



HOUSE USE ONLY

CHAIR:

WITH / WITHOUT

1st SESSION, 67th GENERAL ASSEMBLY
Province of Prince Edward Island
2 CHARLES III, 2023

(Bill No. 32)

Child, Youth and Family Services Act

Hon. Barb Ramsay
Minister of Social Development and Seniors

GOVERNMENT BILL

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Acting King's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

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AMENDMENTS

BILL NUMBER: 32 **PAGE No. 2 of 42 PAGES**

TITLE: Child, Youth and Family Services Act

#	SECTION	AMENDMENT	DATE

NOTED: **CERTIFIED CORRECT:**

COMMITTEE CLERK

CHAIR, IN COMMITTEE



CHILD, YOUTH AND FAMILY SERVICES ACT

BILL NO. 32

2023

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 – INTERPRETATION AND ADMINISTRATION

Interpretation

1. Definitions

In this Act,

- (a) “**assessment**” means an assessment conducted by the Director in accordance with Part 2, unless the context provides otherwise;
- (b) “**child**” means a person who is under 18 years of age;
- (c) “**court**” means the Family Section of the Supreme Court of Prince Edward Island;
- (d) “**custody**” means, in relation to a child, the legal authority and responsibility for the day-to-day care of the child;
- (e) “**Director**” means the Director of Child Protection appointed pursuant to section 10;
- (f) “**family violence**” means family violence as defined in the *Victims of Family Violence Act* R.S.P.E.I. 1988, Cap. V-3.2;
- (g) “**guardianship**” means, in relation to a child, the legal authority and responsibility for making decisions in respect of the child;
- (h) “**Indigenous**”, when used in relation to a person, also describes a First Nations person, an Inuk or a Métis person;
- (i) “**Indigenous governing body**” means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (j) “**investigation**” means an investigation conducted by the Director in accordance with Part 2;
- (k) “**Minister**” means the Minister of Social Development and Seniors;
- (l) “**parent**” means, in relation to a child,
 - (i) a person who is

- (A) presumed or declared to be a parent of the child in accordance with Part 4 of the *Children's Law Act* R.S.P.E.I. 1988, Cap. C-6.1, or an adoptive parent under the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1, or similar legislation in another jurisdiction, and
 - (B) entitled to decision-making responsibility or parenting time in relation to the child in accordance with the *Children's Law Act* or the *Divorce Act* (Canada),
- (ii) a person who has permanent custody and guardianship of the child by agreement or the order of a court of competent jurisdiction, or
 - (iii) a person with whom the child resides and who stands in the place of a person referred to in subclause (i),
- but does not include
- (iv) the Director,
 - (v) a person, other than the Director or a parent, who has temporary custody and guardianship of the child under this Act, or
 - (vi) a person caring for the child on behalf of the Director or a parent;
- (m) “**police service**” means a police service as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;
 - (n) “**removal**” means, in relation to a child, the removal of the child by the Director from the custody of a parent, without the consent of the parent;
 - (o) “**youth**” means a child who is 16 or 17 years of age.

2. **Best interests of the child**

- (1) For the purpose of this Act, the “best interests of the child” means the best interests of the particular child in the particular circumstances, taking into consideration all relevant factors, including
 - (a) the child’s safety and well-being;
 - (b) the child’s physical, mental, emotional and developmental needs;
 - (c) the child’s relationship with the child’s parents, other family members and other persons who are significant to the child;
 - (d) any plans for the child’s care;
 - (e) the ability and willingness of the child’s parents to care for and meet the needs of the child or participate in a family intervention plan towards that end;
 - (f) the importance of continuity, security, stability and permanency in the child’s care;
 - (g) the effect of the child’s developmental capacity on the child’s perception of time in relation to custody arrangements;
 - (h) the effect on the child of any delay in the disposition of a matter respecting the child;
 - (i) the child’s views and preferences, given due weight in accordance with the child’s age and maturity;
 - (j) the child’s cultural, ethnic, linguistic and religious heritage;
 - (k) the child’s sexual orientation, gender identity and gender expression;
 - (l) the importance of supporting and preserving families as the preferred environment for the care and upbringing of children; and
 - (m) any other factors prescribed by the regulations.

Safety and well-being paramount

- (2) Where there is a conflict between clauses (1)(a) and (l), clause (a) shall prevail.

3. Child in need of protection

- (1) For the purpose of this Act, a child is in need of protection where the safety or well-being of the child is endangered because of any of the following circumstances:
- (a) the child has been or is likely to be physically harmed by a parent;
 - (b) a parent is unable or unwilling to protect the child from physical harm by another person, where the parent knows or ought to know that the child has been or is likely to be physically harmed by the person;
 - (c) the child has been or is likely to be exposed to family violence;
 - (d) the child has been or is likely to be emotionally harmed by a parent;
 - (e) a parent is unable or unwilling to protect the child from emotional harm by another person, where the parent knows or ought to know that the child has been or is likely to be emotionally harmed by the person;
 - (f) the child has been or is likely to be sexually abused or exploited by a parent;
 - (g) a parent is unable or unwilling to protect the child from sexual abuse or exploitation by another person, where the parent knows or ought to know that the child has been or is likely to be sexually abused or exploited by the person;
 - (h) the child has been or is likely to be neglected by a parent;
 - (i) the child has been abandoned;
 - (j) the child is under 12 years of age and has or is likely to seriously harm a person or animal intentionally or seriously damage property intentionally, and a parent is unable or unwilling to take remedial or preventative measures;
 - (k) any other circumstances prescribed by the regulations.

Physical harm

- (2) For the purpose of this Act, a child is physically harmed by a parent or other person where the parent or other person, as the case may be, intentionally or recklessly causes injury to any part of the child's body.

Emotional harm

- (3) For the purpose of this Act, a child is emotionally harmed by a parent or other person where the child's mental or emotional functioning or development is impaired as a result of any of the following:
- (a) rejection or deprivation of affection by the parent or other person;
 - (b) failure of the parent or other person to meet the emotional, social, cognitive, educational or psychological needs of the child;
 - (c) exposure of the child by the parent or other person to family violence or severe domestic disharmony;
 - (d) inappropriate criticism, humiliation or expectations of, or threats or accusations toward, the child by the parent or other person;
 - (e) the mental or emotional condition of the parent or anyone living in the same residence as the child;
 - (f) chronic alcohol or drug abuse by the parent or anyone living in the same residence as the child;
 - (g) any other factors prescribed by the regulations.

Sexual abuse or exploitation

- (4) For the purpose of this Act, a child is sexually abused or exploited by a parent or other person where the parent or other person, as the case may be, inappropriately exposes the child to, or engages the child in, sexual contact, activity or behaviour, pornography or prostitution.

Neglect

- (5) For the purpose of this Act, a child is neglected where a parent is unable or unwilling to
- (a) provide the child with the necessities of life;
 - (b) provide the child with adequate care and supervision; or
 - (c) obtain for the child or permit the child to receive, in a timely manner, medical, psychological, dental or other services that are necessary for the health or well-being of the child.

Abandonment

- (6) For the purpose of this Act, a child is abandoned where
- (a) no parent of the child is able or willing to maintain or take custody of the child; or
 - (b) the child's only parent has died,
- and adequate provisions have not been made for the care of the child.

4. Family intervention plan

For the purpose of this Act, a “family intervention plan” means a plan of the services and interventions proposed to mitigate the circumstances causing a child to be in need of protection and shall include

- (a) a description of the proposed services and interventions;
- (b) a description of the indicators by which the Director or the court will determine when services or interventions may no longer be required;
- (c) an estimate of the time required to achieve the purpose of the services or interventions;
- (d) information respecting previous involvement with the child or a parent, under this or a predecessor Act, that is relevant to the plan;
- (e) where the child is in the custody of the Director or other person who is not a parent of the child, pursuant to this Act,
 - (i) an explanation of why the child cannot be adequately protected while in the custody of either parent and a description of any past efforts to do so,
 - (ii) an explanation of the efforts planned to maintain the child's contact with parents, family members or other persons significant to the child, where appropriate,
 - (iii) a description of the arrangements made or being made for the child's stability and permanency, and
 - (iv) a description of the arrangements made or being made to recognize the importance of the child's identity and cultural and community connections; and
- (f) any other components prescribed by the regulations.

5. Child in temporary custody of Director or other person

- (1) For the purpose of this Act, a child is in the temporary custody of the Director or other person who is not a parent of the child where

- (a) the child is in the custody of the Director or other person pursuant to a temporary custody and guardianship agreement under Part 3;
- (b) the child has been removed by the Director under Part 4 and has not been returned to the custody of one or both of the child's parents within seven days of the removal; or
- (c) the child is in the custody of the Director or other person pursuant to a temporary custody and guardianship order under Part 5.

Maximum period of temporary custody

- (2) Notwithstanding any other section in this Act, subject to subsection (3), no child shall be in the temporary custody of the Director or other person who is not a parent of the child for a cumulative period exceeding
 - (a) where the child is under six years of age, 18 months; and
 - (b) where the child is six years of age or over, 24 months.

One-time exception, best interests

- (3) The Director may extend an agreement, or the court may extend an order, as the case may be, for the temporary custody and guardianship of a child, one time only, for not more than six months beyond the applicable time limit in subsection (2), where, in the opinion of the Director or the court, as the case may be, it is in the best interests of the child.

Determination of age

- (4) For the purpose of subsection (2), the age of a child shall be determined as of the date the child is first in the temporary custody of the Director or other person who is not a parent of the child.

Period not counted

- (5) Where a period of at least two years has elapsed since a child was in the temporary custody of the Director or other person who is not a parent of the child, any time the child spent in the temporary custody of the Director or other person preceding that period shall not be included in a subsequent calculation under subsection (2) or for the purpose of determining the child's age under subsection (4).

Purpose and Application

6. Purpose of Act

- (1) The purpose of this Act is to promote and protect the safety and well-being of children by supporting parents and families to fulfill this responsibility, where possible, and empowering the Director and the court to intervene on behalf of a child, where necessary.

Best interests of child paramount

- (2) The Director, a review panel, the court and any other person acting pursuant to this Act shall make decisions and act with the best interests of the child as the paramount consideration.

Least disruptive measure

- (3) Before taking any action pursuant to this Act, the Director and the court shall consider whether a less disruptive measure may be effective in fulfilling the purpose of this Act.

7. Application of Act in respect of Indigenous children

- (1) The application of this Act in respect of an Indigenous child is subject to

- (a) the exercise of inherent jurisdiction and legislative authority in relation to child and family services by an Indigenous governing body on behalf of an Indigenous group, community or people to which the child belongs;
- (b) a coordination agreement between the Indigenous governing body and the Government of Prince Edward Island; and
- (c) *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada).

Notice of significant measures

- (2) For the purpose of section 12 of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada), the following are significant measures when taken in relation to an Indigenous child, of which advanced notice is required:
 - (a) conducting an investigation;
 - (b) entering into or renewing an agreement under Part 3;
 - (c) removing the child or bringing the child back into the custody of the Director or other person under Part 4;
 - (d) returning the child to the custody of one or both of the child’s parents under Part 3 or 4;
 - (e) making an application to the court under Part 5;
 - (f) placing the child in the care of a caregiver in accordance with section 47;
 - (g) other measures identified by an Indigenous governing body and communicated to the Director.

Notice of investigation outcome

- (3) Where an Indigenous governing body is notified of an investigation, the Director shall, on completion of the investigation, report the Director’s determination and, where the Director determines there are reasonable grounds to believe that the child is in need of protection, the reasons for that determination to the Indigenous governing body.

Notice of court proceedings

- (4) An Indigenous governing body entitled to make representations in court proceedings under this Act in respect of an Indigenous child, pursuant to section 13 of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada), shall be provided with notice of those court proceedings as if it were a party.

Definitions

- (5) In subsection (1), “child and family services” and “coordination agreement” have the same meaning as in *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada).

8. UN Convention on the Rights of the Child

- (1) This Act shall be construed and applied in a manner that is consistent with the United Nations Convention on the Rights of the Child.

Right to be heard

- (2) Every child has the following rights under this Act:
 - (a) to express the child’s views and preferences freely and safely about matters that affect the child;
 - (b) to have the child’s views and preferences about decisions affecting the child considered and given due weight in accordance with the child’s age and maturity;

- (c) to be consulted and to participate in decisions about supports and services provided to the child and to be advised of decisions made about those supports and services;
- (d) to raise concerns about or recommend changes to the supports and services provided to the child, without interference or fear of coercion, discrimination or reprisal and to receive a response to the concerns or recommendations;
- (e) to be informed, in a manner appropriate to the child, of the child's rights set out in this section.

Respect for rights

- (3) The Director and any other person acting pursuant to this Act shall respect a child's rights under this section.

Administration

9. Minister responsible for Act

- (1) The Minister is responsible for the administration of this Act.

Duty of Minister

- (2) The Minister shall ensure that measures are taken in accordance with this Act to fulfill the purpose of this Act.

Powers of Minister

- (3) The Minister may, in respect of fulfilling the purpose of this Act,
 - (a) establish goals, objectives, policies and guidelines;
 - (b) establish and operate facilities and programs to deliver supports and services;
 - (c) provide supports and services to prevent or mitigate factors that affect the safety and well-being of children in families and assist children who have been in the custody of the Director to transition to independence as adults;
 - (d) enter into agreements with persons or organizations as partners or agents;
 - (e) allocate funding and other resources; and
 - (f) monitor and evaluate the efficacy of operations and delivery systems.

Delegation by Minister

- (4) The Minister may, in writing, delegate to any person a power or duty of the Minister under this Act, except the authority to appoint a Director of Child Protection.

10. Director of Child Protection

- (1) The Minister shall appoint a Director of Child Protection.

Acting Director

- (2) Where there is a vacancy in the office of Director or the Director is absent or unable to act, the Minister may appoint an acting Director to exercise the powers and duties of the Director.

Delegation by Director

- (3) The Director may, in writing, delegate to any person a power or duty of the Director under this Act.

Duties of the Director

- (4) In addition to performing other duties imposed throughout this Act or by the Minister, the Director shall
- (a) subject to the direction of the Minister, administer and enforce provisions related to the protection of children under this Act and the regulations;
 - (b) establish policies and procedures respecting the provision of or referral to supports and services under this Act;
 - (c) oversee and direct the provision of or referral to supports and services under this Act;
 - (d) advise the Minister on matters relating to fulfilling the purpose of this Act; and
 - (e) prepare and submit to the Minister an annual report containing the information required by the Minister.

11. Administrative review

- (1) Subject to the regulations, a person, including a child or representative of a child, who is aggrieved by a decision of the Director under this Act may request a review of the decision by submitting a written request for review to the Minister not more than 30 days from the date the decision was made known to the person.

Review panel

- (2) Subject to the regulations, on receipt of a request for review, the Minister shall appoint a review panel composed of not more than three members to review the decision in accordance with the regulations.

Chairperson

- (3) The Minister shall appoint a chairperson of the review panel from among its members.

Rules of procedure

- (4) Subject to the regulations, a review panel shall establish its own rules of procedure.

Remuneration

- (5) Members of a review panel shall receive such remuneration as the Minister may determine.

PART 2 – REPORTING, ASSESSMENT AND INVESTIGATION

Duty to Report

12. Mandatory reporting

- (1) Notwithstanding any other Act, every person who has knowledge, or reasonable grounds to suspect, that a child is in need of protection shall
- (a) without delay, report the circumstances to the Director, or to a police officer who shall report the information to the Director; and
 - (b) provide to the Director any additional information that is known or available to the person.

Ongoing duty to report

- (2) A person who makes a report in accordance with subsection (1) shall make a further report of any subsequent knowledge or reasonable grounds to suspect that the child is in need of protection.

Confidential information

- (3) Subsections (1) and (2) apply notwithstanding the confidential nature of the information on which the report is based, but nothing in this section abrogates any solicitor-client privilege.

Identity of person reporting

- (4) No person shall disclose or be compelled to disclose the identity of a person who makes a report to a police officer or the Director, in good faith, pursuant to subsection (1) or (2).

Does not apply to police officer

- (5) Subsection (4) does not apply where the person who makes a report to the Director is a police officer.

Not liable to civil action

- (6) A person who makes a report or provides information in accordance with subsection (1) or (2) or does anything to assist in an investigation carried out by the Director is not liable in any civil action for doing so in good faith.

No delegation of duty

- (7) For greater certainty, the duty to report under this section is personal and shall not be delegated or assigned to another person.

Assessment

13. Assessment required

- (1) Where
- (a) a report is made pursuant to section 12;
 - (b) a parent, a child or a Children’s Lawyer appointed under section 33.1 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, requests an assessment; or
 - (c) it otherwise appears to the Director that a child may be in need of protection, the Director shall assess the reported or known circumstances affecting the safety and well-being of the child.

Nature of assessment

- (2) In conducting an assessment, the Director may
- (a) contact and seek information from any of the following:
 - (i) the person who made a report or requested an assessment, as referred to in subsection (1),
 - (ii) a police officer,
 - (iii) a parent who is a subject of the assessment; and
 - (b) with the consent of a parent who is a subject of the assessment, contact and seek information from other persons.

Investigation

14. Investigation of circumstances

- (1) Where, following an assessment, the Director determines that there are reasonable grounds to suspect that a child is in need of protection, the Director shall investigate the circumstances affecting the safety and well-being of the child, which may include
- (a) the child's physical, mental, emotional and developmental status;
 - (b) the child's education;
 - (c) the child's residence and surroundings;
 - (d) the child's social and economic circumstances;
 - (e) the child's culture, ethnicity, language and religion;
 - (f) the child's sexual orientation, gender identity and gender expression;
 - (g) any intervention of law enforcement or the judicial system in respect of the child;
 - (h) the child's relationship with the child's parents, other family members and other persons significant to the child;
 - (i) the physical, mental, emotional and developmental status of persons referred to in clause (h);
 - (j) any intervention of law enforcement or the judicial system in respect of persons referred to in clause (h); and
 - (k) any other circumstances prescribed by the regulations.

Powers of Director, investigation

- (2) Notwithstanding any other Act, in conducting an investigation the Director may, without the consent of a parent of the child,
- (a) attend at the residence of the child and other places frequented by the child;
 - (b) transport the child to a place considered by the Director to be appropriate for an interview or examination;
 - (c) interview and examine the child;
 - (d) interview a parent of the child;
 - (e) interview persons who care for the child or have opportunities to observe the child;
 - (f) interview persons who provide medical, health, social, educational or other services to the child or a parent of the child;
 - (g) require information, including personal information and personal health information, to be provided by a person, public body or custodian to the Director from medical, health, social service, education and other records concerning the child or a parent of the child;
 - (h) require a police service to provide information to the Director concerning the child, a parent of the child or other persons of significance to the investigation;
 - (i) cause an examination to be made of the physical, mental and emotional health and development of the child;
 - (j) request a parent of the child to undergo an examination of physical, mental and emotional health or an assessment related to parenting of the child; and
 - (k) consult other persons and gather other information as necessary to complete the investigation.

Order cooperation

- (3) Upon the application of the Director, without notice, the court may order any person to provide information or access to a person, place or record to the Director, or to otherwise cooperate with an investigation under this section.

Report of determination

- (4) Subject to subsection (5), on completion of an investigation, the Director shall report the Director's determination and, where the Director determines there are reasonable grounds to believe that the child is in need of protection, the reasons for that determination to the following persons:
- (a) a parent who is a subject of the investigation;
 - (b) the child who is the subject of the investigation, where, in the opinion of the Director, the child is capable of understanding the nature of the investigation;
 - (c) any other person where, in the opinion of the Director, it is necessary to ensure the safety or well-being of the child.

Report not required

- (5) The Director is not required to report to a parent under clause (4)(a) or the child under clause (4)(b) where
- (a) the Director has reasonable grounds to believe it would endanger the safety of the child or any other person; or
 - (b) a criminal investigation related to the matter has been or is likely to be initiated.

Determination

15. Child not in need of protection

Where, following an assessment or investigation, the Director determines that there are not reasonable grounds to suspect or believe, as the case may be, that the child is in need of protection, the Director may do any of the following:

- (a) take no further action;
- (b) advise the person who made a report pursuant to section 12 or requested an assessment in accordance with subsection 13(1) of the Director's determination;
- (c) refer the child, a parent or the family to supports and services available on a voluntary basis, whether provided by the Minister or another person or organization, which may include
 - (i) counselling,
 - (ii) pre-natal supports,
 - (iii) parenting programs, or
 - (iv) supports or services relating to family violence.

16. Child in need of protection

- (1) Where, following an investigation, the Director determines that there are reasonable grounds to believe that the child is in need of protection, the Director may take appropriate action authorized under Part 3, 4 or 5.

Collaborative approaches

- (2) The Director may use a family group conference, mediation or another collaborative approach to do any of the following:
- (a) to develop, amend or replace a family intervention plan or an agreement;
 - (b) to resolve issues related to a family intervention plan or an agreement, other than the Director’s determination that the child is in need of protection or factors leading to that determination;
 - (c) to resolve a matter or issues related to a matter before the court under this Act.

Definitions

- (3) For the purpose of subsection (2),
- (a) “**family group conference**” means a formal planning and decision-making meeting facilitated by a coordinator, which may involve a parent, family member or other person significant to the child in need of protection, the child, the Director, legal counsel, and service providers or other persons, such as the Child and Youth Advocate, agreed to by the parties;
 - (b) “**mediation**” means a collaborative approach facilitated by a mediator, which may involve a parent, family member or other person significant to the child in need of protection, the child, the Director, legal counsel, and service providers or other persons, such as the Child and Youth Advocate, agreed to by the parties.

PART 3 – AGREEMENTS

Agreement for Supports and Services

17. Agreement with parent

- (1) The Director may enter into an agreement with a parent of a child for supports and services, where the Director determines that there are reasonable grounds to believe that
- (a) the child is in need of protection; and
 - (b) the safety and well-being of the child can be adequately protected if the child remains in the custody of one or both of the child’s parents, with supports and services to mitigate the circumstances causing the child to be in need of protection.

Agreement with youth

- (2) The Director may enter into an agreement with a youth for supports and services, where
- (a) the Director determines that there are reasonable grounds to believe that the youth is in need of protection;
 - (b) in the opinion of the Director, the youth is capable of understanding the nature and effect of an agreement; and
 - (c) any of the following circumstances exist:
 - (i) neither of the youth’s parents is available to consent to the provision of supports and services, despite reasonable efforts by the Director to make contact with a parent,
 - (ii) there is serious conflict between the youth and one or both of the youth’s parents,
 - (iii) the youth no longer lives with either of the youth’s parents, or

- (iv) the Director determines that the involvement of either of the youth's parents would likely be harmful to the best interests of the youth.

Terms of agreement

- (3) An agreement made under this section shall include terms providing for
 - (a) regular and scheduled contact between the child or youth and the Director, with or without a parent;
 - (b) a family intervention plan;
 - (c) any conditions or restrictions on contact between the child or youth and a parent, family member or other person significant to the child or youth;
 - (d) the duration of the agreement and manner of its termination; and
 - (e) other matters as agreed to by the parties.

Youth not to be compelled to receive services

- (4) A youth may not be compelled to receive services and supports pursuant to an agreement made under this section.

Temporary Custody and Guardianship

18. Application of section

- (1) This section applies where the Director determines that there are reasonable grounds to believe that
 - (a) a child is in need of protection; and
 - (b) the safety and well-being of the child cannot be adequately protected if the child remains in the custody of either of the child's parents.

Temporary agreement

- (2) In the circumstances described in subsection (1), the Director may
 - (a) enter into an agreement with the child's parents, under which the child's parents transfer temporary custody and guardianship of the child to the Director; or
 - (b) enter into an agreement with the child's parents and another person, under which the child's parents transfer temporary custody and guardianship of the child to the other person, with the approval and under the supervision of the Director.

Terms of agreement

- (3) An agreement made under this section shall include terms providing for
 - (a) a transfer of temporary custody and guardianship of the child to the Director or other person under the supervision of the Director, as the case may be;
 - (b) a family intervention plan;
 - (c) permitted or prohibited contact between the child and the child's parents, family members or other persons significant to the child;
 - (d) the duration of the agreement and manner of its termination;
 - (e) the financial or other contributions to be made by the child's parents towards the care of the child; and
 - (f) other matters as agreed to by the parties.

Term of agreement

- (4) The initial term of an agreement made under this section shall not exceed
- (a) where the child is under six years of age, three months; and
 - (b) where the child is six years of age or over, six months.

Renewals

- (5) An agreement made under this section may be renewed for additional terms.

Determination of age

- (6) For the purpose of subsection (4), the age of the child shall be determined as of the date of the agreement.

Termination notice by party

- (7) A party to a temporary custody and guardianship agreement may terminate it at any time by giving at least 15 days' written notice to the other parties.

19. Duty of Director

- (1) The Director shall, on or before the date of expiry or termination of a temporary custody and guardianship agreement,
- (a) renew the agreement or enter into another agreement under this Part;
 - (b) apply for a protection order under Part 5; or
 - (c) return the child or ensure the child is returned to the custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the intervention of the Director.

Custody pending hearing

- (2) Where the Director applies for a protection order in accordance with clause (1)(b), the Director shall have temporary custody and guardianship of the child pending the preliminary hearing, unless otherwise agreed by the parties or ordered by the court.

Permanent Custody and Guardianship

20. Permanent custody and guardianship

- (1) This section applies where the Director determines that there are reasonable grounds to believe that
- (a) a child is in need of protection;
 - (b) the safety and well-being of the child cannot be adequately protected if the child remains in the custody of either of the child's parents; and
 - (c) the circumstances in clauses (a) and (b) are not likely to change in a reasonable period of time with services or other interventions.

Permanent agreement

- (2) In the circumstances described in subsection (1), the Director may
- (a) enter into an agreement with the child's parents, under which the child's parents transfer permanent custody and guardianship of the child to the Director; or

- (b) enter into an agreement with the child's parents and another person, under which the child's parents transfer permanent custody and guardianship of the child to the other person, with the approval of the Director.

Validity of agreement

- (3) Unless the court otherwise orders, an agreement made pursuant to this section is not valid unless all persons who have rights in respect of the custody or guardianship of the child have consented.

Minimum age of child

- (4) An agreement made pursuant to this section is not valid unless the child is at least 14 days old at the time the agreement is executed.

21. Effect of permanent agreement

- (1) Subject to subsection (2), where a child's parents transfer permanent custody and guardianship of the child to the Director or other person in accordance with section 20,
 - (a) the rights and obligations of the parents in respect to the child are terminated; and
 - (b) the Director or other person, as the case may be, has all rights to custody and guardianship of the child, including the right to give or withhold consent to
 - (i) contact between the child and a parent or any other person, and
 - (ii) the adoption of the child.

Notice of termination of agreement

- (2) A parent who enters into an agreement pursuant to section 20 may give written notice of termination of the agreement to the Director and any other parties to the agreement, not later than 14 days after signing the agreement.

Duty of Director

- (3) Within 30 days of receiving a notice of termination pursuant to subsection (2), the Director shall
 - (a) enter into another agreement under this Part;
 - (b) apply for a protection order under Part 5; or
 - (c) return the child or ensure the child is returned to the custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the intervention of the Director.

Custody in Director pending hearing

- (4) Where the Director applies for a protection order in accordance with clause (3)(b), the Director shall have custody and guardianship of the child pending the hearing, unless otherwise agreed to by the parties or ordered by the court.

22. Termination of permanent custody and guardianship

Where a child is in the permanent custody and guardianship of the Director or other person pursuant to section 20 and the agreement is not terminated pursuant to section 21, the custody and guardianship terminates

- (a) when the child reaches 18 years of age, is adopted or marries; or
- (b) by order of the court.

General Matters

23. Capacity of parent under 18 years

A parent who is under 18 years of age is considered to have the capacity to enter into an agreement with the Director under this Part, unless otherwise established, and the agreement is enforceable in respect of that parent.

24. Agreements do not limit court authority

An agreement made under this Part does not limit the court's authority to hear an application or make an order in respect of a child under this Act.

PART 4 – REMOVAL OR RETURN TO CUSTODY

25. Removal of child

- (1) The Director may remove a child where the Director has reasonable grounds to believe that
 - (a) the child is in need of protection; and
 - (b) a less disruptive course of action will not adequately protect the safety and well-being of the child.

Application for warrant

- (2) Where a parent of the child, or other person caring for the child, refuses to permit the Director to enter and search the premises where the Director reasonably believes the child is located or remove the child, the Director may apply to the court, without notice, for a warrant.

Issuance of warrant

- (3) Where the court is satisfied on the basis of the Director's sworn information that the conditions in subsections (1) and (2) have been established, the court may issue a warrant authorizing the Director to
 - (a) enter, by force if necessary, and search the premises where the Director reasonably believes the child is located, for the purpose of removing the child; and
 - (b) remove the child.

Exception, without warrant

- (4) Notwithstanding subsection (2), the Director may take the action described in clauses (3)(a) and (b) without a warrant, where the Director has reasonable grounds to believe that
 - (a) the safety and well-being of the child is in immediate danger; or
 - (b) the child may leave or be taken from the area before a warrant can be obtained.

Police officer to assist

- (5) On the request of the Director, a police officer shall assist the Director in exercising the Director's powers under this section.

Identification of child

- (6) It is not necessary that a child be identified by name for the purpose of an application under subsection (2) or a warrant under subsection (3).

Telewarrant

- (7) An application under this section may be made by telephone or other means of telecommunication.

26. Child taken to place of safety by police officer

- (1) Where a police officer has reasonable grounds to believe that a child is in need of protection and the safety and well-being of the child is in immediate danger, the police officer may take the child to a place of safety.

Report to Director

- (2) Where a police officer takes a child to a place of safety under subsection (1), the police officer shall
- (a) promptly report the circumstances to the Director; and
 - (b) take the child to the Director or another person, as directed by the Director.

Deemed removal

- (3) A child in the custody of the Director pursuant to subsection (2) is considered to have been removed by the Director pursuant to section 25.

Application

- (4) This section does not apply where a child is detained pursuant to the *Youth Criminal Justice Act* (Canada).

27. Duties of Director on removal

- (1) Where a child is removed under this Part, the Director shall
- (a) make all reasonable efforts to give notice of and the reasons for the removal to the child's parents, as soon as reasonably possible; and
 - (b) not more than seven days after the removal,
 - (i) apply for an order under Part 5, or
 - (ii) return the child to the custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the removal.

Custody in Director pending hearing

- (2) Where the Director makes an application in accordance with subclause (1)(b)(i), the custody and guardianship of the child shall remain with the Director pending the hearing, unless the court otherwise orders.

Computation of time

- (3) Rule 3.01 of the Rules of Civil Procedure applies in respect of the computation of time in clause (1)(b).

28. Application for warrant, bringing child back into custody

- (1) The Director may apply to the court, without notice, for a warrant authorizing the Director to enter, by force if necessary, and search a premises where the Director reasonably believes a child is located, for the purpose of bringing the child back into the custody of the Director or other person who has custody pursuant to this Act.

Issuance of warrant

- (2) Where the court is satisfied on the basis of the sworn information of the Director or other person that the child has left or been taken from the lawful custody of the Director or other person, as the case may be, the court may issue the warrant.

Exception, without warrant

- (3) Notwithstanding subsection (1), the Director may enter, by force if necessary, and search a premises where the Director reasonably believes a child is located, without a warrant, for the purpose of bringing the child back into the custody of the Director or other person, where the Director has reasonable grounds to believe that
- (a) the safety or well-being of the child is in immediate danger; or
 - (b) the child may leave or be taken from the area before a warrant can be obtained.

Police officer to assist

- (4) On the request of the Director, a police officer shall assist the Director in exercising the Director's powers under this section.

Identification of child

- (5) It is not necessary that a child be identified by name for the purpose of an application under subsection (1) or a warrant under subsection (2).

Telewarrant

- (6) An application under this section may be made by telephone or other means of telecommunication.

PART 5 – COURT PROCEEDINGS

Interpretation

29. Computation of time

In this Part, Rule 3.01 of the Rules of Civil Procedure applies in respect of the computation of time.

No Contact Order

30. Application to prohibit contact

- (1) Where the Director has reasonable grounds to believe that a person has or is likely to physically or emotionally harm or sexually abuse or exploit a child, the Director may apply to the court for an order to prohibit contact between that person and the child.

Date of hearing

- (2) The court shall set a date for a hearing, which shall commence not more than seven days after the date the application is filed with the court.

Notice of hearing

- (3) The Director shall, at least four days before the date of the hearing, serve notice of the hearing and a copy of the application on

- (a) the person against whom the order is sought; and
- (b) the child's parents.

Interim order

- (4) Where a hearing under this section has not been concluded and, in the opinion of the court, it is necessary to protect the safety and well-being of the child, the court may make an interim order
- (a) prohibiting the person against whom the order is sought from doing any or all of the following until the conclusion of the hearing:
 - (i) contacting or interfering with, or trying to contact or interfere with, the child, or entering a place where the child is located,
 - (ii) residing with the child, or entering premises where the child resides, including premises that the person owns or has a right to occupy; and
 - (b) imposing any conditions that the court considers appropriate for implementing the order and protecting the child.

Disposition

- (5) Where the court is satisfied that there are reasonable grounds to believe that the person has or is likely to physically or emotionally harm or sexually abuse or exploit a child and, in the opinion of the court, it is necessary to protect the safety and well-being of the child, the court may make an order
- (a) prohibiting the person against whom the order is sought from doing any or all of the following for a period not exceeding six months:
 - (i) contacting or interfering with, or trying to contact or interfere with, the child or entering a place where the child is located,
 - (ii) residing with the child or entering premises where the child resides, including premises that the person owns or has a right to occupy; and
 - (b) imposing any conditions that the court considers appropriate for implementing the order and protecting the child.

Vary, terminate or make subsequent order

- (6) Before an order prohibiting contact between a child and another person expires, on the application of the Director or the person named in the order, the court may
- (a) make another order under subsection (5);
 - (b) vary the order; or
 - (c) terminate the order.

Existing order continues pending subsequent hearing

- (7) Where a person is subject to an order prohibiting contact between the person and a child and an application for a subsequent order to prohibit contact is filed but not heard before the expiration of the existing order, the person shall remain subject to the existing order until the application is heard and decided.

Assistance of police officer

- (8) On the request of the Director or another person, a police officer shall assist in enforcing an order made under this section.

Order may be made any time

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

Protection Order

Application

31. Application for order

- (1) Where the Director has reasonable grounds to believe that a child is in need of protection, the Director may apply to the court for an order in respect of the child for
- (a) supervision;
 - (b) temporary custody and guardianship, followed by supervision;
 - (c) temporary custody and guardianship; or
 - (d) permanent custody and guardianship.

Matters for determination

- (2) Where the Director makes an application under subsection (1), the court shall
- (a) hold a preliminary hearing to determine whether the Director has established a prima facie case that the child is in need of protection;
 - (b) where the court finds that the Director has established a prima facie case, hold a protection hearing to determine whether the child is in need of protection; and
 - (c) where the court finds that the child is in need of protection, hold a disposition hearing to determine the intervention that is in the best interests of the child to promote and protect the safety and well-being of the child.

Collaborative approach

- (3) Nothing in this section precludes the Director from using a collaborative approach in accordance with subsection 16(2) while the application is before the court.

Preliminary Hearing

32. Date of preliminary hearing

- (1) The court shall set a date for a preliminary hearing, which shall commence not more than seven days after the date an application under subsection 31(1) is filed with the court.

Notice of preliminary hearing

- (2) The Director shall, at least four days before the date of the preliminary hearing, serve notice of the preliminary hearing and a copy of the application on the other parties.

Evidence in support of application

- (3) The Director shall present evidence at the preliminary hearing respecting
- (a) the grounds for believing the child is in need of protection;
 - (b) where the child was removed,
 - (i) the circumstances respecting the removal, and
 - (ii) less disruptive measures considered by the Director; and

- (c) an interim family intervention plan.

No prima facie case

- (4) Where the court finds that the Director has not established a prima facie case that the child is in need of protection, the court shall
- (a) dismiss the application; and
 - (b) where the child is in the custody and guardianship of the Director or other person who is not a parent of the child, pursuant to this Act, order that the child be returned to the custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the intervention of the Director.

Prima facie case

- (5) Where the court finds that the Director has established a prima facie case that the child is in need of protection, the court shall
- (a) set a date for a protection hearing, which shall commence not more than 30 days after the completion of the preliminary hearing unless otherwise agreed by the parties; and
 - (b) make an interim order respecting the custody and guardianship of the child, under which the child shall either
 - (i) remain in, be placed in or returned to the custody of one or both of the child's parents, subject to the supervision of the Director, or
 - (ii) remain in or be placed in the temporary custody and guardianship of the Director or other person who is not a parent of the child, subject to the supervision of the Director.

Terms of interim order

- (6) An interim order made pursuant to subsection (5) may include terms set out in subsection 36(2) or (3).

Variation

- (7) On the application of the Director, the court may vary an interim order made pursuant to subsection (5) at any time before the completion of the protection hearing.

Investigation continues

- (8) Nothing in subsection (5) impedes the powers of the Director to continue or complete an investigation in respect of the child.

Protection Hearing

33. Notice of protection hearing

- (1) The Director shall serve notice of the protection hearing on the other parties at least 20 days before the date of the hearing.

Child not in need of protection

- (2) Where, on the completion of the protection hearing, the court finds that the child is not in need of protection, the court shall
- (a) dismiss the application; and
 - (b) where the child is in the custody and guardianship of the Director or other person who is not a parent of the child, pursuant to this Act, order that the child be returned to the

custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the intervention of the Director.

Child in need of protection

- (3) Where, on the completion of the protection hearing, the court finds that the child is in need of protection, the court shall
- (a) set a date for a disposition hearing, which shall commence not more than 30 days after the date of the protection decision; and
 - (b) make a protection order respecting the custody and guardianship of the child pending the completion of the disposition hearing, under which the child shall either
 - (i) remain in, be placed in or returned to the custody of one or both of the child's parents, subject to the supervision of the Director, or
 - (ii) remain in or be placed in the temporary custody and guardianship of the Director or other person who is not a parent of the child, subject to the supervision of the Director.

Terms of protection order

- (4) A protection order made pursuant to subsection (3) may include terms set out in subsection 36(2) or (3).

Variation

- (5) On the application of the Director, the court may vary a protection order made pursuant to subsection (3) at any time before the completion of the disposition hearing.

Investigation continues

- (6) Nothing in subsection (3) impedes the powers of the Director to continue or complete an investigation in respect of the child.

Consent order

- (7) Notwithstanding subsection (3), where the court finds that a child is in need of protection, the court may, with the consent of the parties, make any order under clause 36(1)(b).

Adjournment to permit collaborative approach

- (8) On the request of the parties to the application, the court may adjourn a protection hearing to a date not more than 90 days after the date of the preliminary hearing to allow the parties to use collaborative approaches in accordance with subsection 16(2).

Withdrawal of application

- (9) Where the parties enter into an agreement that resolves the outstanding matters before the court pending the completion of the protection hearing, the Director may advise the court and withdraw the application.

Disposition Hearing

34. Notice and family intervention plan

- (1) The Director shall, at least 20 days before the date of the disposition hearing,
- (a) file with the court the family intervention plan proposed by the Director; and
 - (b) serve on the other parties
 - (i) notice of the disposition hearing, and

- (ii) a copy of the family intervention plan proposed by the Director.

Plan of care, parent

- (2) A parent may, at least 15 days before the date of the disposition hearing, file with the court and serve on the other parties a copy of any plan of care proposed by the parent in respect of the child.

35. Considerations

In making a decision on the disposition of an application made under subsection 31(1), the court shall consider

- (a) the evidence adduced at the protection hearing and the disposition hearing;
- (b) the family intervention plan proposed by the Director; and
- (c) any plan of care proposed by a parent of the child.

36. Disposition

- (1) On the completion of the disposition hearing, the court may

- (a) reverse the court's finding that the child is in need of protection, in which case the court shall
 - (i) dismiss the application, and
 - (ii) where the child is in the custody and guardianship of the Director or other person who is not a parent, order that the child be returned to the custody of one or both of the child's parents, in accordance with the parenting arrangements in place before the intervention of the Director; or
- (b) confirm the court's finding that the child is in need of protection and make one of the following orders for an intervention that is in the best interests of the child to promote and protect the safety and well-being of the child:
 - (i) an order that the child remain in or be returned to the custody and guardianship of one or both of the child's parents, subject to the supervision of the Director for a specified period not exceeding six months,
 - (ii) an order that the child remain or be placed in the temporary custody and guardianship of the Director for a specified period,
 - (iii) an order that the child remain or be placed in the temporary custody and guardianship of the Director for a specified period, and then returned to the custody of one or both of the child's parents, subject to the supervision of the Director for a specified period that, together with the period of temporary custody and guardianship, does not exceed six months,
 - (iv) an order that the child remain or be placed in the temporary custody and guardianship of a person, other than the Director or a parent, for a specified period, under the supervision of the Director,
 - (v) an order that the child be placed in the permanent custody and guardianship of the Director,
 - (vi) an order that the child be placed in the permanent custody and guardianship of a person, other than the Director or a parent.

Terms of supervision order

- (2) An order made under subsection (1) that includes supervision by the Director may include terms respecting

- (a) regular and scheduled contact between the child and the Director, with or without a parent;
- (b) permitted or prohibited contact between the child and a parent, family member or other person significant to the child;
- (c) the participation of the child or a parent in assessments, treatment or services; and
- (d) other matters as the court considers necessary.

Terms of temporary custody order

- (3) An order made under subsection (1) that places the child in the temporary custody and guardianship of the Director or other person who is not a parent of the child may include terms respecting
- (a) permitted or prohibited contact between the child and a parent, family member or other person significant to the child;
 - (b) the participation of the child or a parent in assessments, treatment or services;
 - (c) the return of the child to the custody of one or both of the child’s parents, under the supervision of the Director, upon the fulfilment of specified conditions; and
 - (d) other matters as the court considers necessary.

Initial term of temporary order

- (4) The initial term of an order for temporary custody and guardianship of a child shall not exceed
- (a) where the child is under six years of age, three months; and
 - (b) where the child is six years of age or over, six months.

Age

- (5) For the purposes of clauses (4)(a) and (b), the age of the child shall be determined as of the date the application was made under subsection 31(1).

Effect of permanent custody order

- (6) Where the court orders that the child be placed in the permanent custody and guardianship of the Director or other person who is not a parent of the child,
- (a) the rights and obligations of the parents of the child are terminated; and
 - (b) the Director or other person, as the case may be, has all rights to custody and guardianship of the child, including the right to give or withhold consent to
 - (i) contact between the child and a parent, and
 - (ii) the adoption of the child.

37. Combined protection and disposition hearings

Notwithstanding subsection 33(3), the court may combine the protection hearing and the disposition hearing into one hearing, and sections 33 to 36 apply with the necessary changes.

Review, Variation, Termination and Appeal

38. Review of supervision or temporary custody order

- (1) Before an order made pursuant to subclause 36(1)(b)(i), (ii), (iii) or (iv) expires, the Director may apply to the court for a review of the order.

Commencement of review hearing

- (2) A review hearing shall commence not more than 30 days after the date of filing of an application for review, unless
- (a) otherwise ordered by the court, where the Director is seeking a permanent custody and guardianship order; or
 - (b) otherwise agreed by the parties, where the Director is not seeking a permanent custody and guardianship order.

Maximum period before commencement

- (3) Notwithstanding clauses (2)(a) and (b), a review hearing shall commence not more than 90 days after the date of filing of an application for review.

Notice of review hearing

- (4) The Director shall, at least 20 days before the date of the review hearing, serve notice of the review hearing on the other parties and, where applicable, the person other than the Director or a parent who has temporary custody and guardianship of the child.

Review order

- (5) On the completion of a review hearing, the court may
- (a) take no action in respect of the order;
 - (b) vary the order or make a new order in accordance with subclauses 36(1)(b)(i) to (vi); or
 - (c) terminate the order.

Custody continues

- (6) Custody and guardianship of a child continues in accordance with the order under review pending the completion of the review hearing.

39. Termination of permanent order

- (1) An order made under this Act for the permanent custody and guardianship of a child terminates
- (a) when the child reaches 18 years of age, is adopted or marries; or
 - (b) by order of the court.

Variation or termination of agreement or order on application

- (2) The court may vary or terminate an agreement or order made under this Act for the permanent custody and guardianship of a child, on the application of
- (a) the person, whether the Director or other person, who has permanent custody and guardianship of the child under the agreement or order; or
 - (b) the child, where the child is a youth and has been the subject of the agreement or order for a continuous period of at least one year immediately preceding the application.

Notice

- (3) Notice of an application made under this section shall be served on the other parties at least five days before the hearing of the application.

Director is party

- (4) Where the child is in the permanent custody and guardianship of a person other than the Director under the agreement or order, the Director shall be considered a party to an application made under this section.

Power of court

- (5) The court may, by order, vary or terminate the agreement or order, or make a new order in respect of the custody and guardianship of the child, in accordance with what the court considers is in the best interests of the child.

Exception

- (6) Notwithstanding subsection (2), no application to vary or terminate an agreement or order for permanent custody and guardianship may be made where the child who is the subject of the order has been placed for the purpose of adoption.

40. Appeal

- (1) An appeal lies to the Court of Appeal from a decision of the court made under this Part, other than a preliminary decision, within 30 days of the date of the decision.

Decision of Court of Appeal

- (2) On hearing an appeal made pursuant to subsection (1), the Court of Appeal may
- (a) confirm the decision under appeal;
 - (b) revoke or vary any order made as part of the decision under appeal;
 - (c) refer the matter back to the court for a new hearing; or
 - (d) make any order the court could have made in the matter.

Court Procedure

41. Dispensing with service

The court may make an order dispensing with service of a notice on a person under this Act, where

- (a) the identity or whereabouts of the person is unknown;
- (b) the person is evading service;
- (c) service cannot be reasonably effected on the person; or
- (d) the court otherwise considers it appropriate.

42. Right to be heard and to counsel, parent

A parent of a child has the right to be heard and the right to legal counsel in proceedings under this Act in respect of the child, except where an application is made without notice by the Director.

43. Legal representation, child

- (1) A child who is the subject of a proceeding under this Act may be represented by legal counsel in respect of the proceeding.

Court may order

- (2) The court may order that legal counsel be provided for the child, where the court determines it is necessary to ensure the child's interests are adequately protected in a proceeding after considering all relevant factors, including
- (a) any difference in the child's views and the views of the parties to the proceeding;

- (b) any difference in the child's interests and the interests of the parties to the proceeding;
- (c) the nature of the proceeding, including the seriousness and complexity of the issues and whether the child has been removed or the Director is requesting to remove the child;
- (d) the child's capacity to express the child's views to the court;
- (e) the child's views respecting separate representation, where those views can reasonably be ascertained; and
- (f) the presence of parents or guardians at hearings.

44. Hearing private

- (1) No person shall be present at a hearing under this Act except
 - (a) the child's parents and any other persons having custody or guardianship rights respecting the child;
 - (b) the Director;
 - (c) the child who is the subject of the hearing, if the child appears to be capable of understanding the circumstances;
 - (d) a person other than the Director or a parent, in whose custody and guardianship the child has been or may be placed;
 - (e) an Indigenous governing body acting on behalf of an Indigenous group, community or people to which the child belongs;
 - (f) where the hearing is in respect of an application to prohibit contact between the child and another person, the person against whom the order is sought;
 - (g) legal counsel; and
 - (h) other persons as the court considers appropriate.

Child need not be present

- (2) It is not necessary that a child referred to in clause (1)(c) be present at the hearing unless the court otherwise orders, and the court may exclude the child from the hearing or any part of it.

45. Admissible evidence

- (1) At a hearing under this Act, the court may admit as evidence
 - (a) hearsay evidence that the court considers reliable;
 - (b) an oral statement that has been videotaped;
 - (c) a written statement or report that the court considers reliable;
 - (d) a transcript, report, exhibit or finding from an earlier civil or criminal court proceeding; and
 - (e) evidence taken at a previous hearing under this Act or a predecessor Act.

Evidence of child

- (2) The court may accept the evidence of a child without an oath, where the court is satisfied that the child has sufficient appreciation of the facts of the child's evidence and sufficient understanding of the duty to speak the truth.

46. Standard of proof

The standard of proof for an application made under this Act shall be on a balance of probabilities.

PART 6 – CARE OF CHILD

47. Care of child

(1) Where a child is in the custody and guardianship of the Director pursuant to this Act, the Director shall, where possible and subject to any applicable agreement or order, place the child in the care of one of the following caregivers, approved by the Director, considered in the following order of priority:

- (a) a member of the child's family;
- (b) a person with whom the child has a significant relationship;
- (c) a foster parent or group home.

Rights of Director

(2) Where a child has been placed in the care of a caregiver pursuant to subsection (1), the caregiver shall

- (a) ensure the Director has contact and communication with the child;
- (b) allow the Director to inspect any place of residence or activity used for the care of the child; and
- (c) allow the Director to inspect and take copies of any records respecting the care of the child.

Custody remains in Director

(3) For greater certainty, a child in the care of a caregiver pursuant to subsection (1) remains in the custody and guardianship of the Director for the purpose of this Act.

Rights of child in care

(4) A child in the care of caregivers pursuant to subsection (1) has the following rights:

- (a) to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the home;
- (b) to receive medical and dental care when required;
- (c) to be informed of the standard of behaviour expected by the child's caregivers and of the consequences of not meeting those expectations, as applicable;
- (d) to be free from corporal punishment;
- (e) to reasonable privacy and possession of personal belongings;
- (f) to reasonable privacy when visiting or communicating with family members, subject to any order of the court;
- (g) to participate in social, recreational, athletic and creative activities, if available and appropriate and according to the child's abilities, interests or identity;
- (h) to receive the religious instruction and to participate in the religious activities of the child's choice;
- (i) to receive guidance and encouragement to maintain the child's cultural heritage and identity;

- (j) to receive guidance, encouragement and support to learn about and practise the child's Indigenous traditions, customs and language, and belong to the child's Indigenous community, where applicable;
- (k) to be informed about and participate in developing or amending the plan of care for the child;
- (l) to participate in decisions about the child's work, education or training;
- (m) to be provided with an interpreter or other communication assistance if language or disability is a barrier to consulting the child on decisions affecting their custody or care;
- (n) to be informed about and to be assisted in contacting a lawyer, the Child and Youth Advocate or the Ombudsperson;
- (o) to privacy when meeting or communicating with a lawyer, the Child and Youth Advocate or the Ombudsperson;
- (p) to be informed of the child's rights under this section and the procedures available for enforcing those rights.

Respect for rights

- (5) The Director, a caregiver and any other person acting pursuant to this Act in respect of a child in care shall respect a child's rights under this section.

48. Child from outside province

The Director may make an agreement with a child protection agency recognized under the law of another jurisdiction, to provide or supervise the care or placement of a child in the province on behalf of the child protection agency.

PART 7 – POST-PROTECTION

49. Person without capacity

Where a person in the temporary or permanent custody and guardianship of the Director reaches 18 years of age and the Director has reasonable grounds to believe that the person does not have the capacity to manage the person's financial matters or personal matters, the Minister shall ensure suitable arrangements in respect of the person have been or will be made with another person or appropriate public official.

50. Transitional supports and services

Where a person was in the temporary or permanent custody and guardianship of the Director immediately before reaching 18 years of age, the Minister may enter into a written agreement with the person or a guardian or trustee of the person, at any time during the period when the person is 18 years of age or older but under 25 years of age, for transitional supports and services.

PART 8 – ACCESS TO AND PROTECTION OF INFORMATION

Interpretation

51. Definitions

- (1) In this Part and section 14,
- (a) the terms “**custodian**” and “**personal health information**” have the same meaning as in the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41; and
 - (b) the terms “**personal information**”, “**public body**” and “**record**” have the same meaning as in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01.

Records and personal information

- (2) This Part, except section 53, applies in respect of
- (a) records created under or for the purpose of this Act or a predecessor Act that are in the custody or under the control of the Director; and
 - (b) personal information collected under or for the purpose of this Act or a predecessor Act that is in the custody or under the control of the Director.

52. Paramountcy

This Part and sections 12 and 14 apply despite the *Freedom of Information and Protection of Privacy Act*.

Rights of Director

53. Director’s right of access

- (1) The Director has a right of access to a record and to collect and use personal information and personal health information that
- (a) relates to
 - (i) a child who may be or is in need of protection, or
 - (ii) a parent of the child;
 - (b) is in the custody or control of
 - (i) a custodian,
 - (ii) a public body,
 - (iii) a police service,
 - (iv) a person or organization that receives funding from the government to provide services under this Act, or
 - (v) a prescribed person or organization; and
 - (c) is necessary to enable the Director to exercise the Director’s powers and perform the Director’s duties under this Act or the regulations, including those related to assessments, investigations and the provision of services and interventions.

Exception, solicitor-client privilege

- (2) Subsection (1) does not apply to information that is subject to solicitor-client privilege.

54. Director may disclose to third parties

Subject to section 56, the Director may disclose personal information without the consent of the person to whom it relates

- (a) to a caregiver with whom the Director has placed a child in need of protection;
- (b) to an official or organization providing child protection services in another jurisdiction;
- (c) for the purpose of
 - (i) conducting an assessment or an investigation,
 - (ii) a collaborative approach or a court proceeding under this Act,
 - (iii) case planning or integrated service delivery,
 - (iv) maintaining the information in an information system used in the administration of this Act, or
 - (v) monitoring and evaluating service delivery or quality improvement;
- (d) in aggregate, non-identifiable form;
- (e) to a person or organization for the purpose of research, compiling statistical data or academic activities provided the person or organization has entered into an agreement with the Director respecting the security, use, disclosure and destruction of the personal information;
- (f) where the Director has reasonable grounds to believe that it is necessary to protect the safety and well-being of a child; or
- (g) where the Director considers it is necessary in the administration of this Act.

Rights of Other Persons

55. No right of access except as provided in Act

- (1) No person has a right of access to a record or personal information except as provided in this section, subject to section 56.

Right of access to own personal information

- (2) A person, including a child, whether directly or through a representative of the child, has a right of access to and shall, on request, be provided with personal information about the person.

Right of child subject to Director's discretion

- (3) The right of a child under subsection (2) is subject to the discretion of the Director to refuse to provide the personal information after taking into consideration the child's age and maturity.

Right of access to information about child

- (4) A parent of a child has a right of access to and shall, on request, be provided with personal information about the child, except where
 - (a) the rights of the parent in respect of the child have been suspended or terminated by an order of the court; or
 - (b) the Director is of the opinion that it would constitute an unreasonable invasion of the child's privacy.

Right of access by law

- (5) The Director shall, on request, provide access to a record or disclose personal information without the consent of the person to whom it relates, where it is required by law for the purpose of

- (a) a criminal investigation or criminal court proceeding;
- (b) an investigation or inquest under the *Coroners Act* R.S.P.E.I. 1988, Cap. C-25.1;
- (c) a review or an investigation by the Child and Youth Advocate under the *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3; or
- (d) the exercise of a function of a Children’s Lawyer under the *Judicature Act*.

Limit on Rights

56. No access or disclosure

Notwithstanding sections 54 and 55, the Director shall not disclose personal information or provide access to a record or personal information, where the access or disclosure

- (a) is prohibited under the *Adoption Act* or the *Youth Criminal Justice Act* (Canada);
- (b) could reasonably be expected to result in physical or emotional harm to the person to whom the personal information relates or another person;
- (c) would identify a person who made a report under section 12, in contravention of subsection 12(4); or
- (d) could reasonably be expected to jeopardize an investigation under this Act or a criminal investigation.

Administration

57. Request for access

- (1) A request for access to a record or personal information under section 55 shall be made to the Director, in writing, and specify the nature of the record or personal information and the form of access requested.

Response to a request

- (2) The Director shall make every reasonable effort to respond not more than 30 days after receiving the request.

Form and contents of response

- (3) The Director shall respond in writing and specify
 - (a) whether access to all or part of the record or personal information requested is granted or refused;
 - (b) the time, place and manner in which access to the record or the personal information will be provided; and
 - (c) where access to all or part of the record or personal information requested is refused,
 - (i) the reasons for the refusal, and
 - (ii) the name of a person who can answer questions concerning the refusal.

58. Correction of personal information in a record

- (1) A person who believes there is an error or omission in the personal information about the person or the person’s child in a record may request, in writing, that the Director correct the error or omission.

Response to a request

- (2) The Director shall make every reasonable effort to respond not more than 30 days after receiving the request.

Correction

- (3) Where the Director determines that there is an error or omission, the Director shall
- (a) correct any error by removing the error;
 - (b) correct any omission by adding the information missing; and
 - (c) provide notice in writing of the Director's determination and correction to the person who made the request.

Refusal to correct

- (4) Where the Director determines that there is no error or omission, the Director shall
- (a) refuse to correct the record;
 - (b) provide notice in writing of the refusal to the person who made the request; and
 - (c) advise the person who made the request of the name of a person who can answer questions concerning the refusal.

59. Annotation of access or refusal to correct

- (1) The Director shall note on a record
- (a) every time a person accesses personal information in the record about the person or the person's child, on request; and
 - (b) every request for a correction of personal information in the record that is refused.

Corrections and annotations part of record

- (2) A notation made under subsection (1) and a correction made under section 58 form part of the record.

PART 9 – GENERAL MATTERS

60. Order or agreement from another jurisdiction

An agreement or court order made pursuant to the laws of another jurisdiction that

- (a) corresponds to an agreement or order available under this Act; and
- (b) is confirmed to be valid by a court or child protection authority of the other jurisdiction has, to the extent that it is consistent with this Act, the same effect in the province as if it had been made pursuant to this Act.

61. Liability protection

No action lies against the Director or other persons acting under the authority of this Act for actions done or omitted to be done or decisions made in good faith and properly carried out in accordance with this Act.

62. Offences

A person who does any of the following is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months, or to both a fine and imprisonment:

- (a) by act or omission wilfully contributes to a child being a child in need of protection;
- (b) fails to report or to provide information to the Director or a police officer in accordance with section 12;
- (c) knowingly makes a report or provides information that is false or misleading to the Director or a police officer pursuant to section 12;
- (d) discloses the identity of a person who made a report, in contravention of subsection 12(4);
- (e) fails to comply with a court order related to the care, custody or guardianship of a child;
- (f) obstructs or interferes with the Director in the exercise of the Director's powers or performance of the Director's duties under this Act;
- (g) removes or attempts to remove a child from, induces or attempts to induce a child to leave or harbours a child who leaves the custody of the Director or other person who is not a parent of the child or the care of a caregiver acting on behalf of the Director;
- (h) publishes information that identifies parties to, or a child who is the subject of, an agreement or proceedings pursuant to this Act, except where authorized by the court;
- (i) fails to comply with or contravenes an order made pursuant to this Act.

63. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing other factors that may be relevant to the best interests of the child;
- (b) prescribing other circumstances where the safety and well-being of a child is endangered causing the child to be in need of protection;
- (c) prescribing other circumstances that may impair a child's mental or emotional functioning causing emotional harm;
- (d) prescribing other required components of a family intervention plan;
- (e) respecting the application of this Act in respect of Indigenous children;
- (f) respecting the decisions of the Director that are subject to review by a review panel;
- (g) respecting the appointment and composition of a review panel;
- (h) respecting the process and procedures of a review;
- (i) prescribing other circumstances that may be investigated in relation to the safety and well-being of a child;
- (j) respecting collaborative approaches, including the use and disclosure of information derived from them, processes and procedures;
- (k) respecting the application for and the issuance and execution of warrants;
- (l) respecting court proceedings and court procedure under this Act;
- (m) respecting the placement of a child with a caregiver;
- (n) respecting supports and services provided under this Act;
- (o) prescribing a person or organization that may have information to which the Director has a right of access;
- (p) respecting access to, and the collection, use and disclosure of, information under this Act;

- (q) prescribing forms for the purpose of this Act;
- (r) defining any word or phrase used but not defined in this Act;
- (s) respecting any matter necessary and advisable to carry out effectively the intent and purpose of this Act.

64. Review by advisory committee

The Minister shall, every five years and in accordance with the regulations, appoint an advisory committee to

- (a) review the provisions of this Act and the supports and services provided pursuant to this Act;
- (b) conduct an impact assessment of this Act and the supports and services provided pursuant to it on the rights of children; and
- (c) make a report to the Minister respecting
 - (i) the operation and administration of this Act, and
 - (ii) whether or not the principles and purposes of this Act are being achieved.

65. Transitional, period of temporary custody

Any period during which a child was in the temporary custody of the Director following apprehension or pursuant to an agreement or order under the previous Act, is deemed to be a period during which the child was in the temporary custody of the Director under this Act.

Consequential Amendments

66. Adoption Act

- (1) **The *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1, is amended by this section.**
- (2) **Clause 1(h) of the Act is amended by the deletion of the words “*Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “*Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01,”.**
- (3) **Section 22 of the Act is amended**
 - (a) **in clause (b), by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”; and**
 - (b) **in the words immediately following subclause (c)(iv), by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”.**

67. Adult Protection Act

- (1) **The *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5, is amended by this section.**
- (2) **Section 19 of the Act is repealed.**

68. Child and Youth Advocate Act

(1) **The *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3, is amended by this section.**

(2) **Section 1 of the Act is amended**

(a) **in subclause (c)(ii), by the deletion of the words “21 years of age who is receiving a service under section 46 of the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “25 years of age who is receiving supports and services under section 50 of the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01”;**

(b) **by the repeal of clause (e); and**

(c) **in subclause (l)(i), by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”.**

(3) **Clause 12(2)(c) of the Act is amended by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”.**

(4) **Clause 15(2)(b) of the Act is amended by the deletion of the words “subsection 10(3) of the *Child Protection Act*” and the substitution of the words “section 12 of the *Child, Youth and Family Services Act*”.**

(5) **Clause 18(2)(b) of the Act is amended by the deletion of the words “section 10 of the *Child Protection Act*” and the substitution of the words “section 12 of the *Child, Youth and Family Services Act*”.**

(6) **Clauses 22(3)(c) and 22(4)(d) of the Act are repealed.**

69. Children’s Law Act

(1) **The *Children’s Law Act* R.S.P.E.I. 1988, Cap. C-6.1, is amended by this section.**

(2) **Clause 1(1)(j) of the Act is amended by the deletion of the words “*Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “*Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

(3) **Clause 37(b) of the Act is amended by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”.**

(4) **Subsection 60(3) of the Act is amended by the deletion of the words “*Child Protection Act*” and the substitution of the words “*Child, Youth and Family Services Act*”.**

(5) **The heading immediately before section 82 of the Act is repealed and the following substituted:**

Child, Youth and Family Services Act

- (6) **Section 82 of the Act is amended by the deletion of the words “Child Protection Act” wherever they occur and the substitution of the words “Child, Youth and Family Services Act”.**

70. Education Act

- (1) **The *Education Act* R.S.P.E.I. 1988, Cap. E-.02, is amended by this section.**
- (2) **Subsection 1(1) of the Act is amended**
- (a) **in clause (f), by the deletion of the words “Child Protection Act R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “Child, Youth and Family Services Act R.S.P.E.I. 1988, Cap. C-6.01”; and**
- (b) **in paragraph (p)(ii)(B), by the deletion of the words “subsection 13(2) of the *Child Protection Act*” and the substitution of the words “subsection 17(2) of the *Child, Youth and Family Services Act*”.**
- (3) **Clause 58(4)(e) of the Act is amended by the deletion of the words “Child Protection Act” and the substitution of the words “Child, Youth and Family Services Act”.**
- (4) **Section 82 of the Act is repealed and the following substituted:**

82. Duty to report

- (1) A teacher or other school staff member who has reasonable grounds to suspect that a student is in need of protection in accordance with section 3 of the *Child, Youth and Family Services Act* shall immediately report the matter to the Director of Child Protection in accordance with the *Child, Youth and Family Services Act*.

Disclosure to Director of Child Protection allowed

- (2) Nothing in this Act shall be construed to preclude the disclosure to the Director of Child Protection or a peace officer of information indicative that a child is in need of protection or relevant to a report or an investigation pursuant to the *Child, Youth and Family Services Act*.

71. Family Law Act

- (1) **The *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, is amended by this section.**
- (2) **Subsection 33(3) of the Act is amended by the deletion of the words “Child Protection Act R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “Child, Youth and Family Services Act R.S.P.E.I. 1988, Cap. C-6.01,”.**

72. Health Information Act

- (1) **The *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, is amended by this section.**
- (2) **Clause 4(2)(b) of the Act is repealed and the following substituted:**
- (b) the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01;

73. Health Services Payment Act

- (1) **The *Health Services Payment Act* R.S.P.E.I. 1988, Cap. H-2, is amended by this section.**
- (2) **Subsection 17(6) of the Act is amended by the deletion of the words “of child abuse or neglect or relevant to an investigation pursuant to the *Child Protection Act* R.S.P.E.I. 1988, Cap C-5.1” and the substitution of the words “that a child is in need of protection or relevant to an investigation pursuant to the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

74. Hospital and Diagnostic Services Insurance Act

- (1) **The *Hospital and Diagnostic Service Insurance Act* R.S.P.E.I. 1988, Cap. H-8, is amended by this section.**
- (2) **Subsection 6(6) of the Act is amended by the deletion of the words “of child abuse or neglect or relevant to an investigation pursuant to the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “that a child is in need of protection or relevant to an investigation pursuant to the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

75. Judicature Act

- (1) **The *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, is amended by this section.**
- (2) **Clause 33.1(8)(l) of the Act is amended by the deletion of the words “*Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “*Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

76. Maintenance Enforcement Act

- (1) **The *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1, is amended by this section.**
- (2) **Subsection 4(4) of the Act is amended by the deletion of the words “*Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “*Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01,”.**

77. Marriage Act

- (1) **The *Marriage Act* R.S.P.E.I. 1988, Cap. M-3, is amended by this section.**
- (2) **Clause 19(2)(d) of the Act is amended by the deletion of the words “a person of whom the Director of Child Protection has permanent guardianship under the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “in the permanent custody and guardianship of the Director of Child Protection under the *Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01,”.**

78. Social Assistance Act

- (1) **The *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3, is amended by this section.**
- (2) **Clause 1(c.1) of the Act is amended by the deletion of the words “*Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1” and the substitution of the words “*Child, Youth and Family Services Act* R.S.P.E.I. 1988, Cap. C-6.01,”.**

79. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(Bill No. 32)

Child, Youth and Family Services Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 7, 2023
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Darlene Compton, Speaker

Joseph Jeffrey, Clerk

Hon. Barb Ramsay
Minister of Social Development and Seniors

GOVERNMENT BILL

2023
1st SESSION, 67th GENERAL ASSEMBLY