

September 21, 2021

CONSULTATION DRAFT

CHILD, YOUTH AND FAMILY ENHANCEMENT ACT

BILL NO.

2021

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 Division 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 Metis 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 with 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 Housing;
- (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 IV 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) “**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 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 child’s views and preferences;
 - (i) the child’s cultural, racial, linguistic and religious heritage;
 - (j) the child’s sexual orientation, gender identity and gender expression;
 - (k) the importance of supporting and preserving families as the preferred environment for the care and upbringing of children; and
 - (l) any other factors prescribed by the regulations.

Safety and well-being paramount

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

3. Child in need of protection

- (1) For the purposes 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 intentionally seriously harm a person or animal or intentionally seriously damage property, 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 purposes 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 purposes 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 or physiological 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 purposes 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 purposes 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 purposes 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 purposes 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 has been placed in the custody of the Director or another person by the child's parents, apprehended by the Director or removed by the court from the parents' custody,
 - (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 a parent, family member or other person 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 purposes of this Act, a child is in the temporary custody of the Director or other person who is not a parent of the child, as the case may be, 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 apprehended by the Director under Part 4 and has not been returned to the custody of the child's parents within seven days of the apprehension;

- (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 five years of age or younger, 18 months; and
- (b) where the child is six years of age or older, 24 months.

Exception, best interests

- (3) The Director may extend an agreement or the court may extend an order for the temporary custody and guardianship of a child 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 shall be provided in accordance with that section:
 - (a) conducting an investigation;
 - (b) entering into or renewing an agreement under Part 3;
 - (c) apprehending 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 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.

Views of child

- (2) Where reasonably possible, when making a decision or taking an action under this Act in relation to a child, the Director shall
 - (a) consider the views of the child; and
 - (b) explain to the child, in a manner appropriate to the child, the reasons for and the nature, effect and implications of the decision or action.

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 and guidelines;
 - (b) enter into agreements with persons or organizations as partners or agents;
 - (c) allocate funding and other resources; and
 - (d) monitor and evaluate the efficacy of operations and delivery systems.

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 delegate, in writing, 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 the provisions of 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;
 - (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 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 the 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) Where a person who performs professional or official duties in respect of children has made a report in accordance with subsection (1), the person shall make a further report in accordance with subsection (1) 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 has made a report to the Director, in good faith, pursuant to subsection (1) or (2), except by order of the court.

Does not apply to police officer

- (5) Subsection (4) does not apply where the person who has made 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.

Assessment

13. Assessment required

- (1) Where
- (a) a report has been made pursuant to section 12;
 - (b) a parent, 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 under 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, race, 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 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 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 or request under subsection 12(1) of the Director's determination;
- (c) offer to provide or provide supports and services to the child, a parent or the family on a voluntary basis or refer the child, a parent or the family to other supports and services available on a voluntary basis, 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.

Alternative dispute resolution

- (2) The Director may use a family group conference, mediation or another form of alternative dispute resolution to develop, amend or replace a family intervention plan or an agreement or 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.

Definitions

- (3) For the purpose of subsection (2),
 - (a) “**alternative dispute resolution**” means a dispute resolution process other than litigation, approved by the Director;
 - (b) “**family group conference**” means a formal planning and decision-making meeting facilitated by an independent coordinator, which may involve a parent, family member or other person significant to the child in need of protection, the Director and other service providers and legal counsel;
 - (c) “**mediation**” means a dispute resolution process facilitated by a mediator, which may involve a parent, family member or other person significant to the child in need of protection, the Director and other service providers and legal counsel.

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 a parent, 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) a parent of the youth is not 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 a parent,
 - (iii) the youth no longer lives with a parent, or
 - (iv) the Director determines that the involvement of a parent 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 and the Director, with or without a parent;
 - (b) a family intervention plan;
 - (c) any conditions or restrictions on contact between the child and a parent or other person;
 - (d) the duration of the agreement and manner of its termination; and
 - (e) other matters as agreed to by the parties.

Term of agreement

- (4) The initial term of an agreement made pursuant to this section shall not exceed six months.

Renewal of agreement, child under 16 years

- (5) The Director may renew an agreement made with a parent under subsection (1) in respect of a child who is under 16 years of age for additional terms that do not collectively exceed a period of 12 months.

Renewal of agreement, youth

- (6) The Director may renew an agreement made with a youth, or a parent in respect of a youth, for additional terms until the youth reaches 18 years of age.

Youth not to be compelled to receive services

- (7) 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 a parent.

Temporary agreement

- (2) In the circumstances described in subsection (1), the Director may
- (a) enter into an agreement with the parents of the child, under which the parents transfer temporary custody and guardianship of the child to the Director; or
 - (b) enter into an agreement with the parents of the child and another person, under which the 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 a parent or other person;
 - (d) the duration of the agreement and manner of its termination;
 - (e) the financial or other contributions to be made by the 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 five years of age or younger, three months; and
 - (b) where the child is six years of age or older, six months.

Renewals

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

Determination of age

- (6) For the purposes 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) return the child or ensure the child is returned to the custody of the child's parents;
 - (b) renew or enter into another agreement under this Part; or
 - (c) apply for a protection order under Part 5.

Custody pending hearing

- (2) Where the Director applies for a protection order in accordance with clause (1)(c), the Director shall have temporary custody and guardianship of the child pending the interim 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 a parent; 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 parents of the child, under which the parents transfer permanent custody and guardianship of the child to the Director; or
 - (b) enter into an agreement with the parents of the child and another person, under which the 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 with 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) The Director shall, within 30 days of receiving a notice of termination pursuant to subsection (2),
 - (a) return the child or ensure the child is returned to the custody of the child's parents;
 - (b) enter into another agreement under this Part with the child's parents; or
 - (c) apply for a protection order under Part 5.

Custody in Director pending hearing

- (4) Where the Director applies for a protection order in accordance with clause (3)(c), 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 – APPREHENSION OR RETURN TO CUSTODY

25. Apprehension of child

- (1) The Director may apprehend 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) The Director shall apply to the court, without notice, for a warrant and, where the court is satisfied on the basis of the Director's sworn information that the conditions in subsection (1) are met, the court may issue a warrant authorizing the Director to
- (a) apprehend the child; and
 - (b) enter a premises or vehicle, or board a vessel or aircraft, by force if necessary, for the purpose of apprehending the child.

Exception, without warrant

- (3) Notwithstanding subsection (2), the Director may act in accordance with clauses (2)(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

- (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 or warrant under subsection (2).

Telewarrant

- (6) 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 apprehension

- (3) A child in the custody of the Director pursuant to subsection (2) is considered to have been apprehended 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 apprehension

- (1) Where a child is apprehended under this Part, the Director shall
- (a) make all reasonable efforts to give notice of and the reasons for the apprehension to the child's parents, as soon as reasonably possible; and
 - (b) not more than seven days after the apprehension,
 - (i) apply for an order under Part 5, or
 - (ii) return the child to the custody of the child's parents.

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.

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 a premises or vehicle, or board a vessel or aircraft, by force if necessary, for the purpose of bringing a child back into the custody of the Director or other person who has custody pursuant to an agreement or order under 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, the court may issue the warrant.

Exception, without warrant

- (3) Notwithstanding subsection (1), the Director may enter a premises or vehicle, or board a vessel or aircraft, by force if necessary, without a warrant, for the purpose of bringing a 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 or warrant under subsection (1).

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 and in section 27, Rule 3.01 of the Rules of Court 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 parents of the child.

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 that does any of the following:
- (a) prohibits the person against whom the order is sought from contacting or interfering with, or trying to contact or interfere with, the child, or from entering a place where the child is located, until the conclusion of the hearing;
 - (b) prohibits the person against whom the order is sought from residing with the child, or entering premises where the child resides, including premises that the person owns or has a right to occupy, until the conclusion of the hearing; and
 - (c) impose those 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 that does any of the following:

- (a) prohibits the person against whom the order is sought from contacting or interfering with, or trying to contact or interfere with, the child, or from entering a place where the child is located, for a period not exceeding six months;
- (b) prohibit the person against whom the order is sought from residing with the child, or entering premises where the child resides, including premises that the person owns or has a right to occupy, for a period not exceeding six months; and
- (c) impose those conditions that the judge considers appropriate for implementing the order and protecting the child.

Vary, terminate or make subsequent order

- (6) Before an order to prohibit 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 to prohibit contact 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 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**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 an interim 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.

32. Date of interim hearing

- (1) The court shall set a date for an interim 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 interim hearing

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

Evidence in support of application

- (3) The Director shall present evidence at the interim hearing respecting
- (a) the grounds for believing the child is in need of protection;
 - (b) where the child was apprehended,
 - (i) the circumstances respecting the apprehension, and
 - (ii) less disruptive measures considered by the Director; and
 - (c) an interim family intervention plan for the child.

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 was apprehended, order the Director to return the child to the custody of the child's parents.

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 interim 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.

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 and the disposition 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.

33. Notice of protection hearing

- (1) The Director shall serve notice of a 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 a child is not in need of protection, the court shall
 - (a) dismiss the application; and
 - (b) where the child is in the custody of the Director, order the Director to return the child to the custody of the child's parents.

Child in need of protection

- (3) Where, on the completion of the protection hearing, the court finds that a child is in need of protection, the court shall set a date for a disposition hearing, which shall commence not more than 30 days after the date of the protection decision.

Consent order

- (4) 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 section 36.

34. Notice of disposition hearing

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

Family intervention plan, Director

- (2) The Director shall, at least 20 days before the date of the disposition hearing, file with the court and serve on the other parties, a copy of the Director's proposed family intervention plan.

Plan of care, parent

- (3) 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 a disposition hearing, the court may
 - (a) reverse the court's finding that the child is in need of protection and
 - (i) dismiss the application, and
 - (ii) where the child is in the custody and guardianship of the Director, order the Director to return the child to the custody of the child's parents; or

- (b) 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 of one or both of the child's parents, subject to the supervision of the Director for a 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 period that together with the period of temporary custody and guardianship does not exceed six months,
 - (iv) an order that the child 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;
 - (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 another person may include terms respecting
- (a) permitted or prohibited contact between the child and a parent;
 - (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 five years of age or younger, three months; and
 - (b) where the child is six years of age or older, 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 an application 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.

38. Review of supervision or temporary custody order

- (1) Before an order made pursuant to subclause 36(2)(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 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, at least 20 days before the date of the review hearing.

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 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 purposes 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 an interim 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 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 counsel in respect of those proceedings.

Court may order

- (2) Where the court determines that legal representation of a child is necessary to ensure that the child's interests are adequately protected in a proceeding under this Act, the court may order that legal counsel be provided for the child.

44. Hearing private

- (1) No person shall be present at a hearing under this Act except
 - (a) the parents of the child 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) 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;
 - (f) counsel; and
 - (g) 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 an agreement or order made under this Act, the Director shall, where possible and subject to the 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 purposes of this Act.

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 Director shall ensure suitable arrangements in respect of the person have been or will be made with another person or the Office of the Public Trustee, Public and Official Guardian.

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 Director 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 purposes 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 purposes 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, and
 - (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) alternative dispute resolution 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;
- (d) in aggregate, non-identifiable form;
- (e) where the Director has reasonable grounds to believe that it is necessary to protect the safety and well-being of a child; or
- (f) 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 12 years of age or older has a right of access to and shall, on request, be provided with personal information about the person.

Right of access to information about child

- (3) 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 the rights of the parent in respect of the child have been suspended or terminated by an order of the court.

Right of access by law

- (4) 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; or
 - (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.

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* R.S.P.E.I. 1988, Cap. A-4.1 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) when, where and how 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.

Director to review request

- (2) The Director shall review the request and determine whether there is an error or omission in the personal information about the person or the person's child in the record.

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;
 - (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 is 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 the 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 procedure of a review;
- (i) prescribing other circumstances that may be investigated in relation to the safety and well-being of a child;
- (j) respecting alternative dispute resolution, including the use and disclosure of information derived from it, processes and procedures;
- (k) respecting the application for and the issuance and execution of warrants;
- (l) respecting court proceedings and court procedure under the Act;

- (m) respecting the placement of a child with a caregiver;
- (n) respecting supports and services provided under the Act;
- (o) prescribing a person or organization that may have information to which the Director has right of access;
- (p) respecting access to, and the collection, use and disclosure of, information under the Act;
- (q) prescribing forms for the purposes of the Act;
- (r) defining any word or phrase used but not defined in the Act;
- (s) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

64. Transitional, period of temporary custody

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

Consequential Amendments

65. 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 Enhancement 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 Enhancement 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 Enhancement Act*”**

66. 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.**

67. 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 Enhancement 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 Enhancement 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 Enhancement 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 Enhancement 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 Enhancement Act*”.**
- (6) **Clause 22(3)(c) of the Act is amended by the addition of the words “of a band in respect of an Indigenous child” after the words “the designated representative”.**

68. 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 Enhancement 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 Enhancement 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 Enhancement Act*”.**
- (5) **The heading immediately before section 82 of the Act is repealed and the following substituted:**

Child, Youth and Family Enhancement 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 Enhancement Act*”.**

69. 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 Enhancement 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 Enhancement 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 Enhancement 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 Enhancement Act* shall immediately report the matter to the Director of Child Protection in accordance with the *Child, Youth and Family Enhancement 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 Enhancement Act*.

70. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01.”**

71. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01;

72. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

73. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

74. Judicature Act

- (1) **The *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, is amended by this section.**
- (2) **Subsection 33.1(8) 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01”.**

75. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01.”.**

76. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01.”.**

77. 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 Enhancement Act* R.S.P.E.I. 1988, Cap. C-6.01,”.**

78. Commencement

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

EXPLANATORY NOTES

SECTION 1 defines terms used in the Act.

SECTION 2 defines “best interests of the child” and sets out factors relevant to making that determination.

SECTION 3 defines “child in need of protection” and related terms.

SECTION 4 defines “family intervention plan” and sets out required components of a family intervention plan.

SECTION 5 sets out the circumstances in which a child is in the temporary custody of the Director or other person who is not a parent of the child and sets limits on the cumulative period of time a child may be placed in the temporary custody of person other than a parent.

SECTION 6 sets out the purpose of the Act and requires persons acting pursuant to the Act to act in the best interests of the child and take the least disruptive measures to do so.

SECTION 7 notes that the application of the Act in respect of an Indigenous child is subject to the exercise of inherent jurisdiction and legislative authority by an Indigenous governing body representing the child, any coordination agreement between an Indigenous governing body representing the child and the government, and federal legislation governing child and family services in relation to Indigenous peoples.

It identifies actions in the Act that, when taken in relation to an Indigenous child, are significant measures of which notice to an Indigenous governing body representing the child is required, as is the determination of the Director following an investigation. It provides that notice of court proceedings shall be given on the same basis as notice to parties.

SECTION 8 provides that the Act shall be construed and applied in a manner consistent with the UN Convention on the Rights of the Child. It requires the Director to, where reasonably possible, consider the views of the child when making a decision or taking an action under the Act and explain to the child the reasons for and nature, effect and implications of the decision or action.

SECTION 9 provides that the Minister is responsible for the administration of the Act and sets out the powers and duties of the Minister under the Act.

SECTION 10 requires the Minister to appoint a Director of Child Protection and provides for the appointment of an acting Director where necessary. It authorizes the Director to delegate a power or duty of the Director and sets out some administrative duties of the Director.

SECTION 11 establishes an administrative review process for decisions of the Director under the Act, subject to and in accordance with the regulations.

SECTION 12 requires a person who has knowledge or reasonable grounds to suspect that a child is in need of protection to report it to the Director or a police officer. It protects the identity of a person who makes a report and limits the person's liability for making a report in good faith.

SECTION 13 requires the Director to assess the reported or known circumstances affecting the safety and well-being of a child following a report or in other specified circumstances and sets out the powers of the Director in doing so.

SECTION 14 requires the Director to conduct an investigation where the Director determines on assessment that there are reasonable grounds to suspect that a child is in need of protection and sets out potential circumstances of relevance. It sets out the Director's powers in conducting an investigation and duties following an investigation.

SECTION 15 sets out actions the Director may take after determining that there are not reasonable grounds to suspect or believe that a child is in need of protection.

SECTION 16 provides that the Director may take actions authorized under Parts 3 to 5 of the Act after determining that there are reasonable grounds to believe that a child is in need of protection. It also provides for the use of alternative dispute resolution in relation to a family intervention plan or agreement in respect of a child in need of protection.

SECTION 17 provides for the Director to enter into an agreement with a parent or youth for supports and services to mitigate the circumstances causing the child to be in need of protection. It sets out required terms of the agreement, limits the initial term to six months and provides for renewal of the agreement.

SECTION 18 provides for the Director to enter into an agreement with the parents of a child in need of protection, or the parents and another person, to transfer temporary custody and guardianship of the child to the Director or other person, as the case may be. It sets out required terms of the agreement, limits the initial term based on the age of the child, and provides for renewal or termination of the agreement.

SECTION 19 sets out the duty of the Director on the expiry or termination of a temporary custody and guardianship agreement. It provides for temporary custody and guardianship of the child where an application for a protection order is made under Part 5.

SECTION 20 provides for the Director to enter into an agreement with the parents of a child in need of protection, or the parents and another person, to transfer permanent custody and guardianship of the child to the Director or other person, as the case may be.

SECTION 21 sets out the effect of a permanent custody and guardianship agreement, subject to a 14-day grace period in which the agreement may be terminated. It sets out the duty of the Director on termination of the agreement and provides for temporary custody and guardianship of the child where an application for a protection order is made under Part 5.

SECTION 22 provides for termination of permanent custody and guardianship of a child when the child reaches adulthood, is adopted or marries or by order of the court.

SECTION 23 provides that a parent who is under 18 years of age has capacity to enter an agreement under Part 3 and it is enforceable in respect of that parent.

SECTION 24 provides that an agreement made under Part 3 does not limit the court's authority to hear an application or make an order in respect of a child under the Act.

SECTION 25 authorizes the Director to apprehend a child in specified circumstances. It requires the Director to obtain a warrant except in specified circumstances. It provides for an application to be made by telecommunication and without naming the child. It requires a police officer to assist the Director, on request.

SECTION 26 authorizes a police officer to take a child to a place of safety and then to the Director in specified circumstances. It deems the child to have been apprehended by the Director in these circumstances.

SECTION 27 sets out the duties of the Director after apprehending a child.

SECTION 28 provides for the Director to apply for a warrant to enter premises to bring a child back into custody where the child has left or been taken from the lawful custody of the Director or other person. It sets out circumstances where a warrant isn't required. It provides for an application to be made by telecommunication and without naming the child. It requires a police officer to assist the Director, on request.

SECTION 29 provides that, in Part 5 and section 27, Rule 3.01 of the Rules of Court apply in respect of the computation of time.

SECTION 30 provides for the Director to apply to the court for an order to prohibit contact between a child and a person who, the Director has reasonable grounds to believe, has or is likely to physically or emotionally harm or sexually abuse or exploit the child. It provides for the court to make an interim order pending a final disposition and to renew, vary or terminate an order to prohibit contact. It requires a police officer to assist in enforcing the order.

SECTION 31 provides for the Director to apply for a protection order and sets out the stages of an interim hearing, a protection hearing and a disposition hearing.

SECTION 32 sets out requirements in respect of an interim hearing, including the date, notice, evidence and disposition by the court.

SECTION 33 sets out requirements in respect of a protection hearing, including notice and disposition by the court.

SECTION 34 sets out requirements in respect of a disposition hearing, including notice and a family intervention plan.

SECTION 35 sets out the evidence and submissions the court shall consider on disposition.

SECTION 36 sets out the options of the court on disposition and the terms that may be included in particular orders. It limits the term of an initial order for temporary custody and guardianship based on the age of the child on the date of the application. It also sets out the effect of an order for permanent custody and guardianship on the rights and obligations of the child's parents.

SECTION 37 permits the court to combine a protection hearing and a disposition hearing into one hearing.

SECTION 38 provides for the Director to apply for a review of a protection order for supervision or temporary custody and guardianship. It sets out requirements in respect of the date and notice of a review hearing. It also sets out options for the disposition by the court.

SECTION 39 provides for the termination of permanent custody and guardianship of a child. It provides for an application to the court to vary or terminate an agreement or order for permanent custody and guardianship and sets out notice requirements for the hearing and the powers of the court on disposition.

SECTION 40 gives a right of appeal in respect of a decision of the court, other than an interim decision, and sets out the powers of the Court of Appeal on hearing the appeal.

SECTION 41 provides for the court to dispense with service of a notice in specified circumstances.

SECTION 42 provides that a parent has the right to be heard and the right to counsel in proceedings under the Act in respect of their child, except where an application is made without notice.

SECTION 43 provides that a child who is the subject of a proceeding under this Act may be represented by legal counsel and the court may order that legal counsel be provided for the child.

SECTION 44 sets out the persons who may be present at a hearing and provides that a child who is the subject of the hearing is not required to be present, but may be present unless excluded by the court.

SECTION 45 sets out the type of evidence that may be admitted in a hearing under this Act.

SECTION 46 provides that the standard of proof for an application under this Act is on the balance of probabilities.

SECTION 47 sets out the rights and obligations of the Director in respect of placing a child who is in the custody of the Director in the care of a caregiver such as a family member or foster parent.

SECTION 48 permits the Director to assist an authority from another jurisdiction to provide or supervise the care or placement of a child in the province.

SECTION 49 requires the Director to ensure suitable arrangements have been or will be made in respect of a child who is transitioning to adulthood from the custody and guardianship of the Director, where the Director has reasonable grounds to believe that the child does not have the capacity to manage financial or personal matters.

SECTION 50 provides for the Director to enter into an agreement for transitional supports and services with a person who is 18 years of age or older but under 25 years of age and was in the temporary custody and guardianship of the Director immediately before reaching 18 years of age.

SECTION 51 defines terms used in Part 8 and in related provisions in section 14. It provides that the Part, except section 53, applies in respect of records created and personal information collected under or for the purposes of this or a predecessor Act and in the custody or under the control of the Director.

SECTION 52 provides that Part 8 and section 12 and 14 of the Act apply despite the *Freedom of Information and Protection of Privacy Act*.

SECTION 53 provides the Director with a right of access to certain records and to collect certain personal information and personal health information for the purposes of this Act.

SECTION 54 permits the Director to disclose personal information to certain persons, for certain purposes and in certain circumstances.

SECTION 55 provides that no person has a right of access to a record or personal information except as provided in this Act, subject to section 56. It provides that a person 12 years of age or over has a right of access to personal information about oneself, except in specified circumstances. It provides that a parent has a right of access to personal information about their child, except where parental rights have been suspended or terminated by order of the court. It requires the Director to provide access to a record or disclose personal information where it is required by certain laws for certain purposes.

SECTION 56 prohibits the Director from providing access to a record or personal information in specified circumstances.

SECTION 57 sets out the process for requesting access to a record or personal information under section 55.

SECTION 58 sets out the process for correcting an error or omission in personal information or a record.

SECTION 59 requires the Director to keep a record of each time a person accesses personal information in the record about the person or the person's child and each time a correction is refused.

SECTION 60 provides for the effect in the province of an agreement or order made in another jurisdiction.

SECTION 61 limits the liability of the Director and other persons acting in good faith under the Act.

SECTION 62 sets out offences and penalties under the Act.

SECTION 63 authorizes the Lieutenant Governor in Council to make regulations about specified matters.

SECTION 64 provides for the time that a child is in the temporary custody and guardianship of the Director or other person who is not a parent under a predecessor Act to be taken into account under this Act.

SECTIONS 65 TO 77 set out consequential amendments to other statutes.

SECTION 78 provides for the commencement of the Act on proclamation.