64. (1) A director or social worker shall provide information concerning a child's or youth's care to a person providing care to or entrusted with the care of the child or youth.

(2) A director or social worker shall provide information concerning the caregiver of a child or youth to the child or youth and the parent of the child or youth.

Removal of child from caregiver

65. A director or social worker may remove a child from the care of a caregiver with whom the director or social worker has placed the child, without notice, if necessary.

Counselling

66. A child who is removed from a person caring for the child shall be entitled to counselling.

PART VIII CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

Definition

67. In this Part, "information" means personal information obtained under this Act or a predecessor Act which is held on file by or is in the possession of or under the control of the provincial director or a

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director, and includes information that is written, photographed, recorded or stored by any other means.

Right of access and right to consent to disclose

68. (1) A person over 12 years of age has the right to and shall, on request, be given access to information relating to himself or herself, including

- (a) information relating to his or her birth family;
- (b) the reasons why he or she was removed from his or her parent;
- (c) the reasons for the continuation of a court order relating to him or her; and
- (d) the identity of former caregivers.

(2) A person who has the custody of a child other than temporary custody has the right to and shall, on request, be given access to information including information about the child referred to in subsection (1).

(3) The right to be given access to information does not extend to information excepted from disclosure under section 69.

(4) Where information excepted from disclosure under section 69 can reasonably be severed, a person referred to in subsection (1) or (2) has the right of access to the remainder of the information.

Exceptions to access rights

69. A person shall be denied access to information where

- (a) the disclosure is prohibited under the *Adoption of Children Act*;
- (b) there are reasonable grounds to believe that the disclosure might result in physical or emotional harm to that person or to another person;
- (c) where the disclosure would identify a person who made a report under section 15; or
- (d) the disclosure could reasonably be expected to jeopardize an investigation under this Act or a criminal investigation.

Disclosure without consent

70. A director may, without the consent of another person, authorize the disclosure of information obtained under this Act if the disclosure is

- (a) necessary to ensure the safety, health or well-being of a child;
- (b) shared with persons entrusted with the care of a child or youth;
- (c) necessary for the administration of this Act; or
- (d) for research and evaluation purposes.

PART IX OFFENCES AGAINST CHILDREN

General offence

71. A person who by commission or omission wilfully contributes to a child being a child in need of protective intervention is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

Contributing to an offence

72. A person who sells, gives or causes to come into the possession of a child

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- (a) a drug which is or, in quantity may be, harmful to the child;
- (b) an obscene book or other printed material, copies or written obscene matter;
- (c) an obscene picture, photograph, or pornographic material, model or pornographic material available through electronic means; or
- (c) another obscene object,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

Removing a child

73. A person shall not remove or attempt to remove a child or entice a child to leave the care or custody of a director or harbour a child who has left the care or custody of the director.

Liability for an offence

74. Unless specifically stated otherwise, a person who fails to comply with or otherwise contravenes a provision of this Act for which a penalty has not specifically provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 months or to both a fine and imprisonment.

PART X ACCOUNTABILITY PROVISIONS

Minister's advisory committee

75. (1) The minister shall establish an advisory committee whose function is to review every 2 years the operation of this Act and to report to the minister concerning its operation and stating whether, in its opinion, the principles and purpose of the Act are being achieved.

(2) The advisory committee shall be appointed by the minister and shall be composed of

- (a) 2 persons who themselves or whose children are receiving or have received services under this Act or a predecessor Act;
- (b) a representative from a board;
- (c) a representative of the minister;
- (d) a legal aid lawyer;
- (e) 2 persons drawn from the cultural, racial or linguistic minority communities; and
- (f) those other persons, not exceeding 3 in number, who the minister may determine.

(3) Appointments to the advisory committee shall be for 3 years and may be renewed.

(4) The members of the committee shall elect one of their number to serve as chairperson.

(5) The members of the committee shall serve without remuneration but may be reimbursed for expenses reasonably incurred in carrying out their duties on the committee.

(6) The minister shall present a copy of the committee's report to the House of Assembly not later than 30 days after receiving it and if the House of Assembly is not then sitting within 15 days of the beginning of the next sitting.

Custody review committees

76. (1) Each board shall establish a review committee which shall review annually and report to the board's director on the care of all children in the continuous custody of the director.

(2) Each review committee shall be composed of

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- (a) a member of the board;
- (b) a parent of a child who is receiving or has received services under this Act or a predecessor Act; and
- (c) a member of each appropriate professional discipline employed by the board.

Appeals

77. An appeal lies from a decision of a judge under this Act to

- (a) the Trial Division if the order, decision or judgment was made by a Provincial Court judge; or
- (b) the Court of Appeal if the order, decision or judgment under appeal was made by a judge of the Trial Division or of the Unified Family Court,

and the provisions of the *Judicature Act* and the applicable rules of court shall govern the proceedings on the appeal.

PART XI REGULATIONS

Regulations

78. The minister may make regulations to give effect to the purpose of this Act.

PART XII TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND REPEAL

Transitional provisions

79. (1) Where the Director of Child Welfare appointed under the *Child Welfare Act* has entered into an agreement, the agreement, on the coming into force of this Act, shall be considered to have been entered into by the director employed by the board having responsibility under this Act.

(2) A period during which a child was in the care or custody of the Director of Child Welfare under the *Child Welfare Act* shall not be counted for the purpose of determining the maximum period during which a child may be in custody under section 36 of this Act.

Consequential amendments

80. (1) Paragraph 2(h) of the *Adoption of Children Act* is repealed and the following substituted:

(h) "director" means the Provincial Director of Child, Youth and Family Services appointed under the *Child, Youth and Family Services Act* or a person designated by the director as his or her representative;

(2) Subsection 10(3) of the *Adoption of Children Act* is repealed and the following substituted:

(3) Where a child has been committed permanently to the continuous custody of a director of child, youth and family services under the *Child, Youth and Family Services Act*, the only consent required to the adoption of that child is that of the director and of the child where he or she is 12 years of age or older and capable of giving an informed consent.

(3) Subsection 40(1) of the *Children's Law Act* is amended by deleting the words "the Director of Child Welfare" and substituting the words "a director of child, youth and family services under the *Child, Youth and Family Services Act*".

(4) Subsection 40(3) of the *Children's Law Act* is amended by deleting the words "The Director of Child Welfare" and substituting the words "A director of child, youth and family services under the *Child, Youth and Family Services Act*".

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(5) Subsection 69(1) of the *Family Law Act* is amended by deleting the words "the Director of Child Welfare" and substituting the words "a director of child, youth and family services under the *Child, Youth and Family Services Act*".

(6) Paragraph 2(a) of the *Neglected Adults Welfare Act* is amended by deleting the words "*Child Welfare Act*" and substituting the words "*Child, Youth and Family Services Act*".

(7) Paragraph 8(2)(f) of the *Public Trustee Act* is repealed and the following substituted:

(f) act as guardian of the estate of an infant committed to the continuous custody of a director under the *Child, Youth and Family Services Act*;

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81. The *Child Welfare Act* is repealed.

Commencement

82. This Act or a section or subsection of this Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

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