

CONSOLIDATION OF CHILD AND FAMILY SERVICES ACT

S.N.W.T. 1997,c.13

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S.N.W.T. 1998,c.17

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S.N.W.T. 1998,c.34

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S.Nu. 2003,c.4,s.12

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S.Nu. 2009,c.10

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S.Nu. 2010,c.4,s.8

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CHILD AND FAMILY SERVICES ACT

INTERPRETATION

Definitions

1. In this Act,

"abuse" means neglect or emotional, psychological, physical or sexual abuse; (*mauvais traitement*)

"apprehended" means apprehended under this Act; (*appréhendé*)

"assistant Director" means an assistant Director appointed under subsection 53(1); (*directeur adjoint*)

"authorized person" means a person authorized by the Director under subsection 55(1) or (1.1); (*personne autorisée*)

"child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years, and a person in respect of whom an order has been made under subsection 47(3) or 48(2); (*enfant*)

"Child and Family Services Committee" means a Child and Family Services Committee established by a community agreement; (*comité des services à l'enfance et à la famille*)

"child care facility" means a child care facility approved by the Director under subsection 62(1); (*établissement d'aide à l'enfance*)

"Child Protection Worker" means a Child Protection Worker appointed under subsection 54(2) or (3); (*préposé à la protection de l'enfance*)

"community" means a municipality, a settlement and a prescribed community; (*communauté*).

"community agreement" means an agreement made under section 57 or 58.1; (*accord communautaire*)

"community standards" means community standards established under section 59 by a community corporation, as defined in section 56, that is a party to a community agreement; (*normes communautaires*)

"Director" means the Director of Child and Family Services appointed under subsection 51(1); (*directeur*)

"foster home" means a foster home approved by the Director under subsection 62(3); (*foyer d'accueil*)

"parent", except in the expressions "the rights and responsibilities of a parent" and "the rights of a parent" and in Part II, includes a person, other than the Director, who has lawful custody of a child; (*père ou mère* or *parents*)

"plan of care agreement" means a plan of care agreement made by a plan of care committee; (*accord concernant le projet de prise en charge*)

"plan of care committee" means a plan of care committee established by a Child Protection Worker under paragraph 10(1)(c) or 11(3)(c) or by a Child and Family Services Committee under subsection 16(3); (*comité chargé du projet de prise en charge*)

"youth" means a person who has attained the age of 16 years but has not attained the age of majority. (*jeune*) S.N.W.T. 1998,c.17,s.4(2); S.Nu. 2009,c.10,s.2.

Where matter transferred

1.1. A reference to a person to whom a report is made in section 9 or to a peace officer, authorized person or Child Protection Worker in this Act shall be deemed to include any peace officer, authorized person or Child Protection Worker to whom the matter is transferred. S.N.W.T. 1998,c.17,s.4(3).

Principles governing Act

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

- (a) the paramount objective of this Act is to promote the best interests, protection and well-being of children;
- (b) children are entitled to protection from abuse and harm and from the threat of abuse and harm;
- (c) parents should use methods other than force by way of correction towards their children or in the discipline of their children;
- (d) the family's well-being should be supported and promoted;
- (e) parents are responsible to care and provide for and to supervise and protect their children;
- (f) measures taken for the protection and well-being of children should, as far as possible, promote family and community integrity and continuity;
- (g) communities should be encouraged to provide, wherever possible, their own child and family services;
- (h) children, where appropriate, and parents should participate in decisions affecting them;
- (i) children, where appropriate, parents, and adult members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their own interests are being made;
- (j) there should be no unreasonable delay in making or carrying out a decision affecting a child;

- (k) services to children and their families should cause the least amount of disruption to the family and should promote the early reunification of the child with the family;
- (l) children should be supported within the context of their family and extended family to the greatest extent possible by the Director providing services or assisting others in providing services on a voluntary basis to support and assist the family;
- (m) children removed from their family should be provided with a level of care adequate to meet their needs, within available resources, and consistent with community standards;
- (n) consistent with the United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on November 20, 1989, persons who have attained the age of 16 years but have not attained the age of majority and cannot reside with their parents should be supported in their efforts to care for themselves.

Best interests of the child

3. Where there is a reference in this Act to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child including the following factors, with a recognition that differing cultural values and practices must be respected in making that determination:

- (a) the child's safety;
- (b) the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the importance for the child's development of a positive relationship with his or her parent, a secure place as a wanted and needed member of the family, and a stable environment;
- (e) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- (f) the risk that the child may suffer harm through being removed from, kept away from, returned to, or allowed to remain in, the care of a parent;
- (g) the merits of any proposed plan of care for the child;
- (h) the child's relationship by blood or through adoption;
- (i) the child's views and preferences, if they can be reasonably ascertained;
- (j) the effects on the child of a delay in making a decision.

PART I

PROTECTION OF CHILDREN AND YOUTH

Definitions

4. In this Part,

"court" means the Nunavut Court of Justice or a justice of the peace; (*tribunal*)

"investigation" means an investigation under subsection 9(1) or paragraph 11(3)(a); (*enquête*)

"investigation report" means a report prepared under subsection 13(1) on an investigation; (*rapport d'enquête*)

"order" means an order made under section 28; (*ordonnance*)

"report" means a report made under subsection 8(1). (*rapport*)
S.N.W.T. 1998,c.34,Sch.C,s.3(2); S.Nu. 2009,c.10,s.3.

Voluntary Support Services and Agreements

Voluntary support services and agreements

5. (1) The Director may enter into a written agreement with a person who has lawful custody of a child to provide services or to assist others in providing services, or to assist that person's family in obtaining services, to support and assist that person's family to care for the child.

Consent and signature of child

- (2) Where a child referred to in subsection (1) has attained the age of 12 years,
- (a) before entering into an agreement under subsection (1), the Director shall interview the child in order to ascertain the child's views on the services to support and assist the family to care for the child; and
 - (b) the child may consent to and sign the agreement referred to in subsection (1) but the agreement is valid whether or not the child consents to or signs the agreement.

Voluntary support services

(3) The services to support and assist the family of a person who has lawful custody of a child referred to in subsection (1) may include

- (a) counselling;
- (b) in-home support;
- (c) respite care;
- (d) parenting programs;
- (e) services for improving the family's financial situation;

- (f) services for improving the family's housing;
- (g) drug or alcohol treatment and rehabilitation;
- (h) mediation of disputes;
- (i) services to assist the family to deal with the illness of a child or a family member; and
- (j) any other services agreed to by the Director and the person who has lawful custody of the child.

Term of agreement

(4) The initial term of an agreement referred to in subsection (1) must not exceed six months, and an agreement may be extended for one or more terms not exceeding six months each.

Support services and agreements for youth

6. (1) Where the Director is satisfied that a youth cannot reside with his or her parents and needs assistance to provide for himself or herself, or is living in circumstances of a child who needs protection under subsection 7(3), the Director may enter into a written agreement with the youth to provide services or to assist others in providing services, or to assist that youth in obtaining services, to support and assist that youth to care for himself or herself.

Support services

(2) The services to support and assist a youth referred to in subsection (1) may include

- (a) counselling;
- (b) parenting programs;
- (c) services for improving the youth's financial situation;
- (d) services for improving the youth's housing;
- (e) drug or alcohol treatment and rehabilitation;
- (f) mediation of disputes; and
- (g) any other services agreed to by the Director and the youth.

Support services – housing

(2.1) Services to be provided under paragraph (2)(d) may include placement of the youth in a foster home or child care facility or such other accommodation as may best meet the needs of the youth.

Agreements with third parties

(2.2) The Director may enter into an agreement with a third party for the provision of services to a youth pursuant to an agreement under subsection (1) or pursuant to an order under section 29.5.

Term of agreement

(3) The initial term of an agreement referred to in subsection (1) or (2.2) must not exceed six months, and an agreement may be extended for one or more terms not exceeding six months each until the youth attains the age of majority.

S.Nu. 2009,c.10,s.4.

Child Who Needs Protection

"parent" defined

7. (1) In this section, "parent" includes
- (a) a person who has lawful custody of a child, other than the Director; and
 - (b) except in paragraph (3)(m), a person having charge of a child.

Interpretation

- (2) Subsection (3) shall be interpreted
- (a) with a recognition that differing cultural values and practices must be respected; and
 - (b) in accordance with community standards.

Child who needs protection

- (3) A child needs protection where
- (a) the child has suffered physical harm inflicted by the child's parent or caused by the parent's unwillingness or inability to care and provide for or supervise and protect the child adequately;
 - (b) there is a substantial risk that the child will suffer physical harm inflicted by the child's parent or caused by the parent's unwillingness or inability to care and provide for or supervise and protect the child adequately;
 - (c) the child has been sexually molested or sexually exploited by the child's parent or by another person where the child's parent knew or should have known of the possibility of sexual molestation or sexual exploitation and was unwilling or unable to protect the child;
 - (d) there is a substantial risk that the child will be sexually molested or sexually exploited by the child's parent or by another person where the child's parent knows or should know of the possibility of sexual molestation or sexual exploitation and is unwilling or unable to protect the child;
 - (e) the child has demonstrated severe anxiety, depression, withdrawal, self-destructive behaviour, or aggressive behaviour towards others, or any other severe behaviour that is consistent with the child having suffered emotional harm, and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to remedy or alleviate the harm;

- (f) there is a substantial risk that the child will suffer emotional harm of the kind described in paragraph (e) and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to prevent the harm;
- (g) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to remedy or alleviate the condition;
- (h) the child's health or emotional or mental well-being has been harmed by the child's use of alcohol, drugs, solvents or similar substances and the child's parent is unavailable, unable or unwilling to properly care for the child;
- (i) there is a substantial risk that the child's health or emotional or mental well-being will be harmed by the child's use of alcohol, drugs, solvents or similar substances and the child's parent is unavailable, unable or unwilling to properly care for the child;
- (j) the child requires medical treatment to cure, prevent or alleviate serious physical harm or serious physical suffering and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, the treatment;
- (k) the child suffers from malnutrition of a degree that, if not immediately remedied, could seriously impair the child's growth or development or result in permanent injury or death;
- (l) the child has been abandoned by the child's parent without the child's parent having made adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;
- (m) the child's parents have died without making adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;
- (n) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care; or
- (o) the child is less than 12 years of age and has killed or seriously injured another person or has persisted in injuring others or causing damage to the property of others, and services, treatment or healing processes are necessary to prevent a recurrence and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, the services, treatment or healing processes.

S.N.W.T. 1998,c.17,s.4(4).

Duty to Report and Investigation of Report

Duty to report child needing protection

- 8.** (1) A person who has information of the need of protection of a child shall, without delay, report the matter
- (a) to a Child Protection Worker; or
 - (b) if a Child Protection Worker is not available, to a peace officer or an authorized person.

Confidentiality and privilege

(2) Subsection (1) applies notwithstanding that the information reported is confidential or privileged.

Civil liability

(3) No action shall be commenced against a person for reporting information in accordance with this section unless it is done maliciously.

Solicitor and client privilege

(4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client.

Offence and punishment

(5) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding six months or to both.

Assessment and investigation

9. (1) A person to whom a report is made shall assess the report and, where the person considers it advisable, investigate the child's need for protection.

Where no investigation

(2) Where, after assessing a report, the person to whom the report was made does not investigate the child's need for protection, he or she shall, in accordance with any guidelines of the Minister, prepare a report setting out the reason for not investigating the child's need for protection and provide a copy of the report to the Director.

Apprehension and Other Action Where Report

Action by Child Protection Worker

- 10.** (1) Where a report is made to a Child Protection Worker and during or as a result of an investigation the Child Protection Worker has reasonable grounds to believe that the child needs protection, or where a matter is referred to the Child Protection Worker under paragraph (2)(b), the Child Protection Worker
- (a) may apprehend the child if the Child Protection Worker has reasonable grounds to believe that the child's health or safety is in

- danger and the child has not already been apprehended under paragraph (2)(a);
- (b) may offer the services referred to in section 5 to the family of the person who has lawful custody of the child without entering into an agreement under that section until a plan of care agreement commences or a court makes an order; and
 - (c) shall, subject to subsection 12(1) and section 18, within eight days after the report is made or the matter is referred, endeavour to establish a plan of care committee, whether or not the child has been apprehended.

Action by peace officer or authorized person

(2) Where a report is made to a peace officer or an authorized person and during or as a result of an investigation he or she has reasonable grounds to believe that the child needs protection, the peace officer or authorized person

- (a) may apprehend the child if the peace officer or authorized person has reasonable grounds to believe that the child's health or safety is in danger; and
 - (b) shall, without delay, refer the matter to a Child Protection Worker, whether or not the child has been apprehended.
- S.N.W.T. 1998,c.17,s.4(5),(6).

Apprehension Where No Report

Apprehension of child where no report

11. (1) A Child Protection Worker, a peace officer or an authorized person may apprehend a child where he or she has reasonable grounds to believe that

- (a) the child needs protection; and
- (b) the child's health or safety is in danger.

Referral to Child Protection Worker

(2) Where a child has been apprehended under subsection (1) by a peace officer or an authorized person, he or she shall, without delay, notify a Child Protection Worker of the apprehension and refer the matter to the Child Protection Worker.

Action following apprehension

(3) Where a Child Protection Worker apprehends a child under subsection (1) or a matter is referred to the Child Protection Worker under subsection (2), the Child Protection Worker

- (a) shall investigate the child's need for protection;
- (b) may offer the services referred to in section 5 to the family of the person who has lawful custody of the child without entering into an agreement under that section until a plan of care agreement commences or a court makes an order; and

- (c) shall, subject to subsection 12(1) and section 18, within eight days after the Child Protection Worker apprehends the child or the matter is referred to the Child Protection Worker, endeavour to establish a plan of care committee.

Application

- (4) This section applies where no report is made.

Return of Child Apprehended

Return of child to parent

12. (1) Where a child has been apprehended under paragraph 10(1)(a) or (2)(a) or subsection 11(1) and the child is returned within 72 hours after the apprehension to his or her parent or the person having actual care of the child at the time of the apprehension, a Child Protection Worker shall not establish a plan of care committee unless the child has been returned pursuant to a decision of the Director under paragraph 35(2)(a) that the child shall live with the child's parent or that person.

Return to person having lawful custody

(2) For the purpose of subsection (1), the child shall not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Investigation Report

Investigation report

13. (1) After an investigation is completed, a Child Protection Worker shall, in accordance with any guidelines of the Minister, prepare a report on the investigation of the facts of the case including a description of any measures taken to protect the child, and provide a copy of the report to the Director.

Action where child does not need protection

(2) Notwithstanding any other provision of this Act, where an investigation is completed and, based on the investigation, a Child Protection Worker is of the opinion that the child who is the subject of the investigation does not need protection,

- (a) a plan of care committee shall not be established and if it has been established, it shall be dissolved and any plan of care agreement shall be deemed to have terminated;
- (b) where a Child Protection Worker has applied to a court for a declaration that the child needs protection and for an order, the Child Protection Worker shall withdraw the application; and
- (c) where the child has been apprehended, the child shall be returned to his or her parent or the person having actual care of the child at the time of the apprehension.

Return to person having lawful custody

(3) For the purpose of paragraph (2)(c), the child shall not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Plan of Care Committee and Agreement

Notice of procedures

- 14.** (1) Where a child has not been apprehended, the Child Protection Worker shall, before establishing a plan of care committee,
- (a) notify the person who has lawful custody of the child and the child, where the child has attained the age of 12 years, that the person or the child has a right to make an election under section 18 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order; and
 - (b) provide, together with the notice under paragraph (a), information prepared by the Director explaining the procedure under this Act for making a plan of care agreement and for making an application to a court for a declaration that a child needs protection and for an order, whichever is applicable.

Notice when child turns 12

(2) Where a child who is to be the subject of a plan of care agreement attains the age of 12 years after a plan of care committee is established, the Child Protection Worker shall notify the child of his or her right to make an election under section 18 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order and provide the child with the information referred to in paragraph (1)(b).

Method of notice

(3) Notice under paragraph (1)(a) and subsection (2) may be by any method and may be oral or in writing, but where oral notice is given it must be followed by written notice as soon as is reasonably practicable.

Validity of action or proceeding

(4) The validity of any action taken or proceeding commenced under this Act is not affected where a Child Protection Worker is unable, after making a reasonable effort, to give notice in accordance with subsection (1) or (2).

"child's community" defined

15. (1) In this section and section 16, "child's community" means the community in which a child is ordinarily resident at the time a report is made in respect of the child or the child is apprehended under subsection 11(1).

Plan of care committee

- (2) A plan of care committee shall be composed of
- (a) at least one person who has lawful custody of the child;
 - (b) the child, where the child has attained the age of 12 years and wishes to sit as a member;
 - (c) one member of the Child and Family Services Committee, where there is a Child and Family Services Committee in the child's community; and
 - (d) one Child Protection Worker.

Substitution of members

(3) Where a member listed in paragraph (2)(c) or (d) is unable or unwilling to continue to sit as a member, the Child and Family Services Committee or the Child Protection Worker, as the case may be, shall invite another person of the same category as that member to sit as a member.

Additional members

- (3.1) A majority of the members of a plan of care committee listed in subsection (2)
- (a) shall, if there is a member of the child's extended family who lives in the child's community and who the majority considers suitable, invite a member of the child's extended family to become a member of the committee; and
 - (b) may agree to invite one or more additional persons to become members of the committee where they believe such persons may be of assistance in developing and entering into a plan of care agreement.

Chairperson

(4) The members of a plan of care committee shall, at their first meeting, select a member to serve as chairperson.

Procedure

(5) A plan of care committee shall conduct its meetings and exercise its powers and perform its duties in accordance with the procedures set out in the regulations.

Powers and duties

- (6) A plan of care committee
- (a) shall endeavour to develop a plan of care in respect of a child;
 - (b) shall enter into a plan of care agreement in accordance with section 19 to give effect to any plan of care agreed to by the plan of care committee; and
 - (c) may exercise its powers and shall perform its duties under this Act and the regulations in relation to a plan of care agreement.

Term

- (7) A plan of care committee terminates
- (a) where there is only one member of the category listed in paragraph (2)(a) and he or she has become unable or unwilling to sit as a member, and the Child and Family Services Committee or the Child Protection Worker, as the case may be,
 - (i) is not required under the regulations to invite another person to sit as a member, or
 - (ii) is required under the regulations to invite another person to sit as a member but is unable to substitute another person for that member;
 - (a.1) where the Child and Family Services Committee or the Child Protection Worker, as the case may be, is unable to substitute another person for a member listed in paragraph (2)(c) or (d) who has become unable or unwilling to sit as a member;
 - (b) on the expiration of the time referred to in subsection 16(1) or (4) for making a plan of care agreement; or
 - (c) where a plan of care agreement is made, on the expiration or termination of the plan of care agreement.
- S.N.W.T. 1998,c.17,s.4(7),(8),(9).

Where committee not formed or plan not agreed to

16. (1) Where a person listed in paragraph 15(2)(a), (c) or (d) is unable or unwilling to sit as a member of a plan of care committee and a plan of care committee is not established or if it is established, is terminated as a result, or a Child Protection Worker establishes a plan of care committee and, at the expiration of 15 days after the relevant day referred to in subsection (2), the plan of care committee has not made a plan of care agreement in respect of the child, the Child Protection Worker shall, without delay,

- (a) where there is a Child and Family Services Committee in the child's community, refer the matter to the Child and Family Services Committee; or
- (b) where there is no Child and Family Services Committee in the child's community, apply to a court for a declaration that the child needs protection and for an order.

Relevant day

(2) For the purpose of subsection (1), the relevant day is the day, whichever day is later, on which

- (a) a report was made to a Child Protection Worker in respect of the child;
- (b) the matter was referred to a Child Protection Worker under paragraph 10(2)(b) or subsection 11(2); or
- (c) the child was apprehended by a Child Protection Worker under subsection 11(1).

Child and Family Services Committee

(3) Subject to section 18, a Child and Family Services Committee shall endeavour to establish a plan of care committee within eight days after the day on which a Child Protection Worker refers the matter to it, whether or not the child has been apprehended.

Where committee not formed or plan not agreed to

(4) A Child Protection Worker shall, without delay, apply to a court for a declaration that the child needs protection and for an order where

- (a) a person listed in paragraph 15(2)(a), (c) or (d) is unable or unwilling to sit as a member of a plan of care committee and a plan of care committee is not established or if it is established, is terminated as a result; or
- (b) the Child and Family Services Committee establishes a plan of care committee and, at the expiration of 15 days after the day on which the Child Protection Worker referred the matter to the Child and Family Services Committee, the plan of care committee has not made a plan of care agreement in respect of the child.

Person ineligible to serve on plan of care committee

17. (1) A person who is or is to be a member of a plan of care committee is ineligible to sit as a member of the plan of care committee if he or she is a subject of a report or investigation concerning another matter that is being dealt with under this Act or in respect of which a plan of care agreement or order is in effect.

Deemed resignation

(2) Where a person who is a member of a plan of care committee becomes ineligible to sit as a member of a plan of care committee, he or she is deemed to have resigned from the plan of care committee.

Substitution of member

(3) Where a person referred to in subsection (1) is or is to be a member of a plan of care committee listed in paragraph 15(2)(c) or (d), the Child and Family Services Committee or the Child Protection Worker, as the case may be, shall invite another person of the same category as that member to sit as a member.

Exception

(4) This section does not apply where the person referred to in subsection (1) is a child who is a member of the plan of care committee under paragraph 15(2)(b).
S.N.W.T. 1998,c.17,s.4(10).

Election to proceed to court

18. (1) A person who has lawful custody of a child who is to be the subject of a plan of care agreement or the child, where the child has attained the age of 12 years, may at any time before a plan of care agreement commences elect in writing not to have a plan of care committee established or, if it has been established, to have the plan of care

committee dissolved, and to have a Child Protection Worker apply to a court for a declaration that the child needs protection and for an order.

Assistance of Child Protection Worker

(2) On the request of a person or child referred to in subsection (1), a Child Protection Worker shall assist the person or child in preparing an election under subsection (1).

Provision of election to Child Protection Worker

(3) The person or child making an election under subsection (1) shall provide it to the Child Protection Worker and it is effective on the day on which it is received by the Child Protection Worker.

Action by Child Protection Worker

(4) On receipt of an election under subsection (1), the Child Protection Worker shall apply to a court for a declaration that the child needs protection and for an order.

Plan of care agreement

- 19.** (1) A plan of care agreement for a child may include provision for
- (a) where and with whom the child will live;
 - (b) support services to make the child's home safe for the child;
 - (c) counselling;
 - (d) access to the child by a parent where the child will not be living with the parent;
 - (e) the child's education;
 - (f) the child's social and recreational activities;
 - (g) the responsibilities of any of the persons
 - (i) listed in paragraphs 15(2)(a), (c), and (d), or
 - (ii) who become members of a plan of care committee under subsection 15(3.1);
 - (h) a person named in the agreement to have the rights and responsibilities of a parent in respect of the person of the child that are set out in the agreement during the term of the agreement;
 - (i) support for the child by a parent under the *Children's Law Act* during the term of the agreement; and
 - (j) any other matter or thing that the plan of care committee considers necessary and in the best interests of the child.

Person named in agreement

(2) Notwithstanding paragraph 35(1)(b) and subsection 35(6), the Director or an assistant Director may be the person named in a plan of care agreement under paragraph (1)(h).

Rights and responsibilities of person named in agreement

(3) A person who is named in a plan of care agreement under paragraph (1)(h) as having the rights and responsibilities of a parent in respect of the person of the child who

is the subject of the plan of care agreement has those rights and responsibilities set out in the agreement until

- (a) the agreement is modified to provide otherwise; or
- (b) the agreement is terminated or expires.

Form of plan of care agreement

(4) A plan of care agreement must be in writing and signed by a majority of the members of the plan of care committee.

Required consents

(4.1) The majority of members signing the plan of care agreement, referred to in subsection (4), must include the following members:

- (a) every person who has lawful custody of the child and who is a member;
- (b) the Child Protection Worker.

Consent of child

(5) A child who is the subject of the plan of care agreement and who has attained the age of 12 years may consent to and sign a plan of care agreement and any extension or modification of it.

Initial term of plan of care agreement

(6) The initial term of a plan of care agreement must not exceed 12 months.

Maximum term

(7) The term of a plan of care agreement, together with any extensions of the term of the agreement, must not exceed 24 months.

Monitoring plan of care agreement

(8) A Child Protection Worker shall monitor a plan of care agreement to ensure that it is implemented according to its terms. S.N.W.T. 1998,c.17,s.4(11).

Request for review of plan of care agreement

20. (1) Any person who has signed a plan of care agreement may, on 10 days written notice to all members of the plan of care committee, request the plan of care committee to review the agreement and, on review, the term of the agreement may be extended and any term or condition modified with the consent of a majority of the members of the plan of care committee.

Mandatory review of plan of care agreement

(2) Where the term of a plan of care agreement is extended beyond 12 months, the plan of care committee shall review the agreement every three months and, on review, the term of the agreement may be extended and any term or condition modified with the consent of a majority of the members of the plan of care committee.

Required consents

(3) The majority of members consenting to an extension or modification, referred to in subsections (1) and (2), must include the following members:

- (a) every person who has lawful custody of the child and who is a member;
- (b) the Child Protection Worker.

Deemed extension of plan of care agreement after expiration of agreement

(4) A plan of care agreement shall be deemed not to have expired where, within a reasonable period of time after the expiration of the agreement, a majority of the members of the plan of care committee agree in writing that it is in the best interests of the child to extend the agreement for a specified term.

Required consents

(5) The majority of members agreeing to an extension, referred to in subsection (4), must include the following members:

- (a) every person who has lawful custody of the child and who is a member;
- (b) the Child Protection Worker.
S.N.W.T. 1998,c.17,s.4(12),(13).

Power of Director and others

21. A plan of care agreement does not limit the power of the Director, a Child Protection Worker, a peace officer or an authorized person to take any action under sections 9 to 11 and 31 in respect of a child who is the subject of a plan of care agreement.

Termination of plan of care agreement

22. (1) A member of a plan of care committee who is the Child Protection Worker or a person who has lawful custody of the child who is the subject of the plan of care agreement may terminate the plan of care agreement on 10 days written notice to the other.

Action by Child Protection Worker

(2) Where a Child Protection Worker is of the opinion that terminating a plan of care agreement will result in the child who is the subject of the agreement needing protection, the Child Protection Worker shall, without delay after giving or receiving the notice referred to in subsection (1), apply to a court for a declaration that the child needs protection and for an order.

Reliance on original grounds

(3) Where a Child Protection Worker applies to a court under subsection (2), the application may be made on the grounds that a Child Protection Worker, a peace officer or an authorized person had under section 10 or 11 to believe that the child needed protection at the time he or she acted under those sections.

Deemed termination of plan of care agreement

23. (1) Notwithstanding subsection 22(1), a plan of care agreement shall be deemed to have terminated on the day on which

- (a) the child who is the subject of the plan of care agreement is apprehended where, on the commencement of the agreement, the child had not already been apprehended; or
- (b) the court makes an order where, on the commencement of the agreement, the child had already been apprehended.

Application

(2) Paragraph (1)(a) does not apply where a child who is the subject of a plan of care agreement is apprehended under subsection 31(2).

Plan of Care

Development of plan of care

23.1. (1) Where a Child Protection Worker applies or is in a position to apply to a court for a declaration that a child needs protection and for an order, the Child Protection Worker shall develop a plan of care in respect of the child.

Contents of plan of care

(2) A plan of care for a child may include provision for

- (a) where and with whom the child will live;
 - (b) support services to make the child's home safe for the child;
 - (c) counselling;
 - (d) visits with the child by a parent where the child will not be living with the parent;
 - (e) the child's education;
 - (f) the child's social and recreational activities; and
 - (g) any other matter or thing that the Child Protection Worker considers necessary and in the best interests of the child.
- S.N.W.T. 1998,c.17,s.4(14).

Hearing

Application for declaration and order

24. An application to a court for a declaration that a child needs protection and for an order must be made within 45 days after the day, whichever day is later, on which,

- (a) a report was made to a Child Protection Worker in respect of the child;
- (b) the matter was referred to a Child Protection Worker under paragraph 10(2)(b) or subsection 11(2);
- (c) the child was apprehended by a Child Protection Worker under subsection 11(1); or

- (d) a Child Protection Worker received an election under subsection 18(3).
S.N.W.T. 1998,c.17,s.4(15).

Service of originating notice

25. A Child Protection Worker must serve a copy of the originating notice commencing an application for a declaration that a child needs protection and for an order and an affidavit in support of the application on

- (a) the following persons, if their identities and whereabouts are known:
 - (i) the child's parents,
 - (ii) the person having actual care of the child at the time the investigation under subsection 9(1) or 11(3) commenced, where the child was not apprehended,
 - (iii) the person having actual care of the child at the time the child was apprehended, where the child was apprehended;
- (b) the child, where the child has attained the age of 12 years;
- (b.1) the members of the plan of care committee not otherwise served under this section or, where a plan of care committee was not established and there is a Child and Family Services Committee in the child's community, the chairperson of the Child and Family Services Committee; and
- (c) the applicable aboriginal organization set out in the regulations, if the child is an aboriginal child.
S.N.W.T. 1998,c.17,s.4(16).

Time for hearing after first appearance

26. A hearing must be held not later than three months after the first appearance unless a court orders otherwise.

Determination of whether child needs protection

27. (1) On hearing an application for a declaration that a child needs protection and for an order, the court shall determine, in accordance with section 7, whether or not the child who is the subject of the hearing needs protection.

Declaration that child needs protection

(2) Where a court determines that a child needs protection, the court shall make a declaration to that effect and, before making an order, shall

- (a) invite and consider representations on a plan of care for the child by
 - (i) the Child Protection Worker,
 - (ii) the child's parents,
 - (iii) the person having actual care of the child at the time the declaration is made, where the child was not apprehended,

- (iv) the person having actual care of the child at the time the child was apprehended, where the child was apprehended, and
- (v) the child, where the child has attained the age of 12 years; and
- (b) consider any terms and conditions recommended by the Child Protection Worker to implement a plan of care for the child.

Order

28. (1) A court may make one of the following orders that is, in the opinion of the court, in the best interests of the child who is the subject of the hearing:

- (a) the child remain with or be returned to his or her parent or the person having actual care of the child
 - (i) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
 - (ii) at the time the child was apprehended, where the child was apprehended;
- (b) the child remain with or be returned to his or her parent or the person having actual care of the child
 - (i) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
 - (ii) at the time the child was apprehended, where the child was apprehended,
 subject to supervision by a Child Protection Worker and to any terms and conditions that the court considers necessary and proper, for a specified period not exceeding 12 months;
- (c) the child be placed in the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order
 - (i) any terms and conditions that the court considers necessary and proper, and
 - (ii) that the child's parent or person having actual care of the child
 - (A) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
 - (B) at the time the child was apprehended, where the child was apprehended,
 be granted access to the child on the terms and conditions that the court considers appropriate;
- (d) the child be placed in the permanent custody of the Director, and the court may specify in the order
 - (i) any terms and conditions that the court considers necessary and proper, and
 - (ii) that the child's parent or person having actual care of the child

- (A) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
- (B) at the time the child was apprehended, where the child was apprehended,
be granted access to the child on the terms and conditions that the court considers appropriate.

Justice of the peace

(2) A justice of the peace may not make an order under paragraph (1)(d).

(3) **Deleted**, Committee of the Whole, 13th Legislative Assembly, October 9, 1997.

Return to person having lawful custody

(4) For the purposes of paragraphs (1)(a) and (b), the child shall not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child

- (a) at the time the declaration was made under subsection 27(2), where the child was not apprehended; or
- (b) at the time the child was apprehended, where the child was apprehended.

Access

(5) Where a court in an order made under paragraph (1)(c) or (d) grants a person access to the child, the court shall set out in the order the terms and conditions of access including

- (a) when and where the child and the person granted access to the child may visit the other;
- (b) the right, if any, of the person granted access to the child to make inquiries and to be given information as to the health, education and welfare of the child; and
- (c) any other term or condition that the court considers necessary and proper and in the best interests of the child.

Placement of child

(6) Where a court makes an order under paragraph (1)(c) or (d), the court may not make an order respecting the placement of the child.

Consent for medical treatment

(7) Where a court makes an order under paragraph (1)(c), the order may provide that the child's parent shall retain any right that the parent may have to give or refuse consent for medical care or treatment for the child.

Maintenance of child

(8) Where a court makes an order under paragraph (1)(c), the order may provide that the child's parent or a person who stands in the place of the child's parent shall make a financial contribution specified in the order towards the costs incurred by the Director in maintaining and supervising the child during the term of the order.

Further order

(9) Where a court makes an order under paragraph (1)(b) or (c), a Child Protection Worker, on serving notice on the persons mentioned in section 25, may bring the matter again before a court and the court may

- (a) extend the order for one or more periods;
- (b) vary the order or make any further order under subsection (1) that the court considers necessary and proper; or
- (c) discharge the order.

Limitation on further order

(10) A court may not make or extend an order under subsection (9) that would result in a child being in the temporary custody of the Director for a continuous period exceeding 24 months.

Certified copy of order

29. After an order is made, the Child Protection Worker shall obtain a certified copy of the order from the Clerk of the Nunavut Court of Justice and send it to each of the following persons:

- (a) the Director;
 - (b) the child's parents if the identities and whereabouts of the child's parents are known;
 - (c) either of the following persons, if the child is to remain with or be returned to that person:
 - (i) the person having actual care of the child at the time the declaration was made under subsection 27(2), where the child was not apprehended,
 - (ii) the person having actual care of the child at the time the child was apprehended, where the child was apprehended.
- S.Nu. 2010,c.4,s.8(2).

Youth Who Needs Protection**Declaration that youth needs protection**

29.1. The Director may apply to the court for a declaration that a youth needs protection and for an order where the Director has reason to believe that a youth

- (a) cannot reside with his or her parents; and
 - (i) is unable to care for and protect himself or herself, and
 - (ii) is unable or unwilling to enter into an agreement with the Director under section 6 due to developmental, behavioural, emotional, mental or physical incapacity or

- disorder, or the effects of the use of alcohol, drugs, solvents
or other similar substances, or
- (b) is living in circumstances of a child who needs protection under subsection 7(3).
S.Nu. 2009,c.10,s.5.

Service of originating notice

29.2. The Director must serve a copy of the originating notice commencing an application under section 29.1 and an affidavit in support of the application on

- (a) the youth; and
(b) the youth's parents, if their identities and whereabouts are known.
S.Nu. 2009,c.10,s.5.

Application by interested person

29.3. An interested person may make an application under section 29.1 by serving an originating notice of the application and an affidavit in support of the application on the youth and on the Director. S.Nu. 2009,c.10,s.5.

Determination of whether youth needs protection

29.4. (1) On hearing an application under section 29.1, the court shall determine whether or not the youth who is the subject of the hearing needs protection.

Declaration that youth needs protection

(2) Where a court determines that a youth is in need of protection, the court shall make a declaration to that effect, and before making an order shall invite and consider representations on a plan of care for the youth by

- (a) the Director;
(b) the youth; and
(c) the youth's parents, if their identities and whereabouts are known, and the court considers it in the interests of the youth to hear from one or both of the youth's parents.

Plan of care for youth

(3) A plan of care in respect of a youth shall be based on services that may be provided pursuant to an agreement under section 6. S.Nu. 2009,c.10,s.5.

Order

29.5. (1) On making a declaration that a youth is in need of protection under subsection 29.4(2), the court may make one of the following orders that is, in the opinion of the court, in the best interests of the youth who is the subject of the hearing:

- (a) the youth be placed in the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order
(i) any terms and conditions that the court considers necessary and proper, and

- (ii) that the youth's parent or person having actual care of the youth at the time the declaration was made under subsection 29.4(2) be granted access to the youth on the terms and conditions that the court considers appropriate;
- (b) the youth be placed in the permanent custody of the Director, and the court may specify in the order
 - (i) any terms and conditions that the court considers necessary and proper, and
 - (ii) that the youth's parent or person having actual care of the youth at the time the declaration was made under subsection 29.4(2) be granted access to the youth on the terms and conditions that the court considers appropriate.

Justice of the peace

(2) A justice of the peace may not make an order under paragraph (1)(b).

Maintenance of youth

(3) Where a court makes an order under subsection (1), the order may provide that the youth's parent or a person who stands in the place of the youth's parent shall make a financial contribution specified in the order towards the costs incurred by the Director in maintaining and supervising the youth during the term of the order.

Further order

(4) Where a court makes an order under paragraph (1)(a), the Director, on serving notice on the persons mentioned in section 29.2, may bring the matter again before a court and the court may

- (a) extend the order for one or more periods;
- (b) vary the order or make any further order under subsection (1) that the court considers necessary and proper; or
- (c) discharge the order.

Copy of order to youth

(5) The Director shall provide a certified copy of any declaration made under subsection 29.4(2) and any order made under subsection (1) to the youth who is the subject of the declaration or order.

Placement of youth and implementation of plan of care

(6) Where a youth is placed in the temporary or permanent custody of the Director pursuant to an order under subsection (1), a Child Protection Worker shall

- (a) on behalf of the Director, make arrangements as soon as possible to place the youth in such accommodations as are specified in the order or the plan of care to best meet the needs of the youth; and
- (b) monitor the plan of care to ensure that it is implemented according to its terms.

Application of section 47

(7) Section 47 applies where a youth is placed in the temporary custody of the Director pursuant to an order under paragraph (1)(a), and in applying section 47,

- (a) a reference to a child shall be read as a reference to a youth; and
- (b) a reference to paragraph 28(9)(c) shall be read as a reference to paragraph (4)(c).

Application of sections 48 and 49

(8) Sections 48 and 49 apply where a youth is placed in the permanent custody of the Director pursuant to an order under paragraph (1)(b), and in applying sections 48 and 49,

- (a) a reference to a child shall be read as a reference to a youth; and
- (b) the reference to 16 years in paragraph 48(1)(a) shall be read as a reference to 19 years.
S.Nu. 2009,c.10,s.5.

Application of Part IV

29.6. With respect to an order made under section 29.5 or an agreement entered into under section 6, the provisions of Part IV, other than subsections 84(2), (3) and (4), apply to a youth in the same way that they apply to a child, and any reference to a child or children shall be read as including a reference to a youth. S.Nu. 2009,c.10,s.5.

Medical Care or Treatment to Preserve Life

Definitions

30. In sections 31 and 32,

"court" means the Nunavut Court of Justice; (*tribunal*)

"order" means an order made under subsection 31(9); (*ordonnance*)

"parent" means a parent as defined in subsection 7(1). (*père ou mère*)
S.N.W.T. 1998,c.34,Sch.C,s.3(3)(a).

Medical care or treatment – where order not required

31. (1) Where the Director has reasonable grounds to believe that a child needs protection by reason of any refusal described in paragraph 7(3)(j) and it is necessary in order to preserve the life of the child that the child be provided immediately with medical care or treatment, the Director

- (a) shall direct a Child Protection Worker, a peace officer or an authorized person to apprehend the child, if the child has not already been apprehended, or, without delay, notify the child's parents in writing of the direction under paragraph (b) if the child has already been apprehended; and

- (b) may direct that the child be provided immediately with medical care or treatment in order to preserve the life of the child without obtaining an order.

Medical care or treatment – where order required

(2) Where the Director has reasonable grounds to believe that a child needs protection by reason of any refusal described in paragraph 7(3)(j) and that, although it is not necessary in order to preserve the life of the child, the child should be provided with medical care or treatment, the Director shall

- (a) direct a Child Protection Worker, a peace officer or an authorized person to apprehend the child, if the child has not already been apprehended; and
- (b) without delay, make an application to the court for a declaration that the child needs protection and for an order authorizing the medical care or treatment.

Apprehension of child

(3) A Child Protection Worker, a peace officer or an authorized person shall apprehend a child where he or she has been directed to do so by the Director under paragraph (1)(a) or (2)(a).

Notice of apprehension

(4) Where a child has been apprehended under paragraph (1)(a) or (2)(a), the Director shall, without delay, notify the child's parents, if the identities and whereabouts of the child's parents are known,

- (a) that the child has been apprehended;
- (b) the reasons for the apprehension; and
- (c) that the Director intends to proceed under subsection (1) or (2), as the case may be.

Method of notice

(5) Notice under subsection (4) may be by any method and may be oral or in writing.

Validity of action or proceeding

(6) The validity of any action taken or proceeding commenced under this section is not affected where the Director is unable, after making a reasonable effort, to give notice in accordance with paragraph (1)(a) or subsection (4).

Service of originating notice

(7) Where the Director proceeds under subsection (2), the Director must serve a copy of the originating notice commencing, or where an application has been commenced in the court a notice of, an application for a declaration that a child needs protection and for an order and an affidavit in support of the application on

- (a) the child's parents and the person having actual care of the child at the time the child was apprehended; and
- (b) the child, where the child has attained the age of 12 years.

Determination of whether child needs protection

(8) On hearing an application for a declaration that the child needs protection and for an order, the court shall determine whether or not the child needs protection.

Declaration that child needs protection and order

(9) Where a court determines that a child needs protection by reason of any refusal described in paragraph 7(3)(j), the court shall make a declaration to that effect and where the court is satisfied that the child should be provided with medical care or treatment and it is, in the opinion of the court, in the best interests of the child who is the subject of the hearing to do so, the court may make an order

- (a) dispensing with the parent's consent for medical care or treatment for the child;
- (b) authorizing the medical care or treatment;
- (c) requiring the child's parents, the person having actual care of the child at the time the child was apprehended or other person to deliver the child to the place where the medical care or treatment will be provided;
- (d) prohibiting any person from obstructing the provision of the medical care or treatment;
- (e) providing when the child shall be returned to his or her parents or the person having actual care of the child at the time the child was apprehended; and
- (f) including any other terms and conditions, including the duration of the order, that the court considers necessary.

Provision of medical care

(10) On the making of the order, the Director shall direct that the child be provided with medical care or treatment in accordance with the order.

Certified copy of order

32. (1) After an order is made, the Director shall obtain from the court and send to each of the following persons, a certified copy of the order:

- (a) the child's parents, unless the court orders otherwise;
- (b) the person having actual care of the child at the time the child was apprehended, unless the court orders otherwise;
- (c) the person who provided the medical care or treatment.

Civil liability

(2) No liability attaches to the Director in respect of, or any person providing, medical care or treatment under section 31 by reason only that the parent of the child did not consent to the care or treatment.

Power of Director and others to proceed under Act

(3) Section 31 and any action taken or anything done under section 31 in respect of a child does not limit the power of the Director, a Child Protection Worker, a peace officer, an authorized person or any other person who is authorized by this Act to do so from taking any other action or commencing or continuing any proceeding under any other provision of this Act in respect of the child.

Apprehension – General

Method of apprehension

33. A person who is authorized to apprehend a child under this Part may, without a warrant, enter a place by day or night, using force if necessary to effect entry, to apprehend the child.

Notice of apprehension

34. (1) Where a child has been apprehended, a Child Protection Worker shall, without delay, notify the child's parents and the person having actual care of the child at the time the child was apprehended, if the identities and whereabouts of the child's parents and the person are known, and the child, where the child has attained the age of 12 years, that the child has been apprehended and the reasons for the apprehension and, where applicable, that

- (a) a Child and Family Services Committee or the Child Protection Worker shall endeavour to establish a plan of care committee by the date specified in the notice;
- (b) the Child Protection Worker intends to apply to a court for a declaration that the child needs protection and for an order; or
- (c) the person who has lawful custody of the child or the child, where the child has attained the age of 12 years, has a right to make an election under section 18 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order.

Information on procedures under Act

(2) A Child Protection Worker shall provide, together with the notice under subsection (1), information prepared by the Director explaining the procedure under this Act for making a plan of care agreement and for making an application to a court for a declaration that a child needs protection and for an order, whichever is applicable.

Method of notice

(3) Notice under subsection (1) may be by any method and may be oral or in writing.

Validity of action or proceeding

(4) The validity of any action taken or proceeding commenced under this Act is not affected where the Child Protection Worker is unable, after making a reasonable effort, to give notice in accordance with subsection (1).

Application

(5) This section does not apply where a child has been apprehended under subsection 31(2).

Rights and responsibilities of Director

35. (1) Where a child has been apprehended, the Director has the rights and responsibilities of a parent in respect of the person of the child from the time of the apprehension until one of the following occurs:

- (a) the child is returned under section 12 to his or her parent or the person having actual care of the child at the time of the apprehension;
- (b) a plan of care agreement commences;
- (c) an order is made;
- (d) where no plan of care agreement or order has been made, the child attains the age of 16 years.

Limitation on rights of Director

(2) For the purposes of subsection (1), the rights of a parent in respect of the person of the child means only those rights in relation to the following:

- (a) where and with whom the child will live;
- (b) consent to the examination of the child by a health care professional and, except where a child has been apprehended by reason of any refusal described in paragraph 7(3)(j), consent for medical care or treatment for the child if, in the opinion of the Director, the care or treatment should be provided;
- (c) the child's education;
- (d) the child's social and recreational activities.

Return to person having lawful custody

(3) For the purpose of paragraph (2)(a), the child shall not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Where child lives with parent

(4) Where the Director decides under paragraph (2)(a) that a child will live with a parent of the child or person having actual care of the child at the time the child was apprehended, the Director may impose any terms and conditions that the Director considers advisable including supervision by a Child Protection Worker.

Where child lives with other person

(5) Where the Director decides under paragraph (2)(a) that a child will live with someone other than a parent of the child, the Director may allow the child's parents or person having actual care of the child at the time the child was apprehended access to the child on any terms and conditions that the Director considers appropriate.

Delegation to assistant Director

(6) The Director may, in writing, delegate to an assistant Director any of the Director's rights and responsibilities of a parent in respect of the person of the child during the period referred to in subsection (1).

Child Protection Worker

(7) A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under subsection (6), in respect of any matter listed in paragraphs (2)(a) to (d) where authorized to do so by the Director or the assistant Director.

Application

(8) This section does not apply where a child has been apprehended under subsection 31(2).

PART II

PERMANENT CUSTODY FOR PURPOSE OF ADOPTION

Definitions

36. In this Part,

"court" means the Nunavut Court of Justice; (*tribunal*)

"order" means an order made under subsection 38(1). (*ordonnance*)
S.N.W.T. 1998,c.34,Sch.C,s.3(4)(a).

Delivery of child for adoption

37. (1) Where a parent of a child delivers the child to a Child Protection Worker for the purpose of adoption and the consents required by this Part have been provided to the Director or a Child Protection Worker, the Child Protection Worker shall apply to a court for an order that the child be placed in the permanent custody of the Director.

Service of notice

(2) The Child Protection Worker must serve a copy of the originating notice commencing the application under subsection (1) and an affidavit of the Child Protection Worker in support of the application on the child's parents.

Rights and responsibilities of Director

(3) Where a child has been delivered to a Child Protection Worker for the purpose of adoption, the Director has the rights and responsibilities of a parent in respect of the person of the child from the time of the delivery until an order is made.

Limitation on rights of Director

(3.1) For the purposes of subsection (3), until the consents required by this Part have been provided to the Director or a Child Protection Worker, the rights of a parent in respect of the person of the child means only those rights in relation to the following:

- (a) where and with whom the child will live;
- (b) consent to the examination of the child by a health care professional and consent for medical care or treatment for the child if, in the opinion of the Director, the care or treatment should be provided;
- (c) the child's education;
- (d) the child's social and recreational activities.

Delegation to assistant Director

(4) The Director may, in writing, delegate to an assistant Director any of the Director's rights or responsibilities of a parent in respect of the person of the child during the period referred to in subsection (3).

Child Protection Worker

(5) A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under subsection (4), in respect of any right or responsibility of a parent in respect of the person of the child where authorized to do so by the Director or the assistant Director. S.N.W.T. 1998,c.17,s.4(17).

Order

38. (1) On hearing an application for an order that a child be placed in the permanent custody of the Director, the court shall make an order placing the child in the permanent custody of the Director where, in the opinion of the court, it is in the best interests of the child to do so, and the court may specify in the order

- (a) any terms and conditions that the court considers necessary and proper; and
- (b) that the child's parent be granted access to the child on the terms and conditions that the court considers appropriate.

Access

(2) Where a court in its order grants a child's parent access to the child, the court shall set out in the order the terms and conditions of access including

- (a) when and where the child and the parent may visit the other;
- (b) the right, if any, of the parent to make inquiries and to be given information as to the health, education and welfare of the child; and
- (c) any other term or condition that the court considers necessary and proper and in the best interests of the child.

Certified copy of order

(3) After an order is made, the Child Protection Worker shall obtain from the court and send to each of the following persons, a certified copy of the order:

- (a) the Director;
- (b) the child's parents.

Consent to Order

Consent of parent to order

39. (1) Except as provided in section 43, no order shall be made without the consent of the parents of the child.

Parent under age of majority

(2) A parent who has not attained the age of majority may consent to the placing of his or her child in the permanent custody of the Director for the purpose of adoption.

Time for parent's consent

(3) A parent may not consent to the placing of his or her child in the permanent custody of the Director for the purpose of adoption until the expiration of 10 days after the child has been delivered to a Child Protection Worker under subsection 37(1).
S.N.W.T. 1998,c.17,s.4(18).

Consultation before consent

40. Before a parent consents to the placing of his or her child in the permanent custody of the Director for the purpose of adoption, a Child Protection Worker shall

- (a) provide information prepared by the Director to the parent on the services available to the parent and to the child if the child remains with the parent or an order is made respecting the child;
- (b) explain the effect of an order, and when a consent may be given or revoked; and
- (c) advise the parent to obtain independent legal advice before giving his or her consent.

Provision of consent to Director

41. (1) A parent shall provide his or her consent to the Director.

Receipt of consent

(2) A Child Protection Worker may receive the consent of a parent on behalf of the Director.

Revocation of consent by parent

42. (1) A parent may revoke his or her consent at any time before an order is made and shall, without delay, provide the revocation to the Director.

Assistance of Child Protection Worker

(2) On the request of a parent, a Child Protection Worker shall assist the parent in preparing a revocation under subsection (1).

Return of child to parent

(3) Where a parent revokes his or her consent under subsection (1), the Child Protection Worker shall return the child as soon as possible to the parent having actual care of the child immediately before the child was delivered to the Child Protection Worker under subsection 37(1).

Dispensing with consent of parent

43. Where the consent of a parent is not produced at the hearing of an application for an order, the judge may order notice of the application and affidavit of the Child Protection Worker in support of the application to be served on the parent and the judge may dispense with the consent of the parent in the following circumstances where, in the opinion of the judge, it is in the best interests of the child to do so:

- (a) the parent fails to appear at the time and place stated in the notice;
- (b) the parent appears and objects to giving consent on grounds that the judge considers insufficient;
- (c) the judge, for reasons that appear to be sufficient to the judge, considers it necessary or desirable to dispense with the consent of the parent.

Form of consent

44. A consent must be

- (a) in writing and in a form that complies with the regulations; and
- (b) accompanied by an affidavit of execution.

Consent or revocation from outside Nunavut

45. (1) A consent or a revocation of a consent of a parent residing outside Nunavut to the placing of his or her child who is residing in Nunavut in the permanent custody of the Director for the purpose of adoption is a valid consent or revocation in Nunavut if the consent or revocation complies with the laws of the jurisdiction in which the parent resides when the consent was given or the revocation was made, and is admissible in evidence as if it were a consent or revocation given or made under this Act.

Affidavit of execution

(2) Notwithstanding paragraph 44(b), an affidavit of execution is not required for a consent referred to in subsection (1) if it is not required by the law of the jurisdiction referred to in subsection (1). S.N.W.T. 1998,c.17,s.4(19); S.Nu. 2010,c.4,s.8(3).

PART III**TEMPORARY AND PERMANENT CUSTODY****Placement and Plan of Care****Placement of child and implementation of plan of care**

46. Where a court places a child in the temporary or permanent custody of the Director, a Child Protection Worker shall

- (a) on behalf of the Director, make arrangements as soon as possible to place the child in a child care facility or a foster home, unless the child is to be placed for adoption under the *Adoption Act*; and
 - (b) monitor the plan of care to ensure that it is implemented according to its terms.
- S.N.W.T. 1998,c.17,s.4(20).

Temporary Custody

Temporary custody

47. (1) Where a child has been placed in the temporary custody of the Director, the Director has the rights and responsibilities of a parent in respect of the person of the child until

- (a) the period of custody set out in the order expires; or
- (b) a court, under paragraph 28(9)(c), discharges the order placing the child in the temporary custody of the Director.

Limitation on rights of Director

(2) For the purposes of subsection (1), the rights of a parent in respect of the person of the child means only those rights in relation to the following:

- (a) where and with whom the child will live;
- (b) subject to an order made under subsection 28(7), consent for medical care or treatment for the child;
- (c) the child's education;
- (d) the child's social and recreational activities.

Extension of temporary custody

(3) Where, on application to the Nunavut Court of Justice, the court is of the opinion that it is in the best interests of a child who has been placed in the temporary custody of the Director to do so, the court may make an order providing that the Director continue to have custody of the child for the period that the court considers necessary and proper but not beyond the day on which the child attains the age of majority, but the court may not make an order that would result in the child being in the temporary custody of the Director for a continuous period exceeding 24 months.

Who may make application

(4) An application under subsection (3) may be made by the Director, a child who has been placed in the temporary custody of the Director or an interested person on serving notice of the application and an affidavit in support of the application on the others.

Delegation to assistant Director

(5) The Director may, in writing, delegate to an assistant Director any of the Director's rights and responsibilities of a parent in respect of the person of the child during the period referred to in subsection (1).

Child Protection Worker

(6) A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under subsection (5), in respect of any matter listed in paragraphs (2)(a) to (d) where authorized to do so by the Director or the assistant Director. S.N.W.T. 1998,c.34,Sch.C,s.3(4)(b); S.Nu. 2009,c.10,s.6.

Permanent Custody

Permanent custody

48. (1) Subject to section 20 of the *Adoption Act*, where a child has been placed in the permanent custody of the Director, the Director has the rights and responsibilities of a parent in respect of the person of the child until

- (a) the child attains the age of 16 years;
- (b) the child is adopted under the *Adoption Act*; or
- (c) a court, under section 49, discharges the order placing the child in the permanent custody of the Director.

Provision of information

(1.1) The Director shall provide information regarding a child who is in the permanent custody of the Director, including information respecting the placement, education or health of the child, to a person who had lawful custody of the child immediately before the child was placed in the permanent custody of the Director, unless the Director considers it is not in the best interests of the child to do so.

Extension of permanent custody

(2) Where, on application to the Nunavut Court of Justice, the court is of the opinion that it is in the best interests of a child who has been placed in the permanent custody of the Director to do so, the court may make an order providing that the Director continue to have custody of the child for the period that the court considers necessary and proper beyond the day on which the child attains the age of 16 years, but not beyond the day on which the child attains the age of majority.

Who may make application

(3) An application under subsection (2) may be made by the Director, a child who has been placed in the permanent custody of the Director or an interested person on serving notice of the application and an affidavit in support of the application on the others.

Termination of extended permanent custody

(4) Where an order is made under subsection (2), subject to section 20 of the *Adoption Act*, the Director has the rights and responsibilities of a parent in respect of the person of the child until

- (a) the period of custody set out in the order expires;
- (b) the child attains the age of majority;

- (c) the child is adopted under the *Adoption Act*; or
- (d) a court, under section 49, discharges the order placing the child in the permanent custody of the Director.

Delegation to assistant Director

(5) The Director may, in writing, delegate to an assistant Director any of the Director's rights and responsibilities of a parent in respect of the person of the child during the period referred to in subsection (1) or (4).

Child Protection Worker

(6) A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under subsection (5), in respect of any right or responsibility of a parent in respect of the person of the child where authorized to do so by the Director or the assistant Director. S.N.W.T. 1998,c.17,s.4(21); S.N.W.T. 1998,c.34,Sch.C,s.3(4)(c).

Discharging Permanent Custody Order

Application to discharge order

49. (1) Where a child has been placed in the permanent custody of the Director, the Director, the child's parent or, where the child has attained the age of 12 years, the child may apply to the court that made the original order to make an order discharging that order.

Order

(2) Where, in the opinion of the court to which an application is made under subsection (1) it is in the best interests of the child to do so, the court may make an order discharging the order placing the child in the permanent custody of the Director and may impose any terms and conditions that the court considers necessary and proper.

PART IV

GENERAL

Administration

Directions and guidelines

50. The Minister may issue the directions and guidelines referred to in this Act.

Appointment of Director

51. (1) The Minister shall appoint a Director of Child and Family Services.

Duties of Director

(2) The Director shall

- (a) perform the duties imposed on the Director by this Act and the regulations or by any other Act;

- (b) ensure that the provisions of this Act and the regulations are carried out;
- (c) prepare the information referred to in paragraph 14(1)(b) and subsection 34(2);
- (d) prepare the information on the services referred to in paragraph 40(a);
- (e) in accordance with the directions and guidelines of the Minister, visit, or direct a Child Protection Worker or an authorized person to visit, any child placed under a plan of care agreement or otherwise under this Act;
- (f) in accordance with the directions and guidelines of the Minister, inspect, or direct a Child Protection Worker or an authorized person to inspect, any child care facility, foster home or other place where a child is placed under a plan of care agreement or otherwise under this Act; and
- (g) prepare and submit an annual report to the Minister in accordance with the regulations.

Powers of Director

(3) The Director may

- (a) exercise any power that is conferred on the Director by this Act or the regulations and by any other Act;
 - (b) subject to section 52, in writing, delegate to an assistant Director any of the Director's powers and duties under this Act or the regulations or under any other Act in respect of the community for which the assistant Director is appointed;
 - (c) in writing, authorize a Child Protection Worker to assist the Director or assistant Director in the exercise of any of the Director's powers and the performance of any of the Director's duties under this Act or the regulations or under any other Act in respect of Nunavut or the community for which the Child Protection Worker is appointed;
 - (d) provide direction to an authorized person in the exercise of any power or in the performance of any duty of an authorized person under this Act; and
 - (e) exercise any power and perform any duty conferred or imposed on a Child Protection Worker by this Act or the regulations.
- S.Nu. 2010,c.4,s.8(3).

Limitation on delegation by Director

52. The Director may not delegate any power or duty referred to in section 31 or 32, paragraph 51(2)(g) or (3)(c), subsection 53(1), 54(2) or (3), or 55(1) or (1.1).

Assistant Directors

53. (1) The Director may appoint an assistant Director for one or more communities.

Delegated powers and duties

(2) An assistant Director may exercise the powers and shall perform the duties of the Director that the Director has delegated to the assistant Director under paragraph 51(3)(b) in respect of the community for which the assistant Director is appointed.

Powers and duties of Child Protection Worker

(3) An assistant Director may exercise any power and perform any duty conferred or imposed on a Child Protection Worker by this Act or the regulations.

Definitions

54. (1) In this section, "community", "community corporation" and "corporate body" have the same meaning as in section 56.

Child Protection Workers for Nunavut

(2) The Director may appoint employees of the Government of Nunavut as Child Protection Workers for Nunavut.

Child Protection Workers for communities

(3) Where there is a community agreement, the Director may appoint one or more employees of the following as Child Protection Workers for the community or communities to which the agreement applies:

- (a) if a community corporation is a party to the agreement, that community corporation; or
- (b) if a corporate body is a party to the agreement, that corporate body.

Powers and duties

(4) A Child Protection Worker

- (a) has the powers conferred and duties imposed on a Child Protection Worker by this Act and the regulations; and
- (b) shall assist the Director and the assistant Director in the exercise of any powers and the performance of any duties of the Director that the Director has authorized the Child Protection Worker to exercise or perform under paragraph 51(3)(c), in respect of Nunavut or the community or communities for which the Child Protection Worker is appointed.
S.N.W.T. 1998,c.17,s.4(22); S.Nu. 2010,c.4,s.8(3).

Authorized person

55. (1) The Director may, in writing, authorize a person to exercise any of the powers and perform any of the duties of an authorized person under this Act.

Chairperson of a Child and Family Services Committee

(1.1) The Director, in writing,

- (a) shall authorize a chairperson of a Child and Family Services Committee to exercise the powers and perform the duties of an authorized person under sections 60 and 61; and
- (b) may authorize a chairperson of a Child and Family Services Committee to exercise any other power and perform any other duty of an authorized person under this Act.

Direction of Director

(2) An authorized person is subject to the direction of the Director in the exercise of any power or in the performance of any duty of an authorized person under this Act.

Community Agreements

Definitions

56. In sections 57 to 59,

"community" means,

- (a) in respect of a community agreement made under section 57, a municipality or a settlement in respect of which a settlement corporation has been established, and
- (b) in respect of a community agreement made under section 58.1, any community; (*communauté*)

"community corporation" means a municipal corporation or a settlement corporation; (*corporation de communauté*)

"community council" means the council of a municipal corporation or settlement corporation; (*conseil communautaire*)

"corporate body" means a not for profit corporate body of an aboriginal organization. (*personne morale*)

Community agreement

57. (1) A community council may, by by-law, authorize the community corporation to enter into a community agreement with the Minister

- (a) delegating to the community corporation the authority and responsibility for any matter set out in this Act;
- (b) establishing a Child and Family Services Committee and defining its role in the community, in addition to its powers and duties under this Act, and establishing the term of office of its members and the procedures by which the Child and Family Services Committee shall conduct its meetings and exercise its powers and perform its duties under this Act; and

- (c) setting out the procedure for establishing and amending community standards and making the members of the community aware of community standards.

Powers and duties of municipal corporation

(2) A community corporation has, subject to the terms and conditions of a community agreement, the power and shall perform the duties delegated to the community corporation by the community agreement and, for greater certainty, the exercise of the powers and performance of the duties in accordance with the community agreement is deemed, for the purposes of the *Cities, Towns and Villages Act*, the *Hamlets Act* and the *Settlements Act*, to be a municipal purpose. S.Nu. 2010,c.4,s.8(3).

Child and Family Services Committee

58. (1) A Child and Family Services Committee is a committee of the community council and shall exercise its powers and perform its duties in accordance with this Act, the regulations and the community agreement.

Appointment of members

(2) The members of a Child and Family Services Committee shall be appointed by the community council for the term set out in the community agreement.

Community agreement

58.1. (1) A board of directors of a corporate body may authorize the corporate body to enter into a community agreement with the Minister

- (a) delegating to the corporate body the authority and responsibility for any matter set out in this Act;
- (b) specifying the community or communities in which the corporate body may act;
- (c) specifying the aboriginal children for whom the corporate body may act; and
- (d) establishing a Child and Family Services Committee and defining its role in the community or communities in which it may act, in addition to its powers and duties under this Act, and establishing the term of office of its members and the procedures by which the Child and Family Services Committee shall conduct its meetings and exercise its powers and perform its duties under this Act.

Limitation

(2) Delegation to a corporate body under subsection (1) may be made only in respect of aboriginal children represented by the aboriginal organization referred to in the definition "corporate body" in section 56.

Powers and duties of corporate body

(3) A corporate body has, subject to the terms and conditions of a community agreement, the power and shall perform the duties delegated to the corporate body by the community agreement.

Child and Family Services Committee

58.2. (1) A Child and Family Services Committee is a committee of the board of directors of the corporate body and shall exercise its powers and perform its duties in accordance with this Act, the regulations and the community agreement.

Appointment of members

(2) The members of a Child and Family Services Committee shall be appointed by the board of directors for the term set out in the community agreement.

Community standards

59. (1) A community corporation that is a party to a community agreement may establish community standards to be used in determining

- (a) the level of care adequate to meet a child's needs under paragraph 2(m); and
- (b) whether or not a child needs protection under subsection 7(3).

Minimum community standards

(2) Community standards must include the minimum community standards established by the regulations.

Additional community standards

(3) A community corporation that is a party to a community agreement may establish community standards in addition to the minimum community standards established by the regulations in accordance with the procedure set out in the community agreement, but any additional community standards shall not abrogate or derogate from the minimum community standards established by the regulations.

Duty to inform community of community standards

(4) A community corporation that is a party to a community agreement shall make the members of the community aware of the community standards in accordance with the procedure set out in the community agreement.

Delegation to Boards of Management

Delegation to Board of Management

59.1. (1) The Minister may, by order, delegate the authority and responsibility for any matter set out in this Act to a Board of Management established under the *Hospital Insurance and Health and Social Services Administration Act*.

Orders made before this section comes into force

(2) Every order made under section 4.1 of the *Child Welfare Act* before this section comes into force continues in force in respect of the management, control and operation of child protection services as if the order were made under subsection (1).
S.N.W.T. 1998,c.17,s.4(23),(24).

Visiting and Inspection

Persons entrusted with care of child

60. Every person entrusted with the care of a child under this Act shall permit the Director, a Child Protection Worker or an authorized person

- (a) to visit the child at any time, without notice; and
- (b) on the request of the Director, a Child Protection Worker or an authorized person, to inspect the place where the child has been placed for the purpose of determining that the place conforms to the standards of living accommodation established by the regulations and that the plan of care for the child, if any, is being implemented according to its terms as it relates to the responsibilities of that person.

Child care facilities and foster homes

61. Every person who operates a child care facility or foster home shall permit the Director, a Child Protection Worker or an authorized person

- (a) to visit the children in its care at any time, without notice; and
- (b) on the request of the Director, a Child Protection Worker or an authorized person, to inspect all parts of the premises and buildings used in connection with the child care facility or foster home for the purpose of determining that the child care facility or foster home conforms to the standards of living accommodation established by the regulations and that every plan of care for a child is being implemented according to its terms as it relates to the responsibilities of the child care facility or foster home.

Child Care Facilities and Foster Homes

Approval of child care facilities

62. (1) Subject to subsection (2), the Director may approve a group home or other facility as a child care facility for the purpose of the placement of children under this Act other than for the purpose of adoption.

Exception

(2) The Director may not approve as a child care facility a place or facility that is a place of temporary detention or a place of custody for the purposes of the *Young Offenders Act* or the *Youth Criminal Justice Act* (Canada).

Approval of foster homes

(3) The Director may approve a private home as a foster home for the purpose of the placement of children under this Act other than for the purpose of adoption.

Agreements

(4) The Director may enter into a written agreement with a person who operates a child care facility or a foster home respecting the placement of children under this Act. S.Nu. 2003,c.4,s.12.

Duties of child care facility and foster home

- 63.** Every person who operates a child care facility or foster home shall
- (a) ensure that the child care facility or foster home complies with all the requirements of this Act and the regulations respecting child care facilities and foster homes;
 - (b) ensure that the child care facility or foster home conforms to the standards of living accommodation established by the regulations;
 - (c) implement the plan of care for each child in its care according to its terms as it relates to the responsibilities of the child care facility or foster home; and
 - (d) on the request of the Director, a Child Protection Worker or an authorized person,
 - (i) provide the Director, Child Protection Worker or authorized person with full information and particulars concerning every child in its care, and
 - (ii) permit the Director, Child Protection Worker or authorized person to have access to and inspect all books and records of the child care facility or foster home dealing with the care of the children in its care.

Investigation respecting child care facility or foster home

64. (1) The Minister may appoint one or more persons to investigate and report to the Minister on the management and operation of a child care facility or foster home, and may direct the manner of conducting the investigation, where it appears to the Minister that the management or operation of the child care facility or foster home is not in the best interests of the children in its care.

Scope of investigation

(2) An investigation and report under subsection (1) may be in relation to matters that have happened before or that happen after the coming into force of this Act.

"institution" defined

65. (1) In subsection (2), "institution" means an institution within the meaning of section 44 of the *Child Welfare Act*, R.S.N.W.T. 1988, c.C-6, that ceased to operate as an institution for the purposes of the former Act on or before the coming into force of this Act, and includes any similar facility under any predecessor legislation.

Investigation respecting institutions

(2) The Minister may appoint one or more persons to investigate and report to the Minister on the management and operation of an institution in relation to matters that have happened before this Act comes into force, and may direct the manner of

conducting the investigation, where it appears to the Minister that the management or operation of the institution was not in the best interests of the children in its care.
S.Nu. 2010,c.4,s.8(3).

Miscellaneous

Temporary accommodation of child

66. No child who is held or brought before a court for a hearing under this Act shall be placed or allowed to remain with a young person or an adult prisoner in a lock-up or police cell.

Infants under the age of one year

67. Unless authorized by the Director, no foster parent shall retain or receive for care apart from their parents more than three infants under the age of one year for a period exceeding 24 hours.

Obligation to support child

68. Nothing in this Act relieves any person who has an obligation to support a child from that obligation, and the fact that support is being provided does not deprive the Director or a Child Protection Worker of any power or right conferred on the Director or a Child Protection Worker by this Act or the regulations.

Liability

69. (1) The Director, assistant Directors, Child Protection Workers, authorized persons and any other person having powers or duties under this Act or the regulations shall not be liable for anything done or not done by him or her in good faith in the performance of his or her duties or in the exercise of his or her powers.

Exception

(2) Subsection (1) does not apply to persons required to report under subsection 8(1).

Confidentiality and Disclosure

Definitions

70. In sections 71, 73 and 74,

"court" means the Court of Appeal, the Nunavut Court of Justice or a justice of the peace; (*tribunal*)

"record of information" means a record as defined in the *Access to Information and Protection of Privacy Act*. (*document*)
S.N.W.T. 1998,c.34,Sch.C,s.3(5).

Confidentiality

- 71.** (1) Any information or record of information relating to a child or his or her parent is confidential where it is received, obtained or retained by any person
- (a) under this Act or the regulations;
 - (b) in the exercise of his or her powers or in the performance of his or her duties under this Act or the regulations;
 - (c) who operates a child care facility or foster home respecting a child in the care of the child care facility or foster home; or
 - (d) who is employed by or retained on contract to provide services to a child care facility or foster home respecting a child in the care of the child care facility or foster home.

Prohibition on disclosure and communication of information

(2) Notwithstanding the provisions in the *Access to Information and Protection of Privacy Act* allowing disclosure of personal information as defined in that Act, no person referred to in subsection (1) shall disclose or communicate any information or record of information described in subsection (1) to any person except

- (a) where necessary or appropriate in the exercise of his or her powers or in the performance of his or her duties under this Act or the regulations;
- (b) with the written consent of the person to whom the information or record relates;
- (c) where giving evidence in court;
- (d) on the order of a court;
- (e) to a person appointed to conduct an investigation under section 64 or 65;
- (f) to the Minister, the Director, an assistant Director, a Child Protection Worker or an authorized person, at their request;
- (g) to a peace officer, if the person believes on reasonable grounds that
 - (i) failure to disclose the information or record of information is likely to cause physical or emotional harm to a person or serious damage to property, and
 - (ii) the need for disclosure is urgent;
- (h) where a disclosure or communication is required for the purposes of this Act or to protect a child;
 - (i) where necessary for the provision of care, counselling or education to the child;
 - (j) where, in the opinion of the Minister, the benefit of the release of the information would clearly outweigh any invasion of privacy that could result from the release; or
 - (k) where it is required for the purposes of this Act.

Use of information

72. Any information or record of information disclosed under subsection 71(2) shall be used only for the purpose for which it was disclosed and shall not be disclosed further.

Offence and punishment

73. (1) Every person who contravenes subsection 71(2) or section 72 is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding six months or to both.

Exception

(2) Subsection (1) does not apply to a child who is a member of a plan of care committee and the subject of the plan of care agreement.

Exchange of information

74. Notwithstanding sections 71 to 73, the Director may, in accordance with the regulations, disclose information or a record of information in his or her possession relating to any person in connection with this Act to a person who or agency that in a province or territory performs substantially the same functions as the Director where that information or record of information is reasonably required by that person or agency in order to provide services to the person who is the subject of the information or to protect a child. S.Nu. 2010,c.4,s.8(3).

Jurisdiction**Jurisdiction**

75. The powers, duties and functions conferred by this Act on a court are exercisable notwithstanding that any party to the proceedings or the child who is the subject of the proceedings is not domiciled in Nunavut. S.Nu. 2010,c.4,s.8(3).

Power in respect of witnesses

76. In proceedings under this Act, every court has the same power as is vested in the Nunavut Court of Justice in civil cases

- (a) to summon any person and require that person to give evidence on oath and to produce all documents and things as may be relevant; and
 - (b) to enforce the attendance of witnesses and to compel them to give evidence and produce documents.
- S.N.W.T. 1998,c.34,Sch.C,s.3(3)(b).

Where justice of the peace unable to act

77. Where a justice of the peace with whom an originating notice has been filed but who has not heard any evidence in the matter is absent or unable to act or requests the substitution of another justice of the peace, another justice of the peace may act in his or her stead.

Transfer between courts

78. The court to which an application is made under this Act may order that the proceedings be transferred to another court where, in the opinion of the court, another court is more appropriate to determine the matters in issue.

Effect of order made outside Nunavut

79. Every order of a court made according to the laws of a province or territory similar in nature or purpose to an order made under section 28 or subsection 38(1) has, for all purposes in Nunavut, the same effect as an order made under section 28 or subsection 38(1), as the case may be. S.Nu. 2010,c.4,s.8(3).

Procedure

Application of Rules of the Nunavut Court of Justice

80. Subject to the regulations, the Rules of the Nunavut Court of Justice apply to proceedings under this Act in any court in which they are brought except where the Rules are inconsistent with this Act or the purposes and intent of this Act. S.N.W.T. 1998,c.34,Sch.C,s.3(3)(c).

Originating notice

81. (1) A proceeding under this Act must be commenced by originating notice.

Notice of motion and affidavit

(2) An application in a proceeding must be made by notice of motion and supported by affidavit evidence, new or previously made and read in the same proceeding, as to all the facts on which it is based that do not appear from the record.

Affidavits based on information and belief

(3) An affidavit in support of an application or a proceeding may be based on information and belief.

Service of originating notice and affidavit

82. (1) A copy of the originating notice and a copy of each affidavit in support of the notice must be served 10 days before the day named in the notice for the hearing of the application.

Service of notice of motion and affidavit

(2) A copy of the notice of motion, and any affidavit to be relied on in support of an application that has not already been served, must be served 10 days before the return date of the motion.

Variation of time periods

83. A court may vary any time specified in or under this Act before or after the time period has expired and may dispense with any requirement for any notice under this Act where the court considers it to be in the best interests of the child to do so.

Hearings

84. (1) All proceedings under this Act shall be heard by a court in private and no persons shall be present at the hearing other than

- (a) the officers of the court;
- (b) the parties and their counsel; and

- (c) any other person whom the court in its discretion expressly permits.

Where child may be present

(2) A child who is the subject of the hearing and has attained the age of 12 years may be present at the hearing unless, in the opinion of the court, it is not in the best interests of the child to be present, in which case the court shall exclude the child from the room in which the hearing is being held.

Exclusion of child

(3) Except where, in the opinion of the court, it is necessary for a child who is the subject of the hearing and has not attained the age of 12 years, or another child to be present at the hearing in order to be identified or to give evidence, the court shall exclude the child from the room in which the hearing is being held.

Place of hearing where child present

(4) Where a child is brought before a court, the court shall hold the hearing in premises other than the ordinary Nunavut Court of Justice premises unless it is impracticable to do so, in which case the court shall hold the hearing in the ordinary Nunavut Court of Justice premises separate from the other business of the court. S.N.W.T. 1998,c.34,Sch.C,s.3(6).

Adult accompanying parents or child

85. (1) At a meeting of a plan of care committee or at a hearing under this Act, the child who is to be the subject of the plan of care agreement or is the subject of the hearing and each parent of the child is entitled to choose and be accompanied by an adult who may assist the child or the parent in expressing his or her views to the plan of care committee or to the court.

Status of adult

(2) An adult referred to in subsection (1) is not a representative of or an advocate for the child or the parent.

Counsel for child

86. (1) The court shall ensure that a child who is the subject of a hearing before the court is represented by counsel independent of his or her parents where it appears to the court that

- (a) the interests of the child and the child's parents are in conflict; or
- (b) it would be in the best interests of the child to be represented by his or her own counsel.

Payment of fees, disbursements and expenses

(2) The court may require the parents of the child to pay the fees, disbursements and expenses of counsel referred to in subsection (1) and shall specify in the order the proportion or amounts of the fees, disbursements and expenses that each parent is required to pay.

"court" defined

(3) In this section, "court" means the Nunavut Court of Justice.
S.N.W.T. 1998,c.34,Sch.C,s.3(4)(d).

Identity of child

87. No person shall publish or make public information that has the effect of identifying

- (a) a child who is
 - (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or
 - (ii) a witness at a hearing; or
- (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.

Appeal**Appeal**

88. (1) Any party to a hearing under this Act may, within 30 days after the date of an order made under this Act, appeal the order to

- (a) the Nunavut Court of Justice, where the order was made by a justice of the peace; or
- (b) the Court of Appeal, where the order was made by the Nunavut Court of Justice.

Procedure on appeal

(2) The appeal from a justice of the peace to the Nunavut Court of Justice shall be conducted in accordance with the procedure for appeals from tribunals set out in the *Judicature Act*.

Stay of execution

(3) Execution of an order made under subsection 31(9) that is appealed under subsection (1) shall be stayed unless, on application of the Director, the court hearing the appeal orders otherwise in respect of the order or any provision of the order.

Procedures

(4) Sections 66, 83, 84, 85 and 87 apply, with such modifications as the circumstances require, to an appeal.

Hearing of appeal

(5) The Nunavut Court of Justice or Court of Appeal may, on hearing an appeal made under subsection (1), affirm, reverse or modify the order, and make any other order that the court considers necessary and proper, including a declaration that a child needs protection, where in the opinion of the Nunavut Court of Justice or Court of Appeal it is in the best interests of the child to do so. S.N.W.T. 1998,c.34,Sch.C,s.3(3)(d),(7).

Offence and Punishment

Prohibitions

89. No person shall

- (a) induce or attempt to induce a child to abscond from a child care facility, foster home or a person entrusted with the care of the child under this Act;
- (b) remove or attempt to remove a child unlawfully from the care, custody, control or charge of the Director, assistant Director or a Child Protection Worker;
- (c) detain or knowingly harbour an absconding child placed in the temporary or permanent custody of the Director;
- (d) having the care, custody, control or charge of a child, abandon the child, without having made adequate provision for the child's care and custody, or abuse or harm the child, or procure the abandonment, abuse or harm of the child; or
- (e) omit to perform a duty imposed on him or her by or under this Act.

Offence and punishment

90. Every person who contravenes a provision of this Act for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, to imprisonment for a term not exceeding 12 months or to both.

Regulations

Regulations

91. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) for the purposes of the definition of "community" in section 1, prescribing as a community a populated area that is a separate area, a part of a municipality or settlement or an area that includes part of a municipality or settlement;
- (a.1) respecting the establishment of plan of care committees including the selection of a person to sit as the member listed in paragraph 15(2)(c) or (d);
- (b) respecting the procedures by which a plan of care committee shall conduct its meetings and exercise its powers and perform its duties under this Act and the regulations;
- (b.1) respecting the selection of a person to be invited under subsection 15(3) or 17(3) to sit as the member listed in paragraph 15(2)(c) or (d);
- (b.2) where a person is or is to be a member of a plan of care committee listed in paragraph 15(2)(a) and is ineligible to sit as a member under subsection 17(1), respecting the circumstances in which the Child and Family Services Committee or the Child Protection

- Worker, as the case may be, shall invite another person of the same category to sit as a member;
- (b.3) where a member of a plan of care committee listed in paragraph 15(2)(a) is unable or unwilling to continue to sit as a member, respecting the circumstances in which the Child and Family Services Committee or the Child Protection Worker, as the case may be, shall invite another person of the same category to sit as a member;
 - (b.4) respecting the removal of a member of a plan of care committee;
 - (c) respecting plan of care committees;
 - (d) respecting the applicable aboriginal organizations that must be served with a copy of an originating notice and affidavit under section 25;
 - (e) respecting the form of a consent to placing a child in the permanent custody of the Director for the purpose of adoption;
 - (f) respecting additional powers and duties of the Director;
 - (g) respecting the annual report to the Minister referred to in paragraph 51(2)(g);
 - (h) respecting the minimum community standards that must be included in the community standards established by a community corporation, as defined in section 56, that is a party to a community agreement;
 - (i) respecting standards of living accommodation to be maintained by child care facilities, foster homes and persons entrusted with the care of a child under this Act, including different standards for different categories of child care facilities and foster homes or to take into account cultural differences;
 - (j) respecting child care facilities and foster homes;
 - (k) respecting the procedure for the disclosure of information by the Director under section 74;
 - (l) respecting the procedure to be used in proceedings and applications under this Act and providing that certain portions or provisions of the Rules of the Nunavut Court of Justice do or do not apply to these proceedings and applications; and
 - (m) respecting any other matter that, in the opinion of the Commissioner, is necessary for carrying out the purposes and provisions of this Act.
- S.N.W.T. 1998,c.17,s.4(25); S.N.W.T. 1998,c.34,Sch.C,s.3(3)(e).

TRANSITIONAL

Definitions

92. (1) In this section and in sections 93 to 95,

"former Act" means the *Child Welfare Act*, R.S.N.W.T. 1988, c.C-6; (*ancienne loi*)

"Superintendent" means the Superintendent of Child Welfare appointed under the former Act. (*protecteur de l'enfance*)

Interpretation Act

(2) Subject to sections 93 to 95 of this Act, sections 35 to 37 of the *Interpretation Act* apply to all matters affected by the repeal of the former Act and the substitution of this Act.

Repeal of Former Act

Transitional

93. Notwithstanding the repeal of the former Act, on the coming into force of this section,

- (a) the person whose appointment as the Superintendent of Child Welfare or deputy Superintendent of Child Welfare under subsection 2(1) of the former Act is in effect shall be deemed to have been appointed as the Director of Child and Family Services and deputy Director of Child and Family Services respectively under subsection 51(1) of this Act;
- (b) where a case has been adjourned by an order referred to in paragraph 17(2)(a) of the former Act, a Child Protection Worker may, on serving notice and an affidavit in support of the application on the persons mentioned in section 25 of this Act, bring the case again before a court under this Act;
- (c) a foster home approved by the Superintendent under the former Act, where the approval is in effect, shall be deemed to have been approved as a foster home by the Director under subsection 62(3) of this Act;
- (d) the circumstances under which a child shall be deemed to be in need of protection under subsection 12(2) of the former Act continue to apply in respect of a child who has been apprehended under that Act or in respect of whom an order has been made under that Act, in subsequent proceedings under this Act;
- (e) where a person or persons have been appointed under section 44 of the former Act to inquire into and report on the management and conduct of an institution and the inquiry has not been concluded or report completed, section 44 of the former Act shall continue to apply to that inquiry or report; and
- (f) an application that has been made under subsection 49(1) of the former Act for a writ or an order for the production of a child shall be dealt with in accordance with section 49 of the former Act.

Actions or Proceedings Under Former Act

Actions or proceedings under former Act

94. (1) Except as otherwise provided in this section, any action taken or proceeding commenced under the former Act shall be continued under and in conformity with this Act.

Child 16 to 18 years of age

(2) Subsection (1) applies even though the child in respect of whom an action has been taken or a proceeding has been commenced has attained the age of 16 years on the coming into force of this section, and any order made under section 28, subsection 31(9) or 38(1) of this Act may be made to have effect until that child attains the age of 18 years notwithstanding the definition of "child" in section 1 of this Act and the reference in paragraph 35(1)(d) of this Act to 16 years of age shall be read as 18 years of age in respect of that child.

Name in proceeding

(3) A proceeding that has been commenced under the former Act and is continued by subsection (1) is continued in the name of the Director as applicant.

Youth court judge

(4) Where a matter is before a youth court judge under the former Act on the coming into force of this section, the youth court judge shall transfer the matter to the Nunavut Court of Justice.

Deeming provisions

(5) For the purposes of subsection (1), the following provisions apply to the last action taken or step in a proceeding commenced under the former Act listed below before the coming into force of this section:

- (a) a petition filed under subsection 13(1) or a report made under subsection 30(2) of the former Act shall be deemed to be a report under subsection 8(1) of this Act;
- (b) an inquiry by the Superintendent under subsection 13(3) of the former Act shall be deemed to be an investigation under section 9 of this Act;
- (c) a child who was apprehended under the former Act shall continue to be apprehended under this Act on the basis of the grounds set out in the former Act;
- (d) a child who was apprehended under subsection 42(1) of the former Act shall be deemed to have been apprehended under subsection 31(3) of this Act;
- (e) a child who is being treated under subsection 42(1) of the former Act shall be deemed to be a child who is being treated under paragraph 31(1)(b) of this Act;

- (f) service of a copy of a notice of motion under section 15 of the former Act shall be deemed to be service of an originating notice under section 25 of this Act;
- (g) a report of the Superintendent or of a Child Welfare Worker under section 16 of the former Act shall be deemed to be a report of a Child Protection Worker under subsection 13(1) of this Act;
- (h) a hearing under the former Act that is being held pursuant to a proceeding commenced under subsection 14(2) or 19(1) of the former Act shall be deemed to be a hearing under section 27 of this Act;
- (i) an application under subsection 19(1) of the former Act for an order committing a child to the permanent care and custody of the Superintendent shall be deemed to be an application referred to in section 24 of this Act for an order under paragraph 28(1)(d) of this Act;
- (j) an application under paragraph 27(1)(a) of the former Act for an order rescinding an order committing a child to the temporary care and custody of the Superintendent shall be deemed to be an application for an order under paragraph 28(9)(c) of this Act;
- (k) an appeal under subsection 40(1) of the former Act shall be deemed to be an appeal under subsection 88(1) of this Act.

Where child apprehended under former Act

(5.1) Sections 14 to 23 of this Act do not apply to a child who was apprehended under the former Act.

Exception

(6) Notwithstanding paragraph (5)(c), a child who was apprehended under the former Act on the grounds set out in paragraph 12(2)(b) of the former Act shall be dealt with under Part II of this Act and for that purpose, the apprehension under the former Act ceases to have effect on the coming into force of this section and the child shall be deemed to have been delivered by a parent of the child to a Child Protection Worker under subsection 37(1) of this Act. S.N.W.T. 1998,c.34,Sch.C,s.3(8).

Orders Made Under Former Act

Orders made under former Act

95. (1) This section applies to an order that was made under the former Act and is in effect on the coming into force of this section.

Deeming provision

(2) Subject to subsection (3), an order made under a provision of the former Act referred to in Column 1 of the following Table shall be deemed to have been made under the provision of this Act referred to in Column 2 that is opposite to it and shall be deemed to include a declaration that the child who is the subject of the order needs protection where subsection 27(2) is indicated in Column 2:

TABLE

Column 1 (former Act)	Column 2 (this Act)
17(1) as described in 17(2)(b)	27(2), 28(1)(b)
17(1) as described in 17(2)(c)	27(2), 28(1)(c)
17(1) as described in 17(2)(c) on application for a further order under 17(5)	28(9)(b)
19(2)	27(2), 28(1)(d)
25(1)	48(2)
27(2) in respect of an application made under 27(1)(a)	28(9)(c)
36	28(8)
40(3)	88(5)

Limitation respecting access

(3) Where an order made under subsection 17(1) or 19(2) of the former Act referred to in Column 1 of the Table in subsection (2) is deemed to be an order made under paragraph 28(1)(c) or (d) of this Act in Column 2, subparagraphs 28(1)(c)(ii) and (d)(ii) of this Act do not apply in any subsequent proceedings under this Act in respect of those orders.

Child 16 to 18 years of age

(4) Where an order made under a provision of the former Act referred to in Column 1 of the Table in subsection (2) was made to apply to a child until the child attains the age of 16 years or more up to attaining the age of 18 years, the corresponding order in Column 2 shall be deemed to have been made to apply to that child until the child attains the age specified in the order in Column 1, while the order is in effect, and any further order made under this Act in respect of that child may be made to apply until the child attains the age of 18 years notwithstanding the definition of "child" in section 1 of this Act.

Maximum age of child

(5) Where an order made under subsection 19(2) of the former Act is deemed to be an order under paragraph 28(1)(d) of this Act, paragraph 48(1)(a) of this Act shall, in relation to that order, be read, "the child attains the age of 18 years;".

Temporary care and custody orders

(6) A further order made under subsection 17(1) of the former Act as described in paragraph 17(2)(c) of the former Act on application for a further order under subsection 17(5) of the former Act shall be deemed to be an order under paragraph 28(9)(b) of this Act even though the result of the order under the former Act

was that the child be committed to the temporary care and custody of the Superintendent for a continuous period exceeding 24 months but not exceeding 36 months.

Order for maintenance of child

(7) An order made under section 36 of the former Act shall be deemed to have been made under subsection 28(8) of this Act even though the order under section 36 of the former Act is in respect of an order committing a child to the permanent care and custody of the Superintendent.

Reference to Superintendent

(8) A reference in an order made under the former Act to the Superintendent or to a Child Welfare Worker shall be deemed to be a reference to the Director of Child and Family Services or to a Child Protection Worker respectively for the purposes of this section.

REPEAL

Repeal

96. (1) Subject to subsection (2), section 1 and Parts I, II and VI of the *Child Welfare Act* are repealed.

Exception

(2) Section 1 and Parts I and VI of the *Child Welfare Act* continue to apply to Parts III, IV and V until Parts III, IV or V are repealed by another Act.

COMING INTO FORCE

Coming into force

97. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner.