



## **PLEASE NOTE**

This document, prepared by the [Legislative Counsel Office](#), is an office consolidation of this Act, current to December 9, 2010. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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**CHAPTER C-5.1**  
**CHILD PROTECTION ACT**

WHEREAS children are entitled to protection from abuse and neglect; Preamble  
AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults, and a right to special safeguards and assistance in the preservation of those rights and freedoms;  
AND WHEREAS parents have the right and responsibility for the care and supervision of their children, and children should only be removed from that care and supervision when other measures have failed or are inappropriate;  
AND WHEREAS the preservation of the cultural, racial, linguistic and religious heritage of a child promotes the healthy development of the child;  
AND WHEREAS children are entitled, no less than adults, based on their developmental capacity, to be heard in the course of and to participate in the processes that lead to decisions that affect them;  
AND WHEREAS the rights of children, families and individuals are guaranteed by the rule of law, intervention into the affairs of individuals and families should be governed by law so as to protect those rights and preserve the autonomy and integrity of the family wherever possible;  
AND WHEREAS the developmental needs of children require timely and relevant decision making consistent with their stage of development;  
AND WHEREAS children have a concept of time and developmental capacity that is different from that of adults, and services provided and proceedings taken pursuant to this Act should endeavour to respect the sense of time of a child;  
AND WHEREAS children should be provided for, as nearly as possible as if they were in the care and protection of prudent and conscientious parents, when it is necessary to remove them from the care and supervision of their parents;  
AND WHEREAS the prevention of abuse and neglect of children is a responsibility shared by the family, community and the province;

**1. In this Act**

- (a) “aboriginal child” means a child who  
(i) is registered in accordance with the *Indian Act* (Canada),  
(ii) has a biological parent who is registered in accordance with the *Indian Act* (Canada),  
(iii) is under 12 years old and has a biological parent who

Definitions

aboriginal child

	(A) is a descendant from an aboriginal person, and (B) considers himself or herself to be aboriginal, or (iv) is 12 years old or more, a descendant of an aboriginal person and considers himself or herself to be aboriginal;
abuse	(b) “abuse”, in relation to a child, means physical, mental, emotional or sexual exploitation, mistreatment or injury of the child;
alternative approach	(c) “alternative approach” means a method for developing a plan of care for a child through mediation, joint planning conference, family group planning conference or such other method of dispute resolution or joint planning as the Director considers appropriate;
apprehension	(d) “apprehension” means the taking of a child into custody by the Director, in accordance with this Act;
band	(e) “band” means a body of Indians as defined by the <i>Indian Act</i> (Canada);
band council	(f) “band council” means the governing body for a band, as defined by the <i>Indian Act</i> (Canada);
caregiver	(g) “caregiver” means a foster parent, an employee of a child care organization or other person who has the care of a child pursuant to section 48;
child	(h) “child” means a person under the age of 18 years;
child care organization	(i) “child care organization” means a boarding home, group home, residential centre, training centre, assessment centre or such other facility approved by the Minister;
child protection services	(j) “child protection services” means intervention with children, youths or parents, in accordance with this Act;
court	(k) “court” means the Family Division of the Supreme Court of Prince Edward Island;
custody	(l) “custody” means the legal authority and responsibility for possessing a child physically and providing for the normal daily requirements related to the care and development of the child;
delegate	(m) “delegate” means a person to whom the Director has delegated specific powers and duties of the Director, pursuant to section 5;
Department	(m.1) “Department” means the Department of Community Services, Seniors and Labour;
designated representative	(n) “designated representative” means a person designated by the band council to represent the band respecting an aboriginal child;

- (o) “Director” means the Director of Child Protection appointed pursuant to section 4; Director
- (p) “guardianship” means the legal responsibility and authority for making decisions respecting the person of a child; guardianship
- (q) “Minister” means the Minister of Community Services, Seniors and Labour; Minister
- (r) “neglect” means failure to provide a child with adequate care and guidance, or other acts of omission by a parent respecting a child, that are inappropriate for the child or likely to be harmful to the child; neglect
- (s) “parent” means parent
- (i) a birth or adoptive parent who has custody or guardianship rights to a child,
  - (ii) a person, who has stood *in loco parentis* to a child for a period of not less than one year and who has a continuing relationship with the child,
  - (iii) a legal guardian of a child, or
  - (iv) a person responsible for the care of a child and with whom the child resides,
- but does not include a person acting as a caregiver on behalf of the Director;
- (t) “peace officer” means a person defined as a peace officer pursuant to the *Criminal Code* (Canada); peace officer
- (u) “plan of care” means a description of plans for plan of care
- (i) the placement and care of a child,
  - (ii) services, programs or other intervention with a parent based on an assessment of the needs and best interests of the child, and the abilities and needs of a parent with respect to care and responsibilities for a child, and
  - (iii) services, programs or other intervention provided to a child based on an assessment of the needs and best interests of the child;
- (v) “prior Act” means the *Family and Child Services Act* R.S.P.E.I. 1988, Cap. F-2; prior Act
- (w) repealed by 2005,c.39,s.7; regional authority
- (x) “secure assessment” means involuntary detention for assessment and development of a plan of care pursuant to sections 51, 53 or 54; secure assessment

youth	(y) “youth” means a person over the age of 12 years and under the age of 18 years. 2000(2nd),c.3,s.1; 2005,c.40,s.3; 2005,c.39,s.7; 2010,c.28,s.1.
Primary purpose of Act	<b>2.</b> (1) The primary purpose of this Act is to protect children from harm due to abuse and neglect, within the context of section 9 and the best interests of the child.
Best interests of the child	(2) The best interests of the child means the interests that appear, to the Director, or to a court, to be best for the child under the circumstances, having regard to all relevant considerations, including <ul style="list-style-type: none"> <li>(a) the safety of the child;</li> <li>(b) the capacity of a parent to properly discharge parental obligations;</li> <li>(c) the physical, mental and emotional needs of the child, and the appropriate care or treatment to meet those needs;</li> <li>(d) the physical, mental and emotional level of development of the child;</li> <li>(e) the views of the child, where appropriate;</li> <li>(f) a secure place for the child and the development of a positive relationship as a member of a family;</li> <li>(g) the love, affection and ties between the child and persons who have had custody of the child;</li> <li>(h) the love, affection and ties between the child and other persons in the life of the child;</li> <li>(i) the cultural, racial, linguistic and religious heritage of the child;</li> <li>(j) if the child is aboriginal, the importance of preserving the cultural identity of the child;</li> <li>(k) the capacity of persons other than a parent to exercise custody rights and duties respecting a child;</li> <li>(l) the continuity of care for the child and the possible effect of disruption of that care on the child; and</li> <li>(m) the difference in the concept of time, and the developmental capacity of a child. 2000(2nd),c.3,s.2; 2010,c.28,s.2.</li> </ul>

#### ADMINISTRATION

Minister responsible for Act	<b>3.</b> (1) The Minister is responsible for the overall administration of this Act.
Duties of Minister	(2) The Minister shall <ul style="list-style-type: none"> <li>(a) ensure that child protection services are provided in the province in accordance with this Act;</li> <li>(b) ensure the provision of such facilities and programs as the Minister considers necessary for the provision of child protection services in the province; and</li> </ul>

(c) provide direction and ensure coordination of child protection services.

(3) The Minister may

Other powers of  
Minister

- (a) establish goals, objectives and guidelines for the delivery of child protection services;
- (b) enter into agreements with agencies or jurisdictions respecting the provision of child protection services;
- (c) allocate funding and other resources for the provision of child protection services; and
- (d) monitor and evaluate service delivery under this Act. 2000(2nd),c.3,s.4; 2005,c.39,s.7; 2010,c.28,s.4.

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

Director of Child  
Protection

(2) The Director shall have the following duties:

Duties of the  
Director

- (a) to assume the custody and guardianship of children pursuant to the provisions of this Act;
- (b) subject to the direction of the Minister, to administer and enforce the provisions of this Act;
- (c) to cause reports made pursuant to section 10 to be investigated;
- (d) to operate and deliver child protection services under this Act by employees of the Department;
- (e) to establish policies and procedures respecting all aspects of child protection services;
- (f) repealed by 2010,c.28,s.5;
- (g) to provide consultation and direction respecting child protection services provided under this Act;
- (h) repealed by 2010,c.28,s.5;
- (i) to submit to the Minister an annual review of child protection services in the province;
- (j) to advise the Minister and other persons on matters relating to child protection and the programs, facilities and resources necessary to carry out the requirements of this Act; and
- (k) to exercise the powers and duties required by this Act and such other powers and duties as the Minister may direct.

(3) The Minister shall appoint an acting Director to exercise the powers and duties of the Director where there is a vacancy in the office of Director or the Director is absent or unable to act. 2000(2nd),c.3,s.5.

Acting Director

5. (1) The Director may delegate to any person, the power to provide child protection services and the ability to exercise specified powers and duties of the Director in accordance with this Act.

Delegation, child  
protective services

Reference includes delegate	(2) References in this Act to a power or duty of the Director shall, unless otherwise specified, include a reference to a power or duty of a delegate under subsection (1), within the limits of the delegation.
No sub-delegation	(3) Delegated powers and duties of the Director under this section shall not be sub-delegated.
No derogation of powers	(4) Nothing in this section diminishes or derogates from the powers and duties of the Director pursuant to this Act. 2000(2nd),c.3,s.7; 2010,c.28,s.6.
Complaint process may be established	<b>6.</b> The Minister may establish a complaint process with respect to decisions of the Director, in accordance with the regulations. 2000(2nd),c.3,s.8; 2010,c.28,s.7.
Records	<b>7.</b> (1) The Director may keep records containing information gathered in the administration of this Act, and shall determine the access required to such records for the purpose of monitoring and evaluating service delivery provided under this Act.
Disclosure	(2) Subject to this section and the regulations, the Director may, with or without consent, disclose information contained in a record, where <ul style="list-style-type: none"> <li>(a) the person requesting the disclosure is over the age of 12 years and the subject of a record made under this Act or under the prior Act;</li> <li>(b) the disclosure, pursuant to clause (a), is made to a parent or guardian in the case of a person who is, in the opinion of the Director, incompetent;</li> <li>(c) the disclosure is made with respect to court proceedings under this Act;</li> <li>(d) the Director has reasonable grounds to believe that the disclosure is necessary to ensure the safety or essential well-being of the child to whom it relates;</li> <li>(e) the Director considers it necessary for the purpose of assessing needs, planning or providing care or services for the child;</li> <li>(f) the information is necessary to conduct an alternative approach under section 18;</li> <li>(g) the information is required for the purposes of a criminal investigation, a criminal court proceeding following an investigation, or for an investigation under this Act;</li> <li>(h) the disclosure is made to an official or an organization providing child protection services in another jurisdiction;</li> <li>(i) the information is provided to a person or organization for the purposes of maintaining it in information systems to be used for the administration of this Act;</li> </ul>

- (j) the information is required to establish who is responsible for the care of a child;
- (k) the disclosure is an aggregate of information which does not identify particular persons; or
- (l) the disclosure is essential for the administration of this Act.

(3) Subject to subsection (4), the Director may disclose identifying information with the written consent of the person who is the subject of the record.

Disclosure with consent

(4) Subject to the regulations, the Director may refuse to disclose, or by editing or other means, limit disclosure of information if there are reasonable grounds to believe that revealing the information may

Director may refuse disclosure

- (a) result in physical or emotional harm to the requesting person or to another person; or
- (b) lead to the identification of a person who made a report pursuant to section 10.

(5) Notwithstanding any other provisions of this section, the Director shall refuse to disclose, or by editing, limit disclosure of information, where the disclosure

Director shall refuse to disclose

- (a) may jeopardize a criminal investigation or an investigation under this Act; or
- (b) is prohibited by law.

(6) No person shall publish information disclosed by the Director under this Act, except in accordance with the purposes and conditions which governed the disclosure.

Publication of information

(7) Notwithstanding subsection (6), any person to whom information is disclosed pursuant to this section may use the information to publish statistical analyses, reports or commentaries, provided that identifying information is not revealed. 2000(2nd),c.3,s.9; 2010,c.28,s.8.

Statistical information

**8.** No person shall reveal information obtained pursuant to this Act except as permitted by this Act. 2000(2nd),c.3,s.10; 2010,c.28,s.9.

Prohibition from disclosure

#### CHILD IN NEED OF PROTECTION

**9.** A child is in need of protection where

Child in need of protection

- (a) the child has suffered physical harm inflicted by a parent;
- (b) the child is at substantial risk of suffering physical harm inflicted by a parent;
- (c) the child has suffered harm caused by
  - (i) neglect of the child by a parent,
  - (ii) failure of a parent to adequately supervise or protect the child,
 or

- (iii) failure of a parent to provide for the adequate supervision or protection of the child;
- (d) the child is at substantial risk of suffering harm caused by
  - (i) neglect of the child by a parent,
  - (ii) failure of a parent to adequately supervise or protect the child, or
  - (iii) failure of a parent to provide for the adequate supervision or protection of the child;
- (e) the child has been sexually abused by a parent or by another person where the parent knew or ought to have known of the possibility of sexual abuse of the child and the parent failed to protect the child;
- (f) the child is at substantial risk of sexual abuse by a parent or by another person where the parent knew or ought to have known of the possibility of sexual abuse of the child and the parent failed to protect the child;
- (g) the child has been harmed as a result of being sexually exploited for the purpose of prostitution and the parent has failed or been unable to protect the child;
- (h) the child is at substantial risk of being sexually exploited for the purpose of prostitution and the parent has failed or been unable to protect the child;
- (i) the child has been harmed as a result of being exposed to or involved in the production of child pornography and the parent has failed or been unable to protect the child;
- (j) the child is at substantial risk of being harmed as a result of being exposed to or involved in the production of child pornography and the parent has failed or been unable to protect the child;
- (k) the child has suffered emotional harm inflicted by a parent, or by another person, where the parent knew or ought to have known that the other person was emotionally abusing the child and the parent failed to protect the child;
- (l) the child is at substantial risk of suffering emotional harm caused by a parent, or by another person, where the parent knew or ought to have known, that the other person was emotionally abusing the child and the parent failed to protect the child;
- (m) the child has suffered physical or emotional harm caused by being exposed to domestic violence by or towards a parent;
- (n) the child is at substantial risk of suffering physical or emotional harm caused by being exposed to domestic violence by or towards a parent;
- (o) the child requires specific medical, psychological or psychiatric treatment to cure, prevent or ameliorate the effects of a physical or emotional condition or harm suffered, and the parent does not, or

- refuses to, obtain treatment or is unavailable or unable to consent to treatment;
- (p) the child suffers from a mental, emotional or developmental condition that, if not addressed, could seriously harm the child and the parent does not or refuses to obtain treatment or is unavailable or unable to consent to services or treatment to remedy or ameliorate the effects of the condition;
- (q) the child has been abandoned, or the only parent of the child has died or is unavailable to take custody of the child, and adequate provisions have not been made for the care of the child;
- (r) the child is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;
- (s) the child is less than 12 years old, and the child, in the opinion of the Director,
  - (i) may have killed or seriously injured another person,
  - (ii) poses a serious danger to another person, or
  - (iii) may have caused significant loss or damage to property, and the parent of the child does not obtain or is unwilling to consent to treatment for the child which may be necessary to prevent a recurrence of the incident or danger; or
- (t) the past parenting by the parent has put a child at significant risk of harm within the meaning of this section. 2010,c.28,s.10.

MANDATORY REPORTING

**10.** (1) Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall

Mandatory reporting

- (a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and
- (b) provide to the Director such additional information as is known or available to the person.

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

Confidential information

(3) Subject to subsection (5), no person shall reveal or be compelled to reveal the identity of a person who has made a report to the Director pursuant to subsection (1).

Identity of person reporting

(4) Subject to subsection (5), a person who makes a report or provides information pursuant to subsection (1) or who does anything to assist in

Not liable to civil action

an investigation carried out by the Director is not liable to any civil action in respect of providing such information or assistance.

False or misleading information

(5) Subsections (3) and (4) do not apply where a person knowingly makes a report or provides information which is false or misleading. 2000(2nd),c.3,s.22; 2010,c.28,s.11.

#### ASSESSMENT AND INVESTIGATION

Assessment

**11.** (1) Where a report has been made pursuant to section 10, or where it appears to the Director that a child may be in need of protection, or where a parent or child requests an assessment, the Director shall make an assessment of the circumstances affecting the child, regardless of the consent of any person, and the Director may determine that

- (a) no further action is required;
  - (b) a fuller investigation of the circumstances of the child should be taken pursuant to section 12;
  - (c) referrals should be made to community resources;
  - (d) apprehension of the child is necessary;
  - (e) an application under section 29 is necessary to protect the child;
- or
- (f) the person who made the report may be advised that the information provided in respect of the report does not meet the eligibility criteria for an investigation under this Act.

Subsequent requests

(2) Nothing in this section prevents the Director from determining that any requests for investigation are without foundation. 2000(2nd),c.3,s.11; 2010,c.28,s.12.

Investigation of circumstances

**12.** (1) Where the Director has reasonable grounds to believe that a child may be in need of protection, the Director may, regardless of the consent of any person, carry out an investigation of the circumstances and condition of the child to determine whether the child is in need of protection.

Investigation criteria

(2) An investigation by the Director may include an analysis of medical, health, social, residential, educational, emotional, economic, and other factors affecting the life of the child.

Powers of Director, investigation

(3) Notwithstanding any other Act, in conducting an investigation the Director may, without consent,

- (a) visit 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;
- (c) interview and examine the child;

- (d) interview the parent of the child;
- (e) interview persons who care for the child and persons who have opportunities to observe the child;
- (f) interview persons who provide health, social, educational or other services to the child or to the parent of the child;
- (g) require information to be provided to the Director from medical, health, social, educational and other service records concerning the child and the parent;
- (h) cause an examination to be made of the physical, mental and emotional health and development of the child;
- (i) request the parent of the child to undergo an examination of physical, mental and emotional health or other assessment related to parenting of the child;
- (j) require information to be provided about past parenting by individuals; and
- (k) consult such other persons and gather such other evidence as may be necessary to complete the investigation.

(3.1) Where the child who is the subject of an investigation is an aboriginal child and a registered member of a band, the Director shall notify a designated representative of the band that the Director is conducting the investigation.

Notice to  
designated  
representative

(3.2) Where the Director believes that the child who is the subject of an investigation is an aboriginal child who is entitled to be registered as a member of a band, the Director shall give notice that the investigation is taking place to a designated representative of the band that has been identified by

Identification of  
designated  
representative

- (a) the child, if the child is 12 years old or older; or
- (b) the parent of the child, if the child is less than 12 years old.

(4) Upon the application of the Director, the court may order any person

Order cooperation

- (a) to provide information to the Director;
- (b) to allow the Director access to a person, place or record; or
- (c) to cooperate with an investigation by the Director,

under this section.

(5) Subject to subsection (6) and the regulations, the Director shall make reasonable efforts to give a general report of the results of an investigation to

Report of  
investigation

- (a) the parent of the child, who is the subject of the investigation; and
- (b) the child who is the subject of the investigation, if the child is at least 12 years old and apparently capable of understanding the circumstances of the investigation.

- Report not required, where
- (6) A report is not required pursuant to subsection (5) where
- (a) the Director has reasonable grounds to believe that such a report would endanger the safety of the child or any other person; or
  - (b) a criminal investigation related to the matter has been initiated or is likely to occur. 2000(2nd),c.3,s.12; 2010,c.28,s.13.

#### PROVISION OF CHILD PROTECTION SERVICES

- Agreement for child protection services
- 13.** (1) Where the Director concludes, after an investigation, that a child is in need of protection, the Director may offer child protection services to the parent.

- Idem*
- (2) The Director may, following an investigation, enter into an agreement with a child for the provision of child protection services in respect of the child, independent of the parent of the child, where
- (a) the child is at least 16 years old and is apparently capable of understanding the agreement; and
  - (b) either
    - (i) the parent of the child is unavailable to consent, despite reasonable efforts by the Director to make contact with the parent,
    - (ii) consultation with the child and the parent indicates that serious difficulties exist between them, making it impracticable to make an agreement with the parent for the benefit of the child,
    - (iii) the child no longer lives with the parent, or
    - (iv) the Director determines that the involvement of the parent would likely be harmful to the best interests of the child.

- Term of agreement
- (3) The initial term of an agreement for the provision of child protection services in respect of a child shall not exceed six months where the agreement is entered into by the Director with
- (a) a parent of the child; or
  - (b) a child who is at least 16 years old.

- Renewal of agreement, additional terms
- (4) The Director may renew an agreement for the provision of child protection services in respect of a child who is less than 16 years old for additional terms which do not collectively exceed a maximum of 12 months.

- Additional terms for child over 16 years
- (5) An agreement for child protection services in respect of a child over the age of 16 years may be renewed for additional terms until the child reaches the age of 18 years.

- Child not to be compelled to receive child protection services
- (6) Notwithstanding subsection (2), where
- (a) the parent of a child in need of protection refuses to consent to the provision of child protection services to the child; and
  - (b) the child is at least 16 years old,

the child shall not be compelled to receive child protection services if the child is apparently capable of understanding an agreement for the provision of such services, unless ordered to do so by the court under this Act.

(7) Where an investigation has been completed in respect of a child who is an aboriginal child and a registered member of a band, the Director shall notify a designated representative of the band of the outcome of the investigation and whether an agreement for the provision of child protection services in respect of the child has been entered into with the parent of the child, or with the child, under this section.

Notice of investigation outcome of an aboriginal child

(8) Where an investigation has been completed in respect of a child and the Director believes that the child is an aboriginal child who is entitled to be registered as a member of a band, the Director shall give notice of the outcome of the investigation to a designated representative of the band that has been identified by

Identification of designated representative

- (a) the child if the child is 12 years old or older; or
  - (b) the parent of the child if the child is less than 12 years old.
- 2000(2nd),c.3,s.13; 2002,c.2,s.1; 2010,c.28,s.15.

**14.** Repealed by 2008,c.28,s.17. 2000(2nd),c.3,s.14; 2002,c.2,s.2; 2010,c.28,s.17.

Agreement for child protection services, with youth

**15.** (1) Where the Director has reasonable grounds to believe

Abandoned child

- (a) that a child has been abandoned, or that the only parent of a child has died or is unavailable to take custody of the child; and
  - (b) adequate provision has not been made for the care of the child,
- the Director may assume temporary custody of the child for a period not exceeding 72 hours in order to locate a parent or other relative of the child who is willing and able to provide care for the child.

(2) Nothing in this section precludes an apprehension of the child pursuant to section 23. 2000(2nd),c.3,s.15.

Apprehension not precluded

#### ALTERNATIVE APPROACHES

**16.** (1) Subject to the regulations, where the Director has determined that a child is in need of protection and no agreement has been made with the parent of the child respecting child protection services, the Director may initiate an alternative approach to developing a plan of care for the child.

Alternative approaches

(2) A plan of care developed as an alternative approach is subject to the approval of the Director.

Director's approval required

(3) Notwithstanding any other provision of this section, where a child is 12 years old or more, a plan of care shall not be effective unless

Child's views

- (a) the plan of care has been explained to the child in a manner appropriate to the child; and
  - (b) the Director has considered the views of the child.
- 2000(2nd),c.3,s.16; 2010,c.28,s.16(1)(a).

**Time limits**      **17.** (1) Subject to section 18, a plan of care made pursuant to section 16 shall not exceed 6 months in duration, but it may be renewed by the parties for not more than two additional 6 month periods.

**Adjourn, withdraw application**      (2) Notwithstanding sections 36 and 37, where the Director has made an application pursuant to section 29 and the Director considers that an alternative approach may be successful, the Director may request an adjournment or withdraw the application. 2000(2nd),c.3,s.17.

#### CUSTODY AND GUARDIANSHIP BY AGREEMENT

**Temporary Agreement**      **18.** (1) Where, after an investigation, the Director determines that a child is in need of protection, the Director may enter into an agreement with a parent of the child whereby the parent transfers temporary custody and guardianship of the child to the Director.

**Conditions required for an agreement**      (2) Before making an agreement pursuant to subsection (1), the Director may consider the opinions of other persons respecting the care of the child and the Director shall

- (a) consider the opinions and proposals for care of the child which a non-custodial parent may propose;
- (b) where a child is 12 years old or more, explain in a manner appropriate to the child, the reasons for and the nature, effect and implications of the proposed agreement to the child, and consider the views of the child; and
- (c) be satisfied that the agreement is in the best interests of the child.

**Terms of agreement**      (3) An agreement made under this section shall include the following terms:

- (a) a transfer of temporary custody and guardianship of the child to the Director;
- (b) a plan of care for the child;
- (c) terms of access to the child by a parent or other person;
- (d) the duration of the agreement and its manner of termination;
- (e) the financial or other contributions to be made by the parent towards the care of the child; and
- (f) other terms as agreed.

**More than one child**      (4) An agreement made pursuant to this section may apply to more than one child.

- (5) The initial term of an agreement made under this section shall not exceed Term of agreement
- (a) 3 months respecting a child who is 5 years old or less; or
  - (b) 6 months respecting a child who is 6 years old or more.
- (6) An agreement made under this section may be renewed for Renewals additional terms, provided the child shall not be in the continuous custody of the Director under the agreement, for a period exceeding
- (a) 12 months, where the child is 5 years old or less; or
  - (b) 18 months, where the child is between the ages of 6 and 12 years.
- (6.1) Notwithstanding subsection (6), agreements made under this Maximum terms of agreements section shall not exceed a cumulative period of
- (a) 18 months, where the child is 5 years old or less; or
  - (b) 24 months, where the child is between the ages of 6 and 12 years.
- (6.2) Notwithstanding subsections (6) and (6.1), if the Director Exceptional circumstances determines that exceptional circumstances exist, the Director may allow for a longer cumulative period of agreements.
- (7) Where a child is over 12 years old, an agreement may be renewed Over 12 for any number of terms until the child reaches 18 years, provided the Director reviews the agreement annually.
- (8) For the purposes of this section, the date of the initial agreement is Date the date used to calculate
- (a) the age of the child; and
  - (b) the total continuous custody. 2000(2nd),c.3,s.18; 2010,c.28,s.18.
- 18.1** (1) Where Notice of temporary agreement for aboriginal child
- (a) the Director enters into a temporary agreement under subsection 18(1) with a parent of a child; and
  - (b) the child is an aboriginal child and a registered member of a band, the Director shall notify a designated representative of the band that an agreement has been entered into between the Director and the parent of the child for the transfer of temporary custody and guardianship of the child to the Director.
- (2) Where Identification of designated representative
- (a) the Director enters into a temporary agreement under subsection 18(1) with a parent of a child; and
  - (b) the Director believes that the child is an aboriginal child who is entitled to be registered as a member of a band,
- the Director shall give notice of a temporary agreement to a designated representative of the band that has been identified by

- (c) the child, if the child is 12 years old or older; or
  - (d) the parent of the child, if the child is less than 12 years old.
- 2010,c.28,s.19

Termination notice  
by party

**19.** (1) A party to an agreement made pursuant to section 18 may terminate it at any time by giving 15 days written notice to the other party.

Return of child

(2) Subject to subsection (3), where

- (a) an agreement is about to expire and is not renewed; or
- (b) notice of termination is given pursuant to subsection (1),

the Director shall, on or before the date of expiry or termination, return the child to the parent in whose custody the child was at the time the agreement was made.

Director opposes  
return of child

(3) Where the Director has reasonable grounds to believe that the child would be in need of protection if returned pursuant to subsection (2), the Director shall apply, on or before the date of expiry or termination, for an order pursuant to section 29.

Custody pending  
hearing

(4) Unless the court otherwise orders temporary custody and guardianship of the child, as applicable, remains with the Director pending the interim hearing, where the Director makes an application in accordance with subsection (3). 2000(2nd),c.3,s.19; 2010,c.28,s.20.

Permanent  
surrender

**20.** (1) Where the Director determines after an assessment or an investigation that the parent of a child is unable or unwilling to provide for a child and presents no alternative plan, or the plan for the child is not acceptable to the Director, the parent may make an agreement with the Director for the permanent surrender to the Director of the custody and guardianship of the child.

More than one child

(2) An agreement pursuant to this section may apply to more than one child.

Considerations

(3) Before entering into an agreement with the parent of a child pursuant to this section, the Director shall

- (a) consider the opinions and proposals for the care of the child presented by a non-custodial parent;
- (b) explain to the child in a manner appropriate to the child, the reasons for and the nature and effect of the proposed agreement, and consider the views of the child;
- (c) cause further assessment to be made, where the child proposes an alternative;
- (d) cause further assessment to be made, where the child is over 12 years old and expresses opposition to the proposed agreement; and

(e) be satisfied that permanent surrender of custody and guardianship of the child is in the best interests of the child.

All guardians sign

(4) Unless the court otherwise orders, no agreement made pursuant to this section is valid unless all persons who have rights of guardianship respecting a child have signed it.

(5) No agreement may be made pursuant to this section unless the child who is the subject of the agreement is at least 14 days old at the time the agreement is executed. 2000(2nd),c.3,s.20.

Minimum age of child

**21.** (1) Subject to subsection (2), where an agreement is made pursuant to section 20, the rights and obligations of the parent of the child and all other guardianship rights with respect to the child are extinguished, and the Director has all rights to custody and guardianship of the child including the right to give or to withhold consent to the adoption of the child.

Parent's rights extinguished

(2) A parent of a child, who makes an agreement pursuant to section 20, may give written notice of termination of the agreement to the Director, not later than 14 days after signing the agreement.

Termination notice

(3) Where the Director receives a notice of termination pursuant to subsection (2), the Director shall, within 30 days,  
 (a) return the child to the parent in whose custody the child was at the time of making the agreement; or  
 (b) where the Director has reasonable grounds to believe that the child would be in need of protection if returned, apply for an order pursuant to section 29.

Return of child

(4) Unless the court otherwise orders, custody and guardianship of the child shall remain with the Director pending the hearing, where the Director applies for an order in accordance with clause (3)(b). 2000(2nd),c.3,s.21.

Custody in Director pending hearing

**22.** Renumbered and moved to section 10 by 2010,c.28,s.11(3). 2000(2nd),c.3,s.22; 2010,c.28,s.11.

Mandatory reporting

#### APPREHENSION OF A CHILD

**23.** (1) The Director may apprehend a child, without a warrant, where the Director has reasonable grounds to believe that

Apprehension of child

(a) a child is in need of protection; and  
 (b) a less intrusive course of action will not adequately protect the health or safety of the child.

(1.1) Where the Director has reasonable grounds to believe that

Apprehension without warrant

- (a) a child is in need of protection; and
- (b) either
  - (i) the health or safety of the child is in immediate jeopardy; or
  - (ii) there is an immediate risk that the child or the child and the parent are about to leave the area,

the Director may, without a warrant and regardless of the consent of any person, enter, by force if necessary, any premises where the child is believed to be present or to reside, and search for, locate and take the child into the custody of the Director.

Peace officer to assist

(2) A peace officer shall assist the Director in the apprehension of a child under this section, when the Director requests that assistance. 2000(2nd),c.3,s.23; 2002,c.2,s.3.

Warrant for child

**24.** (1) The court may, on the application of the Director without notice, grant a warrant to the Director where the court is satisfied that

- (a) there are reasonable grounds to believe that
  - (i) a child is in need of protection, and
  - (ii) a less intrusive course of action will not adequately protect the health or safety of the child;
- (b) the Director has attempted to apprehend a child pursuant to section 23; and
- (c) the parent of the child, or other person caring for the child, has refused to give up the child or to permit entry to the premises where the Director reasonably believes the child to be present or to reside.

Warrant in respect of child not born

(1.1) The court may, on the application of the Director without notice, grant a warrant to the Director, for execution immediately after the birth of a child, where the court is satisfied that there are reasonable grounds to believe that

- (a) the child will be a child in need of protection on its birth; and
- (b) a less intrusive course of action will not adequately protect the health or safety of the child.

Apprehension at birth of aboriginal child

(1.2) Where the Director plans to apprehend a child on its birth and the Director has reason to believe the child is an aboriginal child who will be entitled to be registered as a member of a band, the Director may notify the designated representative of the band of the Director's plan to apprehend the aboriginal child.

Identification of designated representative

(1.3) Where a parent of a child referred to in subsection (1.2)

- (a) is registered as a member of a band; or
- (b) is not registered as a member of a band and is believed by the Director to be an aboriginal person who is entitled to be registered as a member of a band, the Director shall notify the designated

representative of the band that has been identified by the parent, of the Director's plan to apprehend the child under this section.

(2) A warrant issued pursuant to this section authorizes the Director or the Director assisted by a peace officer, regardless of the consent of any person, to

Authority of warrant

- (a) enter, by force if necessary, any premises where there are reasonable grounds to believe that the child is present or resides;
- (b) search those premises for the child; and
- (c) apprehend and take the child into custody.

(3) A warrant issued pursuant to this section may be transmitted to the Director by facsimile. 2000(2nd),c.3,s.24; 2002,c.2,s.4; 2010,c.28,s.21.

Transmit by fax

(4) Repealed by 2002,c.2,s.4.

Search for child

(5) Repealed by 2002,c.2,s.4.

Child transferred to Director

**25.** (1) Where a peace officer believes that a child is in need of protection, the peace officer may take the child to a place of safety and

Child taken to place of safety

- (a) shall notify the Director forthwith; and
- (b) at the Director's request, deliver the child to the Director or to such other person as the Director may specify.

(2) This section does not apply where a child is detained pursuant to the *Young Offenders Act* (Canada). 2000(2nd),c.3,s.25.

Application

**26.** (1) It is not necessary that a child be identified by name for the purpose of any apprehension, search warrant or order pursuant to this Act.

Identification of child

(2) A child in the custody of the Director, pursuant to section 24 or section 25, shall be deemed to have been apprehended by the Director pursuant to section 23. 2000(2nd),c.3,s.26.

Deemed apprehension

**27.** (1) Where a child is apprehended under this Act, the Director shall

Apply for order after apprehension

- (a) make all reasonable efforts to give notice of the apprehension and the reasons for it, to the parent of the child, as soon as reasonably possible;
  - (a.1) notify, in the case of a child who is an aboriginal child and a registered member of a band, the designated representative of the band that the child has been apprehended; and
- (b) not later than 4 clear days after the apprehension, apply for an order under section 29.

(1.1) Where the Director believes that a child apprehended under this Act is an aboriginal child who is entitled to be registered as a member of

Identification of designated representative

a band, the Director shall give notice that the child has been apprehended to a designated representative of the band that has been identified by

- (a) the child, if the child is 12 years old or older; or
- (b) the parent of the child, if the child is less than 12 years old.

Return of the child (2) Notwithstanding clause (1)(b), where the Director determines that it is in the best interests of the child to return the child to the parent in whose custody the child was at the time of apprehension, the Director shall

- (a) return the child instead of making an application pursuant to section 29;
- (a.1) notify, in the case of a child who is an aboriginal child and a registered member of a band, the designated representative of the band of the Director's intention to return the aboriginal child to a parent of the child; and
- (b) submit a report to the Minister respecting the apprehension and the reasons for returning the child. 2000(2nd),c.3,s.27; 2010,c.28,s.22.

Custody, where apprehension **28.** (1) Unless the court otherwise orders, the Director has custody and guardianship of an apprehended child except where the child is returned pursuant to clause 27(2)(a).

Placement of child (2) The Director may place an apprehended child in the care of a member of the child's extended family who has been assessed and approved by the Director, or of another caregiver who has been assessed and approved by the Director. 2000(2nd),c.3,s.28; 2010,c.28,s.23.

#### COURT APPLICATIONS

Application for order **29.** (1) The Director may apply to the court for an order for

- (a) supervision;
- (b) temporary custody and guardianship followed by supervision;
- (c) temporary custody and guardianship; or
- (d) permanent custody and guardianship,

of a child in need of protection.

Two stage hearing (2) An application pursuant to subsection (1) shall be conducted in two stages

- (a) a protection hearing pursuant to section 36; and
- (b) a disposition hearing pursuant to section 37.

Dates for hearings (3) The date for a protection hearing shall be set in accordance with section 31. 2000(2nd),c.3,s.29.

**30.** (1) A parent of a child has the right to be heard and the right to counsel on applications under this Act, except applications that are made without notice by the Director.

Right to be heard  
and to counsel

(2) Where the child who is the subject of a protection or disposition hearing under this Act is an aboriginal child, the court shall consider the submissions at the hearing of the designated representative of the band or counsel for the designated representative. 2000(2nd),c.3,s.30.

Court shall consider  
band submissions

**31.** (1) Where an application is made pursuant to section 29, the Registrar of the Court of Appeal and the Supreme Court shall fix a date for an interim hearing not later than 4 clear days from the date of filing of the application.

Application for  
court date

(2) The parent from whom the child was apprehended, and any other custodial parent who is known to the Director and who may reasonably be served shall be served with a copy of the application under section 29 together with 2 clear days notice of the interim hearing under this section.

Notice to parent

(3) The Director shall, at the interim hearing, present evidence respecting

Evidence

(a) where the child was not apprehended, the grounds for believing the child is in need of protection and an interim plan of care for the child; or

(b) where the child was apprehended,

(i) the grounds for believing the child is in need of protection,

(ii) the circumstances respecting the apprehension;

(iii) considerations by the Director of less disruptive measures than apprehension; and

(iv) an interim plan of care for the child.

(4) Where the court finds that a *prima facie* case has not been made to find the child in need of protection, the court shall dismiss the application and, in the case of an apprehension, return the child to the parent in whose custody the child was at the time of apprehension.

No *prima facie* case

(5) Where the court is satisfied that a *prima facie* case has been made that the child is in need of protection, the court

*Prima facie* case

(a) shall set a date for a protection hearing;

(b) shall order that the child

(i) remain with or be placed in the custody of a parent of the child, subject to the supervision of the Director,

(ii) remain in or be placed in the custody and guardianship of the Director, or

	(iii) remain with, or, where applicable, be returned to the parent in whose custody the child was at the time of apprehension, subject to the supervision of the Director; and (c) may include terms in the order as set out in subsection 38(3) or (4).
Variation	(6) The court may, on the application of the Director, vary an order made pursuant to subsection (5) at any time.
Investigation continues	(7) Nothing in subsection (5) impedes the powers of the Director to continue or complete an investigation respecting the child.
Placement of child	(8) Where the Director has custody and guardianship of a child pursuant to subsection (5) or (6), the Director may place the child in the care of a member of the child's extended family who has been assessed and approved by the Director, or of another caregiver who has been assessed and approved by the Director. 2000(2nd),c.3,s.31; 2002,c.2,s.5; 2008,c.20,s.72(10); 2010,c.28,s.24.
Notice of protection hearing	<b>32.</b> (1) The Director shall serve a notice of the protection hearing on (a) the parent from whom the child was apprehended; and (b) any parent who is known to the Director and who may reasonably be served.
Notification of protection hearing of aboriginal child	(2) Where an aboriginal child is registered as a member of a band, the Director shall serve 10 days' notice of the protection hearing on a designated representative of the band.
<i>Idem</i>	(3) Where the Director believes that a child is an aboriginal child who is entitled to be registered as a member of a band, the Director shall serve 10 days' notice of the protection hearing on a designated representative of the band that has been identified by (a) the child, if the child is 12 years old or older; or (b) the parent of the child, if the child is less than 12 years old. 2000(2nd),c.3,s.32; 2002,c.2,s.6; 2010,c.28,s.25.
Dispensing with service	<b>33.</b> The court may make an order dispensing with service of a notice under this Act, where (a) the identity or whereabouts of a person is unknown; (b) the person is evading service; (c) service cannot be reasonably effected; or (d) the court considers it appropriate. 2000(2nd),c.3,s.33.
Explanation to child, counsel	<b>34.</b> (1) Where the Director has made an application pursuant to section 29, and the child who is the subject of the proceedings is at least 12 years old and apparently capable of understanding the circumstances,

- (a) the Director shall explain, to the degree that the child can understand, the nature of the proceedings and their possible implications to the child; and
- (b) the court may order that the child be represented by counsel at the expense of the Director.

(2) It is not necessary that the child who is the subject of a hearing 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. 2000(2nd),c.3,s.34.

Child need not be present

**35.** (1) No person shall be present at a hearing pursuant to this Act except

Hearing private

- (a) the parents of the child and persons having custody or guardianship rights respecting the child;
- (b) if the child is an aboriginal child, a designated representative of the band served with the notice of hearing;
- (c) the Director or delegates of the Director;
- (d) the child who is the subject of the hearing, if the child is at least 12 years old and apparently capable of understanding the circumstances;
- (e) counsel; and
- (f) such other persons as the court may consider appropriate.

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

Child evidence

(3) The court may admit evidence taken at a previous hearing pursuant to this Act or to the prior Act with respect to the child or a sibling of the child, without hearing the witness who gave the evidence at the previous hearing. 2000(2nd),c.3,s.35.

Evidence from previous hearings

**36.** (1) Unless the parties otherwise agree, a protection hearing shall be commenced not later than 40 days from the completion of the interim hearing.

Protection hearing in 40 days

(2) Notwithstanding subsection 29(2) and subsection (1), the court, with the consent of the parties, may combine the protection hearing and the disposition hearing into one hearing.

Combined hearings

(3) Where, at the conclusion of a protection hearing, the court

- (a) finds that a child is not in need of protection, the court shall dismiss the application and, if applicable, order that the child be returned to the parent of the child in whose custody the child was at the time of the apprehension or of the interim hearing; or

Dismissal of application

(b) finds that a child is in need of protection, the court shall schedule a disposition hearing, in accordance with subsection 37(1).

Consent order	(4) Notwithstanding subsection 29(2) and clause (3)(b), the court may, after finding that a child is in need of protection, and with the consent of the parties, make a disposition order, after considering the best interests of the child. 2000(2nd),c.3,s.36.
Disposition hearing	<b>37.</b> (1) Unless the parties otherwise agree, where a child is found to be in need of protection, the court shall commence a disposition hearing not later than 20 days from the decision of the court made pursuant to clause 36(3)(b).
Plan of care	(1.1) The Director shall, at least 10 days prior to the commencement of the disposition hearing, file with the court and serve on each parent served under subsection 32(1), a copy of the Director's proposed plan of care for the child.
Alternative plan of care	(1.2) Each parent who wishes to submit an alternative plan of care for the child for consideration at the disposition hearing shall, at least five days prior to the commencement of the disposition hearing, file it with the court and serve it on the Director.
Notice to band	(2) Where the child is believed to be an aboriginal child and a member of a band, the Director shall serve 10 days notice of a disposition hearing, <ul style="list-style-type: none"> <li>(a) if the child is registered or entitled to be registered as a member of a band, on a designated representative of the band; or</li> <li>(b) if the child is not registered as a member of a band and is an aboriginal child, on a designated representative of a band that has been identified by <ul style="list-style-type: none"> <li>(i) the child, if the child is 12 years old or older, or</li> <li>(ii) the parent of the child if the child is less than 12 years old.</li> </ul> </li> </ul>
Considerations	(3) At a disposition hearing, the court shall consider the evidence, including that adduced at the protection hearing, and the plan of care for the child, proposed by the Director and by the parent of the child.
Plan of care	(4) Where the Director believes that a child is an aboriginal child who is entitled to be registered as a member of a band, the Director shall consult and collaborate with the designated representative of the band in developing a plan of care for the child.
Not applicable, where	(5) Subsections (1) and (2) do not apply where the court has combined the hearings pursuant to subsection 36(2) or has made a disposition order pursuant to subsection 36(4). 2000(2nd),c.3,s.37; 2002,c.2,s.7; 2010,c.28,s.26.

- 38.** (1) At the conclusion of a disposition hearing, the court may
- (a) dismiss the application and order the child to be returned to the parent in whose custody the child was at the time of apprehension or the interim hearing; and
  - (b) vary, suspend or revoke any existing custody order or agreement with respect to the child.
- Decision
- (2) Subject to section 41, at the conclusion of a disposition hearing, the court may order, after consideration of the best interests of the child,
- (a) that the child remain with or be placed in the custody of a parent of the child, subject to the supervision of the Director, for a period not exceeding 6 months;
  - (b) that the child be placed in the temporary custody and guardianship of the Director;
  - (c) that the child be placed in the temporary custody and guardianship of the Director for a specified period, followed by a return to the custody of the parent subject to the supervision of the Director, for a cumulative period not exceeding 6 months;
  - (d) that the child be placed in the permanent custody and guardianship of the Director; or
  - (e) that the child be placed in the permanent custody and guardianship of a parent.
- Disposition order
- (3) A disposition order that requires supervision by the Director, made pursuant to this section, may include the following terms:
- (a) a requirement that the Director supervise the child;
  - (a.1) a requirement that during a period of supervision the Director shall be permitted to see the child on a regular basis, independent of a parent;
  - (a.2) a requirement that appointments with the Director during a period of supervision be scheduled in a manner consistent with the plan of care submitted by the Director;
  - (b) directions to allow the Director to provide child protection services to the child or for the benefit of the child;
  - (c) directions respecting the place of residence of the child and the persons residing with the child;
  - (d) directions respecting contact with the child by any person;
  - (e) requirements respecting assessment, treatment or services to be obtained by a parent; and
  - (f) such other terms as the court may consider appropriate in the circumstances.
- Terms of supervision order
- (4) A disposition order that places temporary custody and guardianship of a child with the Director, made pursuant to this section may include the following terms:
- Terms of temporary order

	<ul style="list-style-type: none"> <li>(a) access to the child by a parent or other person, subject to reasonable terms and conditions;</li> <li>(b) requirements respecting the assessment, treatment or services to be obtained for the child;</li> <li>(c) requirements respecting the assessment, treatment or services to be obtained by a parent;</li> <li>(d) return to the custody of the parent under the supervision of the Director, upon the fulfilment of certain conditions; and</li> <li>(e) such other terms as the court may consider appropriate in the circumstances.</li> </ul>
Parent's rights extinguished	(5) Subject to section 41, where a disposition order is made pursuant to clause (2)(d), the rights and obligations of the parent of the child and any other guardianship rights with respect to the child are extinguished, and the Director has all rights to custody and guardianship of the child, including the right to give or withhold consent to the adoption of the child. 2000(2nd),c.3,s.38; 2002,c.2,s.8; 2010,c.28,s.16(1)(b).
Review of order	<b>39.</b> (1) Prior to its expiry, the Director may apply to the court for a review of an order made pursuant to clause 38(2)(a), (b) or (c).
Notice of review hearing	(2) The Director shall give 10 days notice of a review hearing to <ul style="list-style-type: none"> <li>(a) the parent of the child; and</li> <li>(b) where the child is an aboriginal child, to the designated representative of the band, in accordance with subsection 37(2).</li> </ul>
Review order	(3) Subject to section 41, upon the conclusion of a review hearing, the court may terminate, vary or make such additional order as the court may consider reasonable.
Commencement of review hearing	(4) A review hearing shall be commenced not later than 45 days from the date of filing of an application for review, unless <ul style="list-style-type: none"> <li>(a) otherwise ordered by the court, where the Director is seeking permanent custody and guardianship of a child; or</li> <li>(b) otherwise agreed by the parties, where the Director is not seeking permanent custody and guardianship of a child.</li> </ul>
Court order	(4.1) Notwithstanding subsection (4), no court order or agreement shall result in a review hearing being commenced more than 60 days from the date of filing of an application for review.
Previous hearing	(5) At a review hearing, the court may consider evidence taken at a previous hearing under this Act, respecting the child or a sibling of the child.

(6) Custody and guardianship of a child continues in accordance with the order under review, pending the completion of the review hearing. 2000(2nd),c.3,s.39; 2005,c.3,s.1. Custody continues

**40.** The burden of proof for any application pursuant to this Act shall be on a preponderance of evidence within the context of the best interests of the child. 2000(2nd),c.3,s.40. Burden of proof

**41.** (1) The initial term of an order for temporary custody and guardianship of a child shall not exceed Initial term of order  
 (a) 3 months respecting a child who is 5 years old or less; or  
 (b) 6 months respecting a child who is 6 years old or more.

(2) A disposition order may be renewed provided that the total cumulative time that the child is in the custody and guardianship of the Director under a disposition order and renewals of the order shall not exceed Renewal of temporary orders  
 (a) 12 months respecting a child who is 5 years old or under; or  
 (b) 18 months respecting a child who is 6 years old or over.

(3) Notwithstanding subsection (2), in exceptional circumstances, orders for temporary custody and guardianship of a child may be renewed for one additional period of 6 months. Additional renewal

(4) For the purposes of this section, the age of the child is determined as of the date of an application made under section 29. Age

(5) Nothing in this section prevents future applications by the Director pursuant to section 29, respecting any child. 2000(2nd),c.3,s.41. Future applications

**42.** An appeal lies to the Court of Appeal from a decision of the court pursuant to subsection 31(4), clause 36(3)(a), section 38, subsection 39(3), and sections 50 and 52 within 30 days of the date of the decision. 2000(2nd),c.3,s.42; 2002,c.2,s.9; 2008,c.20,s.72(10). Appeal

**43.** (1) The court, on the application of the Director, may grant a search warrant for the location and return of a child that has left or been taken from the care of the Director. Search warrant

(2) A search warrant granted pursuant to subsection (1) authorizes the Director or a peace officer to enter and search any premises where, on reasonable grounds, the child is believed to be present, and to locate and return the child to the custody of the Director. 2000(2nd),c.3,s.43. Idem

**44.** (1) Where a child is in the custody and guardianship of the Director pursuant to this Act, the court may order that any person be restrained from contact or communication with the child or that contact or Restraining order

communication with the child be subject to such conditions as the court may consider appropriate.

Monitor restraining order

(2) The Director may monitor adherence to a restraining order issued pursuant to subsection (1) and where the Director has reasonable grounds to believe the order is being contravened, the Director may take such action as the Director considers necessary to restrict contact with the child in accordance with the order. 2000(2nd),c.3,s.44.

Termination of permanent agreement or order

**45.** (1) An agreement or order for permanent custody and guardianship of a child terminates when the person who is the subject of the agreement or order

- (a) reaches the age of 18 years;
- (b) has been adopted;
- (c) marries; or
- (d) the agreement or order is terminated pursuant to this section.

*Idem*

(2) The court may terminate an agreement or order for permanent custody and guardianship on such grounds as the court may consider just

- (a) on the application of
  - (i) a parent, or
  - (ii) the Director, who was granted permanent custody and guardianship pursuant to clause 38(2)(d) or (e); or
- (b) on the application of a person 16 years old or older, who has been the subject of a permanent custody and guardianship agreement or order pursuant to this Act for a continuous period of at least one year immediately preceding the application.

Notice

(3) Notice of an application pursuant to subsection (2) shall be served on the person who is the subject of the agreement or order or on the Director, as applicable, at least 5 clear days before the hearing of the application.

Director is party

(4) The Director shall be a party to an application pursuant to clause (2)(b).

Return child or appoint guardian

(5) Where an order terminating custody and guardianship is made pursuant to subsection (2), the court shall make an order

- (a) returning the person who is the subject of the agreement or order to the custody and guardianship of a parent; or
- (b) appointing another person, other than the Director, to be guardian of the child.

Exception

(6) Notwithstanding subsection (2), no application to terminate or vary an agreement or order for permanent custody and guardianship may be made where a person who is the subject of such an agreement or order

has been placed by the Director for the purposes of adoption. 2000(2nd),c.3,s.45; 2002,c.2,s.10; 2010,c.28,s.27; 2010,c.5,s.1.

**46.** (1) Where a person in the permanent custody and guardianship of the Director reaches the age of 18 years, the Director may enter into a written agreement with the person for continued services to prepare the person for independent living, where

Continued child protection services

(a) the person is a student or a participant in an approved educational, training or rehabilitative program; or

(b) the Director considers that there are unusual circumstances which necessitate special transitional support,

until the person reaches the age of 21 years or until the Director considers that there is no longer a need for services under this subsection, whichever occurs earlier.

(2) Where a mentally incompetent person in the permanent custody and guardianship of the Director reaches the age of 18 years, the Director shall apply to the court for an order appointing another person, other than the Director, as guardian of the mentally incompetent person.

Guardian

(3) The Director may enter into a written agreement with the guardian appointed pursuant to subsection (2) to provide transitional support for the person, up to the age of 21 years. 2000(2nd),c.3,s.46; 2002,c.2,s.11; 2010,c.28,s.28.

Transitional support

## CHILD CARE

**47.** The Minister may establish and operate or make agreements for the operation of such services, programs and facilities as may be necessary to accommodate the needs of children, youths or persons in the custody of, or receiving services from, the Director. 2000(2nd),c.3,s.47.

Programs and facilities

**48.** (1) For the purpose of accessing specialized treatment or service, the Director may delegate the Director's rights and responsibilities respecting a child in the custody and guardianship of the Director, subject to monitoring and direction by the Director, to an approved caregiver, within or outside the province.

Director may delegate care of child

(2) Where a child is in the custody, guardianship or under the supervision of the Director, the Director is entitled

Rights of Director

(a) to have access to, contact and communication with the child;

(b) to inspect any place of residence or activity used for the care of the child; and

(c) to inspect and take copies of any records respecting the care of the child.

Custody remains in Director (3) A child in the care of a caregiver pursuant to subsection (1) remains in the custody and guardianship of the Director for the purposes of this Act. 2000(2nd),c.3,s.48; 2010,c.28,s.29.

Child from outside province **49.** Where a child protection agency recognized pursuant to the law of another jurisdiction, wishes to place a child for adoption or other form of care to be provided in the province, the Director may make an agreement with the child protection agency to provide or supervise the care or placement of the child on behalf of the child protection agency. 2000(2nd),c.3,s.49; 2010,c.28,s.16(2)(a).

#### SECURE ASSESSMENT

**Sections 50 to 55 not proclaimed.**

#### MISCELLANEOUS

Order or agreement from another jurisdiction **56.** An agreement or court order made pursuant to the child protection legislation 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. 2000(2nd),c.3,s.56; 2008,c.28,s.16(2)(b).

Liability protection **57.** 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. 2000(2nd),c.3,s.57.

Advisory Committee **58.** (1) The Minister shall appoint an Advisory Committee, in accordance with the regulations to review, every five years, the provisions of this Act and the services performed pursuant to this Act, and to report to the Minister concerning the operation and administration of this Act and concerning whether or not the principles and purposes of this Act are being achieved. 2010,c.28,s.30.

Child abuse registry (2) The Minister may create a child abuse registry in accordance with the regulations. 2000(2nd),c.3,s.58.

Offences **59.** A person who  
 (a) having responsibility for the care of a child, causes the child to be in need of protection;  
 (b) fails to report or to provide information in accordance with section 10;

- (c) with respect to section 10, knowingly makes a report or provides information which is false or misleading;
  - (d) reveals the identity of a person who makes a report or provides information in accordance with section 10;
  - (e) fails to comply with a court order related to the care, custody or guardianship of a child;
  - (f) obstructs the Director or other persons in the performance of their powers or duties under this Act;
  - (g) without authority, induces or attempts to induce a child who is in the custody or under the supervision of the Director to change the place of residence of the child;
  - (h) unlawfully takes, detains or harbours a child who is in the custody of or under the supervision of the Director or who is the subject of an apprehension;
  - (i) has unlawful access to or contact or communication with a child who is in the custody of or under the supervision of the Director;
  - (j) interferes with the care of a child who is in the custody of or under the supervision of the Director;
  - (k) publishes information that identifies parties to an agreement or proceedings pursuant to this Act, other than information respecting the child of that person; or
  - (l) violates any other provision of this Act or the regulations,
- is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$2,000. 2000(2nd),c.3,s.59; 2010,c.28,s.31.

**60.** The Lieutenant Governor in Council may make regulations

Regulations

- (a) respecting the establishment of a complaints process pursuant to section 6, including the designation of one or more persons to review complaints, the process for making complaints and for conducting reviews, making recommendations and written determinations;
- (b) respecting procedures for access to, and the disclosure of, information obtained in the administration of this Act;
- (c) respecting reports of investigations;
- (d) respecting alternative approaches, including the establishment of a list of facilitators, and the covering of costs associated with the alternative approaches;
- (e) prescribing rules for secure assessment;
- (f) respecting the establishment of an Advisory Committee, including its composition and the terms and responsibilities of its members;
- (g) prescribing forms for the purpose of this Act;
- (h) defining any word or expression not defined in this Act; and
- (i) respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent

and purpose of this Act. 2000(2nd),c.3,s.60; 2002,c.2,s.14; 2010;c.28,s.32.

Transitional

**61.** Without prejudice to section 33 of the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8, the following transitional provisions shall have effect:

- (a) where an order has been made in respect of a child pursuant to the prior Act before this Act comes into force, this Act applies where the order is brought before the court for review;
- (b) an application for an order made pursuant to the prior Act is continued pursuant to and in conformity with this Act;
- (c) unless the court otherwise orders, a hearing adjourned under the prior Act is continued pursuant to and in conformity with this Act; and
- (d) for the purposes of section 41, the time during which a child has been in the custody of the Director pursuant to an order pursuant to the prior Act shall be included in reckoning a cumulative period of temporary custody of the Director respecting the child. 2000(2nd),c.3,s.61.