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# Bill 89

*(Chapter 14 of the Statutes of Ontario, 2017)*

## **An Act to enact the Child, Youth and Family Services Act, 2017, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts**

**The Hon. M. Coteau**

Minister of Children and Youth Services

1st Reading	December 8, 2016
2nd Reading	March 9, 2017
3rd Reading	June 1, 2017
Royal Assent	June 1, 2017





*This Explanatory Note was written as a reader's aid to Bill 89 and does not form part of the law.  
Bill 89 has been enacted as Chapter 14 of the Statutes of Ontario, 2017.*

## EXPLANATORY NOTE

The Bill is divided into four Schedules.

Schedule 1 repeals the *Child and Family Services Act* and enacts the *Child, Youth and Family Services Act, 2017* in its place.

Schedule 2 amends the *Child and Family Services Act* while it is still in force, that is, before its repeal by Schedule 1.

Schedule 3 amends the new Act, the *Child, Youth and Family Services Act, 2017*.

Schedule 4 contains related and other amendments to 36 other Acts.

### SCHEDULE 1 CHILD, YOUTH AND FAMILY SERVICES ACT, 2017

The current Act refers throughout to Indian and native children, and gives certain rights of notice and participation to a representative chosen by the child's band or native community. The new Act refers to First Nations, Inuit and Métis children and young persons, and gives rights of notice and participation to a representative chosen by each of the child's or young person's bands and First Nations, Inuit or Métis communities. All references to a child's or young person's bands and First Nations, Inuit or Métis communities in the new Act include any band of which the child or young person is a member, any band with which the child or young person identifies, any First Nations, Inuit or Métis community that is listed in a regulation and of which the child or young person is a member, and any First Nations, Inuit or Métis community that is listed in a regulation and with which the child or young person identifies.

Significant changes are made to terminology. The terms society ward and Crown ward are no longer used. Instead, the new Act refers to children who are in interim society care or extended society care, respectively. The new Act does not refer to children being abandoned or to runaways. And the new Act speaks of bringing children to a place of safety, instead of being apprehended, and of dealing with matters, not dealing with children.

The new *Child, Youth and Family Services Act, 2017* is, like the current *Child and Family Services Act*, divided into Parts. Following is an explanation of each Part and, in particular, how each differs from the current Act.

#### Part I Purpose and Interpretation

The paramount purpose of the Act — to promote the best interests, protection and well-being of children — remains unchanged from the current Act.

The additional purposes of the Act are expanded to include the following:

To recognize that services to children and young persons should be provided in a manner that respects regional differences wherever possible and takes into account,

physical, emotional, spiritual, mental and developmental needs and differences among children and young persons;

a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression; and

a child's or young person's cultural and linguistic needs.

To recognize that services to children and young persons and their families should be provided in a manner that builds on the strengths of the families wherever possible.

One of the additional purposes in the current Act is to recognize that services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions, and the concept of the extended family. This is amended to refer to First Nations, Inuit and Métis children and young persons and families and to their cultures, heritages and traditions and is expanded to also recognize connection to their communities.

There is no longer specific reference to a child's or young person's religion in the additional purposes of the Act. However, a child's or young person's creed is listed as one of several factors to be considered throughout the new Act. "Creed" is defined to include religion.

#### Part II Children's and Young Persons' Rights

This consolidates the rights of children and young persons found in section 2 and Parts I and V of the current Act.

New provisions are added as follows: restricting service providers and foster parents from using physical restraint on children and young persons except as authorized by the regulations, and from using mechanical restraints on children and young persons except as permitted by Parts VI (Youth Justice) and VII (Extraordinary Measures) and the regulations. The provision in the current Act prohibiting service providers from detaining a child in locked premises except as authorized under the

Youth Justice and Extraordinary Measures parts of that Act is maintained; it now expressly applies to foster parents as well as service providers and in respect of young persons as well as children.

In addition, a new statement of rights of children and young persons is added at the outset of the Part, including their right to express their own views freely and safely, to be engaged through honest and respectful dialogue, to have their views given due weight in accordance with their age and maturity and to be informed, in language suitable to their understanding, of their rights and of the existence and role of, and how to contact, the Provincial Advocate for Children and Youth. The procedures in the current Act for making complaints against service providers regarding alleged violations of the rights of children also applies under the new Act to complaints regarding limitations or conditions imposed on visitors and visits. A child or other person may make a complaint as an individual or as part of a group.

### Part III Funding and Accountability

This Part replaces Part I of the current Act. There are several additions as follows.

The Minister may designate entities as lead agencies, which must perform the functions assigned to the lead agency's category by the regulations. The Minister may issue binding directives to certain service providers and lead agencies. A program supervisor may issue compliance orders to certain service providers and lead agencies for failure to comply with, among other things, the Act, the regulations or the directives.

The functions of children's aid societies are set out in this Part and remain essentially the same. One change is that societies are now responsible for investigating allegations that a child is in need of protection and for protecting children in their care, for all children up to the age of 18; in the current Act, these responsibilities are limited to children younger than 16 and to 16 and 17 year olds who are subject to protection orders.

This Part now includes a requirement that every society enter into an accountability agreement with the Minister as a condition of receiving funding; this is currently a requirement in the regulations under the Act, and is being made a statutory requirement in the new Act.

The Minister may issue binding directives to societies. A Director may issue compliance orders to societies for failure to comply with, among other things, the Act, the regulations, an accountability agreement or the directives.

If a society fails to comply with a compliance order, or if the Minister considers it to be in the public interest, the Minister may make a variety of different orders, including ordering a society to take corrective action, suspending, amending or revoking the society's designation, appointing or replacing members of the society's board of directors, designating or replacing a chair of the board, or appointing a supervisor to operate and manage the society. Unless certain conditions exist, the Minister must notify the society of the intention to make such an order, and the society has a right to make a written response.

This Part sets out rules for two or more societies that are proposing to amalgamate and to continue as one society. The Minister may order that a society amalgamate with one or more other societies, or undertake other types of restructuring, if the Minister considers it to be in the public interest. The Minister must notify the society of the intention to make such an order and the society has a right to make a written response to the directions contained in the order, but not to the requirement to amalgamate. In certain circumstances, the Minister may also appoint a supervisor to implement or facilitate the implementation of such an order. A society that receives notice of a proposed order to amalgamate or otherwise restructure must give a copy of the notice to affected employees and their bargaining agents, and on receipt of a final order to amalgamate or otherwise restructure, the society must give notice of the order to affected employees and their bargaining agents and other persons or entities whose contracts are affected by the order, and must make the order available to the public.

The rules for allowing a program supervisor to enter and inspect certain premises to determine compliance with the Act and the regulations are expanded. This Part now sets out rules for such inspections without and with a warrant.

Provisions governing residential placement advisory committees have been moved from Part II (Voluntary Access to Services) in the current Act to this Part in the new Act with the following changes: the current Act lists persons to be included in the committees, while the new Act provides that the committees may include the listed persons; the new Act requires the committees to report to the Minister on their activities annually and on request; the right to object to a residential placement and to ask the Child and Family Services Review Board to review a committee's decision in respect of a residential placement is no longer limited to children 12 or older.

### Part IV First Nations, Inuit and Métis Child and Family Services

This Part replaces Part X of the current Act.

Under the current Act, the Minister may designate native communities for the purposes of the Act. Under this Part, the Minister may make regulations establishing lists of First Nations, Inuit and Métis communities for the purposes of the Act, with the consent of the community's representatives.

Another change is that, under the current Act, a band or native community may designate a body as an Indian or native child and family service authority. Under this Part, a band or First Nations, Inuit or Métis community may designate a body as a First Nations, Inuit or Métis child and family service authority.

## Part V Child Protection

This Part replaces Part III of the current Act with the following changes.

The age of protection is increased to include 16 and 17 year olds. Under the new Act, 16 and 17 year olds may be found to be in need of protection and additional circumstances or conditions applicable only to 16 and 17 year olds may be prescribed to make that determination. However, 16 and 17 year olds may not be brought to a place of safety without their consent. Societies are newly authorized to enter into agreements with 16 and 17 year olds in need of protection and to bring applications to court.

The matters to be considered in determining the best interests of a child are changed. The child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained, and in the case of a First Nations, Inuk or Métis child, the importance of preserving the child's cultural identity and connection to community must be taken into consideration. In addition, any other circumstances that are considered relevant, including a list of 11 circumstances similar to those listed in the current Act, are to be considered. Differences include: the current Act includes the child's cultural background in this list while the new Act includes the child's cultural and linguistic heritage; the current Act includes the religious faith in which the child is being raised while the new Act includes the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression.

The authority for societies to enter into voluntary agreements with persons unable to temporarily care for their children and with young persons is moved from Part II (Voluntary Access to Services) of the current Act to Part V of the new Act. Temporary care agreements may be entered into with respect to children of any age and are no longer restricted to children younger than 16. The authority to enter into special needs agreements is not included in the new Act.

Under the current Act, persons older than 18 may receive extended care and maintenance from a society if they were subject to a custody order or Crown wardship order that expired on their turning 18 or marrying, if they were eligible to receive support services as a 16 or 17 year old, whether or not they actually received those services or, in the case of Indian or native persons, if they were cared for under customary care immediately before their 18th birthday. The comparable section under the new Act makes the provision of continued care and support mandatory in the circumstances listed in the current Act, adds an additional circumstance when it is to be provided, i.e., when a person entered into an agreement with the society as a 16 or 17 year old and the agreement expires on the person's 18th birthday, and uses the updated terminology of First Nations, Inuit and Métis people and of children who are in extended society care.

Societies are required to make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child is in need of protection, cannot remain in the care of or be returned to the person who had charge of the child immediately before intervention by the society or the person entitled to custody of the child and is a member of or identifies with a band or a First Nations, Inuit or Métis community. Customary care is defined as the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child's parent, according to the custom of the child's band or First Nations, Inuit or Métis community.

An equivalent to section 86 of the current Act, which prohibits Roman Catholic children from being placed in the care of a Protestant society, institution or family and Protestant children from being placed with a Roman Catholic society, institution or family, is not included in the new Act. Instead, a society is to choose a residential placement that, where possible, respects the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, creed, sex, sexual orientation, gender identity, gender expression and cultural and linguistic heritage. In the case of a First Nations, Inuk or Métis child, priority is to be given to placing the child with a First Nations, Inuit or Métis family, respectively.

The duty that all persons have to report suspicions that a child is in need of protection applies only in respect of children younger than 16. However, a person may make a report in respect of a child who is 16 or 17.

## Part VI Youth Justice

This Part incorporates Part IV of the current Act with the following changes.

This Part adds that a person in charge of a place of open custody, of secure custody or of temporary detention may authorize certain types of searches in accordance with the regulations, and provides that any contraband found during a search may be seized and disposed of in accordance with the regulations.

This Part also places limits on the use of mechanical restraints in places of secure custody or of secure temporary detention.

## Part VII Extraordinary Measures

This Part replaces Part VI of the current Act, with the following changes.

A section is added setting out limits on the use of mechanical restraints in secure treatment programs.

The current Act allows children and young persons to be placed in secure isolation rooms; in the new Act, this is changed to allow for placing children and young persons in secure de-escalation rooms.

Under the current Act, service providers are required to comply with standards prescribed by regulation respecting the period of time a young person 16 or older who is in a place of secure custody or secure temporary detention may spend in a secure

isolation room and regarding the observation of the young person. In the new Act, the time periods and observation standards for those young persons who are placed in secure de-escalation rooms are set out in the Act itself.

#### Part VIII Adoption and Adoption Licensing

This Part builds on Part VII of the current Act.

The matters to be considered in determining the best interests of a child are changed. The changes are the same as those described above under Part V Child Protection.

A new two stage process is added for a licensee to bring a child who is not a resident of Canada into Ontario to be placed for adoption. First, the licensee must obtain a Director's approval of the person with whom the child is to be placed as eligible and suitable to adopt based on a homestudy. Second, the licensee must obtain a Director's approval of the proposed placement.

The current Act provides an exception to certain requirements if a child is placed for adoption with the child's relative, the child's parent or a spouse of the child's parent. In the new Act, the exception is limited to circumstances in which the child is a resident of Canada and the placement is within Ontario. The current Act also provides an exception to the same requirements if a child is sent out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent. In the new Act, the exception is now limited to circumstances in which the placement is within Canada.

There is a new requirement on societies that begin planning for the adoption of a First Nations, Inuk or Métis child to consider the importance of developing or maintaining the child's connection to the child's bands and First Nations, Inuit or Métis communities.

The ability of a court to make an openness order in respect of a child for the purposes of facilitating communication or maintaining a relationship between the child and certain persons remains. A new type of openness order is added where a society intends to place a First Nations, Inuk or Métis child who is in extended society care for adoption. In such circumstances, the child, the society, or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities may apply for an openness order. The court may make this type of openness order if it is satisfied that the order is in the child's best interests, that the order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community and, if the child is 12 or older, if the child consents.

In the various provisions regarding applications for and proceedings with respect to openness orders, the method of giving notice to a child requires that notice must be given to the Children's Lawyer, the child's lawyer, if any, and the child if the child is 12 or older. The child is entitled to participate in the proceeding as if they were a party.

There is a new requirement on societies to make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child where the child was placed for adoption but the society decides not to finalize the adoption or where a child returns to the care of a society after an adoption order was made.

The adoption licensing rules that were in Part IX of the old Act are now in this Part and remain substantially the same.

#### Part IX Residential Licensing

This Part replaces Part IX of the current Act. Current Part IX addresses both residential licensing and adoption licensing. Under the new Act, adoption licensing has been moved into Part VIII.

As under the current Act, a licence is required to operate a children's residence or to provide residential care in specified circumstances. This Part now provides for regulations to prescribe any other residence as a children's residence.

Other additions to this Part include the following. The Minister may issue binding directives to licensees. The Minister may publish certain information with respect to licences and applications for licences. Licences are to be issued or renewed for a specified term. A Director may assign a class to a licence. On issuing or renewing a licence, a Director may include the maximum number of children for whom residential care may be provided by the licensee. A licensee must charge the amount set out in or determined in accordance with the regulations for the provision of residential care, unless the regulations exempt the licensee.

The rules respecting the right to request a hearing by the Licence Appeal Tribunal, and to appeal the Tribunal's findings, remain essentially unchanged.

The powers of a program supervisor to conduct residential licensing inspections under the current Act are replaced by powers of an inspector to conduct such inspections for the purposes of determining compliance with the Act, the regulations and the directives. This Part now sets out rules for such inspections without and with a warrant.

#### Part X Personal Information

This Part replaces the very limited Part VIII in the current Act, and is essentially a new Part. It is modelled on provisions in the *Personal Health Information Protection Act, 2004*.

This Part sets out extensive rules for the following: the collection, use and disclosure of personal information by the Minister and by service providers; the determination of whether an individual has the capacity to give, withhold or withdraw consent

to the collection, use or disclosure of their personal information; the authorization of a substitute decision-maker to give, withhold or withdraw consent on behalf of an individual; the maintenance and protection of personal information by service providers; individuals' rights of access to service providers' records containing their personal information and to require service providers to correct that information; individuals' rights to make a complaint to the Information and Privacy Commissioner in respect of any contraventions of this Part; the Information and Privacy Commissioner's powers and duties under this Part.

#### Part XI Miscellaneous Matters

This Part incorporates Part XII of the current Act with the following changes.

New in this Part is the authority of the Lieutenant Governor in Council to require, by regulation, certain persons, including those who provide or receive services under the Act, to provide police record checks to another person or body. Also, a society may, in the prescribed circumstances or for a prescribed purpose, ask the police for police record checks or other prescribed information.

Under the current Act, the Minister must periodically conduct a review of the Act or of those provisions specified by the Minister; the review must include a review of provisions imposing obligations on societies when providing services to an Indian or native person. In Part XI of the new Act, the review must address the following matters: the rights of children and young persons; the provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person; and the additional purpose of the Act related to First Nations, Inuit and Métis peoples, with a view to evaluating the progress that has been made to achieve that purpose. It also requires the Minister to consult with children and young persons when conducting a review.

#### Part XII Regulations

As in the current Act, the power to make regulations for each Part of the Act is set out in its own section. In addition, section 339 authorizes the Lieutenant Governor in Council and the Minister to make regulations for the purposes of the Act as a whole, including regulations to govern transitional matters that may arise from the enactment of the new Act and the repeal of the current Act.

### **SCHEDULE 2 AMENDMENTS TO THE CHILD AND FAMILY SERVICES ACT**

This Schedule amends the current *Child and Family Services Act* as follows.

It anticipates the increase in the age of protection from 16 to 18 that is in the new Act in Schedule 1 in the following amendments: clauses 15 (3) (a) and (b) of the Act are re-enacted so that societies' functions to investigate allegations that a child may be in need of protection and to protect children in their care are no longer restricted to children younger than 16 or already subject to a protection order; section 27 of the Act is amended to specify that a service provider requires a court order or the consent of a person who is 16 or older before providing the person with a service; subsection 29 (2) of the Act is re-enacted to allow temporary care agreements to be entered into in respect of children who are 16 or older; the definition of "child" in subsection 37 (1) of the Act, which excludes children who are apparently or actually 16 or older for the purposes of Part III (Child Protection), is repealed, so that child in Part III means a person younger than 18; subsection 37 (2) of the Act is amended to provide that regulations may be made setting out additional circumstances or conditions under which a 16 or 17 year old may be found to be in need of protection; section 40 is amended and new sections 40.1 and 46.1 provide that a society may bring a 16 or 17 year old who is subject to a supervision order to a place of safety only with their consent and the society must, as soon as possible and at the latest within five days of bringing the 16 or 17 year old to a place of safety, bring the matter to court or return the child to the person entitled to custody.

New section 37.1 authorizes 16 and 17 year olds to enter into agreements with societies for the provision of services and supports to them where the society determines that they are or may be in need of protection and is satisfied that no less disruptive course of action is available and the child wants to enter into the agreement.

Section 57 of the Act is amended to provide that a court shall make no order under that section in respect of a child who withdrew from parental control before or after intervention under Part III, where the court is not satisfied that a court order is necessary to protect the child in the future even though the child is found to be in need of protection.

Section 71.1 of the Act is amended to allow a person 18 or older to receive care and maintenance from a society if the person entered into an agreement for services from the society as a 16 or 17 year old and that agreement expired on the person's 18th birthday.

The duty under section 72 to report suspicions that a child is in need of protection is amended to allow, though not require, such reports in respect of children who are 16 or 17.

All the amendments discussed above anticipate provisions in the new Act. However, these amendments to the current Act are intended to come into force before the new Act does.

### SCHEDULE 3 AMENDMENTS TO THE CHILD, YOUTH AND FAMILY SERVICES ACT, 2017

This Schedule amends the new *Child, Youth and Family Services Act, 2017* as follows.

Sections 133 and 134 of the Act, which provide for the maintenance of a child abuse register, are repealed. Consequential amendments are made to other sections to delete all references to sections 133 and 134.

Subsection 206 (1) of the Act allows a court to change an adopted person's surname or given name. This is re-enacted to permit the court to change an adopted person's surname, forename, both surname and forename or single name. The court may also change the person's single name to a name with at least one forename and surname or the person's forename and surname to a single name. Single names are to be determined in accordance with the traditional culture of the adopted person or the applicant or applicants.

References to the *Corporations Act* are replaced with references to the as yet unproclaimed *Not-for-Profit Corporations Act, 2010*.

### SCHEDULE 4 AMENDMENTS TO OTHER ACTS

This Schedule contains amendments to 36 other Acts, most of which are consequential to the repeal of the *Child and Family Services Act* and the enactment of the *Child, Youth and Family Services Act, 2017*. Most of these amendments simply update references to the current Act and terminology from the current Act to refer to the new Act and the new terminology.

A few Acts are amended more extensively as follows.

The *Intercountry Adoption Act, 1998* is amended to bring that Act into closer alliance with the adoption and adoption licensing requirements of the *Child, Youth and Family Services Act, 2017*. In particular, amendments are made to require police record checks, to give the Director under that Act additional authority to refuse to issue or renew or to revoke a licence to facilitate intercountry adoptions, to clarify the inspection powers with respect to licensees and to amend the penalty provisions.

The *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* is amended to provide that the society established under that Act is deemed to be a children's aid society designated under the *Child, Youth and Family Services Act, 2017* and that it may only exercise its powers to bring children to a place of safety within the City of Toronto. The governance provisions in the special Act are repealed, leaving the society subject to the governance provisions in the *Child, Youth and Family Services Act, 2017*.

The *Public Sector Labour Relations Transition Act, 1997* is amended to apply automatically upon the amalgamation of two or more children's aid societies.

The only amendments in this Schedule that are unrelated to the repeal of the *Child and Family Services Act* and the enactment of the *Child, Youth and Family Services Act, 2017* are to the *Freedom of Information and Protection of Privacy Act*. Subsections 65 (8) and 67 (2) of that Act are amended to correct references to other Acts.



**An Act to enact the Child, Youth and Family Services Act, 2017,  
to amend and repeal the Child and Family Services Act  
and to make related amendments to other Acts**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Supporting Children, Youth and Families Act, 2017*.**

**SCHEDULE 1**  
**CHILD, YOUTH AND FAMILY SERVICES ACT, 2017**

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## Preamble

The Government of Ontario acknowledges that children are individuals with rights to be respected and voices to be heard.

The Government of Ontario is committed to the following principles:

Services provided to children and families should be child-centred.

Children and families have better outcomes when services build on their strengths. Prevention services, early intervention services and community support services build on a family's strengths and are invaluable in reducing the need for more disruptive services and interventions.

Services provided to children and families should respect their diversity and the principle of inclusion, consistent with the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families.

Services to children and families should, wherever possible, help maintain connections to their communities.

In furtherance of these principles, the Government of Ontario acknowledges that the aim of the *Child, Youth and Family Services Act, 2017* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child.

With respect to First Nations, Inuit and Métis children, the Government of Ontario acknowledges the following:

The Province of Ontario has unique and evolving relationships with First Nations, Inuit and Métis peoples.

First Nations, Inuit and Métis peoples are constitutionally recognized peoples in Canada, with their own laws, and distinct cultural, political and historical ties to the Province of Ontario.

Where a First Nations, Inuk or Métis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan's Principle.

The United Nations Declaration on the Rights of Indigenous Peoples recognizes the importance of belonging to a community or nation, in accordance with the traditions and customs of the community or nation concerned.

Further, the Government of Ontario believes the following:

First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.

Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.

For these reasons, the Government of Ontario is committed, in the spirit of reconciliation, to working with First Nations, Inuit and Métis peoples to help ensure that wherever possible, they care for their children in accordance with their distinct cultures, heritages and traditions.

## PART I PURPOSES AND INTERPRETATION

### PURPOSES

#### Paramount purpose and other purposes

#### Paramount purpose

**1** (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.

## Other purposes

(2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well-being of children, are to recognize the following:

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
  - i. respects a child's or young person's need for continuity of care and for stable relationships within a family and cultural environment,
  - ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
  - iii. takes into account a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - iv. takes into account a child's or young person's cultural and linguistic needs,
  - v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
  - vi. includes the participation of a child or young person, the child's or young person's parents and relatives and the members of the child's or young person's extended family and community, where appropriate.
4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

## INTERPRETATION

### Interpretation

#### Definitions

**2** (1) In this Act,

“agency” means a corporation; (“agence”)

“band” has the same meaning as in the *Indian Act* (Canada); (“bande”)

“Board” means the Child and Family Services Review Board continued under section 333; (“Commission”)

“child” means a person younger than 18; (“enfant”)

“child in care” means a child or young person who is receiving residential care from a service provider and includes,

- (a) a child who is in the care of a foster parent, and
- (b) a young person who is,
  - (i) detained in a place of temporary detention under the *Youth Criminal Justice Act* (Canada),
  - (ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise, or
  - (iii) held in a place of open custody under section 150 of this Act; (“enfant recevant des soins”, “enfant qui reçoit des soins”)

“court” means the Ontario Court of Justice or the Family Court of the Superior Court of Justice; (“tribunal”)

“creed” includes religion; (“croyance”)

“customary care” means the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community; (“soins conformes aux traditions”)

“Director” means a Director appointed under subsection 53 (1); (“directeur”)

“extended family” means persons to whom a child is related, including through a spousal relationship or adoption and, in the case of a First Nations, Inuk or Métis child, includes any member of,

- (a) a band of which the child is a member,
- (b) a band with which the child identifies,
- (c) a First Nations, Inuit or Métis community of which the child is a member, and
- (d) a First Nations, Inuit or Métis community with which the child identifies; (“famille élargie”)

“First Nations, Inuit or Métis community” means a community listed by the Minister in a regulation made under section 68; (“communauté inuite, métisse ou de Premières Nations”)

“foster care” means the provision of residential care to a child, by and in the home of a person who,

- (a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and
- (b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing),

and “foster home” and “foster parent” have corresponding meanings; (“soins fournis par une famille d’accueil”, “famille d’accueil”, “parent de famille d’accueil”)

“licence” means a licence issued under Part VIII (Adoption and Adoption Licensing) or Part IX (Residential Licensing); a reference to a licence in Part VIII is to a licence issued under that Part and a reference to a licence in Part IX is to a licence issued under that Part; (“permis”)

“licensee” means the holder of a licence; (“titulaire de permis”)

“local director” means a local director appointed under section 38; (“directeur local”)

“mechanical restraints” means a device, material or equipment that reduces the ability of a person to move freely, and includes handcuffs, flex cuffs, leg irons, restraining belts, belly chains and linking chains; (“contentions mécaniques”)

“Minister” means the Minister of Children and Youth Services or such other member of the Executive Council as may be designated under the *Executive Council Act* to administer this Act; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“old Act” means the *Child and Family Services Act*; (“ancienne loi”)

“order” includes a refusal to make an order; (“arrêté, ordre et ordonnance”)

“personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“physical restraint” means a holding technique to restrict a person’s ability to move freely but, for greater certainty, does not include,

- (a) restricting movement, physical redirection or physical prompting, if the restriction, redirection or prompting is brief, gentle and part of a behaviour teaching program, or
- (b) the use of helmets, protective mitts or other equipment to prevent a person from physically injuring or further physically injuring themselves; (“contention physique”)

“place of open custody” means a place or facility designated as a place of open custody under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu ouvert”)

“place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program; (“lieu de détention provisoire en milieu ouvert”)

“place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu fermé”)

“place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program; (“lieu de détention provisoire en milieu fermé”)

“place of temporary detention” means a place or facility designated as a place of temporary detention under the *Youth Criminal Justice Act* (Canada); (“lieu de détention provisoire”)

“prescribed” means prescribed by regulations; (“prescrit”)

“program supervisor” means a program supervisor appointed under subsection 53 (2); (“superviseur de programme”)

“provincial director” means,

- (a) a person, the group or class of persons or the body appointed or designated by the Lieutenant Governor in Council or the Lieutenant Governor in Council’s delegate to perform any of the duties or functions of a provincial director under the *Youth Criminal Justice Act* (Canada), or
- (b) a person appointed under clause 146 (1) (a); (“directeur provincial”)

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record; (“dossier”)

“regulations” means the regulations made under this Act; (“règlements”)

“relative” means, with respect to a child, a person who is the child’s grandparent, great-uncle, great-aunt, uncle or aunt, including through a spousal relationship or adoption; (“membre de la parenté”)

“residential care” means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child’s parent, other than boarding, lodging or associated care for a child who has been placed in the lawful care and custody of a relative or member of the child’s extended family or the child’s community; (“soins en établissement”)

“residential placement” means a place where residential care is provided; (“placement en établissement”, “placé dans un établissement”)

“service” includes,

- (a) a service for a child with a developmental or physical disability or the child’s family,
- (b) a mental health service for a child or the child’s family,
- (c) a service related to residential care for a child,
- (d) a service for a child who is or may be in need of protection or the child’s family,
- (e) a service related to adoption for a child, the child’s family or others,
- (f) counselling for a child or the child’s family,
- (g) a service for a child or the child’s family that is in the nature of support or prevention and that is provided in the community,
- (h) a service or program for or on behalf of a young person for the purposes of the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (i) a prescribed service; (“service”)

“service provider” means,

- (a) the Minister,
- (b) a licensee,
- (c) a person or entity, including a society, that provides a service funded under this Act, or
- (d) a prescribed person or entity,

but does not include a foster parent; (“fournisseur de services”)

“society” means an agency designated as a children’s aid society under subsection 34 (1); (“société”)

“treatment” has the same meaning as in subsection 2 (1) of the *Health Care Consent Act, 1996*; (“traitement”)

“Tribunal” means the Licence Appeal Tribunal; (“Tribunal”)

“young person” means,

- (a) a person who is or, in the absence of evidence to the contrary, appears to be 12 or older but younger than 18 and who is charged with or found guilty of an offence under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or

- (b) if the context requires, any person who is charged under the *Youth Criminal Justice Act* (Canada) with having committed an offence while they were a young person or who is found guilty of an offence under the *Youth Criminal Justice Act* (Canada). (“adolescent”)

#### **Interpretation, “parent”**

- (2) Unless this Act provides otherwise, a reference in this Act to a parent of a child is deemed to be a reference to,
- (a) the person who has lawful custody of the child; or
  - (b) if more than one person has lawful custody of the child, all of the persons who have lawful custody of the child, excluding any person who is unavailable or unable to act, as the context requires.

#### **Member of child’s or young person’s community**

- (3) For the purposes of this Act, the following persons are members of a child’s or young person’s community:
1. A person who has ethnic, cultural or creedal ties in common with the child or young person or with a parent, sibling or relative of the child or young person.
  2. A person who has a beneficial and meaningful relationship with the child or young person or with a parent, sibling or relative of the child or young person.

#### **Interpretation, child’s or young person’s bands and First Nations, Inuit or Métis communities**

- (4) In this Act, a reference to a child’s or young person’s bands and First Nations, Inuit or Métis communities includes all of the following:

1. Any band of which the child or young person is a member.
2. Any band with which the child or young person identifies.
3. Any First Nations, Inuit or Métis community of which the child or young person is a member.
4. Any First Nations, Inuit or Métis community with which the child or young person identifies.

## **PART II CHILDREN’S AND YOUNG PERSONS’ RIGHTS**

### **RIGHTS OF CHILDREN AND YOUNG PERSONS RECEIVING SERVICES**

#### **Rights of children, young persons receiving services**

**3** Every child and young person receiving services under this Act has the following rights:

1. To express their own views freely and safely about matters that affect them.
2. To be engaged through an honest and respectful dialogue about how and why decisions affecting them are made and to have their views given due weight, in accordance with their age and maturity.
3. To be consulted on the nature of the services provided or to be provided to them, to participate in decisions about the services provided or to be provided to them and to be advised of the decisions made in respect of those services.
4. To raise concerns or recommend changes with respect to the services provided or to be provided to them without interference or fear of coercion, discrimination or reprisal and to receive a response to their concerns or recommended changes.
5. To be informed, in language suitable to their understanding, of their rights under this Part.
6. To be informed, in language suitable to their understanding, of the existence and role of the Provincial Advocate for Children and Youth and of how the Provincial Advocate for Children and Youth may be contacted.

#### **Corporal punishment prohibited**

**4** No service provider or foster parent shall inflict corporal punishment on a child or young person or permit corporal punishment to be inflicted on a child or young person in the course of the provision of a service to the child or young person.

#### **Detention restricted**

**5** No service provider or foster parent shall detain a child or young person or permit a child or young person to be detained in locked premises in the course of the provision of a service to the child or young person, except as Part VI (Youth Justice) and Part VII (Extraordinary Measures) authorize.

#### **Physical restraint restricted**

**6** No service provider or foster parent shall use or permit the use of physical restraint on a child or young person for whom the service provider or foster parent is providing services, except as the regulations authorize.

### **Mechanical restraints restricted**

7 No service provider or foster parent shall use or permit the use of mechanical restraints on a child or young person for whom the service provider or foster parent is providing services, except as Part VI (Youth Justice), Part VII (Extraordinary Measures) and the regulations authorize.

## **RIGHTS OF CHILDREN IN CARE**

### **Right to be heard in respect of decisions**

8 (1) For greater certainty, the rights under section 3 of a child in care apply to decisions affecting them, including decisions with respect to,

- (a) the child's or young person's treatment, education or training or work programs;
- (b) the child's or young person's creed, community identity and cultural identity; and
- (c) the child's or young person's placement in or discharge from a residential placement or transfer to another residential placement.

### **Views to be given due weight**

(2) The child's or young person's views with respect to the decisions described in subsection (1) shall be given due weight, in accordance with the child's or young person's age and maturity as required by paragraph 2 of section 3.

### **Right to be informed re residential placement admission**

9 Upon admission to a residential placement, and at regular intervals thereafter, or, where intervals are prescribed, at the prescribed intervals thereafter, a child in care has a right to be informed, in language suitable to their understanding, of,

- (a) their rights under this Part;
- (b) the complaints procedures established under subsection 18 (1) and the further review available under section 19;
- (c) the review procedures available for children under sections 64, 65 and 66;
- (d) the review procedures available under section 152, in the case of a young person described in clause (b) of the definition of "child in care" in subsection 2 (1);
- (e) their responsibilities while in the placement; and
- (f) the rules governing day-to-day operation of the residential care, including disciplinary procedures.

### **Rights of communication, etc.**

10 (1) A child in care has a right,

- (a) to speak in private with, visit and receive visits from members of their family or extended family regularly, subject to subsection (2);
- (b) without unreasonable delay, to speak in private with and receive visits from,
  - (i) their lawyer,
  - (ii) another person representing the child or young person, including the Provincial Advocate for Children and Youth and members of the Provincial Advocate for Children and Youth's staff,
  - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and
  - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and
- (c) to send and receive written communications that are not read, examined or censored by another person, subject to subsections (3) and (4).

### **When child is in extended society care**

(2) A child in care who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is not entitled as of right to speak with, visit or receive visits from a member of their family or extended family, except under an order for access made under Part V (Child Protection) or an openness order or openness agreement made under Part VIII (Adoption and Adoption Licensing).

### **Opening, etc., of written communications to child in care**

(3) Subject to subsection (4), written communications to a child in care,

- (a) may be opened by the service provider or a member of the service provider's staff in the child's or young person's presence and may be inspected for articles prohibited by the service provider;

- (b) subject to clause (c), may be examined or read by the service provider or a member of the service provider's staff in the child's or young person's presence, where the service provider believes on reasonable grounds that the contents of the written communication may cause the child or young person physical or emotional harm;
- (c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from a person described in subclause (1) (b) (i), (ii), (iii) or (iv); and
- (d) shall not be censored or withheld from the child or young person, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child or young person.

#### **Opening, etc., of young person's written communications**

- (4) Written communications to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody,
  - (a) may be opened by the service provider or a member of the service provider's staff in the young person's presence and may be inspected for articles prohibited by the service provider;
  - (b) may be examined or read by the service provider or a member of the service provider's staff and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications,
    - (i) may be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody, or
    - (ii) may contain communications that are prohibited under the *Youth Criminal Justice Act* (Canada) or by court order;
  - (c) shall not be examined or read under clause (b) if it is to or from the young person's lawyer; and
  - (d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is to or from a person described in subclause (1) (b) (ii), (iii) or (iv).

#### **Definition**

- (5) In this section,

"written communications" includes mail and electronic communication in any form.

#### **Conditions and limitations on visitors**

**11** (1) A service provider may impose such conditions and limitations on persons who are visiting a young person in a place of temporary detention, of open custody or of secure custody as are necessary to ensure the safety of staff or young persons in the facility.

#### **Suspending visits in emergencies**

(2) Where a service provider has reasonable grounds to believe there are emergency circumstances within a facility that is a place of temporary detention, of open custody or of secure custody or within the community that may pose a risk to staff or young persons in the facility, the service provider may suspend visits until there are reasonable grounds to believe the emergency has been resolved and there is no longer a risk to staff or young persons in the facility.

#### **Limited exception**

- (3) Despite subsection (2), the service provider may not suspend visits from,
  - (a) the Provincial Advocate for Children and Youth and members of the Provincial Advocate for Children and Youth's staff;
  - (b) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff; or
  - (c) a member of the Legislative Assembly of Ontario or of the Parliament of Canada,

unless the provincial director determines that suspension is necessary to ensure public safety or the safety of staff or young persons in the facility.

#### **Personal liberties**

**12** A child in care has a right,

- (a) to have reasonable privacy and possession of their own personal property, subject to section 155; and
- (b) to receive instruction and participate in activities of their choice related to their creed, community identity and cultural identity, subject to section 14.

#### **Plan of care**

**13** (1) A child in care has a right to a plan of care designed to meet their particular needs, which shall be prepared within 30 days of the child's or young person's admission to the residential placement.



### **Rights to care**

- (2) A child in care has a right,
- (a) to participate in the development of their individual plan of care and in any changes made to it;
  - (b) to have access to food that is of good quality and appropriate for the child or young person, including meals that are well balanced;
  - (c) to be provided with clothing that is of good quality and appropriate for the child or young person, given their size and activities and prevailing weather conditions;
  - (d) to receive medical and dental care, subject to section 14, at regular intervals and whenever required, in a community setting whenever possible;
  - (e) to receive an education that corresponds to their aptitudes and abilities, in a community setting whenever possible; and
  - (f) to participate in recreational, athletic and creative activities that are appropriate for their aptitudes and interests, in a community setting whenever possible.

### **Parental consent, etc.**

**14** Subject to subsection 94 (7) and sections 110 and 111 (custody during adjournment, interim and extended society care), the parent of a child in care retains any right that the parent may have,

- (a) to direct the child's or young person's education and upbringing, in accordance with the child's or young person's creed, community identity and cultural identity; and
- (b) to consent to treatment on behalf of an incapable child or young person, if the parent is the child's or young person's substitute decision-maker in accordance with section 20 of the *Health Care Consent Act, 1996*.

### **SERVICE PROVIDERS' DUTIES IN RESPECT OF CHILDREN'S AND YOUNG PERSONS' RIGHTS**

#### **Children's, young persons' rights to respectful services**

**15** (1) Service providers shall respect the rights of children and young persons as set out in this Act.

#### **Children, young persons to be heard and represented**

(2) Service providers shall ensure that children and young persons and their parents have an opportunity to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.

#### **Exception**

(3) Subsection (2) does not apply to a child or young person or parent of a child or young person if there is good cause for not giving that person an opportunity to be heard or represented as described in that subsection.

#### **Criteria and safeguards re decisions**

(4) Service providers shall ensure that decisions affecting the interests and rights of children and young persons and their parents are made according to clear, consistent criteria and are subject to appropriate procedural safeguards.

#### **Information about Provincial Advocate for Children and Youth to be displayed and available**

- (5) Service providers shall,
- (a) prominently display at their premises, in a manner visible to persons receiving services, a notice advising of the existence and role of the Provincial Advocate for Children and Youth and of how the Provincial Advocate for Children and Youth may be contacted; and
  - (b) make available on request informational materials produced by the Provincial Advocate for Children and Youth.

#### **French language services**

**16** Service providers shall, where appropriate, make services to children and young persons and their families available in the French language.

### **ALTERNATIVE DISPUTE RESOLUTION**

#### **Resolution of issues by prescribed method of alternative dispute resolution**

**17** (1) If a child is or may be in need of protection under this Act, a society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving any issue related to the child or a plan for the child's care.

#### **First Nations, Inuk or Métis child**

(2) If the issue referred to in subsection (1) relates to a First Nations, Inuk or Métis child, the society shall consult with a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities to determine whether an

alternative dispute resolution process established by the bands and communities or another prescribed alternative dispute resolution process could assist in resolving the issue.

### **Children's Lawyer**

(3) If a society or a person, including a child, who is receiving child welfare services proposes that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken to assist in resolving an issue relating to a child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

### **Notice to band, community**

(4) If a society makes or receives a proposal that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken under subsection (3) in a matter involving a First Nations, Inuk or Métis child, the society shall give notice of the proposal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

## **COMPLAINTS AND REVIEWS**

### **Complaints procedure**

**18** (1) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with,

- (a) complaints regarding alleged violations of the rights under this Part of children in care; and
- (b) complaints by children in care or other persons affected by conditions or limitations imposed on visitors under subsection 11 (1) or suspensions of visits under subsection 11 (2).

### **Provincial Advocate for Children and Youth**

(2) The procedure established under subsection (1) must provide that the service provider shall tell the children in care that they may ask for the assistance of the Provincial Advocate for Children and Youth in,

- (a) making a complaint under clause (1) (a) or (b); and
- (b) requesting a further review under subsection 19 (1) of the complaint once the review by the service provider is completed.

### **Review of complaint**

(3) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under clause (1) (a) or (b), on the complaint of,

- (a) a child in care or a group of children in care;
- (b) the parent of a child in care who makes a complaint;
- (c) another person representing the child in care who makes a complaint; or
- (d) a person affected by a condition or limitation imposed on visitors under subsection 11 (1) or a suspension of visits under subsection 11 (2),

and shall seek to resolve the complaint.

### **Response to complainants**

(4) Upon completion of its review under subsection (3), the service provider shall inform each person who made the complaint, whether as an individual or as part of a group, of the results of the review.

### **Further review**

**19** (1) Where a person referred to in subsection 18 (3) makes a complaint, whether as an individual or as part of a group, and is not satisfied with the results of the review conducted under that subsection and requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

### **Same**

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may do so by holding a hearing.

### **Procedure**

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

### **Powers of appointed person**

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 53 (2).

### **Review and report within 30 days**

(5) A person appointed under subsection (1) shall, within 30 days after the day of the appointment, complete the review, set out in a report the person's findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) each person who made the complaint, whether as an individual or as part of a group;
- (b) the service provider; and
- (c) the Minister.

### **Minister to advise persons affected of any decision**

**20** (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 19 (5), the Minister shall advise the service provider and each person who made the complaint, whether as an individual or as part of a group, of the decision.

### **Remedies preserved**

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available.

## **CONSENT AND VOLUNTARY SERVICES**

### **Consents and agreements**

**21** (1) In this section,

"capacity" means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding or withdrawing the consent or making, not making or terminating the agreement; ("jouit de toutes ses facultés mentales")

"nearest relative", when used in reference to a person who is younger than 16, means the person with lawful custody of the person, and when used in reference to a person who is 16 or older, means the person who would be authorized to give or refuse consent to a treatment on the person's behalf under the *Health Care Consent Act, 1996* if the person were incapable with respect to the treatment under that Act. ("membre de la parenté le plus proche")

### **Elements of valid consent or agreement, etc.**

(2) A person's consent or withdrawal of a consent or participation in or termination of an agreement under this Act is valid if, at the time the consent is given or withdrawn or the agreement is made or terminated, the person,

- (a) has capacity;
- (b) is reasonably informed as to the nature and consequences of the consent or agreement, and of alternatives to it;
- (c) gives or withdraws the consent or executes the agreement or notice of termination voluntarily, without coercion or undue influence; and
- (d) has had a reasonable opportunity to obtain independent advice.

### **Where person lacks capacity**

(3) A person's nearest relative may give or withdraw a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment, not more than one year before the nearest relative acts on the person's behalf, that the person does not have capacity.

### **Exceptions: ss. 180, 74 (2) (n)**

(4) Subsection (3) does not apply to a consent under section 180 (consents to adoption) or to a parent's consent referred to in clause 74 (2) (n) (child in need of protection).

### **Consent, etc., of minor**

(5) A person's consent or withdrawal of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is younger than 18.

### **Exception: Part X**

(6) This section does not apply in respect of the collection, use or disclosure of personal information under Part X (Personal Information).

**Consent to service****Consent to service: person 16 or older**

**22** (1) Subject to clause (2) (b) and subsection (3), a service provider may provide a service to a person who is 16 or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.

**Consent to residential care: child younger than 16 or in society's care**

- (2) A service provider may provide residential care to a child,
- (a) if the child is younger than 16, with the consent of the child's parent; and
  - (b) if the child is in a society's lawful custody, with the society's consent,
- except where this Act provides otherwise.

**Exception — Part VI**

(3) Subsections (1) and (2) do not apply where a service is provided to a young person under Part VI (Youth Justice).

**Discharge from residential placement**

- (4) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) may only be discharged from the placement,
- (a) with the consent that would be required for a new residential placement;
  - (b) where the placement is made under the authority of an agreement made under subsection 75 (1) (temporary care agreements), in accordance with section 76 (notice of termination); or
  - (c) where the placement is made under the authority of an agreement made under subsection 77 (1) (agreements with 16 and 17 year olds), in accordance with subsection 77 (4) (notice of termination).

**Transfer to another placement**

(5) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

**Child's views and wishes**

- (6) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall,
- (a) ensure that the child and the person whose consent is required under subsection (2) are made aware of and understand, as far as possible, the reasons for the placement, discharge or transfer; and
  - (b) take the child's views and wishes into account, given due weight in accordance with the child's age and maturity.

**Application of *Health Care Consent Act, 1996***

(7) If the service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of this section.

**Counselling service: child 12 or older**

**23** (1) A service provider may provide a counselling service to a child who is 12 or older with the child's consent, and no other person's consent is required, but if the child is younger than 16, the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

**Application of *Health Care Consent Act, 1996***

(2) If the counselling service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of subsection (1).

## PART III

### FUNDING AND ACCOUNTABILITY

**Definition**

**24** In this Part,

"lead agency" means an entity designated as a lead agency under subsection 30 (1).

#### FUNDING OF SERVICES AND LEAD AGENCIES

**Provision of services directly or by others**

**25** The Minister may,

- (a) provide services;

- (b) establish, operate and maintain premises for the provision of services;
- (c) provide funding, pursuant to agreements, to persons, agencies, municipalities, organizations and other prescribed entities,
  - (i) for the provision or coordination of services by them,
  - (ii) for the acquisition, maintenance or operation of premises used for the provision or coordination of services,
  - (iii) for the establishment of advisory groups or committees with respect to services,
  - (iv) for research, evaluation, planning, development, co-ordination or redesign with respect to services,
  - (v) for any other prescribed purpose; and
- (d) provide funding, pursuant to agreements, to lead agencies with respect to the performance of the functions referred to in subsection 30 (5).

### **Services to persons older than 18**

**26** The Minister may provide services and provide funding pursuant to agreements for the provision of services to persons who are not children, and to their families, as if those persons were children.

### **Minister's advisory committee**

**27** The Minister may appoint members to a Minister's advisory committee, established by order of the Lieutenant Governor in Council, to advise the Minister on child and family well-being.

### **Security for payment of funds**

**28** The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, charge, caution, registration of agreement or in such other manner as the Minister determines.

### **Conditions on transfer of assets**

**29** No service provider or lead agency shall transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations or any term of an agreement with the Minister.

### **Lead agencies**

#### **Designation**

**30 (1)** The Minister may designate an entity as a lead agency.

#### **Conditions of designation**

(2) The Minister may impose conditions on a designation made under this section and may at any time amend or remove the conditions or impose new ones.

#### **Revocation of designation**

(3) The Minister may revoke a designation made under this section.

#### **Categories of lead agencies**

(4) The Minister may assign lead agencies to different lead agency categories established by the regulations.

#### **Functions of lead agencies**

(5) Every lead agency shall perform the functions assigned to the lead agency's category by the regulations.

#### **List of lead agencies and categories**

(6) The Minister shall maintain a list of lead agencies and their categories.

#### **Public availability**

(7) The Minister shall make the list available to the public.

#### **Placements must comply with Act and regulations, etc.**

**31** No service provider shall place a child in a residential placement except in accordance with this Act, the regulations and the directives issued under this Act.

## **DIRECTIVES AND COMPLIANCE ORDERS (LEAD AGENCIES AND SERVICE PROVIDERS)**

### **Directives by Minister**

#### **Non-application**

**32 (1)** This section and section 33 do not apply in respect of,

- (a) licensees under Part IX (Residential Licensing), when acting in their capacity as licensees under that Part; or

- (b) societies, when performing their functions under subsection 35 (1).

#### **Directives**

- (2) The Minister may issue directives to service providers and lead agencies with respect to any prescribed matter.

#### **Binding**

- (3) Every service provider and lead agency shall comply with every directive issued to it under this section.

#### **General or particular**

- (4) A directive may be general or particular in its application.

#### **Law prevails**

- (5) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

#### **Public availability**

- (6) The Minister shall make every directive under this section available to the public.

#### **Non-application of Legislation Act, 2006**

- (7) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

#### **Compliance order**

##### **Grounds**

**33** (1) A program supervisor may make an order under subsection (2) if the program supervisor believes on reasonable grounds that a service provider or lead agency has failed to comply with,

- (a) this Act or the regulations;
- (b) a directive issued under section 32;
- (c) in the case of a service provider, an agreement referred to in clause 25 (c) or section 26; or
- (d) in the case of a lead agency,
  - (i) an agreement referred to in clause 25 (d);
  - (ii) a condition imposed on the lead agency's designation under subsection 30 (2), or
  - (iii) subsection 30 (5) (functions of lead agencies).

##### **Order**

(2) For the purposes of subsection (1), a program supervisor may issue an order to the service provider or lead agency that requires either or both of the following:

1. That the service provider or lead agency do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
2. That the service provider or lead agency prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

##### **Compliance required**

(3) A service provider or lead agency served with an order under this section shall comply with the order within the time specified in it.

##### **Public availability**

(4) The Minister,

- (a) may make orders under this section available to the public; and
- (b) shall make a summary of each order under this section available to the public in accordance with the regulations.

##### **Failure to comply**

(5) If a service provider or lead agency fails to comply with an order made under this section within the time specified in it, the Minister may terminate all or part of the funding provided to the service provider or lead agency.

## CHILDREN'S AID SOCIETIES

### Children's aid society

#### Designation

**34** (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 35 (1).

#### Conditions on designation

(2) For any or all of the functions of a society set out in subsection 35 (1), the Minister may impose conditions on the designation and may at any time amend or remove the conditions or impose new ones.

#### Amendment of designation

(3) The Minister may at any time amend a designation to provide that the society is no longer designated for a particular function or functions set out in subsection 35 (1) or to alter the society's territorial jurisdiction.

#### Society deemed to be a local board

(4) A society is deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act, 2006* and the *Municipal Conflict of Interest Act*.

#### Not Crown agents

(5) A society and its members, officers, employees and agents are not agents of the Crown in right of Ontario and shall not hold themselves out as such.

#### No Crown liability

(6) No action or other proceeding shall be instituted against the Crown in right of Ontario for any act or omission of a society or its members, officers, employees or agents.

#### Functions

**35** (1) The functions of a children's aid society are to,

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VIII (Adoption and Adoption Licensing); and
- (g) perform any other duties given to it by this Act or the regulations or any other Act.

#### Prescribed standards, etc.

(2) A society shall,

- (a) provide the prescribed standard of services in its performance of its functions; and
- (b) follow the prescribed procedures and practices.

#### Governance matters

##### First Nations, Inuit or Métis representatives on board

**36** (1) A society that provides services to First Nations, Inuit or Métis children and families shall have the prescribed number of First Nations, Inuit or Métis representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

##### Employee may not sit on board

(2) An employee of a society shall not be a member of the society's board.

#### By-laws

(3) The by-laws of a society shall include any provisions that are prescribed.

#### No personal liability

**37** No action shall be instituted against a member of the board of directors or an officer or employee of a society for any act done in good faith in the execution or intended execution of the person's duty or for an alleged neglect or default in good faith in the execution of that duty.

**Appointment of local director**

**38** Every society shall appoint a local director with the prescribed qualifications, powers and duties.

**Designation of places of safety**

**39** For the purposes of Part V (Child Protection), a local director may designate a place as a place of safety and may designate a class of places as places of safety.

## FUNDING AND ACCOUNTABILITY AGREEMENTS

**Funding****Payments by Minister**

**40** (1) The Minister shall pay to every society, out of money appropriated for the purpose by the Legislature, an amount determined in accordance with the regulations.

**Manner of payment**

(2) An amount payable to a society under subsection (1), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister.

**Accountability agreement**

**41** (1) Every society shall enter into an accountability agreement with the Minister as a condition of receiving funding.

**Term**

(2) The term of an accountability agreement shall be for at least one of the Ministry's fiscal years but may be for a longer term specified by the Minister.

**Board approval**

(3) The society's board of directors shall approve the accountability agreement before the society enters into the agreement.

**Content**

(4) An accountability agreement must include a requirement that the society operate within its approved budget allocation and any other prescribed terms.

**If no agreement**

(5) If the Minister and a society cannot agree on the terms of an accountability agreement by a date determined by the Minister, the Minister may set the terms of the agreement.

## DIRECTIVES AND COMPLIANCE ORDERS (SOCIETIES)

**Directives by Minister**

**42** (1) The Minister may issue directives to societies, including directives with respect to financial and administrative matters and the performance of their functions under subsection 35 (1).

**Binding**

(2) A society shall comply with every directive issued to it under this section.

**General or particular**

(3) A directive may be general or particular in its application.

**Law prevails**

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

**Public availability**

(5) The Minister shall make every directive under this section available to the public.

**Non-application of *Legislation Act, 2006***

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

**Compliance order****Grounds**

**43** (1) A Director may make an order under subsection (2) if the Director believes on reasonable grounds that a society has failed to comply with,

- (a) this Act or the regulations;



- (b) a condition imposed on the society's designation under subsection 34 (2);
- (c) an accountability agreement entered into under section 41; or
- (d) a directive issued under section 42.

#### **Order**

(2) For the purposes of subsection (1), a Director may issue an order to the society that requires either or both of the following:

1. That the society do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
2. That the society prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

#### **Compliance required**

(3) A society served with an order under this section shall comply with the order within the time specified in it.

#### **Public availability**

- (4) The Minister,
  - (a) may make orders under this section available to the public; and
  - (b) shall make a summary of each order under this section available to the public in accordance with the regulations.

### **MINISTER'S POWERS**

#### **Powers of Minister**

##### **Grounds**

- 44** (1) The Minister may exercise a power set out in subsection (3) if,
- (a) a society has failed to comply with a compliance order made under section 43 within the time specified in it; or
  - (b) the Minister considers it to be in the public interest to do so.

##### **Public interest**

(2) In considering the public interest under clause (1) (b), the Minister may consider any matter the Minister regards as relevant including,

- (a) the quality of the financial and operational management of the society;
- (b) the society's capabilities with respect to its corporate governance; and
- (c) the quality of services provided by the society.

##### **Powers**

- (3) For the purposes of subsection (1), the Minister may do one or more of the following:
  1. Order that the society cease a particular activity or take other corrective action within the time specified in the order.
  2. Impose or amend conditions on the society's designation under subsection 34 (1).
  3. Suspend, amend or revoke the designation of the society.
  4. Appoint members of the society's board of directors if,
    - i. there are vacancies on the board, or
    - ii. there are no vacancies, but the appointment is for the purposes of designating that member as chair of the board under paragraph 7.
  5. Remove members of the board and appoint others in their place.
  6. Designate a chair of the board, if the office of chair is vacant.
  7. Designate another chair of the board in place of the current chair.
  8. Appoint a supervisor to operate and manage the affairs and activities of the society.

##### **Notice of proposal**

(4) If the Minister proposes to act under subsection (3), the Minister shall give written notice of the proposal and reasons for it to the society.

**Immediate action**

(5) Subsection (4) does not apply if,

- (a) in the Minister's opinion, the society has, by its conduct, acquiesced to the Minister's proposal;
- (b) the society has consented to the proposal; or
- (c) there are not enough members on the board to form a quorum.

**Right to respond**

(6) A society that receives notice under subsection (4) may make written submissions to the Minister within 14 days after receipt of the notice or within a different time period specified in the notice.

**Minister's decision**

(7) After considering a written submission from the society or, if no submission is received, after the time period under subsection (6) has expired, the Minister may carry out the proposal and shall give written notice of the decision and reasons for it to the society.

**Decision final**

(8) The Minister's decision is final.

**Provisional action**

(9) Despite subsection (4), the Minister may provisionally exercise any of the powers set out in subsection (3) where, in the Minister's opinion, it is necessary to do so to avert an immediate threat to the public interest or to a person's health, safety or well-being.

**Notice**

(10) The Minister shall give written notice of the provisional exercise of the power and reasons for it to the society.

**Decision final**

(11) The Minister's decision to provisionally exercise the power is final.

**Appointments to board, etc.****Members**

**45** (1) If the Minister appoints members of a society's board of directors under paragraph 4 or 5 of subsection 44 (3), the following rules apply:

- 1. The Minister shall ensure that the members do not constitute a majority of the number of members required to be on the board.
- 2. The members shall be appointed at the pleasure of the Minister for a period that does not exceed two years.
- 3. The members may serve as appointed members for no more than two consecutive years.
- 4. The members shall have the same rights and responsibilities as the members of the board that have been elected.

**Chair**

(2) If the Minister designates a chair of the board of directors under paragraph 6 or 7 of subsection 44 (3), the following rules apply:

- 1. The chair may be designated from among the members of the board, including any members appointed by the Minister under paragraph 4 or 5 of subsection 44 (3).
- 2. The chair shall be designated at the pleasure of the Minister for a period that does not exceed two years.
- 3. The chair may serve as chair for no more than two consecutive years.
- 4. In the case of a designation under paragraph 7 of subsection 44 (3), the former chair may remain a member of the board.

**Appointment of supervisor**

**46** (1) This section applies if a supervisor is appointed to operate and manage the affairs and activities of a society under paragraph 8 of subsection 44 (3).

**Term of appointment**

(2) The appointment of a supervisor is valid for a period not exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period at any time.

### **Powers and duties of supervisor**

(3) Unless the appointment provides otherwise, the supervisor has the exclusive right to exercise all the powers and perform all the duties of the society and its members, directors, Executive Director and officers.

#### **Same**

(4) The Minister may, in the appointment, specify the supervisor's powers and duties and the conditions governing them.

### **Examples of powers and duties**

(5) Without limiting the generality of subsection (4), the supervisor's powers and duties may include the following:

1. Carrying on the society's affairs and activities.
2. Entering into contracts on the society's behalf.
3. Arranging for bank accounts to be opened in the society's name.
4. Authorizing persons to sign financial and other documents on the society's behalf.
5. Hiring or dismissing employees of the society.
6. Making, amending or revoking the society's by-laws.
7. Executing and filing documents on the society's behalf, including applications under the *Corporations Act* and notices and returns under the *Corporations Information Act*.

### **Continued powers and duties of society, etc.**

(6) If, under the appointment, the society or its members, directors, Executive Director or officers continue to have any powers or duties during the supervisor's appointment, any exercise of that power or performance of that duty by the society or its members, directors, Executive Director or officers during that time is valid only if approved by the supervisor in writing.

#### **Assistance**

(7) The supervisor may apply to the Superior Court of Justice for an order directing a peace officer to assist the supervisor in occupying the premises of a society.

### **Report to Minister**

(8) The supervisor shall report to the Minister as the Minister requires.

### **Minister's directions**

(9) The Minister may issue directions to the supervisor with regard to any matter within the supervisor's jurisdiction, and the supervisor shall carry them out.

### **No proceedings against Crown**

(10) No proceeding, other than a proceeding referred to in subsection (12), shall be commenced against the Crown or the Minister with respect to the appointment of the supervisor or any act of the supervisor done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

### **No personal liability**

(11) No action or other proceeding shall be instituted against the supervisor for any act done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

### **Crown liability**

(12) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (11) of this section does not relieve the Crown of liability to which the Crown would otherwise be subject in respect of a tort committed by a supervisor.

### **Effect on board**

(13) On the appointment of a supervisor, the members of the society's board cease to hold office, unless the appointment provides otherwise.

#### **Same**

(14) During the term of the supervisor's appointment, the powers of any member of the board who continues to hold office are suspended, unless the appointment provides otherwise.

### **No personal liability**

(15) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the supervisor after the member's removal under subsection (13) or while the member's powers are suspended under subsection (14).

## **RESTRUCTURING**

### **Amalgamation by societies**

#### **Amalgamation proposal**

**47** (1) Two or more societies that are proposing to amalgamate and continue as one society shall submit an amalgamation proposal to the Minister containing the information and in the form specified by the Minister.

#### **Minister approval of proposal**

(2) The Minister may amend the amalgamation proposal and may approve it in whole or in part.

#### **Amalgamation agreement**

(3) The societies shall not enter into an agreement to amalgamate under subsection 113 (2) of the *Corporations Act* until they have received the Minister's approval of the amalgamation proposal under subsection (2). The amalgamation agreement must be consistent with the amalgamation proposal.

#### **Minister approval of amalgamation application**

(4) The societies shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

#### **Minister's directions**

(5) The Minister may, at any time, issue directions to the societies with regard to the proposed amalgamation, including requiring that a society provide information or documents to the Minister, and the society shall comply with the directions.

#### **Restructuring by Minister's order**

**48** (1) If the Minister considers it to be in the public interest, including to enhance the efficiency, effectiveness and consistency of services, the Minister may order a society to do any of the following on or after the date set out in the order:

1. To amalgamate with one or more other societies.
2. To transfer all or any part of its operations to one or more other societies.
3. To cease operating, to dissolve or to wind up its operations.
4. To do anything or refrain from doing anything in order for the society to achieve anything under paragraphs 1 to 3.

#### **Minister's directions**

(2) The Minister may, in the order, include directions to provide the following to the Minister within the time set out in the order:

1. A plan to implement the order, including with respect to the transfer of assets, liabilities, rights and obligations, and of employees.
2. A timeline according to which the order will be implemented.
3. A proposed budget for implementation of the order.
4. Information about the status of the implementation of the order.
5. In the case of an order made under paragraph 1 of subsection (1), an amalgamation agreement for the Minister's approval.
6. Information with respect to any other matter specified by the Minister.

#### **Notice of proposed order**

(3) If the Minister proposes to make an order under subsection (1), the Minister shall give written notice of the proposed order and any directions contained in the order, and reasons for them, to each affected society.

#### **Notice to employees and bargaining agents**

(4) Each society that receives a notice under subsection (3) shall give a copy of the notice to affected employees and their bargaining agents.

### **Right to respond re directions**

(5) A society may make written submissions to the Minister within 30 days after receipt of the notice or within a different time period specified in the notice. The written submissions may be with respect to any directions contained in the order, but not with respect to the order itself.

### **Minister's decision re directions**

(6) After considering a written submission from the society or, if no submission is received, after the time period under subsection (5) has expired, the Minister may confirm, revoke or amend the directions contained in the order.

### **Notice of order**

(7) The Minister shall give a copy of the order to each affected society.

### **Duty of society**

(8) Each society that receives an order under subsection (7) shall,

- (a) give notice of the order to affected employees and their bargaining agents and to other persons or entities whose contracts are affected by the order; and
- (b) make the order available to the public.

### **Additional changes**

(9) The Minister may, at any time, revoke or amend an order made under this section, including any directions contained in the order. If the Minister does so, subsections (3) to (8) apply with necessary modifications.

### **Compliance**

(10) A society that is the subject of an order under this section shall comply with it.

### **Corporate powers**

(11) A society that is the subject of an order under this section is deemed to have the necessary powers to comply with the order, despite any of the following:

1. Any Act or regulation.
2. Any other instrument related to the corporate governance of a society, including the *Corporations Act* or any letters patent, supplementary letters patent or by-laws.

### **Non-application of *Legislation Act, 2006***

(12) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under this section.

### **Minister approval of amalgamation agreement**

(13) When a society provides an amalgamation agreement to the Minister in accordance with directions given under paragraph 5 of subsection (2), the Minister may amend the agreement and may approve it in whole or in part.

### **Minister approval of amalgamation application**

(14) A society shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

### **Appointment of supervisor for restructuring**

**49** (1) The Minister may appoint a supervisor to implement or facilitate the implementation of an order made under section 48 if,

- (a) an affected society has failed to comply with the order; or
- (b) in the Minister's opinion, there is undue delay, lack of progress or disagreement between or among affected parties that is preventing or is likely to prevent an affected society from complying with the order.

### **Application of other provisions**

(2) If the Minister proposes to appoint a supervisor under subsection (1), subsections 44 (4) to (8) and subsections 46 (2) to (15) apply with necessary modifications.

### **Board compliance**

(3) The members of an affected society's board of directors shall comply with decisions of a supervisor appointed under subsection (1) to facilitate the implementation of an order made under section 48 with regard to matters within the supervisor's jurisdiction.

### **Conflict with *Corporations Act*, etc.**

**50** In the event of a conflict between sections 44 to 49 and any of the following, sections 44 to 49 prevail:

1. The *Corporations Act* or regulations made under that Act.
2. A society's letters patent, supplementary letters patent or by-laws.

### **Transfer of property held for charitable purpose**

**51** (1) If an order made under section 48 directs a society to transfer to a transferee property that it holds for a charitable purpose, all gifts, trusts, bequests, devises and grants of property that form part of the property being transferred are deemed to be gifts, trusts, bequests, devises and grants of property to the transferee.

### **Specified purpose**

(2) If a will, deed or other document by which a gift, trust, bequest, devise or grant mentioned in subsection (1) is made indicates that the property being transferred is to be used for a specified purpose, the transferee shall use it for the specified purpose.

### **Application**

(3) Subsections (1) and (2) apply whether the will, deed or document by which the gift, trust, bequest, devise or grant is made, is made before or after this section comes into force.

### **No compensation**

**52** (1) Despite any other Act, no person or entity, including a society, is entitled to any compensation for any loss or damages arising from any direct or indirect action that the Minister or a supervisor appointed under section 44 or 49 takes under this Act, including making an order under section 48.

### **Same, transfer of property**

(2) Despite any other Act, no person or entity, including a society, is entitled to compensation for any loss or damages, including loss of use, loss of revenue and loss of profit, arising from the transfer of property under an order made under section 48.

### **No expropriation**

(3) Nothing in this Part and nothing done or not done in accordance with this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

## **APPOINTMENTS AND DELEGATIONS**

### **Directors and program supervisors**

#### **Appointment of Director**

**53** (1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

#### **Appointment of program supervisor**

(2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

#### **Limitations, etc., on appointments**

(3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

#### **Remuneration and expenses**

(4) The remuneration and expenses of a person appointed under this section who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of money appropriated for the purpose by the Legislature.

#### **Duties of Director with respect to societies**

**54** (1) A Director shall exercise the powers and perform the duties of a society in any area in which no society is functioning.

#### **Powers of local director**

(2) In exercising the powers and performing the duties of a society under subsection (1), a Director has all the powers of a local director.

#### **Delegation by Minister**

**55** (1) Where, under this Act, a power is given to or a duty is imposed on the Minister, a Director, a program supervisor or an employee in the Ministry, the Minister may delegate that power or duty to any other person or class of persons.

#### **Conditions, etc.**

(2) The delegation must be made in writing and is subject to such limitations, conditions and requirements as are set out in it.

### **Deeds and contracts**

(3) Section 6 of the *Executive Council Act* does not apply to a deed or contract that is executed under a delegation made under this section.

## **REPORTS AND INFORMATION**

### **Reports and information to Minister**

**56** Every service provider and lead agency shall,

- (a) make the prescribed reports and provide the prescribed information, including personal information, to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) make a report and provide information, including personal information, to the Minister whenever the Minister requests it.

### **Reports and information to prescribed entities**

**57** Every service provider and lead agency shall provide the prescribed reports and the prescribed information to the prescribed entities in the prescribed manner.

### **Information available to the public**

**58** Every service provider and lead agency shall make the prescribed information available to the public in the prescribed manner.

## **PROGRAM SUPERVISOR INSPECTIONS**

### **Inspection by program supervisor without a warrant**

**59** (1) For the purpose of determining compliance with this Act, the regulations and the directives issued under this Act, a program supervisor may, at any reasonable time and without a warrant or notice, enter the following premises in order to conduct an inspection:

- 1. Premises where a service is provided under this Act.
- 2. Premises where a lead agency's function referred to in subsection 30 (5) is performed.
- 3. Business premises of a service provider.
- 4. Business premises of a lead agency.

### **Limitation, dwelling**

(2) The power to enter and inspect a premises described in subsection (1) shall not be exercised to enter and inspect any room or place actually being used as a dwelling, except with the consent of the occupier.

### **Identification**

(3) A program supervisor conducting an inspection shall, upon request, produce proper identification.

### **Application of other provisions**

(4) Sections 276 (powers on inspection) and 279 (admissibility of certain documents) apply with necessary modifications with respect to an inspection conducted under this section.

### **Inspection by program supervisor with a warrant**

**60** (1) A program supervisor may, without notice, apply to a justice for a warrant under this section.

### **Issuance of warrant**

(2) A justice may issue a warrant authorizing a program supervisor named in the warrant to enter the premises specified in the warrant and to exercise any of the powers mentioned in subsection 276 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises is a premises described in subsection 59 (1);
- (b) in the case of a premises that is not used as a dwelling,
  - (i) that the program supervisor has been prevented from exercising a right of entry to the premises under section 59 or a power under subsection 276 (1), or
  - (ii) that there are reasonable grounds to believe that the program supervisor will be prevented from exercising a right of entry to the premises under section 58 or a power under subsection 276 (1); and
- (c) in the case of a premises that is used as a dwelling,
  - (i) that,

- (A) the program supervisor believes on reasonable grounds that a service being provided, or the manner of providing it, is causing harm or is likely to cause harm to a person's health, safety or well-being as a result of non-compliance with this Act, the regulations or the directives issued under this Act, and
  - (B) it is necessary for the program supervisor to exercise the powers mentioned in subsection 276 (1) in order to inspect the service or the manner of providing it, or
- (ii) that a ground exists that is prescribed for the purposes of this subclause.

#### **Expert help**

(3) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the program supervisor in the execution of the warrant.

#### **Expiry of warrant**

(4) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

#### **Extension of time**

(5) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the program supervisor named in the warrant.

#### **Use of force**

(6) A program supervisor named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

#### **Time of execution**

(7) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

#### **Other matters**

(8) Subsections 276 (2) to (7) and section 279 apply with necessary modifications with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.

#### **Definition**

(9) In this section,

“justice” means a provincial judge or a justice of the peace.

#### **Inspection report**

**61** (1) After completing an inspection, a program supervisor shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the service provider or lead agency; and
- (c) any other prescribed person.

#### **All non-compliance to be documented**

(2) If a program supervisor finds that a service provider or lead agency has not complied with a requirement of this Act, the regulations or a directive issued under this Act, the program supervisor shall document the non-compliance in the inspection report.

### **REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE**

#### **Definitions**

**62** In sections 63 to 66,

“advisory committee” means a residential placement advisory committee established under subsection 63 (1); (“comité consultatif”)

“institution” means,

- (a) a children's residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Residential Licensing) in which residential care can be provided to 10 or more children at a time, or
- (b) a building, group of buildings or part of a building, designated by a Director, in which residential care can be provided to 10 or more children at a time; (“foyer”)



“residential placement” does not include,

- (a) a placement made under the *Youth Criminal Justice Act* (Canada) or under Part VI (Youth Justice),
- (b) commitment to a secure treatment program under Part VII (Extraordinary Measures), or
- (c) a placement with a person who is neither a service provider nor a foster parent; (“placement en établissement”)

“special need” means a need that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability. (“besoin particulier”)

### **Residential placement advisory committees**

**63** (1) The Minister may establish residential placement advisory committees and shall specify the territorial jurisdiction of each advisory committee.

#### **Composition**

(2) Each residential placement advisory committee shall consist of persons whom the Minister considers appropriate, which may include,

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, a representative of a band or First Nations, Inuit or Métis community.

#### **Payments to members, hiring of staff**

(3) The Minister may pay allowances and reasonable travelling expenses to the members of an advisory committee, and may authorize an advisory committee to hire support staff.

#### **Duties of advisory committee**

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential care and alternatives to residential care, to conduct reviews under section 64 and to name persons for the purpose of subsection 75 (11) (contact with child under temporary care agreement), and has such further duties as are prescribed.

#### **Reports to Minister**

(5) An advisory committee shall make a report of its activities to the Minister annually and at any other time requested by the Minister.

#### **Review by advisory committee**

##### **Mandatory review**

**64** (1) An advisory committee shall review,

- (a) every residential placement in an institution of a child who resides within the advisory committee’s jurisdiction, if the residential placement is intended to last or actually lasts 90 days or more,
  - (i) as soon as possible, but no later than 45 days after the day on which the child is placed in the institution,
  - (ii) unless the residential placement is reviewed under subclause (i), within 12 months of the establishment of the advisory committee or within such longer period as the Minister allows, and
  - (iii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i) or (ii);
- (b) every residential placement of a child who objects to the residential placement and resides within the advisory committee’s jurisdiction,
  - (i) within the week immediately following the day that is 14 days after the child is placed, and
  - (ii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within 30 days of the referral.

##### **Discretionary review**

(2) An advisory committee may at any time review or re-review, on a person’s request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee’s jurisdiction.

**Review to be informal, etc.**

(3) An advisory committee shall conduct a review under this section in an informal manner and in the absence of the public, and in the course of the review may,

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records relating to the child and members of the child's family that are disclosed to the committee.

**Service providers to assist advisory committee**

(4) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review.

**Matters to be considered**

(5) In conducting a review, an advisory committee shall,

- (a) consider whether the child has a special need;
- (b) consider the child's views and wishes, given due weight in accordance with the child's age and maturity;
- (c) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (d) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- (e) if it considers that a less restrictive alternative to the residential placement would be more appropriate for the child in the circumstances, specify that alternative;
- (f) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (g) in the case of a First Nations, Inuk or Métis child, also consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

**Advisory committee's recommendations****Persons to be advised**

**65** (1) An advisory committee that conducts a review shall advise the following persons of its recommendations as soon as the review has been completed:

- 1. The service provider.
- 2. Any representative of the child.
- 3. The child's parent or, where the child is in a society's lawful custody, the society.
- 4. The child, in language suitable to the child's understanding.
- 5. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2, 3 and 4 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

**Child to be advised of right to review by Board of residential placement**

(2) An advisory committee that conducts a review shall advise the child of the child's right to a further review under section 66.

**Report to Minister**

(3) An advisory committee that conducts a review shall, within 30 days of completing the review, make a report of its findings and recommendations to the Minister.

**Recommendation for less restrictive service**

(4) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (3) that the less restrictive service be provided to the child.

## **Review by Board**

### **Child may request review**

**66** (1) A child who is in a residential placement to which the child objects may apply to the Board for a determination of where the child should remain or be placed, if the residential placement has been reviewed by an advisory committee under section 64 and,

- (a) the child is dissatisfied with the advisory committee's recommendations; or
- (b) the advisory committee's recommendations are not followed.

### **Board to conduct review**

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

### **Notice to child of hearing**

(3) The Board shall advise the child whether it intends to hold a hearing or not within 10 days of receiving the child's application.

### **Parties**

(4) The parties to a hearing under this section are,

- (a) the child;
- (b) the child's parent or, where the child is in a society's lawful custody, the society;
- (c) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a) and (b) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and
- (d) any other persons that the Board specifies.

### **Time for determination**

(5) The Board shall complete its review and make a determination within 30 days of receiving a child's application, unless,

- (a) the Board holds a hearing with respect to the application; and
- (b) the parties consent to a longer period for the Board's determination.

### **Board's order**

(6) After conducting a review under subsection (2), the Board may,

- (a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
- (b) order that the child be discharged from the residential placement; or
- (c) confirm the existing residential placement.

## **OFFENCES**

### **Offences**

**67** (1) A person or entity is guilty of an offence if the person or entity,

- (a) contravenes section 56 (reports and information);
- (b) contravenes section 57 (reports and information to prescribed entities);
- (c) contravenes section 58 (information available to public);
- (d) knowingly provides false information in a statement, report or return required to be provided under this Part or the regulations.

### **Penalty**

(2) A person or entity convicted of an offence under subsection (1) is liable to a fine of not more than \$5,000.

### **Offence — obstruction of program supervisor**

(3) A person is guilty of an offence if the person hinders, obstructs or interferes with a program supervisor conducting an inspection under this Part, or otherwise impedes a program supervisor in exercising the powers or performing the duties of a program supervisor under this Part.

### **Penalty**

(4) A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000.

**Limitation**

(5) A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or program supervisor.

**Directors, officers and employees**

(6) If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence.

**PART IV****FIRST NATIONS, INUIT AND MÉTIS CHILD AND FAMILY SERVICES****Regulations listing First Nations, Inuit and Métis communities**

**68** (1) The Minister may make regulations establishing lists of First Nations, Inuit and Métis communities for the purposes of this Act.

**More than one community**

(2) A regulation made under subsection (1) may list one or more communities as a First Nations, Inuit or Métis community.

**Consent of representatives**

(3) Before making a regulation under subsection (1), the Minister must obtain the consent of the community's representatives.

**Agreements with bands and First Nations, Inuit or Métis communities**

**69** The Minister may, for the provision of services,

- (a) make agreements with bands and First Nations, Inuit or Métis communities and with any other parties whom the bands or communities choose to involve; and
- (b) provide funding to the persons or entities referred to in clause (a) pursuant to such agreements.

**Designation of child and family service authority**

**70** (1) A band or First Nations, Inuit or Métis community may designate a body as a First Nations, Inuit or Métis child and family service authority.

**Agreements, etc.**

(2) Where a band or First Nations, Inuit or Métis community has designated a First Nations, Inuit or Métis child and family service authority, the Minister,

- (a) shall, at the band's or community's request, enter into negotiations for the provision of services by the child and family service authority;
- (b) may enter into agreements with the child and family service authority and, if the band or community agrees, any other person, for the provision of services; and
- (c) may designate the child and family service authority, with its consent, as a society under subsection 34 (1).

**Subsidy for customary care**

**71** If a band or First Nations, Inuit or Métis community declares that a First Nations, Inuit or Métis child is being cared for under customary care, a society or entity may grant a subsidy to the person caring for the child.

**Consultation with bands and First Nations, Inuit or Métis communities**

**72** A society, person or entity that provides services or exercises powers under this Act with respect to First Nations, Inuit or Métis children or young persons shall regularly consult with their bands and First Nations, Inuit or Métis communities about the provision of the services or the exercise of the powers and about matters affecting the children or young persons, including,

- (a) bringing children to a place of safety and the placement of children in residential care;
- (b) the provision of family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part V (Child Protection);
- (e) temporary care agreements under Part V (Child Protection);
- (f) society agreements with 16 and 17 year olds under Part V (Child Protection);
- (g) adoption placements;
- (h) the establishment of emergency houses; and

- (i) any other matter that is prescribed.

### Consultation in specified cases

**73** A society, person or entity that proposes to provide a prescribed service to a First Nations, Inuk or Métis child or young person, or to exercise a prescribed power under this Act in relation to such a child or young person, shall consult with a representative chosen by each of the child's or young person's bands and First Nations, Inuit or Métis communities in accordance with the regulations.

## PART V CHILD PROTECTION INTERPRETATION

### Interpretation

#### Definitions

**74** (1) In this Part,

“child protection worker” means a Director, a local director or a person who meets the prescribed requirements and who is authorized by a Director or local director for the purposes of section 81 (commencing child protection proceedings) and for other prescribed purposes; (“préposé à la protection de l’enfance”)

“extra-provincial child protection order” means a temporary or final order made by a court of another province or a territory of Canada, or of a prescribed jurisdiction outside Canada if it meets prescribed conditions, pursuant to child welfare legislation of that province, territory or other jurisdiction, placing a child into the care and custody of a child welfare authority or other person named in the order; (“ordonnance extraprovinciale de protection d’un enfant”)

“parent”, when used in reference to a child, means each of the following persons, but does not include a foster parent:

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children’s Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 217 or 218.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of the individual’s family, or has acknowledged parentage of the child and provided for the child’s support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children’s Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force; (“parent”)

“place of safety” means a foster home, a hospital, a person’s home that satisfies the requirements of subsection (4) or a place or one of a class of places designated as a place of safety by a Director or local director under section 39, but does not include a place of temporary detention, of open custody or of secure custody; (“lieu sûr”)

### Child in need of protection

(2) A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person’s,
  - (i) failure to adequately care for, provide for, supervise or protect the child, or
  - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s,
  - (i) failure to adequately care for, provide for, supervise or protect the child, or
  - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

- (c) the child has been sexually abused or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child;
- (d) there is a risk that the child is likely to be sexually abused or sexually exploited as described in clause (c);
- (e) the child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996* and the parent is a substitute decision-maker for the child, the parent refuses or is unavailable or unable to consent to the treatment on the child's behalf;
- (f) the child has suffered emotional harm, demonstrated by serious,
  - (i) anxiety,
  - (ii) depression,
  - (iii) withdrawal,
  - (iv) self-destructive or aggressive behaviour, or
  - (v) delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (g) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the harm;
- (h) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (i) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment to prevent the harm;
- (j) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide treatment or access to treatment, or where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the condition;
- (k) the child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (l) the child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment;
- (m) the child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately;
- (n) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is 12 or older, with the child's consent, for the matter to be dealt with under this Part; or
- (o) the child is 16 or 17 and a prescribed circumstance or condition exists.

### **Best interests of child**

- (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,
  - (a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;
  - (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and

- (c) consider any other circumstance of the case that the person considers relevant, including,
- (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
  - (ii) the child's physical, mental and emotional level of development,
  - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - (iv) the child's cultural and linguistic heritage,
  - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
  - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
  - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,
  - (viii) the merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
  - (ix) the effects on the child of delay in the disposition of the case,
  - (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
  - (xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

#### **Place of safety**

- (4) For the purposes of the definition of "place of safety" in subsection (1), a person's home is a place of safety for a child if,
- (a) the person is a relative of the child or a member of the child's extended family or community; and
  - (b) a society or, in the case of a First Nations, Inuk or Métis child, a society or a child and family service authority, has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child.

#### **Definition, child and family service authority**

- (5) In subsection (4),

"child and family service authority" means a First Nations, Inuit or Métis child and family service authority designated under section 70.

### **VOLUNTARY AGREEMENTS**

#### **Temporary care agreement**

**75** (1) A person who is temporarily unable to care adequately for a child in the person's custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

#### **Older child to be party to agreement**

- (2) No temporary care agreement shall be made in respect of a child who is 12 or older unless the child is a party to the agreement.

#### **Exception: developmental disability**

- (3) Subsection (2) does not apply where it has been determined on the basis of an assessment not more than one year before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental disability.

#### **Duty of society**

- (4) A society shall not make a temporary care agreement unless the society,
- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
  - (b) is satisfied that no course of action less disruptive to the child, such as care in the child's own home, is able to adequately protect the child.

#### **Term of agreement limited**

- (5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed 12 months.

**Time limit**

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the agreement is entered into or extended; or
- (b) 24 months, if the child is 6 or older on the day the agreement is entered into or extended.

**Calculating time in care**

(7) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (6):

- 1. An interim society care order made under paragraph 2 of subsection 101 (1).
- 2. A temporary care agreement under subsection (1) of this section.
- 3. A temporary order made under clause 94 (2) (d).

**Previous periods to be counted**

(8) The period referred to in subsection (6) shall include any previous periods that the child was in a society's care and custody as described in subsection (7) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

**Authority to consent to medical treatment may be transferred**

(9) A temporary care agreement may provide that, where the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society is entitled to act in the place of a parent in providing consent to treatment on the child's behalf.

**Contents of temporary care agreement**

(10) A temporary care agreement shall include the following:

- 1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
- 2. A statement by all the parties to the agreement that the child's placement is voluntary.
- 3. A statement, by the person referred to in subsection (1), that the person is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
- 4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.
- 5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another person who is willing to do so.
- 6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
- 7. Such other provisions as are prescribed.

**Designation by advisory committee**

(11) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 of subsection (10) or designate another person under paragraph 5 of subsection (10), a residential placement advisory committee established under subsection 63 (1) that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

**Variation of agreement**

(12) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

**Agreement expires at 18**

(13) No temporary care agreement shall continue beyond the 18th birthday of the person who is its subject.

**Notice of termination of agreement**

**76** (1) A party to a temporary care agreement may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

**When notice takes effect**

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period not exceeding 21 days as the agreement specifies, after the day on which every other party has actually received the notice.



### **Society response to notice of termination**

(3) Where notice of a wish to terminate a temporary care agreement is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made;
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 77 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 77 (1).

### **Expiry of agreement**

(4) Where a temporary care agreement expires or is about to expire and is not extended, the society shall, before the agreement expires or as soon as practicable thereafter, but in any event within 21 days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made;
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 77 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 77 (1).

### **Society agreements with 16 and 17 year olds**

77 (1) The society and a child who is 16 or 17 may make a written agreement for services and supports to be provided for the child where,

- (a) the society has jurisdiction where the child resides;
- (b) the society has determined that the child is or may be in need of protection;
- (c) the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and
- (d) the child wants to enter into the agreement.

### **Term of agreement**

(2) The agreement may be for a period not exceeding 12 months, but may be renewed if the total term of the agreement, as extended, does not exceed 24 months.

### **Previous or current involvement with society not a bar to agreement**

(3) A child may enter into an agreement under this section regardless of any previous or current involvement with a society, and without regard to any time during which the child has been in a society's care pursuant to an agreement made under section 75 (1) or pursuant to an order made under clause 94 (2) (d) or paragraph 2 or 3 of subsection 101 (1).

### **Notice of termination of agreement**

(4) A party to an agreement made under this section may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

### **Agreement expires at 18**

(5) No agreement made under this section shall continue beyond the 18th birthday of the person who is its subject.

### **Current agreements and orders must be terminated first**

(6) Despite subsection (3), an agreement may not come into force under this section until any temporary care agreement under section 75 or order for the care or supervision of a child under this Part is terminated.

### **Representation by Children's Lawyer**

(7) The Children's Lawyer may provide legal representation to the child entering into an agreement under this section if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

## LEGAL REPRESENTATION

### Legal representation of child

**78** (1) A child may have legal representation at any stage in a proceeding under this Part.

#### Court to consider issue

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

- (a) shall, as soon as practicable after the commencement of the proceeding; and
- (b) may, at any later stage in the proceeding,

determine whether legal representation is desirable to protect the child's interests.

#### Direction for legal representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

#### Criteria

(4) Where,

- (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be placed in interim or extended society care under paragraph 2 or 3 of subsection 101 (1);
- (b) the child is in the society's care and,
  - (i) no parent appears before the court, or
  - (ii) it is alleged that the child is in need of protection within the meaning of clause 74 (2) (a), (c), (f), (g) or (j); or
- (c) the child is not permitted to be present at the hearing,

legal representation is deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes, given due weight in accordance with the child's age and maturity, that the child's interests are otherwise adequately protected.

#### Where parent a minor

(5) Where a child's parent is younger than 18, the Children's Lawyer shall represent the parent in a proceeding under this Part unless the court orders otherwise.

## PARTIES AND NOTICE

### Parties

**79** (1) The following are parties to a proceeding under this Part:

- 1. The applicant.
- 2. The society having jurisdiction in the matter.
- 3. The child's parent.
- 4. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2 and 3 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### Director to be added

(2) At any stage in a proceeding under this Part, the court shall add a Director as a party on the Director's motion.

#### Right to participate

(3) Any person, including a foster parent, who has cared for the child continuously during the six months immediately before the hearing,

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a lawyer; and
- (d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

**Child 12 or older**

(4) A child 12 or older who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive notice of the proceeding and not be permitted to be present at the hearing.

**Child younger than 12**

(5) A child younger than 12 who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

- (a) is capable of understanding the hearing; and
- (b) will not suffer emotional harm by being present at the hearing,

and orders that the child receive notice of the proceeding and be permitted to be present at the hearing.

**Child's participation**

(6) A child who is the applicant under subsection 113 (4) or 115 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 121 as if the child were a party.

**Dispensing with notice**

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

**CUSTOMARY CARE****Customary care**

**80** A society shall make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child,

- (a) is in need of protection;
- (b) cannot remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part or, where there is an order for the child's custody that is enforceable in Ontario, of the person entitled to custody under the order; and
- (c) is a member of or identifies with a band, or is a member of or identifies with a First Nations, Inuit or Métis community.

**COMMENCING CHILD PROTECTION PROCEEDINGS****Warrants, orders, etc.****Application**

**81** (1) A society may apply to the court to determine whether a child is in need of protection.

**Warrant to bring child to place of safety**

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

- (a) the child is younger than 16;
- (b) the child is in need of protection; and
- (c) a less restrictive course of action is not available or will not protect the child adequately.

**When warrant may not be refused**

(3) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (7).

**Order to produce child or bring child to place of safety**

(4) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

- (a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or brought the child to a place of safety under subsection (7); and
- (b) the child cannot be protected adequately otherwise than by being brought before the court,

the court may order,

- (c) that the person having charge of the child produce the child before the court at the time and place named in the order for a hearing under subsection 90 (1) to determine whether the child is in need of protection; or
- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

#### **Child's name, location not required**

(5) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (4), to describe the child by name or to specify the premises where the child is located.

#### **Authority to enter, etc.**

(6) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (4) (d) may at any time enter any premises specified in the warrant or order, by force if necessary, and may search for and remove the child.

#### **Bring child to place of safety without warrant**

(7) A child protection worker who believes on reasonable and probable grounds that,

- (a) a child is in need of protection;
- (b) the child is younger than 16; and
- (c) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 90 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

#### **Police assistance**

(8) A child protection worker acting under this section may call for the assistance of a peace officer.

#### **Consent to examine child**

(9) A child protection worker acting under subsection (7) or under a warrant issued under subsection (2) or an order made under clause (4) (d) may authorize the child's medical examination where a parent's consent would otherwise be required.

#### **Right of entry, etc.**

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (7) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

#### **Regulations re power of entry**

(11) A child protection worker authorized to enter premises under subsection (6) or (10) shall exercise the power of entry in accordance with the regulations.

#### **Peace officer has powers of child protection worker**

(12) Subsections (2), (6), (7), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

#### **Protection from personal liability**

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

#### **Exception, 16 and 17 year olds brought to place of safety with consent**

**82** (1) A child protection worker may bring a child who is 16 or 17 and who is subject to a temporary or final supervision order to a place of safety if the child consents.

#### **Temporary or final supervision order**

(2) In this section,

"temporary or final supervision order" means an order under clause 94 (2) (b) or (c), paragraph 1 or 4 of subsection 101 (1), subsection 112 (8) or 115 (10) or clause 116 (1) (a).

### **SPECIAL CASES OF BRINGING CHILDREN TO A PLACE OF SAFETY**

#### **Bringing children who are removed from or leave care to place of safety**

##### **With warrant**

**83** (1) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that,

- (a) the child is actually or apparently younger than 16, and,
  - (i) has left or been removed from a society's lawful care and custody without its consent, or
  - (ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

**When warrant may not be refused**

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

**No need to specify premises**

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

**Without warrant**

(4) A peace officer or child protection worker may without a warrant bring the child to a place of safety if the peace officer or child protection worker believes on reasonable and probable grounds that,

- (a) the child is actually or apparently younger than 16, and,
  - (i) has left or been removed from a society's lawful care and custody without its consent, or
  - (ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1).

**Bringing child younger than 12 home or to place of safety**

**84** (1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently younger than 12 has committed an act in respect of which a person 12 or older could be found guilty of an offence may bring the child to a place of safety without a warrant and on doing so,

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or
- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall bring the child to a place of safety until the child can be returned to the parent or other person.

**Notice to parent, etc.**

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

**Where child not returned to parent, etc., within 12 hours**

(3) Where a child brought to a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 81 (7) and not under subsection (1).

**Children who withdraw from parent's care**

**Warrant to bring child to a place of safety**

**85** (1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of the sworn information of a person that,

- (a) the child is younger than 16;
- (b) the child has withdrawn from the person's care and control without the person's consent; and
- (c) the person believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not brought to a place of safety.

**Child to be returned or brought to a place of safety**

(2) A person acting under a warrant issued under subsection (1) shall return the child to the person with care and control of the child as soon as practicable and where it is not possible to return the child to that person within a reasonable time, bring the child to a place of safety.

### **Notice to person with care, custody or control**

(3) The person in charge of a place of safety to which a child is brought under subsection (2) shall make reasonable efforts to notify the person with care and control of the child that the child is in the place of safety so that the child may be returned to that person.

### **Where child not returned within 12 hours**

(4) Where a child brought to a place of safety under subsection (2) cannot be returned to the person with care and control of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 81 (2) and not under subsection (1).

### **Where custody enforcement proceedings more appropriate**

(5) A justice of the peace shall not issue a warrant under subsection (1) in respect of a child who has withdrawn from the care and control of a person where a proceeding under section 36 of the *Children's Law Reform Act* would be more appropriate.

### **No need to specify premises**

(6) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

### **Child protection proceedings**

(7) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child brought to a place of safety under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the person with care and control of the child,

- (a) the peace officer or child protection worker may bring the child to a place of safety under subsection 81 (7); or
- (b) where the child has been brought to a place of safety under subsection (4), the child is deemed to have been brought there under subsection 81 (7).

### **Authority to enter, etc.**

**86** (1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 83 (1) or 85 (1) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child

### **Right of entry, etc.**

(2) A person authorized under subsection 83 (4) or 84 (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

### **Regulations re power of entry**

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

### **Police assistance**

(4) A child protection worker acting under section 83 or 85 may call for the assistance of a peace officer.

### **Consent to examine child**

(5) Where subsection 84 (3) or 85 (4) applies to a child brought to a place of safety, a child protection worker may authorize the child's medical examination where a parent's consent would be otherwise required.

### **Protection from personal liability**

(6) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 83, 84 or 85 or for an alleged neglect or default in the execution in good faith of that duty.

## **HEARINGS AND ORDERS**

### **Rules re hearings**

#### **Definition**

**87** (1) In this section,

“media” means the press, radio and television media.

#### **Application**

(2) This section applies to hearings held under this Part, except hearings under section 134 (child abuse register).

### **Hearings separate from criminal proceedings**

(3) A hearing shall be held separately from hearings in criminal proceedings.

### **Hearings private unless court orders otherwise**

(4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court orders that the hearing be held in public after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

### **Media representatives may attend**

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

### **Selection of media representatives**

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

- 1. The media representatives in attendance shall choose not more than two persons from among themselves.
- 2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
- 3. The court may permit additional media representatives to be present at the hearing.

### **Order excluding media representatives or prohibiting publication**

(7) Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or
- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

### **Prohibition re identifying child**

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

### **Prohibition re identifying person charged**

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

### **Transcript**

(10) No person except a party or a party's lawyer shall be given a copy of a transcript of the hearing, unless the court orders otherwise.

### **Time in place of safety limited**

**88** As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 81, subclause 83 (1) (a) (ii) or subsection 136 (5),

- (a) the matter shall be brought before a court for a hearing under subsection 90 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order;
- (c) if the child is the subject of an extra-provincial child protection order, the child shall be returned to the child welfare authority or other person named in the order;
- (d) a temporary care agreement shall be made under subsection 75 (1); or
- (e) an agreement shall be made under section 77 (agreements with 16 and 17 year olds).

### **Time in place of safety limited, 16 or 17 year old**

**89** As soon as practicable, but in any event within five days after a child who is 16 or 17 is brought to a place of safety with the child's consent under section 82,

- (a) the matter shall be brought before a court for a hearing under subsection 90 (1); or
- (b) the child shall be returned to the person entitled to custody of the child under an order made under this Part.

### **Child protection hearing**

**90** (1) Where an application is made under subsection 81 (1) or a matter is brought before the court to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 101.

#### **Child's name, age, etc.**

(2) As soon as practicable, and in any event before determining whether a child is in need of protection, the court shall determine,

- (a) the child's name and age;
- (b) whether the child is a First Nations, Inuk or Métis child and, if so, the child's bands and First Nations, Inuit or Métis communities; and
- (c) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

### **Territorial jurisdiction**

**91** (1) In this section,

"territorial jurisdiction" means a society's territorial jurisdiction under subsection 34 (1).

#### **Place of hearing**

(2) A hearing under this Part with respect to a child shall be held in the territorial jurisdiction in which the child ordinarily resides, except that,

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the territorial jurisdiction in which the place from which the child was removed is located;
- (b) where the child is in interim society care under an order made under paragraph 2 or 4 of subsection 101 (1) or extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under paragraph 1 of subsection 101 (1) or clause 116 (1) (a), the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides.

### **Transfer of proceeding**

(3) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another territorial jurisdiction, the court may order that the proceeding be transferred to that other territorial jurisdiction and be continued as if it had been commenced there.

### **Orders affecting society**

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction.

### **Power of court**

**92** The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

### **Evidence**

#### **Past conduct toward children**

**93** (1) Despite anything in the *Evidence Act*, in any proceeding under this Part,

- (a) the court may consider the past conduct of a person toward any child if that person is caring for or has access to or may care for or have access to a child who is the subject of the proceeding; and
- (b) any oral or written statement or report that the court considers relevant to the proceeding, including a transcript, exhibit or finding or the reasons for a decision in an earlier civil or criminal proceeding, is admissible into evidence.

#### **Evidence re disposition and finding**

(2) In a hearing under subsection 90 (1), evidence relating only to the disposition of the matter shall not be considered in determining if the child is in need of protection.



### **Adjournments**

**94** (1) The court shall not adjourn a hearing for more than 30 days,

- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
- (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment.

### **Custody during adjournment**

(2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
- (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;
- (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or
- (d) remain or be placed in the care and custody of the society, but not be placed in a place of temporary detention, of open or of secure custody.

### **Where child is subject to extra-provincial order**

(3) Where a court makes an order under clause (2) (d) in the case of a child who is the subject of an extra-provincial child protection order the society may, during the period of the adjournment, return the child to the care and custody of the child welfare authority or other person named in the order.

### **Criteria**

(4) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be protected adequately by an order under clause (2) (a) or (b).

### **Placement with relative, etc.**

(5) Before making a temporary order for care and custody under clause (2) (d), the court shall consider whether it is in the child's best interests to make an order under clause (2) (c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community.

### **Terms and conditions in order**

(6) A temporary order for care and custody of a child under clause (2) (b) or (c) may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or to purchase any goods or services.

### **Application of s. 107**

(7) Where the court makes an order under clause (2) (d), section 110 (child in interim society care) applies with necessary modifications.

### **Access**

(8) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child on such terms and conditions as the court considers appropriate.

### **Power to vary**

(9) The court may at any time vary or terminate an order made under subsection (2).

### **Evidence on adjournments**

(10) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

### **Child's views and wishes**

(11) Before making an order under subsection (2), the court shall take into consideration the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained.

### **Use of prescribed methods of alternative dispute resolution**

**95** At any time during a proceeding under this Part, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceeding to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.

### **Delay: court to fix date**

**96** Where an application is made under subsection 81 (1) or a matter is brought before the court to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court,

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just.

### **Reasons, etc.**

**97** (1) Where the court makes an order under this Part, the court shall give,

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
  - (i) a brief statement of the evidence on which the court bases its decision, and
  - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

### **No requirement to identify person or place**

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision.

## **ASSESSMENTS**

### **Order for assessment**

**98** (1) In the course of a proceeding under this Part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (3) and (4):

1. The child.
2. A parent of the child.
3. Any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child.

### **Criteria for ordering assessment**

(2) An assessment may be ordered if the court is satisfied that,

- (a) an assessment of one or more of the persons specified in subsection (1) is necessary for the court to make a determination under this Part; and
- (b) the evidence sought from an assessment is not otherwise available to the court.

### **Assessor selected by parties**

(3) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court.

### **Appointment of person selected by parties**

(4) The court shall appoint the person selected by the parties to perform the assessment if the court is satisfied that the person meets the following criteria:

1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.

2. The person has consented to perform the assessment.

#### **Appointment of a person not selected by parties**

(5) If the court is of the opinion that the person selected by the parties under subsection (3) does not meet the criteria set out in subsection (4), the court shall select and appoint another person who does meet the criteria.

#### **Regulations**

(6) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed.

#### **Report**

(7) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days, unless the court is of the opinion that a longer assessment period is necessary.

#### **Copies of report**

(8) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,

- (a) the person assessed, subject to subsections (9) and (10);
- (b) the child's lawyer or agent;
- (c) a parent appearing at the hearing, or the parent's lawyer;
- (d) the society caring for or supervising the child;
- (e) a Director, where the Director requests a copy;
- (f) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) (c), (d) and (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and
- (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

#### **Child younger than 12**

(9) Where the person assessed is a child younger than 12, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

#### **Child 12 or older**

(10) Where the person assessed is a child 12 or older, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.

#### **Conflict**

(11) Subsections (9) and (10) prevail despite anything in the *Personal Health Information Protection Act, 2004*.

#### **Assessment is evidence**

(12) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

#### **Inference from refusal**

(13) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

#### **Report inadmissible**

(14) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except,

- (a) a proceeding under this Part, including an appeal under section 121;
- (b) a proceeding referred to in section 137;
- (c) a proceeding under Part VIII (Adoption and Adoption Licensing) respecting an application to make, vary or terminate an openness order; or
- (d) a proceeding under the *Coroners Act*,

without the consent of the person or persons assessed.

### **Consent order: special requirements**

**99** Where a child is brought before the court on consent as described in clause 74 (2) (n), the court shall, before making an order under section 101 or 102 that would remove the child from the parent's care and custody,

- (a) ask whether,
  - (i) the society has offered the parent and child services that would enable the child to remain with the parent, and
  - (ii) the parent and, where the child is 12 or older, the child, has consulted independent legal counsel in connection with the consent; and
- (b) be satisfied that,
  - (i) the parent and, where the child is 12 or older, the child, understands the nature and consequences of the consent,
  - (ii) every consent is voluntary, and
  - (iii) the parent and, where the child is 12 or older, the child, consents to the order being sought.

### **Society's plan for child**

**100** The court shall, before making an order under section 101, 102, 114 or 116, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its care or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person;
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement; and
- (f) a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity.

### **Order where child in need of protection**

**101** (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 102, in the child's best interests:

#### **Supervision order**

1. That the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months.

#### **Interim society care**

2. That the child be placed in interim society care and custody for a specified period not exceeding 12 months.

#### **Extended society care**

3. That the child be placed in extended society care until the order is terminated under section 116 or expires under section 123.

#### **Consecutive orders of interim society care and supervision**

4. That the child be placed in interim society care and custody under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding a total of 12 months.

#### **Court to inquire**

(2) In determining which order to make under subsection (1) or section 102, the court shall ask the parties what efforts the society or another person or entity has made to assist the child before intervention under this Part.

### **Less disruptive alternatives preferred**

(3) The court shall not make an order removing the child from the care of the person who had charge of the child immediately before intervention under this Part unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential care and the assistance referred to in subsection (2), would be inadequate to protect the child.

### **Community placement to be considered**

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of the child immediately before intervention under this Part, the court shall, before making an order under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person.

### **First Nations, Inuk or Métis child**

(5) Where the child referred to in subsection (4) is a First Nations, Inuk or Métis child, unless there is a substantial reason for placing the child elsewhere, the court shall place the child with a member of the child's extended family if it is possible or, if it is not possible,

- (a) in the case of a First Nations child, another First Nations family;
- (b) in the case of an Inuk child, another Inuit family; or
- (c) in the case of a Métis child, another Métis family.

### **Further hearing with notice for orders for interim or extended society care**

(6) When the court has dispensed with notice to a person under subsection 79 (7), the court shall not make an order for interim society care under paragraph 2 of subsection (1) for a period exceeding 30 days or an order for extended society care under paragraph 3 of subsection (1) until a further hearing under subsection 90 (1) has been held upon notice to that person.

### **Terms and conditions of supervision order**

(7) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on,
  - (i) the child's parent,
  - (ii) the person who will have care and custody of the child under the order,
  - (iii) the child, and
  - (iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services.

### **Order for child to remain or return to person who had charge before intervention**

(8) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

### **No order where child not subject to parental control**

(9) Where the court finds that a child who was not subject to parental control immediately before intervention under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this Part is in need of protection, but is not satisfied that a court order is necessary to protect the child in the future, the court shall make no order in respect of the child.

### **Custody order**

**102** (1) Subject to subsection (6), if a court finds that an order under this section instead of an order under subsection 101 (1) would be in a child's best interests, the court may make an order granting custody of the child to one or more persons, other than a foster parent of the child, with the consent of the person or persons.

### **Deemed to be order under s. 28 *Children's Law Reform Act***

(2) An order made under subsection (1) and any access order under section 104 that is made at the same time as the order under subsection (1) is deemed to be made under section 28 of the *Children's Law Reform Act* and the court,

- (a) may make any order under subsection (1) that the court may make under section 28 of that Act; and
- (b) may give any directions that it may give under section 34 of that Act.

**Restraining order**

(3) When making an order under subsection (1), the court may, without a separate application, make a restraining order in accordance with section 35 of the *Children's Law Reform Act*.

**Deemed to be final order under s. 35 *Children's Law Reform Act***

(4) An order under subsection (3) is deemed to be a final order made under section 35 of the *Children's Law Reform Act*, and shall be treated for all purposes as if it had been made under that section.

**Appeal under s. 121**

(5) Despite subsections (2) and (4), an order under subsection (1) or (3) and any access order under section 104 that is made at the same time as an order under subsection (1) are orders under this Part for the purposes of appealing from the orders under section 121.

**Conflict of laws**

(6) No order shall be made under this section if,

- (a) an order granting custody of the child has been made under the *Divorce Act* (Canada); or
- (b) in the case of an order that would be made by the Ontario Court of Justice, the order would conflict with an order made by a superior court.

**Application of s. 101 (3)**

(7) Subsection 101 (3) applies for the purposes of this section.

**Effect of custody proceedings**

**103** If, under this Part, a proceeding is commenced or an order for the care, custody or supervision of a child is made, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act.

**ACCESS****Access order**

**104** (1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

**Who may apply**

(2) Where a child is in a society's care and custody or supervision, the following may apply to the court at any time for an order under subsection (1):

1. The child.
2. Any other person, including a sibling of the child and, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
3. The society.

**Notice**

(3) An applicant referred to in paragraph 2 of subsection (2) shall give notice of the application to the society.

**Society to give notice of application**

(4) A society making or receiving an application under subsection (2) shall give notice of the application to,

- (a) the child, subject to subsections 79 (4) and (5) (notice to child);
- (b) the child's parent;
- (c) the person caring for the child at the time of the application; and
- (d) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) and (c) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

**Child older than 16**

(5) No order respecting access to a person 16 or older shall be made under subsection (1) without the person's consent.

**Six-month period**

- (6) No application shall be made under subsection (2) by a person other than a society within six months of,
- (a) the making of an order under section 101;
  - (b) the disposition of a previous application by the same person under subsection (2);
  - (c) the disposition of an application under section 113 or 115; or
  - (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),
- whichever is later.

**No application where child placed for adoption**

- (7) No person or society shall make an application under subsection (2) where the child,
- (a) is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
  - (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VIII (Adoption and Adoption Licensing); and
  - (c) still resides in that person's home.

**Access: where child removed from person in charge**

**105** (1) Where an order is made under paragraph 1 or 2 of subsection 101 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with the person would not be in the child's best interests.

**Access after custody order under s. 102**

(2) If a custody order is made under section 102 removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact will not be in the child's best interests.

**Access after supervision order or custody order under s. 116 (1)**

(3) If an order is made for supervision under clause 116 (1) (a) or for custody under clause 116 (1) (b), the court shall make an order for access by every person who had access before the application for the order was made under section 115, unless the court is satisfied that continued contact will not be in the child's best interests.

**Existing access order terminated if order made for extended society care**

(4) Where the court makes an order that a child be in extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), any order for access made under this Part with respect to the child is terminated.

**When court may order access to child in extended society care**

(5) A court shall not make or vary an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) unless the court is satisfied that the order or variation would be in the child's best interests.

**Additional considerations for best interests test**

- (6) The court shall consider, as part of its determination of whether an order or variation would be in the child's best interests under subsection (5),
- (a) whether the relationship between the person and the child is beneficial and meaningful to the child; and
  - (b) if the court considers it relevant, whether the ordered access will impair the child's future opportunities for adoption.

**Court to specify access holders and access recipients**

- (7) Where a court makes or varies an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the court shall specify,
- (a) every person who has been granted a right of access; and
  - (b) every person with respect to whom access has been granted.

**When court to terminate access to child in extended society care**

(8) The court shall terminate an access order with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) if the order is no longer in the best interests of the child as determined under subsection (6).

### **Society may permit contact or communication**

(9) If a society believes that contact or communication between a person and a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is in the best interests of the child and no openness order under Part VIII (Adoption and Adoption Licensing) or access order is in effect with respect to the person and the child, the society may permit contact or communication between the person and the child.

### **Review of access order made concurrently with custody order**

**106** No order for access under section 104 is subject to review under this Act if it is made at the same time as a custody order under section 102, but it may be the subject of an application under section 21 of the *Children's Law Reform Act* and the provisions of that Act apply as if the order had been made under that Act.

### **Restriction on access order**

**107** If a society has applied to a court for an order under this Act respecting access to a child by a parent of the child and the court makes the order, the court shall specify in the order the supervision to which the access is subject if, at the time of making the order, the parent has been charged with or convicted of an offence under the *Criminal Code* (Canada) involving an act of violence against the child or the other parent of the child, unless the court considers it appropriate not to make the access subject to such supervision.

## **PAYMENT ORDERS**

### **Order for payment by parent**

**108** (1) Where the court places a child in the care of,

- (a) a society; or
- (b) a person other than the child's parent, subject to a society's supervision,

the court may order a parent or a parent's estate to pay the society a specified amount at specified intervals for each day the child is in the society's care or supervision.

### **Criteria**

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant:

1. The assets and means of the child and of the parent or the parent's estate.
2. The child's capacity to provide for their own support.
3. The capacity of the parent or the parent's estate to provide support.
4. The child's and the parent's age and physical and mental health.
5. The child's mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent's estate to provide support for another person.
7. The child's aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public money.

### **Order ends at 18**

(3) No order made under subsection (1) shall extend beyond the day on which the child turns 18.

### **Power to vary**

(4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.

### **Collection by municipality**

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1).

### **Enforcement**

(6) An order made against a parent under subsection (1) may be enforced as if it were an order for support made under Part III of the *Family Law Act*.

## **INTERIM AND EXTENDED SOCIETY CARE**

### **Placement of children**

**109** (1) This section applies where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1) or extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).



### **Placement**

- (2) The society having care of a child shall choose a residential placement for the child that,
- (a) represents the least restrictive alternative for the child;
  - (b) where possible, respects the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, creed, sex, sexual orientation, gender identity and gender expression;
  - (c) where possible, respects the child's cultural and linguistic heritage;
  - (d) in the case of a First Nations, Inuk or Métis child, is with, if possible, a member of the child's extended family or, if that is not possible,
    - (i) in the case of a First Nations child, another First Nations family,
    - (ii) in the case of an Inuk child, another Inuit family, or
    - (iii) in the case of a Métis child, another Métis family; and
  - (e) takes into account the child's views and wishes, given due weight in accordance with the child's age and maturity, and the views and wishes of any parent who is entitled to access to the child.

### **Education**

- (3) The society having care of a child shall ensure that the child receives an education that corresponds to the child's aptitudes and abilities.

### **Placement outside or removal from Ontario**

- (4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.

### **Rights of child, parent and foster parent**

- (5) The society having care of a child shall ensure that,
- (a) the child is afforded all the rights referred to in Part II (Children's and Young Persons' Rights); and
  - (b) the wishes of any parent who is entitled to access to the child and, where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

### **Change of placement**

- (6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so.

### **Notice of proposed removal**

- (7) If a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and has lived continuously with a foster parent for two years and a society proposes to remove the child from the foster parent under subsection (6), the society shall,
- (a) give the foster parent at least 10 days notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (8); and
  - (b) in the case of a First Nations, Inuk or Métis child, give the notice required by clause (a), and
    - (i) give at least 10 days notice in writing of the proposed removal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
    - (ii) after the notice is given under subclause (i), consult with representatives chosen by the bands and communities relating to the plan of care for the child.

### **Application for review**

- (8) A foster parent who receives a notice under clause (7) (a) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the proposed removal.

### **Board hearing**

- (9) Upon receipt of an application by a foster parent for a review of a proposed removal, the Board shall hold a hearing under this section.

### **First Nations, Inuk or Métis child**

(10) Upon receipt of an application for review of a proposed removal of a First Nations, Inuk or Métis child, the Board shall also give notice of receipt of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Practices and procedures**

(11) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

### **Composition of Board**

(12) At a hearing under this section, the Board shall be composed of members with the prescribed qualifications and prescribed experience.

### **Parties**

(13) The following persons are parties to a hearing under this section:

1. The applicant.
2. The society.
3. If the child is a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
4. Any person that the Board adds under subsection (14).

### **Additional parties**

(14) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review.

### **Board decision**

(15) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm the proposal to remove the child or direct the society not to carry out the proposed removal, and shall give written reasons for its decision.

### **No removal before decision**

(16) Subject to subsection (17), the society shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the proposed removal under subsection (8) has expired and an application is not made; or
- (b) if an application for a review of the proposed removal is made under subsection (8), the Board has confirmed the proposed removal under subsection (15).

### **Where child at risk**

(17) A society may remove the child from the foster home before the expiry of the time for applying for a review under subsection (8) or at any time after the application for a review is made if, in the opinion of a local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

### **Review of certain placements**

(18) Sections 63, 64, 65 and 66 (review by residential placement advisory committee, further review by the Board) apply with necessary modifications to a residential placement made by a society under this section.

### **Definition**

(19) In this section,

"residential placement" has the same meaning as in section 62.

### **Child in interim society care**

**110** (1) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

### **Consent to treatment — society or parent may act**

(2) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child, unless the court orders that the parent shall retain the authority under that Act to give or refuse consent to treatment on behalf of the incapable child.

### **Exception**

(3) The court shall not make an order under subsection (2) where failure to consent to necessary treatment was a ground for finding that the child was in need of protection.

### **Court may authorize society to act re consent to treatment**

(4) Where a parent referred to in an order made under subsection (2) refuses or is unavailable or unable to consent to treatment for the incapable child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to act in the place of a parent in providing consent to the treatment on the child's behalf.

### **Consent to child's marriage**

(5) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), the child's parent retains any right that the parent may have under the *Marriage Act* to give or refuse consent to the child's marriage.

### **Child in extended society care**

**111** (1) Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

### **Consent to treatment — society may act**

(2) Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child.

### **Society's obligation to pursue family relationship for child in extended society care**

**112** Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

1. An adoption.
2. A custody order under subsection 116 (1).
3. In the case of a First Nations, Inuk or Métis child,
  - i. a plan for customary care,
  - ii. an adoption, or
  - iii. a custody order under subsection 116 (1).

## **REVIEW**

### **Status review**

**113** (1) This section applies where a child is the subject of an order made under paragraph 1 or 4 of subsection 101 (1) for society supervision or under paragraph 2 of subsection 101 (1) for interim society care.

### **Society to seek status review**

- (2) The society having care, custody or supervision of a child,
- (a) may apply to the court at any time for a review of the child's status;
  - (b) shall apply to the court for a review of the child's status before the order expires, unless the expiry is by reason of section 123; and
  - (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child from the care of a person with whom the child was placed under an order for society supervision.

### **Application of subs. (2) (a) and (c)**

(3) If a child is the subject of an order for society supervision, clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides.

### **Others may seek status review**

- (4) An application for review of a child's status may be made on notice to the society by,
- (a) the child, if the child is at least 12;
  - (b) a parent of the child;

- (c) the person with whom the child was placed under an order for society supervision; or
- (d) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b) or (c) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Notice**

(5) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

- (a) the child, except as otherwise provided under subsection 79 (4) or (5);
- (b) the child's parent;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) any foster parent who has cared for the child continuously during the six months immediately before the application; and
- (e) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c) and (d) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Six-month period**

(6) No application shall be made under subsection (4) within six months after the latest of,

- (a) the day the original order was made under subsection 101 (1);
- (b) the day the last application by a person under subsection (4) was disposed of; or
- (c) the day any appeal from an order referred to in clause (a) or the disposition referred to in clause (b) was finally disposed of or abandoned.

#### **Exception**

(7) Subsection (6) does not apply if the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

#### **Interim care and custody**

(8) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

#### **Court may vary, etc.**

**114** Where an application for review of a child's status is made under section 113, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 101 (1), including a term or condition or a provision for access that is part of the order;
- (b) order that the original order terminate on a specified future date;
- (c) make a further order or orders under section 101; or
- (d) make an order under section 102.

#### **Status review for children in, or formerly in, extended society care**

**115** (1) This section applies where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), or is subject to an order for society supervision made under clause 116 (1) (a) or for custody made under clause 116 (1) (b).

#### **Society to seek status review**

(2) The society that has or had care, custody or supervision of the child,

- (a) may apply to the court at any time, subject to subsection (9), for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires if the order is for society supervision, unless the expiry is by reason of section 123; and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child,
  - (i) from the care of a person with whom the child was placed under an order for society supervision described in clause 116 (1) (a), or
  - (ii) from the custody of a person who had custody of the child under a custody order described in clause 116 (1) (b).

### **Application of subs. (2) (a) and (c)**

- (3) Clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district,
- (a) in which the parent or other person with whom the child is placed resides, if the child is the subject of an order for society supervision under clause 116 (1) (a); or
  - (b) in which the person who has custody resides, if the child is the subject of a custody order under clause 116 (1) (b).

### **Others may seek status review**

- (4) An application for review of a child's status under this section may be made on notice to the society by,
- (a) the child, if the child is at least 12;
  - (b) a parent of the child;
  - (c) the person with whom the child was placed under an order for society supervision described in clause 116 (1) (a);
  - (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 116 (1) (b);
  - (e) a foster parent, if the child has lived continuously with the foster parent for at least two years immediately before the application; or
  - (f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **When leave to apply required**

- (5) Despite clause (4) (b), a parent of a child shall not make an application under subsection (4) without leave of the court if the child has, immediately before the application, received continuous care for at least two years from the same foster parent or from the same person under a custody order.

### **Notice**

- (6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,
- (a) the child, except as otherwise provided under subsection 79 (4) or (5);
  - (b) the child's parent, if the child is younger than 16;
  - (c) the person with whom the child was placed, if the child is subject to an order for society supervision described in clause 116 (1) (a);
  - (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 116 (1) (b);
  - (e) any foster parent who has cared for the child continuously during the six months immediately before the application; and
  - (f) in the case of a First Nations, Inuk or Métis child, the persons described in clause (a), (b), (c), (d) or (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Six-month period**

- (7) No application shall be made under subsection (4) within six months after the latest of,
- (a) the day the order was made under subsection 101 (1) or 116 (1), whichever is applicable;
  - (b) the day the last application by a person under subsection (4) was disposed of; or
  - (c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned.

### **Exception**

- (8) Subsection (7) does not apply if,
- (a) the child is the subject of,
    - (i) an order for society supervision made under clause 116 (1) (a),
    - (ii) an order for custody made under clause 116 (1) (b), or
    - (iii) an order for extended society care made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and an order for access under section 104; and

- (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

#### **No review if child placed for adoption**

(9) No person or society shall make an application under this section with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VIII (Adoption and Adoption Licensing), if the child still resides in the person's home.

#### **Interim care and custody**

(10) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

#### **Court order**

**116** (1) If an application for review of a child's status is made under section 115, the court may, in the child's best interests,

- (a) order that the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months;
- (b) order that custody be granted to one or more persons, including a foster parent, with the consent of the person or persons;
- (c) order that the child be placed in extended society care until the order is terminated under this section or expires under section 123; or
- (d) terminate or vary any order made under section 101 or this section.

#### **Variation, termination or new order**

(2) When making an order under subsection (1), the court may, subject to section 105, vary or terminate an order for access or make a further order under section 104.

#### **Termination of extended society care order**

(3) Any previous order for extended society care made under paragraph 3 of subsection 101 (1) or clause (1) (c) is terminated if an order described in clause (1) (a) or (b) is made in respect of a child.

#### **Terms and conditions of supervision order**

(4) If the court makes a supervision order described in clause (1) (a), the court may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on,
  - (i) the child's parent,
  - (ii) the person who will have care and custody of the child under the order,
  - (iii) the child, and
  - (iv) any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services.

#### **Access**

(5) Section 105 applies with necessary modifications if the court makes an order described in clause (1) (a), (b) or (c).

#### **Custody proceeding**

(6) Where an order is made under this section or a proceeding is commenced under this Part, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act.

#### **Rights and responsibilities**

(7) A person to whom custody of a child is granted by an order under this section has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests of the child.

### **Director's annual review of children in extended society care**

**117** (1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child,

- (a) who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
- (b) who was in extended society care under an order described in clause (a) throughout the immediately preceding 24 months; and
- (c) whose status has not been reviewed under this section or under section 116 during that time.

### **Direction to society**

(2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 115 (2) or give any other direction that, in the Director's opinion, is in the child's best interests.

### **Investigation by judge**

**118** (1) The Minister may appoint a judge of the Court of Ontario to investigate a matter relating to a child in a society's care or the proper administration of this Part, and a judge who is appointed shall conduct the investigation and make a written report to the Minister.

### **Application of *Public Inquiries Act, 2009***

(2) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation by a judge under subsection (1).

### **Complaint to society**

**119** (1) A person may make a complaint to a society relating to a service sought or received by that person from the society in accordance with the regulations.

### **Complaint review procedure**

(2) Where a society receives a complaint under subsection (1), it shall deal with the complaint in accordance with the complaint review procedure established by regulation, subject to subsection 120 (2).

### **Public availability**

(3) A society shall make information relating to the complaint review procedure available to the public and to any person upon request.

### **Society's decision**

(4) Subject to subsection (5), the decision of a society made upon completion of the complaint review procedure is final.

### **Application for review by Board**

(5) If a complaint relates to one of the following matters, the complainant may apply to the Board in accordance with the regulations for a review of the decision made by the society upon completion of the complaint review procedure:

- 1. A matter described in subsection 120 (4).
- 2. Any other prescribed matter.

### **Review by Board**

(6) Upon receipt of an application under subsection (5), the Board shall give the society notice of the application and conduct a review of the society's decision.

### **Composition of Board**

(7) The Board shall be composed of members with the prescribed qualifications and prescribed experience.

### **Hearing optional**

(8) The Board may hold a hearing and, if a hearing is held, the Board shall comply with the prescribed practices and procedures.

### **Non-application**

(9) The *Statutory Powers Procedure Act* does not apply to a hearing under this section.

### **Board decision**

(10) Upon completing its review of a decision by a society in relation to a complaint, the Board may,

- (a) in the case of a matter described in subsection 120 (4), make any order described in subsection 120 (7), as appropriate;
- (b) redirect the matter to the society for further review;

- (c) confirm the society's decision; or
- (d) make such other order as may be prescribed.

**No review if matter within purview of court**

- (11) A society shall not conduct a review of a complaint under this section if the subject of the complaint,
- (a) is an issue that has been decided by the court or is before the court; or
  - (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

**Complaint to Board**

**120** (1) If a complaint in respect of a service sought or received from a society relates to a matter described in subsection (4), the person who sought or received the service may,

- (a) decide not to make the complaint to the society under section 119 and make the complaint directly to the Board under this section; or
- (b) where the person first makes the complaint to the society under section 119, submit the complaint to the Board before the society's complaint review procedure is completed.

**Notice to society**

(2) If a person submits a complaint to the Board under clause (1) (b) after having brought the complaint to the society under section 119, the Board shall give the society notice of that fact and the society may terminate or stay its review, as it considers appropriate.

**Complaint to Board**

(3) A complaint to the Board under this section shall be made in accordance with the regulations.

**Matters for Board review**

(4) The following matters may be reviewed by the Board under this section:

1. Allegations that the society has refused to proceed with a complaint made by the complainant under subsection 119 (1) as required under subsection 119 (2).
2. Allegations that the society has failed to respond to the complainant's complaint within the timeframe required by regulation.
3. Allegations that the society has failed to comply with the complaint review procedure or with any other procedural requirements under this Act relating to the review of complaints.
4. Allegations that the society has failed to comply with subsection 15 (2).
5. Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainant's interests.
6. Such other matters as may be prescribed.

**Review by Board**

(5) Upon receipt of a complaint under this section, the Board shall conduct a review of the matter.

**Application**

(6) Subsections 119 (7), (8) and (9) apply with necessary modification to a review of a complaint made under this section.

**Board decision**

(7) After reviewing the complaint, the Board may,

- (a) order the society to proceed with the complaint made by the complainant in accordance with the complaint review procedure established by regulation;
- (b) order the society to provide a response to the complainant within a period specified by the Board;
- (c) order the society to comply with the complaint review procedure established by regulation or with any other requirements under this Act;
- (d) order the society to provide written reasons for a decision to a complainant;
- (e) dismiss the complaint; or
- (f) make such other order as may be prescribed.



### **No review if matter within purview of court**

- (8) The Board shall not conduct a review of a complaint under this section if the subject of the complaint,
- (a) is an issue that has been decided by the court or is before the court; or
  - (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

### **APPEALS**

#### **Appeal**

- 121** (1) An appeal from a court's order under this Part may be made to the Superior Court of Justice by,
- (a) the child, if the child is entitled to participate in the proceeding under subsection 79 (6) (child's participation);
  - (b) any parent of the child;
  - (c) the person who had charge of the child immediately before intervention under this Part;
  - (d) a Director or local director; or
  - (e) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c) or (d) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Exception**

- (2) Subsection (1) does not apply to an order for an assessment under section 98.

#### **Care and custody pending appeal**

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the 10 days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's care and custody at the time the decision is made, the child shall remain in the care and custody of the society until,

- (a) the 10-day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier.

#### **Temporary order**

(4) The Superior Court of Justice may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, and the court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order.

#### **No extension where child placed for adoption**

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing).

#### **Further evidence**

(6) The court may receive further evidence relating to events after the appealed decision.

#### **Place of hearing**

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

#### **Application of s. 87**

(8) Section 87 (rules re hearings) applies with necessary modifications to an appeal under this section.

### **EXPIRY OF ORDERS**

#### **Time limit**

**122** (1) Subject to subsections (4) and (5), the court shall not make an order for interim society care under paragraph 2 of subsection 101 (1) that results in a child being in the care and custody of a society for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the court makes the order; or
- (b) 24 months, if the child is 6 or older on the day the court makes the order.

#### **Calculation of time limit**

(2) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (1):

1. An agreement made under subsection 75 (1) (temporary care agreement).

2. A temporary order made under clause 94 (2) (d) (custody during adjournment).

#### **Previous periods to be counted**

(3) The period referred to in subsection (1) shall include any previous periods that the child was in a society's care and custody under an interim society care order made under paragraph 2 of subsection 101 (1) or as described in subsection (2) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

#### **Deemed extension of time limit**

(4) Where the period referred to in subsection (1) or (5) expires and,

- (a) an appeal of an order made under subsection 101 (1) has been commenced and is not yet finally disposed of; or
- (b) the court has adjourned a hearing under section 114 (status review),

the period is deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 114, as the case may be.

#### **Six-month extension**

(5) Subject to paragraphs 2 and 4 of subsection 101 (1), the court may by order extend the period permitted under subsection (1) by a period not to exceed six months if it is in the child's best interests to do so.

#### **Expiry of orders**

**123** An order under this Part expires when the child who is the subject of the order,

- (a) turns 18; or
- (b) marries,

whichever comes first.

### **CONTINUED CARE AND SUPPORT**

#### **Continued care and support**

**124** A society or prescribed entity shall enter into an agreement to provide care and support to a person in accordance with the regulations in each of the following circumstances:

1. A custody order under clause 116 (1) (b) or an order for extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) was made in relation to that person as a child and the order expires under section 123.
2. The person entered into an agreement with the society under section 77 and the agreement expires on the person's 18th birthday.
3. The person is 18 or older and was eligible for the prescribed support services.
4. In the case of a First Nations, Inuk or Métis person who is 18 or older, paragraph 1, 2 or 3 applies or the person was being cared for under customary care immediately before their 18th birthday and the person who was caring for them was receiving a subsidy from the society or an entity under section 71.

### **DUTY TO REPORT**

#### **Duty to report child in need of protection**

**125** (1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall immediately report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.

4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
5. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
  - i. anxiety,
  - ii. depression,
  - iii. withdrawal,
  - iv. self-destructive or aggressive behaviour, or
  - v. delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

#### **Ongoing duty to report**

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if the person has made previous reports with respect to the same child.

#### **Person must report directly**

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on the person's behalf.

#### **Duty to report does not apply to older children**

(4) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists.

#### **Offence**

(5) A person referred to in subsection (6) is guilty of an offence if,

- (a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and

(b) the information on which it was based was obtained in the course of the person's professional or official duties.

#### **Professionals and officials**

(6) Subsection (5) applies to every person who performs professional or official duties with respect to children including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;
- (c) a religious official;
- (d) a mediator and an arbitrator;
- (e) a peace officer and a coroner;
- (f) a lawyer; and
- (g) a service provider and an employee of a service provider.

#### **Volunteer excluded**

(7) In clause (6) (b),

“youth and recreation worker” does not include a volunteer.

#### **Director, officer or employee of corporation**

(8) A director, officer or employee of a corporation who authorizes, permits or concurs in the commission of an offence under subsection (5) by an employee of the corporation is guilty of an offence.

#### **Penalty**

(9) A person convicted of an offence under subsection (5) or (8) is liable to a fine of not more than \$5,000.

#### **Section overrides privilege; protection from liability**

(10) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion.

#### **Solicitor-client privilege**

(11) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

#### **Conflict**

(12) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*.

#### **Society to assess and verify report of child in need of protection**

**126** (1) A society that receives a report under section 125 that a child, including a child in the society's care or supervision, is or may be in need of protection shall as soon as possible carry out an assessment as prescribed and verify the reported information, or ensure that the information is assessed and verified by another society.

#### **Protection from liability**

(2) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (1) or for an alleged neglect or default of that duty.

#### **Society to report abuse of child in its care and custody**

**127** (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall report the information to a Director as soon as possible.

#### **Definition**

(2) In this section and in sections 129 and 133,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

#### **Duty to report child's death**

**128** A person or society that obtains information that a child has died shall report the information to a coroner if,

- (a) a court made an order under this Act denying access to the child by a parent of the child or making the access subject to supervision;
- (b) on the application of a society, a court varied the order to grant the access or to make it no longer subject to supervision; and
- (c) the child subsequently died as a result of a criminal act committed by a parent or family member who had custody or charge of the child at the time of the act.

## REVIEW TEAMS

### **Review team**

**129** (1) In this section,

“review team” means a team established by a society under subsection (2).

### **Composition**

- (2) Every society shall establish a review team that includes,
- (a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and
  - (b) at least one legally qualified medical practitioner.

### **Chair**

- (3) The members of a review team shall choose a chair from among themselves.

### **Duty of team**

(4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chair, shall,

- (a) review the case; and
- (b) recommend to the society how the child may be protected.

### **Disclosure to team permitted**

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

### **Section overrides privilege; protection from liability**

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

### **Where child not to be returned without review or hearing**

(7) Where a society with a review team has information that a child placed in its care under subsection 94 (2) (custody during adjournment) or subsection 101 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,

- (a) the society has,
  - (i) referred the case to its review team, and
  - (ii) obtained and considered the review team’s recommendations; or
- (b) the court has terminated the order placing the child in the society’s care.

## COURT-ORDERED ACCESS TO RECORDS

### **Production of records**

#### **Definition**

**130** (1) In this section and sections 131 and 132,

“record of personal health information” has the same meaning as in the *Mental Health Act*.

#### **Motion or application for production of record**

(2) A Director or a society may at any time make a motion or an application for an order under subsection (3) or (4) for the production of a record or part of a record.

### **Order on motion**

(3) Where the court is satisfied that a record or part of a record that is the subject of a motion referred to in subsection (2) contains information that may be relevant to a proceeding under this Part and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court.

### **Order on application**

(4) Where the court is satisfied that a record or part of a record that is the subject of an application referred to in subsection (2) may be relevant to assessing compliance with one of the following and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court:

1. An order under clause 94 (2) (b) or (c) that is subject to supervision.
2. An order under clause 94 (2) (c) or (d) with respect to access.
3. A supervision order under paragraph 1 or 4 of subsection 101 (1).
4. An access order under section 104.
5. An order with respect to access or supervision on an application under section 113 or 115.
6. A custody order under section 116.
7. A restraining order under section 137.

### **Court may examine record**

(5) In considering whether to make an order under subsection (3) or (4), the court may examine the record.

### **Information confidential**

(6) No person who obtains information by means of an order made under subsection (3) or (4) shall disclose the information except,

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part.

### **Conflict**

(7) Subsection (6) prevails despite anything in the *Personal Health Information Protection Act, 2004*.

### **Solicitor-client privilege**

(8) Subject to subsection (9), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

### **Application of Mental Health Act**

(9) Where a motion or an application under subsection (2) concerns a record of personal health information, subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act* applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 35 (7) of that Act; and
- (b) the need to protect the child.

### **Application of s. 294**

(10) Where a motion or an application under subsection (2) concerns a record that is a record of a mental disorder within the meaning of section 294, that section applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 294 (6); and
- (b) the need to protect the child.

### **Warrant for access to record**

**131** (1) The court or a justice of the peace may issue a warrant for access to a record or a specified part of it if the court or justice of the peace is satisfied on the basis of information on oath from a Director or a person designated by a society that there are reasonable grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection.

### **Authority conferred by warrant**

(2) The warrant authorizes the Director or the person designated by the society to,

- (a) inspect the record specified in the warrant during normal business hours or during the hours specified in the warrant;

- (b) make copies from the record in any manner that does not damage the record; and
- (c) remove the record for the purpose of making copies.

#### **Return of record**

- (3) A person who removes a record under clause (2) (c) shall promptly return it after copying it.

#### **Admissibility of copies**

- (4) A copy of a record that is the subject of a warrant under this section and that is certified as being a true copy of the original by the person who made the copy is admissible in evidence to the same extent as and has the same evidentiary value as the record.

#### **Duration of warrant**

- (5) The warrant is valid for seven days.

#### **Execution**

- (6) The Director or the person designated by the society may call on a peace officer for assistance in executing the warrant.

#### **Solicitor-client privilege**

- (7) This section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

#### **Application of *Mental Health Act***

- (8) If a warrant issued under this section concerns a record of personal health information and the warrant is challenged under subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act*, equal consideration shall be given to,

- (a) the matters set out in subsection 35 (7) of that Act; and
- (b) the need to protect the child.

#### **Application of s. 294**

- (9) If a warrant issued under this section concerns a record of a mental disorder within the meaning of section 294 and the warrant is challenged under section 294, equal consideration shall be given to,

- (a) the matters set out in subsection 294 (6); and
- (b) the need to protect the child.

#### **Telewarrant**

- 132** (1) Where a Director or a person designated by a society believes that there are reasonable grounds for the issuance of a warrant under section 131 and that it would be impracticable to appear personally before the court or a justice of the peace to make application for a warrant in accordance with section 131, the Director or person designated by the society may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the Chief Justice of the Ontario Court of Justice.

#### **Same**

- (2) The information shall,
- (a) include a statement of the grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection; and
  - (b) set out the circumstances that make it impracticable for the Director or person designated by the society to appear personally before a court or justice of the peace.

#### **Warrant to be issued**

- (3) The justice may issue a warrant for access to the record or the specified part of it if the justice is satisfied that the application discloses,

- (a) reasonable grounds to believe that the record or the part of a record is relevant to investigate an allegation that a child is or may be in need of protection; and
- (b) reasonable grounds to dispense with personal appearance for the purpose of an application under section 131.

#### **Validity of warrant**

- (4) A warrant issued under this section is not subject to challenge by reason only that there were not reasonable grounds to dispense with personal appearance for the purpose of an application under section 131.

### **Application of provisions**

(5) Subsections 131 (2) to (9) apply with necessary modifications with respect to a warrant issued under this section.

### **Definition**

(6) In this section,

“justice” means justice of the peace, a judge of the Ontario Court of Justice or a judge of the Family Court of the Superior Court of Justice.

## **CHILD ABUSE REGISTER**

### **Register**

**133** (1) In this section and in section 134,

“Director” means the person appointed under subsection (2); (“directeur”)

“register” means the register maintained under subsection (5); (“registre”)

“registered person” means a person identified in the register, but does not include,

- (a) a person who reports to a society under subsection 125 (1) or (2) and is not the subject of the report, or
- (b) the child who is the subject of a report. (“personne inscrite”)

### **Director**

(2) The Minister may appoint an employee in the Ministry as Director for the purposes of this section.

### **Duty of society**

(3) A society that receives a report under section 125 that a child, including a child in the society’s care, is or may be suffering or may have suffered abuse shall verify the reported information as soon as possible, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall report it to the Director in the prescribed form as soon as possible.

### **Protection from liability**

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

### **Child abuse register**

(5) The Director shall maintain a register in the prescribed manner for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 125 (1) or (2) and is not the subject of the report.

### **Register confidential**

(6) Despite Part X (Personal Information) and any other Act, no person shall inspect, remove or alter or permit the inspection, removal or alteration of information in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

### **Coroner’s inquest, etc.**

(7) The following persons may inspect, remove and disclose information in the register in accordance with that person’s authority:

1. A coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*.
2. The Children’s Lawyer or the Children’s Lawyer’s authorized agent.

### **Minister or Director may permit access to register**

(8) The Minister or the Director may permit the following persons to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose:

1. A person who is employed,
  - i. in the Ministry,
  - ii. by a society, or
  - iii. by a child welfare authority outside Ontario.



2. A person who is providing or proposes to provide counselling or treatment to a registered person.

**Minister or Director may disclose information**

- (9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

**Research**

- (10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person named in the register.

**Access by child or registered person**

- (11) A child, a registered person or the child's or registered person's lawyer or agent may inspect only the information in the register that refers to the child or registered person.

**Physician**

- (12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

**Amendment of register**

- (13) The Director or an employee in the Ministry acting under the Director's authority,

- (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
- (b) may amend the register to correct an error.

**Register inadmissible: exceptions**

- (14) The register shall not be admitted into evidence in a proceeding except,

- (a) to prove compliance or non-compliance with this section;
- (b) in a hearing or appeal under section 134;
- (c) in a proceeding under the *Coroners Act*; or
- (d) in a proceeding referred to in section 138.

**Hearing re registered person**

**Definition**

- 134** (1) In this section,

"hearing" means a hearing held under clause (4) (b).

**Notice to registered person**

- (2) Where an entry is made in the register, the Director shall as soon as possible give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's lawyer or agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

**Request to amend register**

- (3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

**Director's response**

- (4) On receiving a request under subsection (3), the Director may,

- (a) grant the request; or
- (b) hold a hearing, on 10 days written notice to the parties, to determine whether to grant or refuse the request.

**Delegation**

(5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).

**Procedure**

(6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.

**Hearing**

(7) The parties to a hearing are,

- (a) the registered person;
- (b) the society that verified the information referring to or identifying the registered person; and
- (c) any other person specified by the Director.

**Director's decision**

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.

**Appeal to Divisional Court**

(9) A party to a hearing may appeal the Director's decision to the Divisional Court.

**Hearing private**

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

**Publication**

(11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.

**Record inadmissible: exception**

(12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 142 (1) (c) (confidentiality of child abuse register) or clause 142 (1) (d) (amendment of society's records).

**POWERS OF DIRECTOR****Director's power to transfer**

**135** (1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,

- (a) be transferred to the care or supervision of another society; or
- (b) be transferred from one placement to another placement designated by the Director.

**Criteria**

(2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,

- (a) the length of time the child has spent in the existing placement;
- (b) the views of the foster parents; and
- (c) the views and wishes of the child, given due weight in accordance with the child's age and maturity.

**OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S BEHALF AND INJUNCTIONS****Abuse, failure to provide for reasonable care, etc.****Definition**

**136** (1) In this section,

"abuse" means a state or condition of being physically harmed, sexually abused or sexually exploited.

**Child abuse**

(2) No person having charge of a child shall,

- (a) inflict abuse on the child; or
- (b) by failing to care and provide for or supervise and protect the child adequately,

- (i) permit the child to suffer abuse, or
- (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

#### **Leaving child unattended**

(3) No person having charge of a child younger than 16 shall leave the child without making provision for the child's supervision and care that is reasonable in the circumstances.

#### **Allowing child to loiter, etc.**

- (4) No parent of a child younger than 16 shall permit the child to,
  - (a) loiter in a public place between the hours of midnight and 6 a.m.; or
  - (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual 18 or older to accompany the child.

#### **Police may bring child home or to place of safety**

(5) Where a child who is actually or apparently younger than 16 is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (4) (b), a peace officer may bring the child to a place of safety without a warrant and proceed as if the child had been brought to a place of safety under subsection 84 (1).

#### **Child protection hearing**

(6) The court may, in connection with a case arising under subsection (2), (3) or (4), proceed under this Part as if an application had been made under subsection 81 (1) (child protection proceeding) in respect of the child.

#### **Restraining order**

**137** (1) Instead of making an order under subsection 101 (1) or section 116 or in addition to making a temporary order under subsection 94 (2) or an order under subsection 101 (1) or section 116, the court may make one or more of the following orders in the child's best interests:

1. An order restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.
2. An order restraining or prohibiting a person's contact with the person who has lawful custody of the child following a temporary order made under subsection 94 (2) or an order made under subsection 101 (1) or clause 116 (1) (a) or (b).

#### **Notice**

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

#### **Duration of the order**

(3) An order made under subsection (1) shall continue in force for such period as the court considers in the best interests of the child and,

- (a) if the order is made in addition to a temporary order made under subsection 94 (2) or an order made under subsection 101 (1) or clause 116 (1) (a), (b) or (c), the order may provide that it continues in force, unless it is varied, extended or terminated by the court, as long as the temporary order made under subsection 94 (2) or the order made under subsection 101 (1) or clause 116 (1) (a), (b) or (c), as the case may be, remains in force; or
- (b) if the order is made instead of an order under subsection 101 (1) or clause 116 (1) (a), (b) or (c) or if the order is made in addition to an order under clause 116 (1) (d), the order may provide that it continues in force until it is varied or terminated by the court.

#### **Application for extension, variation or termination**

- (4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,
  - (a) the person who is the subject of the order;
  - (b) the child;
  - (c) the person having charge of the child;
  - (d) a society;
  - (e) a Director; or
  - (f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

**Order for extension, variation or termination**

- (5) Where an application is made under subsection (4), the court may, in the child's best interests,
- (a) extend the order for such period as the court considers to be in the best interests of the child, in the case of an order described in clause (3) (a); or
  - (b) vary or terminate the order.

**Child in society's care not to be returned while order in force**

- (6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,
- (a) the person named in the order; or
  - (b) a person who may permit that person to have access to the child.

**Legal claim for recovery because of abuse**

**138** (1) In this section,

"to suffer abuse", when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

**Recovery on child's behalf**

(2) When the Children's Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse and considers it to be in the child's best interests, the Children's Lawyer may institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

**Society may apply**

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

**Prohibition**

**139** No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except in accordance with this Part.

**Offences re interfering, etc. with child in society supervision or care**

**140** If a child is the subject of an order for society supervision, interim society care or extended society care made under paragraph 1, 2 or 3 of subsection 101 (1) or clause 116 (1) (a) or (c), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;
- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

**Offences re false information, obstruction, etc.**

**141** No person shall,

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 81, 83, 84, 85 or 86.

**Other offences**

**142** (1) A person who contravenes,

- (a) an order for access made under subsection 104 (1);
- (b) subsection 130 (6) (disclosure of information);
- (c) subsection 133 (6) or (10) (confidentiality of child abuse register);
- (d) an order made under subsection 134 (8) (amendment of society's records);
- (e) subsection 136 (3) or (4) (leaving child unattended, etc.);
- (f) a restraining order made under subsection 137 (1);
- (g) section 139 (unauthorized placement);
- (h) any provision of section 140 (interference with child, etc.); or

- (i) clause 141 (a) or (b) (false information, obstruction, etc.),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

#### **Offence of child abuse**

(2) A person who contravenes subsection 136 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

#### **Offences re publication**

(3) A person who contravenes subsection 87 (8) or 134 (11) (publication of identifying information) or an order prohibiting publication made under clause 87 (7) (c) or subsection 87 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

#### **Injunction**

**143** (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening section 140, on the society's application.

#### **Variation, etc.**

(2) The court may vary or terminate an order made under subsection (1), on any person's application.

## **PART VI YOUTH JUSTICE**

#### **Definitions**

**144** In this Part,

"bailiff" means a bailiff appointed under clause 146 (1) (c); ("huissier")

"Board" means the Custody Review Board continued under subsection 151 (1); ("Commission")

"probation officer" means,

- (a) a person appointed or designated by the Lieutenant Governor in Council or their delegate to perform any of the duties or functions of a youth worker under the *Youth Criminal Justice Act* (Canada), or
- (b) a probation officer appointed under clause 146 (1) (b); ("agent de probation")

#### **PROGRAMS AND OFFICERS**

#### **Programs**

##### **Secure and open temporary detention programs**

**145** (1) The Minister may establish the following in places of temporary detention:

- 1. Secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community.
- 2. Open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons.

##### **Secure custody programs**

(2) The Minister may establish secure custody programs in places of secure custody.

##### **Open custody programs**

(3) The Minister may establish open custody programs in places of open custody.

##### **Where locking up permitted**

(4) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

##### **Appointments by Minister**

**146** (1) The Minister may appoint any person or class of persons as,

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
  - (i) under the *Youth Criminal Justice Act* (Canada), and
  - (ii) under this Act and the regulations;

- (b) a probation officer, to perform any or all of the duties and functions,
  - (i) of a youth worker under the *Youth Criminal Justice Act* (Canada),
  - (ii) of a probation officer for purposes related to young persons under the *Provincial Offences Act*, and
  - (iii) of a probation officer under this Act and the regulations; and
- (c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations.

#### **Conditions or limitations on appointments**

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject.

#### **Probation officer and bailiff have powers of peace officer**

(3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer.

#### **Designation of peace officers**

- (4) The Minister may designate in writing,
  - (a) a person who is an employee in the Ministry or is employed in a place of open custody, of secure custody or of temporary detention to be a peace officer while performing the person's duties and functions; or
  - (b) a class of persons, from among the persons described in clause (a), to be peace officers while performing their duties and functions.

#### **Conditions or limitations on designations**

(5) The Minister may set out in a designation made under subsection (4) any conditions or limitations to which it is subject.

#### **Remuneration and expenses**

(6) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of legislative appropriations.

#### **Reports and information**

**147** A person in charge of a place of temporary detention, of open custody or of secure custody, a bailiff and a probation officer,

- (a) shall make the prescribed reports and provide the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) shall make a report and provide information to the Minister whenever the Minister requests it.

### **TEMPORARY DETENTION**

#### **Open and secure temporary detention**

##### **Open temporary detention unless provincial director determines otherwise**

**148** (1) A young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention.

##### **Where secure temporary detention available**

(2) A provincial director may detain a young person in a place of secure temporary detention if the provincial director is satisfied that it is necessary on one of the following grounds:

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the *Youth Criminal Justice Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the 12 months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.

2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).
3. The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,
  - i. to ensure the young person's attendance at court,
  - ii. for the protection and safety of the public, or
  - iii. for the safety or security within a place of temporary detention.

#### **Until return to secure custody**

(3) Despite subsection (1), a young person who is apprehended because they have left or have not returned to a place of secure custody may be detained in a place of secure temporary detention until they are returned to the first-named place of custody.

#### **Until determination**

(4) Despite subsection (1), a young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding 24 hours while a provincial director makes a determination in respect of the young person under subsection (2).

#### **Review of secure temporary detention**

(5) A young person who is being detained in a place of secure temporary detention and who is brought before a youth justice court for a review of an order for detention made under the *Youth Criminal Justice Act* (Canada) or the *Criminal Code* (Canada) may request that the youth justice court review the level of their detention.

#### **Powers of youth justice court**

(6) The youth justice court conducting a review of an order for detention may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention.

#### **Application for return to secure temporary detention**

(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) on the basis that it is necessary that the young person be returned to a place of secure temporary detention because of either of the following:

1. A material change in the circumstances.
2. Any other grounds that the provincial director considers appropriate.

#### **Powers of youth justice court**

(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention.

### **CUSTODY**

#### **Detention under *Provincial Offences Act***

##### **Pre-trial detention**

**149** (1) Where a young person is ordered to be detained in custody under subsection 150 (4) (order for detention) or 151 (2) (further orders) of the *Provincial Offences Act*, the young person shall be detained in a place of temporary detention.

##### **Open custody for provincial offences**

- (2) Where a young person is sentenced to a term of imprisonment under the *Provincial Offences Act*,
- (a) the term of imprisonment shall be served in a place of open custody, subject to subsections (3) and (4);
  - (b) section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) applies with necessary modifications; and
  - (c) sections 28 (remission) and 28.1 (determinations of remission) and Part III (Ontario Parole and Earned Release Board) of the *Ministry of Correctional Services Act* apply with necessary modifications.

##### **Transfer to place of secure custody**

(3) Where a young person is placed in open custody under clause (2) (a), the provincial director may transfer the young person to a place of secure custody if, in the opinion of the provincial director, the transfer is necessary for the safety of the young person or the safety of others in the place of open custody.

### **Concurrent terms**

(4) Where a young person is committed to custody under the *Youth Criminal Justice Act* (Canada) and is sentenced concurrently to a term of imprisonment under the *Provincial Offences Act*, the term of imprisonment under the *Provincial Offences Act* shall be served in the same place as the sentence under the *Youth Criminal Justice Act* (Canada).

### **Young persons in open custody**

**150** Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 103 of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) apply with necessary modifications.

## **CUSTODY REVIEW BOARD**

### **Custody Review Board**

**151** (1) The Custody Review Board is continued under the name Custody Review Board in English and Commission de révision des placements sous garde in French and shall have the powers and duties given to it by this Part and the regulations.

### **Members**

(2) The Board shall be composed of the prescribed number of members who shall be appointed by the Lieutenant Governor in Council.

### **Chair and vice-chairs**

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

### **Quorum**

(4) The prescribed number of members of the Board are a quorum.

### **Remuneration**

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

### **Duties of Board**

(6) The Board shall conduct reviews under section 152 and perform such other duties as are assigned to it by the regulations.

### **Application to Board**

**152** (1) A young person may apply to the Board for a review of,

- (a) the particular place where the young person is held or to which the young person has been transferred;
- (b) a provincial director's refusal to authorize the young person's reintegration leave under section 91 of the *Youth Criminal Justice Act* (Canada); or
- (c) the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the *Young Offenders Act* (Canada) in accordance with section 88 of the *Youth Criminal Justice Act* (Canada).

### **30 day time limit**

(2) An application under subsection (1) must be made within 30 days of the decision, placement or transfer, as the case may be.

### **Duty of Board to conduct review**

(3) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

### **Advise whether hearing to be held**

(4) The Board shall advise the young person whether it intends to hold a hearing or not within 10 days of receiving the young person's application.

### **Procedure**

(5) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (3).



### **Time period for review**

(6) The Board shall complete its review and make a determination within 30 days of receiving a young person's application, unless,

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

### **Board's recommendations**

(7) After conducting a review under subsection (3), the Board may,

- (a) recommend to the provincial director,
  - (i) where the Board is of the opinion that the place where the young person is held or to which the young person has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,
  - (ii) that the young person's reintegration leave be authorized under section 91 of the *Youth Criminal Justice Act* (Canada), or
  - (iii) where the young person has been transferred as described in clause (1) (c), that the young person be returned to a place of open custody; or
- (b) confirm the decision, placement or transfer.

### **APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION**

#### **Apprehension**

##### **Apprehension of young person absent from place of temporary detention**

**153** (1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

##### **Apprehension of young person absent from place of open custody**

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 150,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of reintegration leave under clause 150 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

##### **Young person to be returned within 48 hours**

(3) A young person who is apprehended under this section shall be returned to the place from which the young person is absent within 48 hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 148 (2).

##### **Warrant to apprehend young person**

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of reintegration leave under clause 150 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

##### **Authority to enter, etc.**

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

### **Regulations regarding exercise of power of entry**

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

## **INSPECTIONS AND INVESTIGATIONS**

### **Inspections and investigations**

**154** (1) The Minister may designate any person to conduct such inspections or investigations as the Minister may require in connection with the administration of this Part.

### **Dismissal for cause for obstruction of inspection**

(2) Any person employed in the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment.

## **SEARCHES**

### **Permissible searches**

**155** (1) The person in charge of a place of open custody, of secure custody or of temporary detention may authorize a search, to be carried out in accordance with the regulations, of the following:

1. The place of open custody, of secure custody or of temporary detention.
2. The person of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
3. The property of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
4. Any vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention.

### **Contraband**

(2) Any contraband found during a search may be seized and disposed of in accordance with the regulations.

### **Meaning of contraband**

(3) For the purposes of subsection (2),

“contraband” means,

- (a) anything that a young person is not authorized to have,
- (b) anything that a young person is authorized to have but in a place where they are not authorized to have it, and
- (c) anything that a young person is authorized to have but that is being used for a purpose for which they are not authorized to use it.

## **MECHANICAL RESTRAINTS**

### **Mechanical restraints**

#### **Limits on use**

**156** (1) The person in charge of a place of secure custody or of secure temporary detention shall ensure that no young person who is detained in the place of secure custody or of secure temporary detention is,

- (a) restrained by the use of mechanical restraints, other than in accordance with this section and the regulations;
- (b) restrained by the use of mechanical restraints as a means of punishment.

#### **Conditions for use**

(2) The person in charge of a place of secure custody or of secure temporary detention may authorize the use of mechanical restraints on a young person who is detained in the place of secure custody or of secure temporary detention only if all of the following are satisfied:

1. There is an imminent risk, if mechanical restraints were not used, that:
  - i. the young person or another person would suffer physical injury,
  - ii. the young person would escape the place of secure custody or of secure temporary detention, or
  - iii. the young person would cause significant property damage.
2. Alternatives to the use of mechanical restraints would not be, or have not been, effective to reduce or eliminate the risk referred to in paragraph 1.
3. The use of the mechanical restraints is reasonably necessary to reduce or eliminate the risk referred to in paragraph 1.

### **Exception for transportation**

(3) Despite subsection (2), mechanical restraints may be used on a young person who is detained in a place of secure custody or of secure temporary detention where it is reasonably necessary for the transportation of the young person to another place of custody or detention, or to or from court or the community.

## **PART VII EXTRAORDINARY MEASURES**

### **Definitions**

**157** In this Part,

“administrator” means the person in charge of a secure treatment program; (“administrateur”)

“intrusive procedure” means,

- (a) the use of mechanical restraints,
- (b) an aversive stimulation technique, or
- (c) any other procedure that is prescribed as an intrusive procedure; (“technique d’ingérence”)

“mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments; (“trouble mental”)

“psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug; (“psychotrope”)

“secure de-escalation room” means a locked room approved under subsection 173 (1) for use for the de-escalation of situations and behaviour involving children or young persons; (“pièce de désescalade sous clé”)

“secure treatment program” means a program established or approved by the Minister under subsection 158 (1). (“programme de traitement en milieu fermé”)

## **SECURE TREATMENT PROGRAMS**

### **Secure treatment programs**

#### **Minister may establish or approve programs**

**158** (1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.

#### **Terms and conditions**

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

#### **Admission of children**

(3) No child shall be admitted to a secure treatment program except by a court order under section 164 (commitment to secure treatment program) or under section 171 (emergency admission).

#### **Locking up permitted**

**159** The premises of a secure treatment program may be locked for the detention of children.

#### **Mechanical restraints permitted**

**160** (1) Subject to subsection (3), an administrator may use and permit the use of mechanical restraints on a child as a means of controlling the child’s behaviour.

#### **Consent not required**

(2) An administrator is not required to obtain the consent of or on behalf of the child before using mechanical restraints under this section.

#### **Limitations**

(3) An administrator shall ensure that mechanical restraints are not used on a child in a secure treatment program except,

- (a) in accordance with this Part, the policies established under subsection (4) and the regulations; and

- (b) in an emergency situation under the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or others.

### **Policy**

- (4) A service provider that is approved to provide a secure treatment program shall,
  - (a) establish a policy on the use of mechanical restraints that complies with this Act and the regulations; and
  - (b) ensure that the administrator and the employees of the program comply with the policy.

## **COMMITMENT TO SECURE TREATMENT**

### **Application for order for child's commitment**

**161** (1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

1. Where the child is younger than 16,
  - i. the child's parent,
  - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
  - iii. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,
  - i. the child,
  - ii. the child's parent, if the child consents to the application,
  - iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
  - iv. a physician.

### **Time for hearing**

(2) Where an application is made under subsection (1), the court shall deal with the matter within 10 days of the making of an order under subsection (6) (legal representation) or, where no such order is made, within 10 days of the making of the application.

### **Adjournments**

(3) The court may adjourn the hearing of an application but shall not adjourn it for more than 30 days unless the applicant and the child consent to the longer adjournment.

### **Interim order**

(4) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 164 (1) (a) to (f) and, where the child is younger than 12, the Minister consents to the child's admission.

### **Evidence on adjournments**

(5) For the purpose of subsection (4), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

### **Legal representation of child**

(6) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

### **Hearing private**

(7) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

### **Child entitled to be present**

- (8) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,
  - (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
  - (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing without the child's presence.

### **Court may require child's presence**

(9) The court may require a child who has consented to the holding of the hearing without the child being present under clause (8) (b) to be present at all or part of the hearing.

### **Oral evidence**

**162** (1) Where an application is made under subsection 161 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 164 (1) without the hearing of oral evidence, and the consent is filed with the court.

### **Court may hear oral evidence despite consent**

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

### **Time limitation**

(3) A child's consent under subsection (1) is not effective for more than the period referred to in subsection 165 (1) (period of commitment).

### **Assessment**

**163** (1) The court may, at any time after an application is made under subsection 161 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment.

### **Report**

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days unless the court is of the opinion that a longer assessment period is necessary.

### **Who may not perform assessment**

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates.

### **Copies of report**

(4) The court shall provide a copy of the report to,

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child's lawyer;
- (d) a parent appearing at the hearing;
- (e) a society that has custody of the child under an order made under Part V (Child Protection);
- (f) the administrator; and
- (g) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c), (d), (e) and (f) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Same**

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings.

### **Court may withhold report from child**

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm.

### **Commitment to secure treatment: criteria**

**164** (1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the 45 days immediately preceding,
  - (i) the application under subsection 161 (1),
  - (ii) the child's detention or custody under the *Youth Criminal Justice Act* (Canada) or under the *Provincial Offences Act*, or

- (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient, caused or attempted to cause serious bodily harm to himself or another person;
- (c) the child has,
  - (i) within the 12 months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself or another person, or
  - (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;
- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

#### **Where child younger than 12**

(2) Where the child is younger than 12, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

#### **Additional requirement where applicant is physician**

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met.

#### **Period of commitment**

**165** (1) The court shall specify in an order under subsection 164 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

#### **Where society is applicant**

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than 60 days, the child shall be released on a day 60 days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made the subject of an order for interim society care under paragraph 2 of subsection 101 (1) or for extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

#### **How time calculated**

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 164 (commitment) or pending an application under section 167 (extension) shall be counted.

#### **Where order expires after 18th birthday**

(4) A person who is the subject of an order made under subsection 164 (1) or 167 (5) may be kept in the secure treatment program after turning 18, until the order expires.

#### **Reasons, plans, etc.**

**166** (1) Where the court makes an order under subsection 164 (1) or 167 (5), the court shall give,

- (a) reasons for its decision;
- (b) a statement of the plan, if any, for the child's care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

#### **Plan for care on release**

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order, the administrator shall, within 90 days of the date of the order, prepare such a plan and file it with the court.

## EXTENSION OF PERIOD OF COMMITMENT

### Extension

**167** (1) Where a child is the subject of an order made under subsection 164 (1) (commitment) or subsection (5),

- (a) a person referred to in subsection 161 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

### Same

(2) Where a person is kept in the secure treatment program under subsection 165 (4) after turning 18,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

### Person may be kept in program while application pending

(3) Where an application is made under subsection (1) or (2), the person may be kept in the secure treatment program until the application is disposed of.

### ss. 161 (3), (6-9), 162, 163 apply

(4) Subsections 161 (3), (6), (7), (8) and (9) (hearing) and sections 162 (waive oral evidence) and 163 (assessment) apply with necessary modifications to an application made under subsection (1) or (2).

### Criteria for extension

(5) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 164 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

### Period of extension

(6) The court shall specify in an order under subsection (5) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

## RELEASE BY ADMINISTRATOR

### Release

#### Unconditional release by administrator

**168** (1) The administrator may release a child from a secure treatment program unconditionally where the administrator,

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release the child; and
- (b) is satisfied that,
  - (i) the child no longer requires the secure treatment program, and
  - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

### **Conditional release**

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

### **Administrator may release despite court order**

(3) Subsections (1) and (2) apply despite an order made under subsection 164 (1) (commitment) or 167 (5) (extension).

## **REVIEW OF COMMITMENT**

### **Review of commitment**

**169** (1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 164 (1) (commitment) or 167 (5) (extension):

1. The child, where the child is 12 or older.
2. The child's parent.
3. The society having care, custody or supervision of the child.

### **ss. 161 (3), (6-9), 162, 163 apply**

(2) Subsections 161 (3), (6), (7), (8) and (9) (hearing) and sections 162 (waive oral evidence) and 163 (assessment) apply with necessary modifications to an application made under subsection (1).

### **Termination of order**

(3) The court shall make an order terminating a child's commitment unless the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
- (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 164 (1) or 167 (5), or other appropriate treatment.

### **Same**

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program.

### **ss. 167 (3-6), 168, 169 apply**

**170** Subsections 167 (3), (4), (5) and (6) and sections 168 and 169 apply with necessary modifications to a person who is 18 or older and committed to a secure treatment program as if the person were a child.

## **EMERGENCY ADMISSION**

### **Emergency admission**

**171** (1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

1. Where the child is younger than 16,
  - i. the child's parent,
  - ii. a person who is caring for the child with a parent's consent,
  - iii. a child protection worker who brought the child to a place of safety under section 81, or
  - iv. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,
  - i. the child,
  - ii. the child's parent, if the child consents to the application,
  - iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
  - iv. a physician.



### **Criteria for admission**

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) for a period not to exceed 30 days where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to themselves or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

### **Admission on consent**

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

- (a) the other criteria set out in subsection (2) are met;
- (b) the child, after obtaining legal advice, consents to the admission; and
- (c) if the child is younger than 16, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission.

### **Where child younger than 12**

(4) Where the child is younger than 12, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

### **Additional requirement where applicant is physician**

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

### **Notices required**

(6) The administrator shall ensure that within 24 hours after a child is admitted to a secure treatment program under subsection (2),

- (a) the child is given written notice of the child's right to a review under subsection (9); and
- (b) the Provincial Advocate for Children and Youth and the Children's Lawyer are given notice of the admission.

### **Mandatory advice**

(7) The Provincial Advocate for Children and Youth shall ensure that as soon as possible after the notice is received a person who is not employed to provide services in the secure treatment program explains to the child the child's right to a review in language suitable to the child's understanding.

### **Children's Lawyer to ensure child represented**

(8) The Children's Lawyer shall represent the child at the earliest possible opportunity and in any event within five days after receiving a notice under subsection (6) unless the Children's Lawyer is satisfied that another person will provide legal representation for the child within that time.

### **Application for review**

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

### **Child may be kept in program while application pending**

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

### **Procedure**

(11) Subsections 161 (7), (8) and (9) (hearing) and section 162 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

**Time for review**

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

**Order**

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses (2) (a) to (e).

**POLICE ASSISTANCE****Powers of peace officers, period of commitment****Police may take child for secure treatment**

**172** (1) A peace officer may take a child to a place where there is a secure treatment program,

- (a) for emergency admission, at the request of an applicant referred to in subsection 171 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 164.

**Apprehension of child who leaves**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

**Period of commitment**

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

**SECURE DE-ESCALATION****Director's approval**

**173** (1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where a service is provided, for use for the de-escalation of situations and behaviour involving children or young persons, on such terms and conditions as the Director determines.

**Withdrawal of approval**

(2) Where a Director is of the opinion that a secure de-escalation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

**Secure de-escalation**

**174** (1) No service provider or foster parent shall place in a locked room a child or young person who is in the service provider's or foster parent's care or permit the child or young person to be placed in a locked room, except in accordance with this section and the regulations.

**Secure treatment, secure custody and secure temporary detention**

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part VI (Youth Justice).

**Criteria for use of a secure de-escalation room**

(3) A child or young person may be placed in a secure de-escalation room where,

- (a) in the service provider's opinion,
  - (i) the child's or young person's conduct indicates that the child or young person is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and
  - (ii) no less restrictive method of restraining the child or young person is practicable; and
- (b) where the child is younger than 12, a Director gives permission for the child to be placed in a secure de-escalation room because of exceptional circumstances.

**One-hour limit**

(4) A child or young person who is placed in a secure de-escalation room shall be released within one hour unless the person in charge of the premises approves the child's or young person's longer stay in a secure de-escalation room in writing and records the reasons for not restraining the child or young person by a less restrictive method.

### **Continuous observation**

(5) Subject to subsection (9), the service provider shall ensure that a child or young person who is placed in a secure de-escalation room is continuously observed by a responsible person.

### **Review**

(6) Where a child or young person is kept in a secure de-escalation room for more than one hour, the person in charge of the premises shall review the child's or young person's placement in a secure de-escalation room at prescribed intervals.

### **Release**

(7) A child or young person who is placed in a secure de-escalation room shall be released as soon as the person in charge is satisfied that the child or young person is not likely to cause serious property damage or serious bodily harm in the immediate future.

### **Maximum periods**

(8) Subject to subsection (9), in no event shall a child or young person be kept in a secure de-escalation room for a period or periods that exceed an aggregate of eight hours in a given 24-hour period or an aggregate of 24 hours in a given week.

### **Exception**

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is 16 or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the following standards and procedures and with any additional standards and procedures that may be prescribed:

1. The young person must be observed every 15 minutes by a responsible person and these observations must be recorded in the young person's case record.
2. The service provider must determine whether, given the needs of the young person, the young person should be observed at regular intervals that are more frequent than every 15 minutes, and, if that determination is made, the young person must be observed by a responsible person at the more frequent intervals determined by the service provider and these observations must be recorded in the young person's case record.
3. The young person must not be kept in a secure de-escalation room for a continuous period in excess of 24 hours or for a period or periods that exceed an aggregate of 24 hours in a seven-day period.
4. Despite paragraph 3, the service provider may extend a young person's placement in a secure de-escalation room for a continuous period beyond 24 hours or for an aggregate of more than 24 hours in a given seven-day period, if the provincial director approves the extension.
5. The provincial director may approve the extension of the placement of a young person in a secure de-escalation room beyond 24 continuous hours or beyond an aggregate of 24 hours in a given seven-day period if the provincial director has reasonable and probable grounds to believe that the young person's continued placement in a secure de-escalation room is necessary for the safety of staff or young persons in the facility.

### **Review of use of secure de-escalation**

**175** A person in charge of premises containing a secure de-escalation room shall review,

- (a) the need for the secure de-escalation room; and
- (b) the prescribed matters,

every three months or, in the case of secure custody or secure temporary detention, every six months from the date on which the secure de-escalation room is approved under subsection 173 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

## **PSYCHOTROPIC DRUGS**

### **Consent required for use of psychotropic drugs**

**176** A service provider shall not administer or permit the administration of a psychotropic drug to a child or young person in the service provider's care without a consent in accordance with the *Health Care Consent Act, 1996*.

## **PROFESSIONAL ADVISORY BOARD**

### **Professional Advisory Board**

**177** (1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who,

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;
- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed in the Ministry.

**Chair**

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chair.

**Duties of Board**

(3) The Professional Advisory Board shall, at the Minister's request,

- (a) advise the Minister on prescribing procedures as intrusive procedures;
- (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- (c) review the practices and procedures of service providers with respect to,
  - (i) secure de-escalation,
  - (ii) intrusive procedures, and
  - (iii) psychotropic drugs,

and make recommendations to the Minister.

**Request for review**

**178** Any person may request that the Minister refer the matter of the use of a secure de-escalation room or an intrusive procedure in respect of a child or young person, or the administration of a psychotropic drug to a child or young person, to the Professional Advisory Board for investigation and review.

## PART VIII ADOPTION AND ADOPTION LICENSING

### INTERPRETATION

**Interpretation**

**179** (1) In this Part,

“birth parent” means a person who satisfies the prescribed criteria; (“parent de naissance”)

“birth relative” means,

- (a) in respect of a child who has not been adopted, a relative of the child, and
- (b) in respect of a child who has been adopted, a person who would have been a relative of the child if the child had not been adopted; (“membre de la parenté de naissance”)

“birth sibling” means, in respect of a person, a child of the same birth parent as the person, and includes a child adopted by the birth parent and a person whom the birth parent has demonstrated a settled intention to treat as a child of their family; (“frère ou soeur de naissance”)

“openness agreement” means an agreement referred to in section 212; (“accord de communication”)

“openness order” means an order made by a court in accordance with this Act for the purposes of facilitating communication or maintaining a relationship between the child and,

- (a) a birth parent, birth sibling or birth relative of the child,
- (b) a person with whom the child has a significant relationship or emotional tie, including a foster parent of the child or a member of the child's extended family or community, or
- (c) in the case of a First Nations, Inuk or Métis child,
  - (i) a person described in clause (a) or (b), or
  - (ii) a member of the child's bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community; (“ordonnance de communication”)

“spouse” has the same meaning as in Parts I and II of the *Human Rights Code*. (“conjoint”)

**Best interests of child**

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

- (a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;

- (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
- (c) consider any other circumstance of the case that the person considers relevant, including,
  - (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
  - (ii) the child's physical, mental and emotional level of development,
  - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - (iv) the child's cultural and linguistic heritage,
  - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
  - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
  - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity, and
  - (viii) the effects on the child of delay in the disposition of the case.

#### CONSENT TO ADOPTION

#### Consents

**180** (1) In this section,

“parent”, when used in reference to a child, means each of the following persons, but does not include a licensee or a foster parent:

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children's Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 217 or 218 of this Act.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of the individual's family, or has acknowledged parentage of the child and provided for the child's support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force.

#### Consent of parent, etc.

(2) An order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, shall not be made without,

- (a) the written consent of every parent; or
- (b) where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the written consent of a Director.

#### Same

(3) A consent under clause (2) (a) shall not be given before the child is seven days old.

#### Same

(4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until,

- (a) the society or licensee has advised the parent of the parent's right,

- (i) to withdraw the consent under subsection (8), and
- (ii) to be informed, on their request, whether an adoption order has been made in respect of the child;
- (b) the society or licensee has advised the parent of such other matters as may be prescribed; and
- (c) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

### **Custody of child**

(5) Where,

- (a) a child is being placed for adoption by a society or licensee;
- (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
- (c) the 21-day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 182 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 199.

### **Consent of person to be adopted**

(6) An order for the adoption of a person who is seven or older shall not be made without the person's written consent.

### **Same**

(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

### **Withdrawal of consent**

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within 21 days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

### **Dispensing with person's consent**

- (9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,
- (a) obtaining the consent would cause the person emotional harm; or
  - (b) the person is not able to consent because of a developmental disability.

### **Consent of applicant's spouse**

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

### **Consents by minors: role of Children's Lawyer**

(11) Where a person who gives a consent under clause (2) (a) is younger than 18, the consent is not valid unless the Children's Lawyer is satisfied that the consent is fully informed and reflects the person's true wishes.

### **Affidavits of execution**

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

### **Form of foreign consents**

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

### **Dispensing with consent**

**181** The court may dispense with a consent required under section 180 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and
- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

### **Late withdrawal of consent**

**182** (1) The court may permit a person who gave a consent to the adoption of a child under section 180 to withdraw the consent after the 21-day period referred to in subsection 180 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

### **Exception: child placed for adoption**

(2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care.

## **PLACEMENT FOR ADOPTION**

### **Only societies and licensees may place children, etc.**

**183** (1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

### **Only societies and certain licensees may bring children into Ontario**

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

### **Director's approval of proposed placement**

(3) No licensee except a licensee exempted under subsection (6) shall do the following without first obtaining a Director's approval of the proposed placement under section 188:

- 1. Place a child who is a resident of Canada with another person for adoption.
- 2. Take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

### **Placement of child from outside Canada**

(4) No licensee described in subsection (2) shall bring a child who is not a resident of Canada into Ontario to be placed for adoption without,

- (a) first obtaining a Director's approval of the person with whom the child is to be placed as eligible and suitable to adopt under section 189; and
- (b) after the approval referred to in clause (a) is obtained, obtaining a Director's approval of the proposed placement under section 190.

### **Director's approval required**

(5) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (6), without first receiving a Director's approval of the placement under subsection 188 (3) or 190 (2), as the case may be.

### **Designation of licensee**

(6) A Director may designate a licensee that is an agency as exempt from the requirements of subsection (3).

### **Placements to be registered**

(7) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within 30 days after placing the child.

### **Same: Director**

(8) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (7) shall promptly register the placement in the prescribed manner.

### **Exception: family adoptions within Canada, etc.**

(9) Subsections (1), (2), (3), (5), (7) and (8) do not apply to,

- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent, if the child to be placed is a resident of Canada and the placement is within Ontario; or
- (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent, if the placement is within Canada.

### **Limitation on placement by society**

**184** A society shall not place a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption until,

- (a) the time for commencing an appeal of the order has expired; or
- (b) any appeal of the order has been finally disposed of or abandoned.

### **Adoption planning**

**185** (1) Nothing in this Act prohibits a society from planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and in respect of whom there is an access order in effect under Part V (Child Protection).

### **Openness**

(2) Where a society begins planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the society shall consider the benefits of an openness order or openness agreement in respect of the child.

### **First Nations, Inuk or Métis child**

**186** (1) If a society intends to begin planning for the adoption of a First Nations, Inuk or Métis child, the society shall give written notice of its intention to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Care plan proposed by band or community**

(2) If a representative chosen by each of the child's bands or First Nations, Inuit or Métis communities receives notice under subsection (1), each band and community may, within 60 days of the representative receiving the notice,

- (a) prepare its own plan for the care of the child; and
- (b) submit its plan to the society.

### **Condition for placement**

(3) A society shall not place a First Nations, Inuk or Métis child with another person for adoption until,

- (a) at least 60 days after notice is given to a representative chosen by each of the bands and First Nations, Inuit or Métis communities have elapsed; or
- (b) if a band or First Nations, Inuit or Métis community has submitted a plan for the care of the child, the society has considered the plan.

### **First Nations, Inuk or Métis child, openness, etc.**

**187** (1) Where a society begins planning for the adoption of a First Nations, Inuk or Métis child, the society shall consider the importance of developing or maintaining the child's connection to the child's bands and First Nations, Inuit or Métis communities.

### **Openness agreement or openness order**

(2) For the purposes of subsection (1), the society shall include consideration of the benefits of,

- (a) an openness agreement in respect of the child and a member of the child's bands and First Nations, Inuit or Métis communities; or
- (b) where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), an openness order in respect of the child and a representative of the child's bands and First Nations, Inuit or Métis communities.

### **Child from inside Canada: proposed placement**

**188** (1) A licensee who intends to act as described in subsection 183 (3) shall notify a Director of the proposed placement and at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed.

### **Who may make homestudy**

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

### **Review by Director**

(3) The Director shall review the report of the adoption homestudy promptly and,

- (a) approve the proposed placement;
- (b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by,
  - (i) a specified society, licensee or person, or



(ii) in the case of a placement outside Ontario, a specified child welfare authority recognized in the jurisdiction of the placement or a prescribed person; or

(c) refuse to approve the proposed placement.

#### **Notice**

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

(a) to the person with whom the placement is proposed; and

(b) to the licensee.

#### **Right to hearing**

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom placement is proposed and the licensee are entitled to a hearing before the Board.

#### **Application of other provisions**

(6) Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal) apply to the hearing with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.

#### **Extension of time**

(7) If the Board is satisfied that there are reasonable grounds for the person with whom placement is proposed or the licensee to apply for an extension of the time fixed for requiring the hearing and for the Board to grant relief, it may,

(a) extend the time either before or after the expiration of the time; and

(b) give the directions that it considers proper as a result of extending the time.

#### **Recording of evidence**

(8) The evidence taken before the Board at the hearing shall be recorded.

#### **Placement outside Canada**

(9) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

#### **Child from outside Canada: homestudy**

**189** (1) A licensee who intends to bring a child who is not a resident of Canada into Ontario to be placed for adoption shall provide the Director with a report of an adoption homestudy of the person with whom placement is proposed to assess the person's eligibility and suitability to adopt.

#### **Who may make homestudy**

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

#### **Review by Director**

(3) The Director shall review the report of the adoption homestudy promptly and,

(a) approve the person unconditionally as eligible and suitable to adopt;

(b) approve the person subject to any conditions the Director considers appropriate; or

(c) refuse to approve the person.

#### **Notice**

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

(a) to the person who is the subject of the homestudy; and

(b) to the licensee.

#### **Right to hearing**

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person who is the subject of the homestudy is entitled to a hearing before the Board.

#### **Application of other provisions**

(6) The following provisions apply to the hearing:

1. Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
2. Subsections 188 (7) (extension of time) and (8) (recording of evidence).

#### **Child from outside Canada: review of proposed placement**

**190** (1) If a person has been approved or approved subject to conditions as eligible and suitable to adopt under section 189 and a licensee proposes to place a child with the person for adoption, the licensee shall request that a Director review the proposed placement.

#### **Review by Director**

- (2) The Director shall promptly review the proposed placement and,
  - (a) approve the proposed placement unconditionally;
  - (b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by a specified society, licensee or person; or
  - (c) refuse to approve the proposed placement.

#### **Notice**

- (3) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,
  - (a) to the person with whom the placement is proposed; and
  - (b) to the licensee.

#### **Right to hearing**

- (4) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom the placement is proposed and the licensee are entitled to a hearing before the Board.

#### **Application of other provisions**

- (5) The following provisions apply to the hearing:
  1. Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
  2. Subsections 188 (7) (extension of time) and (8) (recording of evidence).

#### **Access orders terminate**

**191** (1) When a child is placed for adoption by a society or licensee, every order respecting access to the child is terminated, including an access order made under Part V (Child Protection) in respect of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).

#### **No interference, etc., with child in placement**

- (2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,
  - (a) interfere with the child; or
  - (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

#### **DECISION TO REFUSE TO PLACE CHILD OR TO REMOVE CHILD AFTER PLACEMENT**

#### **Decision of society or licensee**

**192** (1) This section applies if,

- (a) a society decides to refuse an application to adopt a particular child made by a foster parent or other person; or
- (b) a society or licensee decides to remove a child who has been placed with a person for adoption.

#### **Notice of decision**

- (2) The society or licensee who makes a decision referred to in subsection (1) shall,
  - (a) give at least 10 days notice in writing of the decision to the person who applied to adopt the child or with whom the child had been placed for adoption;
  - (b) include in the notice under clause (a) notice of the person's right to apply for a review of the decision under subsection (3); and

- (c) in the case of a First Nations, Inuk or Métis child, give the notice required by clauses (a) and (b) and,
  - (i) give at least 10 days notice in writing of the decision to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
  - (ii) after the notice is given, consult with the band or community representatives relating to the planning for the care of the child.

#### **Application for review**

(3) A person who receives notice of a decision under subsection (2) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the decision subject to subsection (4).

#### **Where no review**

(4) If a society receives an application to adopt a child and, at the time of the application, the child had been placed for adoption with another person, the applicant is not entitled to a review of the society's decision to refuse the application.

#### **Board hearing**

(5) Upon receipt of an application under subsection (3) for a review of a decision, the Board shall hold a hearing under this section.

#### **First Nations, Inuk or Métis child**

(6) Upon receipt of an application for review of a decision relating to a First Nations, Inuk or Métis child, the Board shall give notice of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Practices and procedures**

(7) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

#### **Composition of Board**

(8) At a hearing under subsection (5), the Board shall be composed of members with the prescribed qualifications and prescribed experience.

#### **Parties**

(9) The following persons are parties to a hearing under this section:

1. The applicant.
2. The society or licensee.
3. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
4. Any person that the Board adds under subsection (10).

#### **Additional parties**

(10) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review.

#### **Board decision**

(11) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm or rescind the decision under review and shall give written reasons for its decision.

#### **Subsequent placement**

(12) After a society or licensee has made a decision referred to in subsection (1) in relation to a child, the society shall not place the child for adoption with a person other than the person who has a right to apply for a review under subsection (3) unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

#### **No removal before Board decision**

(13) Subject to subsection (14), if a society or licensee has decided to remove a child from the care of a person with whom the child was placed for adoption, the society or licensee, as the case may be, shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or

(b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

#### **Where child at risk**

(14) A society or licensee may carry out a decision to remove a child from the care of a person with whom the child was placed for adoption before the expiry of the time for applying for a review under subsection (3) or at any time after the application for a review is made if, in the opinion of a Director or local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

#### **Notice to Director**

**193** (1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

(a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or

(b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director.

#### **Same**

(2) Where no order for a child's adoption has been made and a year has expired since,

(a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 180 (2) (a); or

(b) the most recent review under subsection (3) of this section,

whichever is later, the society or licensee shall notify a Director, unless the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).

#### **Director to review**

(3) A Director who receives a notice under subsection (1) or (2) shall conduct a review in accordance with the regulations.

### **OPENNESS ORDERS**

#### **No access order in effect**

#### **Application for openness order**

**194** (1) If a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is the subject of a plan for adoption, and no access order is in effect under Part V (Child Protection), the society having care and custody of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 199.

#### **Notice of application**

(2) A society making an application under this section shall give notice of the application to,

(a) the child;

(b) every person who will be permitted to communicate with or have a relationship with the child if the order is made;

(c) any person with whom the society has placed or plans to place the child for adoption; and

(d) any society that will supervise or participate in the arrangement under the openness order.

#### **Method of giving notice to a child**

(3) Notice to a child under subsection (2) shall be given by leaving a copy with,

(a) the Children's Lawyer;

(b) the child's lawyer, if any; and

(c) the child if they are 12 or older.

#### **Openness order**

(4) The court may make an openness order under this section in respect of a child if the court is satisfied that,

(a) the openness order is in the best interests of the child;

(b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and

(c) the following entities and persons have consented to the order:

(i) the society,

(ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,

- (iii) the person with whom the society has placed or plans to place the child for adoption, and
- (iv) the child if they are 12 or older.

**Termination of openness order if extended society care order terminates**

(5) Any openness order made under this section in respect of a child terminates if the child ceases to be in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) by reason of an order made under subsection 116 (1).

**Access order in effect**

**Notice of intent to place for adoption**

**195** (1) This section applies where,

- (a) a society intends to place a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption; and
- (b) an order under Part V (Child Protection) is in effect respecting a person's access to the child or the child's access to another person.

**Notice**

(2) In the circumstances described in subsection (1), the society shall give notice to the following persons:

- 1. Every person who has been granted a right of access under the access order.
- 2. Every person with respect to whom access has been granted under the access order.

**Contents of notice**

(3) The society shall include in the notice the following information:

- 1. Notice that the society intends to place the child for adoption.
- 2. Notice that the access order terminates upon placement for adoption.
- 3. In the case of notice to a person described in paragraph 1 of subsection (2), the fact that the person has a right to apply for an openness order within 30 days after notice is received.
- 4. In the case of notice to a person described in paragraph 2 of subsection (2), the fact that the person described in paragraph 1 of subsection (2) has the right to apply for an openness order within 30 days after notice is received.

**Method of giving notice**

(4) Notice may be given by,

- (a) if the person is not a child, leaving a copy,
  - (i) with the person,
  - (ii) if the person appears to be mentally incapable in respect of an issue in the notice, with the person and with the guardian of the person's property or, if none, with the Public Guardian and Trustee, or
  - (iii) with a lawyer who accepts the notice in writing on a copy of the document; or
- (b) if the person is a child, leaving a copy,
  - (i) with the Children's Lawyer,
  - (ii) with the child's lawyer, if any, and
  - (iii) with the child, if they are 12 or older.

**Alternate method**

(5) On application without notice by a society, the court may order that notice under subsection (2) be given by another method chosen by the court if the society,

- (a) provides detailed evidence showing,
  - (i) what steps have been taken to locate the person to whom the notice is to be given, and
  - (ii) if the person has been located, what steps have been taken to give the notice to the person; and
- (b) shows that the method of giving notice could reasonably be expected to bring the notice to the person's attention.

**Notice not required**

(6) On application without notice by a society, the court may order that the society is not required to give notice under subsection (2) if,

- (a) reasonable efforts to locate the person to whom the notice is to be given have not been or would not be successful; and
- (b) there is no method of giving notice that could reasonably be expected to bring the notice to the person's attention.

**Access order in effect****Application for openness order**

**196** (1) A person described in paragraph 1 of subsection 195 (2) may, within 30 days after notice is received, apply to the court for an openness order.

**Notice of application**

(2) A person making an application for an openness order under this section shall give notice of the application to,

- (a) the society having care and custody of the child;
- (b) if someone other than the child is bringing the application, the child; and
- (c) if the child is bringing the application, the person who will be permitted to communicate with or have a relationship with the child if the order is made.

**Method of giving notice to child**

(3) Notice to a child under subsection (2) shall be given by leaving a copy with,

- (a) the Children's Lawyer;
- (b) the child's lawyer, if any; and
- (c) the child if they are 12 or older.

**Limitation on placement**

(4) A society shall not place the child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section.

**Information before placement**

(5) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:

1. The fact that such an application has been made.
2. The relationship of the applicant to the child or, if the child is the applicant, the relationship of the child to the person with whom the child will be permitted to communicate or have a relationship if the order is made.
3. The details of the openness arrangement requested.

**Outcome of application**

(6) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, after an adoption order is made, the adoptive parent, of the outcome of the application.

**Openness order**

(7) The court may make an openness order under this section in respect of a child if it is satisfied that,

- (a) the openness order is in the best interests of the child;
- (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
- (c) the child has consented to the order, if they are 12 or older.

**Same**

(8) In deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption or, after the adoption order is made, the adoptive parent, to comply with the arrangement under the openness order.

**Consent of society required**

(9) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

### **Termination of openness order if extended society care order terminates**

(10) Any openness order made under this section in respect of a child terminates if the extended society care order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) to which the child was subject terminates by reason of an order made under subsection 116 (1).

### **Temporary orders**

(11) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

### **Openness order — band and First Nations, Inuit or Métis community**

**197** (1) This section applies where a society intends to place a First Nations, Inuk or Métis child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption.

### **Notice**

(2) In the circumstances described in subsection (1), the society shall give notice to the following persons:

1. A representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
2. The child.

### **Contents of notice**

(3) The society shall include in the notice the following information:

1. Notice that the society intends to place the child for adoption.
2. The fact that the person has a right to apply for an openness order within 30 days after notice is received.
3. The fact that the society has a right to apply for an openness order within 30 days after notice is given.

### **Method of giving notice, etc.**

(4) Where notice is required under subsection (2),

(a) notice shall be given by,

- (i) if the person is not a child, leaving a copy with the person or with a lawyer who accepts the notice in writing on a copy of the document, or
- (ii) if the person is a child, leaving a copy,
  - (A) with the Children's Lawyer,
  - (B) with the child's lawyer, if any, and
  - (C) with the child, if they are 12 or older; and

(b) subsections 195 (5) and (6) apply with necessary modifications.

### **Application for openness order**

(5) A person described in paragraph 1 or 2 of subsection (2) may, within 30 days after notice is received, apply to the court for an openness order.

### **Same, society**

(6) The society may, within 30 days after notice is given, apply to the court for an openness order.

### **Notice of application**

(7) A person or society making an application for an openness order under this section shall give notice of the application to every other person or society who could have made such an application.

### **Method of giving notice to a child**

(8) Notice to a child under subsection (7) shall be given by leaving a copy with,

- (a) the Children's Lawyer;
- (b) the child's lawyer, if any; and
- (c) the child if they are 12 or older.

### **Openness order**

(9) The court may make an openness order under this section in respect of a child if it is satisfied that,

- (a) the openness order is in the best interests of the child;

- (b) the openness order will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community;
- (c) the child has consented to the order, if they are 12 or older.

#### **Application of other provisions**

(10) Subsections 196 (4) to (6) and (8) to (11) apply with necessary modifications for the purposes of this section.

#### **Application to vary or terminate openness order before adoption**

**198** (1) A society or a person with whom a child has been placed for adoption may apply to the court for an order to vary or terminate an openness order made under section 194, 196 or 197.

#### **Time for making application**

(2) An application under this section shall not be made after an order for the adoption of the child is made under section 199.

#### **Notice of application**

- (3) A society or person making an application under this section shall give notice of the application to,
- (a) the child;
  - (b) every person who is permitted to communicate with or have a relationship with the child under the openness order;
  - (c) any person with whom the society has placed or plans to place the child for adoption, if the application under this section is made by the society; and
  - (d) any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

#### **Method of giving notice to a child**

- (4) Notice to a child under subsection (3) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

#### **Order to vary openness order before adoption**

- (5) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and
  - (c) either,
    - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
    - (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

#### **Order to terminate openness order before adoption**

- (6) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) termination of the order is in the child's best interests; and
  - (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

#### **Consent of society required**

(7) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

#### **Alternative dispute resolution**

(8) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.



### **Temporary orders**

(9) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

## **ADOPTION ORDERS**

### **Orders for adoption**

#### **Adoption of child**

**199** (1) The court may make an order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee; or
- (b) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed.

#### **Family adoption**

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

#### **Adoption of adult, etc.**

(3) The court may make an order for the adoption of,

- (a) a person 18 or older; or
- (b) a child who is 16 or older and has withdrawn from parental control,

on another person's application.

#### **Who may apply**

(4) An application under this section may only be made,

- (a) by one individual; or
- (b) jointly, by two individuals who are spouses of one another.

#### **Residency requirement**

(5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario.

#### **Where applicant a minor**

**200** The court shall not make an order under section 199 on the application of a person who is younger than 18 unless the court is satisfied that special circumstances justify making the order.

#### **Where order not to be made**

**201** Where the court has made an order,

- (a) dispensing with a consent under section 181; or
- (b) refusing to permit the late withdrawal of a consent under subsection 182 (1),

the court shall not make an order under section 199 until the later of,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned.

#### **Director's statement**

**202** (1) Where an application is made for an order for the adoption of a child under subsection 199 (1), a Director shall, before the hearing, file a written statement with the court indicating,

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 199 (1) (b), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;

- (b) in the case of an application under clause 199 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 199 (1) (b), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order.

#### **Additional circumstances**

- (2) The written statement shall refer to any additional circumstances that the Director wishes to bring to the court's attention.

#### **Local director may make statement**

- (3) Where a child was placed by a society and has resided with the applicant for at least six months, the written statement may be made and filed by the local director.

#### **Amendment of statement, etc.**

- (4) The Director or local director, as the case may be, may amend the written statement at any time and may attend at the hearing and make submissions.

#### **Where recommendation negative**

- (5) Where the written statement indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least 30 days before the hearing.

#### **Report of child's adjustment**

- (6) The written statement shall be based on a report of the child's adjustment in the applicant's home, prepared by,
  - (a) the society that placed the child or has jurisdiction where the child is placed; or
  - (b) a person approved by the Director or local director.

#### **Family adoptions**

- (7) Where an application is made for an order for the adoption of a child under subsection 199 (2),
  - (a) subsections (1), (2), (4), (5) and (6) apply to the application, if the child was not a resident of Canada before being placed for adoption; and
  - (b) the court may order that subsections (1), (2), (4), (5) and (6) apply to the application, if the child was a resident of Canada before being placed for adoption.

#### **Place of hearing**

- 203** (1) An application for an adoption order shall be heard and dealt with in the county or district in which,

- (a) the applicant; or
- (b) the person to be adopted,

resides at the time the application is filed.

#### **Transfer of proceeding**

- (2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there.

#### **Rules re applications**

##### **Hearing in private**

- 204** (1) An application for an adoption order shall be heard and dealt with in the absence of the public.

##### **Court files private**

- (2) No person shall have access to the court file concerning an application for an adoption order, except,
  - (a) the court and authorized court employees;
  - (b) the parties and the persons representing them under the authority of the *Law Society Act*; and
  - (c) a Director and a local director.

##### **Stale applications**

- (3) Where an application for an adoption order is not heard within 12 months of the day on which the applicant signed it,

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application.

#### **No right to notice**

- (4) A person is not entitled to receive notice of an application under section 199 if,
- (a) the person has given a consent under clause 180 (2) (a) and has not withdrawn it;
  - (b) the person's consent has been dispensed with under section 181; or
  - (c) the person is a parent of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) who is placed for adoption.

#### **Power of court**

**205** (1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

#### **Duty of court**

- (2) The court shall not make an order for the adoption of a child under subsection 199 (1) or (2) unless the court is satisfied that,
- (a) every person who has given a consent under section 180 understands the nature and effect of the adoption order; and
  - (b) every applicant understands and appreciates the special role of an adoptive parent.

#### **Participation of child**

- (3) Where an application is made for an order for the adoption of a child under subsection 199 (1) or (2), the court,
- (a) shall inquire into the child's capacity to understand and appreciate the nature of the application;
  - (b) shall take the child's views and wishes into account and give them due weight in accordance with the child's age and maturity; and
  - (c) where it is practical to do so, shall hear the child.

#### **Participation of adult, etc.**

- (4) Where an application is made for an order for the adoption of a person under subsection 199 (3), the court shall consider the person's views and wishes and, on request, hear the person.

#### **Change of name**

**206** (1) Where the court makes an order under section 199, the court may, at the request of the applicant or applicants and, where the person adopted is 12 or older, with the person's written consent,

- (a) change the person's surname to a surname that the person could have been given if the person had been born to the applicant or applicants; and
- (b) change the person's given name.

#### **When child's consent not required**

- (2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 180 (9).

#### **Varying or terminating openness orders after adoption**

**207** (1) Any of the following persons may apply to the court to vary or terminate an openness order made under section 194, 196 or 197 after an order for adoption has been made under section 199:

1. An adoptive parent.
2. The adopted child.
3. A person who is permitted to communicate or have a relationship with the child under the openness order.
4. Any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

#### **Leave**

- (2) Despite paragraphs 2 and 3 of subsection (1), the child and a person who is permitted to communicate or have a relationship with the child under an openness order shall not make an application under subsection (1) without leave of the court.

**Jurisdiction**

- (3) An application under subsection (1) shall be made in the county or district,
- (a) in which the child resides, if the child resides in Ontario; or
  - (b) in which the adoption order for the child was made if the child does not reside in Ontario, unless the court is satisfied that the preponderance of convenience favours having the matter dealt with by the court in another county or district.

**Notice**

- (4) A person making an application under subsection (1) shall give notice of the application to every other person who could have made an application under that subsection with respect to the order.

**Method of giving notice to a child**

- (5) Notice to a child under subsection (4) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

**Order to vary openness order**

- (6) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and
  - (c) either,
    - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
    - (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

**Order to terminate openness order**

- (7) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) termination of the order is in the child's best interests; and
  - (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

**Consent of society required**

- (8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

**Alternative dispute resolution**

- (9) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to a matter relevant to the proceeding.

**Appeal of order to vary or terminate openness order**

- 208** (1) An appeal from a court's order under section 198 or 207 may be made to the Superior Court of Justice by,
- (a) any person who was entitled to apply for the order to vary or terminate the openness order; or
  - (b) any person who was entitled to notice of the application to vary or terminate the openness order.

**Temporary order**

- (2) Pending final disposition of the appeal, the Superior Court of Justice may on any party's motion make a temporary order in the child's best interests that varies or suspends an openness order.

**No time extension**

- (3) No extension of the time for an appeal shall be granted.

**Further evidence**

- (4) The court may receive further evidence relating to events after the appealed decision.

**Place of hearing**

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

**Application of s. 204**

**209** Subsections 204 (1) and (2) apply with necessary modifications to proceedings under sections 194, 196, 197, 198, 207 and 208.

**Child may participate**

**210** A child is entitled to participate in the proceeding under section 194, 196, 197, 198, 207 or 208 as if they were a party.

**Legal representation of child**

**211** (1) A child may have legal representation at any stage in a proceeding under section 194, 196, 197, 198, 207 or 208 and subsection 78 (2) applies with necessary modifications to such a proceeding.

**Children's Lawyer**

(2) The Children's Lawyer may provide legal representation to a child under this Part if, in the opinion of the Children's Lawyer, such representation is appropriate.

**Court may refer matter to Children's Lawyer**

(3) Where the court determines that legal representation is desirable, the court may refer the matter to the Children's Lawyer.

**OPENNESS AGREEMENTS****Who may enter into openness agreement**

**212** (1) For the purposes of facilitating communication or maintaining relationships, an openness agreement may be made by an adoptive parent of a child or by a person with whom a society or licensee has placed or plans to place a child for adoption and any of the following persons:

1. A birth parent, birth relative or birth sibling of the child.
2. A foster parent of the child or another person who cared for the child or in whose custody the child was placed at any time.
3. A member of the child's extended family or community with whom the child has a significant relationship or emotional tie.
4. An adoptive parent of a birth sibling of the child or a person with whom a society or licensee has placed or plans to place a birth sibling of the child for adoption.
5. In the case of a First Nations, Inuk or Métis child,
  - i. a person described in paragraph 1, 2, 3 or 4, or
  - ii. a member of the child's bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

**When agreement may be made**

(2) An openness agreement may be made at any time before or after an adoption order is made.

**Agreement may include dispute resolution process**

(3) An openness agreement may include a process to resolve disputes arising under the agreement or with respect to matters associated with it.

**Child's views and wishes of child**

(4) Before an openness agreement is made, the child's views and wishes shall be taken into account and given due weight in accordance with the child's age and maturity.

**INTERIM ORDERS****Interim order**

**213** (1) Where an application is made for an order for the adoption of a child under subsection 199 (1) or (2), the court, after considering the statement made under subsection 202 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

**Terms and conditions**

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

**Not an adoption order**

(3) An order under subsection (1) is not an adoption order.

**Consents required**

(4) Sections 180 and 181 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

**Departure from Ontario**

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 199 (1) or (2) where the statement made under subsection 202 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order.

**Successive adoption orders**

**214** An adoption order under subsection 199 (1) or (2) or an interim custody order under subsection 213 (1) may be made in respect of a person who is the subject of an earlier adoption order.

## APPEALS

**Appeals****Appeal: adoption order**

**215** (1) An appeal from a court's order under section 199 may be made to the Superior Court of Justice by,

- (a) the applicant for the adoption order; and
- (b) the Director or local director who made the statement under subsection 202 (1).

**Same: dispensing with consent**

(2) An appeal from a court's order under section 181 dispensing with a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person whose consent was dispensed with.

**Same: late withdrawal of consent**

(3) An appeal from a court's order under subsection 182 (1) permitting the late withdrawal of a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person who gave the consent.

**No extension of time for appeal**

(4) No extension of the time for an appeal shall be granted.

**Place of hearing**

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

**Hearing in private**

(6) An appeal under this section shall be heard in the absence of the public.

## EFFECT OF ADOPTION ORDER

**Order final**

**216** (1) An adoption order under section 199 is final and irrevocable, subject only to section 215 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

### **Validity of adoption order not affected by openness order or agreement**

(2) Compliance or non-compliance with the terms of an openness order or openness agreement relating to a child does not affect the validity of an order made under section 199 for the adoption of the child.

### **Status of adopted child**

**217** (1) In this section,

“adopted child” means a person who was adopted in Ontario.

### **Same**

(2) For all purposes of law, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was the adopted child’s parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent.

### **How relationships determined**

(3) The relationship to one another of all persons, including the adopted child, the adoptive parent, the kindred of the adoptive parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

### **Reference in will or other document**

(4) In any will or other document made at any time before or after the day this subsection comes into force and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person is deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

### **Application of section**

(5) This section applies and is deemed always to have applied with respect to any adoption made under any Act that is in force, but not so as to affect,

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and
- (b) any interest in property or right that has indefeasibly vested before the day this subsection comes into force.

### **Exception**

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections.

### **Effect of foreign adoption**

**218** An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part.

### **No order for access by birth parent, etc.**

**219** Where an order for the adoption of a child has been made under this Part, no court shall make an order under this Part for access to the child by,

- (a) a birth parent; or
- (b) a member of a birth parent’s family.

## **MAINTENANCE OF RELATIONSHIPS**

### **Maintenance of relationships**

**220** (1) A society shall make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child in the following circumstances:

- 1. The child was placed for adoption by the society and the society has decided not to finalize the adoption of the child by the person with whom the child was placed.
- 2. A child returns to the care of a society after an adoption order was made.

### **Openness order or agreement or access order**

(2) For the purposes of subsection (1), in addition to what is permitted under subsection 105 (9), a society shall,

- (a) facilitate contact or communication provided for under an existing openness order or openness agreement in respect of the child and the persons who are subject to or parties to the openness order or openness agreement, as the case may be; and
- (b) consider whether to apply for an order for access under Part V (Child Protection) in respect of the child and the persons.

#### **Existing openness order continues in force**

(3) For greater certainty, in a circumstance described in paragraph 1 or 2 of subsection (1), an existing openness order continues to be in force until it is varied or terminated.

### **RECORDS, CONFIDENTIALITY AND DISCLOSURE**

#### **Parent to be informed on request**

**221** At the request of a person whose consent to an adoption was required under clause 180 (2) (a) or clause 137 (2) (a) of the old Act and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

#### **Court papers**

**222** (1) In this section,

“court” includes the Superior Court of Justice.

#### **Requirement to seal documents**

(2) Subject to subsections (3) and 224 (2), the documents used on an application for an adoption order under this Part or Part VII (Adoption) of the old Act shall be sealed up together with a certified copy of the original order and filed in the court office by the appropriate court officer, and shall not be opened for inspection except by court order.

#### **Transmission of order**

(3) Within 30 days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall provide,

- (a) the original order to the adoptive parent;
- (b) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;
- (c) if the adopted child is registered or entitled to be registered under the *Indian Act* (Canada), one certified copy to the Registrar under that Act; and
- (d) one certified copy to such other persons as may be prescribed.

#### **Other court files**

(4) Unless the court orders otherwise, only the court may examine identifying information that comes from the records of any of the following persons that is contained in any court file respecting the judicial review of a decision made by any of them:

1. A designated custodian under section 223.
2. A person who, by virtue of a regulation made under paragraph 18 of subsection 346 (1), reviews or hears appeals of decisions concerning the disclosure of information under section 224 or 225.
3. A person referred to in subsection 224 (1) or 225 (1).

#### **Same**

(5) No person shall, without the court's permission, disclose identifying information described in subsection (4) that the person obtained from the court file.

#### **Definition**

(6) In subsections (4) and (5),

“identifying information” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates.

#### **Designation of custodians of information**

**223** (1) The Lieutenant Governor in Council may, by regulation, designate one or more persons to act as custodians of information that relates to adoptions and may impose such conditions and restrictions with respect to the designation as the Lieutenant Governor in Council considers appropriate.



### **Powers and duties**

(2) A designated custodian may exercise such powers and shall perform such duties as may be prescribed with respect to the information provided to the custodian under this Act.

### **Same, disclosure of information**

(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed.

### **Agreements**

(4) The Minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians.

### **Disclosure to designated custodian**

**224** (1) The Minister, the Registrar General under the *Vital Statistics Act*, a society, a licensee and such other persons as may be prescribed shall give a designated custodian under section 223 such information that relates to adoptions as may be prescribed in such circumstances as may be prescribed.

### **Same, adoption orders**

(2) A court shall give a designated custodian a certified copy of an adoption order made under this Part together with such other documents as may be prescribed in such circumstances as may be prescribed.

### **Disclosure to others**

#### **By the Minister**

**225** (1) The Minister shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

#### **By a society**

(2) A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

#### **By a licensee**

(3) A licensee shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

#### **By a custodian**

(4) A designated custodian under section 223 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

### **Scope of application**

**226** Sections 224 and 225 apply with respect to information that relates to an adoption regardless of when the adoption order was made.

## **CONFIDENTIALITY OF ADOPTION RECORDS**

### **Confidentiality of adoption information**

**227** (1) Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the Ministry, a society, a licensee or a designated custodian under section 223 and no person shall permit it to be inspected, removed, altered or disclosed unless the inspection, removal, alteration or disclosure is,

- (a) necessary for the maintenance or updating of the information by the Ministry, society, licensee or designated custodian or their staff; or
- (b) authorized by this Act or the regulations.

### **Powers of courts and tribunals**

(2) Subsection (1) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

### **Application**

(3) This section applies regardless of when the adoption order was made.

### **Privacy**

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption.

## INJUNCTION

### **Injunction**

**228** (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening subsection 191 (2), on the society's or licensee's application.

### **Variation, etc.**

(2) The Court may vary or terminate an order made under subsection (1), on any person's application.

## LICENSING — REQUIREMENT FOR LICENCE; ISSUANCE AND RENEWAL

### **Licences**

#### **Licence required**

**229** (1) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director.

#### **Issuing licence**

(2) Subject to section 231, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any conditions imposed by the Director.

#### **To individual or non-profit agency only**

(3) Despite subsection (2), a licence shall only be issued to an individual or a non-profit agency.

#### **Renewal of licence**

(4) Subject to section 232, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any conditions imposed by the Director.

#### **Provisional licence or renewal**

(5) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such conditions as the Director may impose, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

#### **Not transferable**

(6) A licence is not transferable.

#### **Definition**

(7) In this section,

“non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

- (a) to which Part III of the *Corporations Act* applies, or
- (b) that is incorporated by or under a general or special Act of the Parliament of Canada.

#### **Conditions of licence**

**230** (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

#### **Amending conditions**

(2) A Director may, at any time, amend the conditions imposed on the licence.

#### **Notice**

(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

#### **Contents of notice**

(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 234 (1).

#### **Conditions take effect upon notice**

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

#### **Licensee must comply**

(6) Every licensee shall comply with the conditions to which the licence is subject.

## LICENSING — REFUSAL AND REVOCATION

### Grounds for refusal

**231** A Director may propose to refuse to issue a licence where, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to place children for adoption in a responsible manner in accordance with this Act and the regulations;
- (b) the past conduct of any person mentioned in clause (a) affords reasonable grounds for belief that the placement of children for adoption will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) a ground exists that is prescribed as a ground for refusing to issue a licence.

### Grounds for revocation, refusal to renew

**232** A Director may propose to revoke or refuse to renew a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
  - (i) this Act or the regulations,
  - (ii) any other applicable law, or
  - (iii) a condition of the licence;
- (b) the placement of children for adoption is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (c) a person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (d) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 231 (b) for refusing to issue the licence; or
- (e) a ground exists that is prescribed as a ground for revoking or refusing to renew a licence.

## LICENSING — HEARING BY TRIBUNAL

### Hearings arising out of s. 231 or 232

#### Notice of proposal

**233** (1) Where a Director proposes to refuse to issue a licence under section 231 or to revoke or refuse to renew a licence under section 232, the Director shall notify the applicant or licensee of the proposal in writing.

#### Request for hearing

(2) A notice under subsection (1) shall set out the reasons for the proposal and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they deliver a written request for a hearing to the Director and to the Tribunal within 10 days after the notice is given.

#### Powers of Director where no hearing requested

(3) Where an applicant or licensee does not request a hearing under subsection (2), the Director may carry out the proposal.

#### Powers of Tribunal where hearing requested

(4) Where an applicant or licensee requests a hearing under subsection (2), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) order the Director to carry out the proposal; or
- (b) order the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

#### Discretion of Tribunal

(5) In making an order under subsection (4), the Tribunal may substitute its opinion for that of the Director.

#### Review of conditions by Tribunal

**234** (1) A licensee who is dissatisfied with the conditions imposed by a Director under subsection 229 (2), (4) or (5) or section 230 is entitled to a hearing by the Tribunal if the licensee delivers a written request for a hearing to the Director and to the Tribunal within 15 days after receiving the licence.

### **Powers of Tribunal**

(2) Where a licensee requests a hearing under subsection (1), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the conditions;
- (b) strike out any or all of the conditions; or
- (c) impose such other conditions as the Tribunal considers appropriate.

### **Continuation of licence pending renewal**

**235** Subject to section 236, where a licensee has applied for renewal of a licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence is deemed to continue,

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to revoke the licence or to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its decision.

### **Suspension of licence**

**236** (1) A Director may, by giving written notice to a licensee, suspend the licence where, in the Director's opinion, the manner in which children are placed for adoption by the licensee is an immediate threat to the health, safety or welfare of the children.

### **Suspension takes effect upon notice**

(2) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **s. 233 (2)-(4) apply**

(3) Where a notice is given under subsection (1), subsections 233 (2), (3) and (4) apply with necessary modifications.

### **Application of other provisions**

**237** Sections 266 and 267 apply with necessary modifications to proceedings before the Tribunal under this Part and to appeals of its orders.

## **LICENSING — DELIVERY OF LICENCE AND RECORDS**

### **Licence and record to be delivered**

**238** If a licence is revoked or renewal of it refused, or if a licensee ceases to place children for adoption, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

## **LICENSING — INJUNCTIONS**

### **Injunction**

**239** (1) A Director may apply to the Superior Court of Justice for an order enjoining a licensee from placing children for adoption while the licence is suspended under section 236.

### **Variance or discharge**

(2) A licensee may apply to the court for an order varying or discharging an order made under subsection (1).

## **OFFENCES**

### **No payments for adoption**

**240** No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 180 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and

- (f) a subsidy paid by a society or by the Minister to an adoptive parent or to a person with whom a child is placed for adoption.

#### **Offences**

**241** (1) A person who contravenes subsection 183 (1), (2), (3) or (4) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

#### **Same**

(2) A person who contravenes subsection 183 (5) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

#### **Same**

(3) A person who contravenes subsection 191 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

#### **Same**

(4) A person who contravenes section 240 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three years, or to both.

#### **Limitation**

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced more than two years after the day on which the offence was, or is alleged to have been, committed.

#### **Offences — licensing**

**242** (1) A person is guilty of an offence if the person,

- (a) knowingly provides false information in an application for a licence or renewal of a licence under this Part or in a statement, report or return required to be provided in respect of a licensing matter under this Part or the regulations; or
- (b) fails to comply with an order or direction made by a court in relation to a licensing matter under this Part.

#### **Directors, officers and employees**

(2) It is an offence for a director, officer or employee of a corporation to authorize, permit or concur in the commission by the corporation of an offence described in subsection (1).

#### **Penalty**

(3) Every person convicted of an offence under this section is liable to a fine of not more than \$5,000.

## **PART IX RESIDENTIAL LICENSING**

#### **Definitions**

**243** In this Part,

“children’s residence” means any of the following residences where children live and receive residential care:

1. A parent model residence having five or more children not of common parentage.
2. A staff model residence having three or more children not of common parentage, including an institution that is supervised or operated by a society or a place of temporary detention, of secure custody or of open custody.
3. Any other prescribed residence.

A children’s residence does not include the following:

4. A house licensed under the *Private Hospitals Act*.
5. A child care centre as defined in the *Child Care and Early Years Act, 2014*.
6. A recreational camp under the *Health Protection and Promotion Act*.
7. A home for special care under the *Homes for Special Care Act*.
8. A school or private school as defined in the *Education Act*.
9. A hostel intended for short term accommodation.
10. A hospital that receives financial aid from the Government of Ontario.

11. A group home or similar facility that receives financial assistance from the Minister of Community Safety and Correctional Services but receives no financial assistance from the Minister under this Act.

12. Any other prescribed place; (“foyer pour enfants”)

“directive” means a directive issued by the Minister under section 252; (“directive”)

“parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis; (“foyer de type familial”)

“placing agency” means a person or entity, including a society, that places a child in residential care or in foster care and includes a licensee; (“agence de placement”)

“staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty. (“foyer avec rotation de personnel”)

## PROTECTIVE MEASURES

### **Licence required**

**244** No person shall do any of the following except under the authority of a licence:

1. Operate a children’s residence.
2. Provide residential care, directly or indirectly, in places that are not children’s residences,
  - i. for three or more children not of common parentage, or
  - ii. in such circumstances as may be prescribed.

### **Prohibition — past offence**

**245** No person shall operate a children’s residence or provide residential care under the authority of a licence if they have been convicted of a prescribed offence.

### **Prohibition — holding out as licensed**

**246** No person shall represent or hold out expressly or by implication that they are licensed to operate a children’s residence or to provide residential care unless the person is licensed to do so.

### **Placements must comply with Act and regulations, etc.**

**247** No licensee shall place a child in a children’s residence or other place where residential care is provided except in accordance with this Act, the regulations and the directives.

### **Duty to keep licence**

**248** (1) A licensee shall keep a copy of the licence at the following premises and shall ensure that the licence is available for public inspection:

1. In the case of a children’s residence, at the residence.
2. In the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

### **Duty to post information**

(2) A licensee shall post any prescribed information in a conspicuous place at the children’s residence or other place where residential care is provided under the authority of a licence.

### **Duty to provide licence and other information**

**249** (1) Before a child is placed in a children’s residence or other place where residential care is provided under the authority of a licence, the licensee shall give the following to the placing agency, where the placing agency is not the licensee, or to the person placing the child:

1. A copy of the licence to operate the children’s residence or to provide residential care, as the case may be.
2. Any other prescribed information.

### **Record of compliance**

(2) The licensee shall make and keep a record of its compliance with subsection (1),

- (a) in the case of a children’s residence, at the residence; or
- (b) in the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

### **Report certain matters to a Director**

**250** (1) If, in the course of employment, it comes to the attention of a prescribed person that there are reasonable grounds to suspect that there is an immediate threat to the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a licence, the person shall immediately report the suspicion and the information on which it is based to a Director.

### **Inspection**

(2) If a suspicion is reported to a Director under subsection (1), the Director shall have an inspector conduct an inspection or make inquiries for the purpose of determining compliance with this Act, the regulations and the directives.

### **Solicitor-client privilege**

(3) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

### **Duty to report**

(4) Nothing in this section affects the duty to report a suspicion under section 125.

### **Director may exempt**

**251** A Director may, in the prescribed circumstances, exempt the following from any provision of this Part, the regulations under this Part or a directive for the time period and on the conditions specified by the Director:

1. A place or class of places where residential care is provided under the authority of a licence.
2. A person or class of persons who provide, or are applying to provide, residential care under the authority of a licence.

### **Directives by Minister**

**252** (1) The Minister may issue directives to licensees with respect to any prescribed matter.

### **Binding**

(2) A licensee shall comply with every directive issued to it under this section.

### **General or particular**

(3) A directive may be general or particular in its application.

### **Law prevails**

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

### **Public availability**

(5) The Minister shall make every directive under this section available to the public.

### **Non-application of *Legislation Act, 2006***

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

### **Publication of information by Minister**

**253** (1) The Minister may publish the following information with respect to licences and applications for licences:

1. The name of the licensee and prescribed contact information.
2. The name of the children's residence or other place where residential care is provided.
3. The conditions, if any, imposed on the licence under section 255.
4. The term of the licence specified under section 256.
5. The class, if any, assigned to the licence under section 258.
6. The maximum number of children for whom residential care may be provided by the licensee, set out in the licence under section 259.
7. Information about the programs and services to be provided under the authority of the licence.
8. A summary of each proposal to refuse to issue a licence under section 261, or under section 195 of the old Act, or to revoke or refuse to renew a licence under section 262, or under section 196 of the old Act, unless the refusal or revocation was not carried out.
9. A summary of each notice of a suspension under section 264, or under section 200 of the old Act.
10. The amount that the licensee shall charge for the provision of residential care under section 268.
11. A summary of each inspection report prepared under section 278.

12. Any other prescribed licensing information.

**Not in force**

- (2) The authority under subsection (1) includes the authority to publish information with respect to licences that are no longer in force.

**Manner**

- (3) The Minister may publish the information in any manner or format the Minister considers appropriate.

LICENCES

**Issuance and renewal of licence**

**Application**

**254** (1) An application for a licence or the renewal of a licence to operate a children's residence or to provide residential care shall be made by submitting to a Director,

- (a) an application in a form approved by the Minister;
- (b) an attestation, to be completed by the applicant in a form approved by the Minister, confirming that the applicant is not prohibited from operating a children's residence or from providing residential care under the authority of a licence under section 245;
- (c) any other information or documentation that may be specified by the Minister; and
- (d) payment of the prescribed fee.

**Additional requirements**

- (2) An applicant for a licence or the renewal of a licence shall comply with any other prescribed requirements and the directives that relate to the application process, unless the applicant withdraws the application.

**Director's duty to issue or renew**

- (3) A Director shall issue or renew a licence if the applicant applied in accordance with subsections (1) and (2) unless,
- (a) the Director proposes to refuse to do so in accordance with section 261 or 262; or
  - (b) the applicant is under 18 years old, is a partnership or is an association of persons.

**Not transferable**

- (4) A licence is not transferable.

**Conditions of licence**

**255** (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

**Amending conditions**

- (2) A Director may, at any time, amend the conditions imposed on the licence.

**Notice**

- (3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

**Contents of notice**

- (4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

**Conditions take effect upon notice**

- (5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

**Licensee must comply**

- (6) Every licensee shall comply with the conditions to which the licence is subject.

**Term of licence**

**256** (1) A licence shall be issued or renewed,

- (a) for a term specified by the Director in accordance with the regulations; or
- (b) if there are no regulations governing the term, for a term specified by the Director that does not exceed one year.



**Expiry at end of term**

(2) A licence expires at the end of its term, unless it is deemed to continue under section 257.

**Revocation for cause**

(3) Nothing in this section prevents a licence from being revoked or suspended.

**Continuation of licence pending renewal**

**257** Subject to a suspension under section 264, if a licensee has applied for renewal of a licence and paid the prescribed fee before the licence expires, the licence is deemed to continue,

- (a) until the renewal is granted; or
- (b) if the licensee is given notice that the Director proposes to revoke or refuse to renew the licence under section 262, until the time for requiring a hearing by the Tribunal has expired and, if a hearing is required, until the Tribunal has made its decision.

**Class of licence**

**258** A Director may assign a class to a licence in accordance with the regulations,

- (a) when issuing or renewing a licence; or
- (b) at any other time, if authorized by the regulations.

**Maximum number of children**

**259** (1) On issuing or renewing a licence, a Director may set out in the licence the maximum number of children for whom residential care may be provided by the licensee in the children's residence or other place where residential care is provided.

**Changing maximum number**

(2) A Director may at any time, but with notice to the licensee that is reasonable in the circumstances, change the maximum number of children set out in the licence.

**Licensee must comply**

(3) A licensee shall not admit to the children's residence or other place where residential care is provided more children than the maximum number set out in the licence, unless the admission is approved by a Director for a specified period of time.

**Appeals of class or maximum number**

**260** If authorized by the regulations, a licensee may, in accordance with the regulations,

- (a) require a review by the Tribunal of,
  - (i) the class assigned to a licence under section 258, or
  - (ii) the maximum number of children set out in a licence under section 259; and
- (b) appeal the Tribunal's decision to the Divisional Court.

**Refusals and revocations****Proposal to refuse to issue**

**261** A Director may propose to refuse to issue a licence if, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or where the applicant is a corporation, an officer or director of the corporation is not competent to operate a children's residence or to provide residential care, as the case may be, in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (b) the past conduct of any person mentioned in clause (a) affords reasonable grounds to believe that the operation of the children's residence or the provision of residential care will not be carried on in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (c) the premises in which the applicant proposes to operate the children's residence or to provide residential care do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) any person has made a false statement in the application for the licence, or in any report, document or other information required to be furnished by this Act or the regulations or any other applicable law;
- (e) a licence held by the applicant has been revoked or the renewal of such a licence has been refused and there has been no material change in the applicant's circumstances; or
- (f) a ground exists that is prescribed as a ground for refusing to issue a licence.

### **Proposal to revoke or refuse to renew**

**262** A Director may propose to revoke or refuse to renew a licence if, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
  - (i) this Act or the regulations,
  - (ii) any other applicable law, or
  - (iii) a condition of the licence;
- (b) the conduct of any person mentioned in clause (a) affords reasonable grounds to believe,
  - (i) that the person is not competent to operate a children's residence or to provide residential care in a responsible manner in accordance with this Act, the regulations or any other applicable law, or
  - (ii) that the children's residence or other place where residential care is provided is not being or will not be operated in accordance with this Act, the regulations or any other applicable law;
- (c) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) the operation of the children's residence or the provision of residential care is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (e) any person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (f) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 261 (b) for refusing to issue the licence; or
- (g) a ground exists that is prescribed as a ground for refusing to renew or for revoking a licence.

### **Notice of proposal**

**263** (1) The Director shall notify the applicant or licensee, as the case may be, in writing if the Director proposes to,

- (a) refuse to issue a licence under section 261; or
- (b) revoke or refuse to renew a licence under section 262.

### **Contents of notice**

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

### **Suspension**

**264** (1) A Director may suspend a licence if, in the Director's opinion, the manner in which the children's residence is operated or residential care is provided is an immediate threat to the health, safety or welfare of the children.

### **Notice**

(2) The Director shall notify the licensee in writing of the suspension.

### **Contents of notice**

(3) The notice shall set out the reasons for the suspension and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

### **Suspension takes effect upon notice**

(4) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **No application**

(5) No person whose licence is suspended may apply to a Director for a licence during the suspension.

## **HEARINGS BY TRIBUNAL**

### **Hearings by Tribunal**

**265** (1) An applicant or licensee to whom any of the following notices is given by a Director may request a hearing by the Tribunal in accordance with subsection (2):

1. A notice of proposal to refuse to issue a licence under section 261.

2. A notice of proposal to revoke or refuse to renew a licence under section 262.
3. A notice to impose or amend conditions on a licence under section 255.
4. A notice to suspend a licence under section 264.

#### **Request for hearing**

(2) The applicant or licensee may request a hearing by giving a written request to the Director who gave the notice referred to in subsection (1), and to the Tribunal,

- (a) in the case of a notice to impose or amend conditions on a licence, within 15 days after the person is given the notice; or
- (b) in the case of all other notices, within 10 days after the person is given the notice.

#### **If hearing regarding proposal is not requested**

(3) If an applicant or licensee to whom a notice of proposal to refuse to issue a licence or to revoke or refuse to renew a licence is given does not request a hearing in accordance with subsection (2), the Director may carry out the proposal.

#### **Hearing**

(4) If an applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall appoint a time for and hold a hearing.

#### **Powers of tribunal**

(5) After holding the hearing, the Tribunal may by order,

- (a) in the case of a proposal to refuse to issue a licence or to revoke or refuse to renew a licence,
  - (i) direct the Director to carry out the proposal, or
  - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations;
- (b) in the case of the imposition or amendment of conditions on a licence,
  - (i) confirm any or all of the conditions,
  - (ii) strike out any or all of the conditions, or
  - (iii) impose such other conditions as the Tribunal considers appropriate; or
- (c) in the case of the suspension of a licence,
  - (i) confirm the suspension, or
  - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

#### **Discretion of tribunal**

(6) In making an order under clause (5) (a) or (c), the Tribunal may substitute its opinion for that of the Director.

#### **Rules for proceedings**

##### **Parties**

**266** (1) The following persons are parties to a proceeding under this Part:

1. The applicant or licensee requiring the hearing.
2. The Director.
3. Any other person specified by the Tribunal.

##### **Members with prior involvement**

(2) A member of the Tribunal who has taken part, before a hearing, in any investigation or consideration of its subject matter that relates to the applicant or licensee shall not take part in the hearing.

##### **Discussion of subject matter of hearing**

(3) A member of the Tribunal who takes part in a hearing shall not communicate with any person, except another member, a lawyer who is not the lawyer of any party, or an employee of the Tribunal, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate.

**When Tribunal seeks independent legal advice**

(4) The Tribunal may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond.

**Examination of documentary evidence**

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing.

**Only members at entire hearing to participate in decision**

(6) No member of the Tribunal shall participate in a decision of the Tribunal under this Part unless the member was present throughout the hearing and heard the evidence and arguments of the parties.

**All members at hearing to participate in decision**

(7) Unless the parties consent, the Tribunal shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision.

**Final decision of Tribunal within 90 days**

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Tribunal shall make a final decision and notify the parties of it within 90 days after the day the Tribunal receives the applicant's or licensee's request for a hearing under subsection 265 (2) of this Act.

**APPEALS****Appeal from Tribunal**

**267** (1) Any party to a hearing before the Tribunal under this Part may appeal from the Tribunal's decision to the Divisional Court.

**Record to be filed in the court**

(2) If notice of an appeal is served under this section, the Tribunal shall promptly file with the court the record of the proceeding in which the decision appealed from was made.

**Minister entitled to be heard**

(3) The Minister, represented by a lawyer or otherwise, is entitled to be heard on the argument of an appeal under this section.

**AMOUNT CHARGED BY LICENSEE****Amount**

**268** (1) A licensee shall charge the amount set out in or determined in accordance with the regulations for the provision of residential care under the authority of a licence.

**Exemption**

(2) A regulation may exempt a licensee or class of licensees from subsection (1) and may prescribe conditions and circumstances for any such exemption.

**LICENSEE CEASING TO OPERATE, ETC.****Licence and records to be delivered**

**269** If a licence is revoked or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

**Notice to placing agency or other person; removal of children**

**270** If a licence is revoked or suspended or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care,

- (a) the licensee shall promptly notify, in writing, every placing agency or person who has a child placed in the children's residence or other place where residential care is provided of the revocation, suspension, refusal or cessation; and
- (b) the placing agency or person who placed a child shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child.

## OCCUPATION BY MINISTER AND INJUNCTIONS

### Order for Minister's occupation

**271** (1) If a Director's notice of proposal to revoke or refuse to renew a licence under clause 263 (1) (b) or notice of suspension under subsection 264 (2) has been given to a licensee and the matter has not yet been finally disposed of, the Minister may apply without notice to the Superior Court of Justice for an order,

- (a) authorizing the Minister or a person appointed by the Minister, pending the outcome of the proceeding and until alternative accommodation may be found for the children who are being cared for, to,
  - (i) occupy and operate the children's residence or the other premises where residential care is provided, or
  - (ii) provide the residential care, directly or indirectly; and
- (b) directing a peace officer to assist the Minister or a person appointed by the Minister as may be necessary in occupying the premises under subclause (a) (i).

### Where court may make order

(2) The court may make an order referred to in subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

### Interim management

(3) If an order described in subclause (1) (a) (i) has been made, the Minister or the person appointed by the Minister may, despite sections 25 and 39 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

### Injunction

**272** (1) A Director may apply to the Superior Court of Justice for an order enjoining any person from,

- (a) contravening section 244 (licence required); or
- (b) operating a children's residence or providing residential care while the licence is suspended under section 264.

### Variance or discharge

(2) Any person may apply to the court for an order varying or discharging an order made under subsection (1).

## RESIDENTIAL LICENSING INSPECTIONS

### Appointment of inspectors

**273** (1) The Minister may appoint inspectors for the purposes of this Part.

### Director is an inspector

(2) A Director is, by virtue of their office, an inspector.

### Powers and duties

(3) An inspector shall have the powers and duties set out in this Part and such other powers and duties as may be prescribed.

### Restrictions

(4) The Minister may restrict an inspector's powers of entry and inspection to specified premises.

### Certificate of appointment

(5) The Minister shall issue to every inspector a certificate of appointment which the inspector shall produce, on request, when exercising the powers or performing the duties of an inspector.

### Purpose of inspection

**274** An inspector shall conduct inspections for the purpose of determining compliance with this Act, the regulations and the directives.

### Inspections without warrant

**275** An inspector may, at any reasonable time and without a warrant or notice, enter and inspect,

- (a) the business premises of a licensee;
- (b) the premises of a children's residence;
- (c) a premises, other than a children's residence, where residential care is provided under the authority of a licence; or
- (d) a premises where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part.

**Powers on inspection**

**276** (1) An inspector conducting an inspection may,

- (a) examine the services provided;
- (b) examine a record or other thing that is relevant to the inspection;
- (c) demand the production for inspection of a record or other thing that is relevant to the inspection, including a record or other thing that is not kept on the premises;
- (d) on issuing a written receipt, remove for review or copying a record or other thing that is relevant to the inspection;
- (e) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business at the premises;
- (f) photograph, film or make any other kind of recording that is relevant to the inspection, including of a child or other person at the premises, but only in a manner that does not intercept any private communications and that is in keeping with reasonable expectations of privacy;
- (g) question a person, including a child, on matters relevant to the inspection;
- (h) call upon experts for assistance in carrying out the inspection; and
- (i) exercise any other prescribed power.

**Demand**

(2) A demand that a record or other thing be produced for inspection may be made orally or in writing and must indicate,

- (a) the nature of the record or thing required; and
- (b) when the record or thing is to be produced.

**Obligation to produce and assist**

(3) If an inspector demands that a record or other thing be produced for inspection, the person having custody of the record or other thing shall produce it for the inspector within the time provided for in the demand, and shall, on the inspector's demand,

- (a) provide whatever assistance is reasonably necessary to produce the record or thing in readable form, including using a data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret the record or thing for the inspector.

**Child's right to refuse**

(4) Despite clause (1) (g), a child may refuse to be questioned by an inspector.

**Child's right to meet with inspector**

(5) An inspector shall meet privately with a child who is receiving residential care in the place being inspected, if the child requests such a meeting.

**Power to exclude persons**

(6) An inspector who questions a person under clause (1) (g) may exclude from questioning any person except a lawyer for the person being questioned.

**Return of things**

(7) A record or other thing that has been removed for review or copying,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and the inspector; and
- (b) shall be returned to the person within a reasonable time.

**Warrant**

**277** (1) An inspector may, without notice, apply to a justice for a warrant under this section.

**Issuance of warrant**

(2) A justice may issue a warrant authorizing an inspector named in the warrant to enter the premises specified in the warrant, and to exercise any of the powers mentioned in subsection 276 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises,
  - (i) is the business premises of a licensee,

- (ii) is a children's residence,
  - (iii) is a place, other than a children's residence, where residential care is provided under the authority of a licence, or
  - (iv) is a place where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part; and
- (b) that,
- (i) the inspector has been prevented from exercising a right of entry to the premises under section 275 or a power under subsection 276 (1), or
  - (ii) there are reasonable grounds to believe that the inspector will be prevented from exercising a right of entry to the premises under section 275 or a power under subsection 276 (1).

### **Dwellings**

(3) The power to enter a premises described in clause (2) (a) with a warrant shall not be exercised to enter a premises that is used as a dwelling, except if,

- (a) the justice is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice authorizes the entry into the dwelling.

### **Expert help**

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in the execution of the warrant.

### **Expiry of warrant**

(5) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

### **Extension of time**

(6) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant.

### **Use of force**

(7) An inspector named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

### **Time of execution**

(8) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

### **Other matters**

(9) Subsections 276 (2) to (7) apply, with necessary modifications, with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.

### **Definition**

(10) In this section,

“justice” means a provincial judge or a justice of the peace.

### **Inspection report**

**278** (1) After completing an inspection, an inspector shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the licensee; and
- (c) any other prescribed person.

### **All non-compliance to be documented**

(2) If an inspector finds that a licensee has not complied with a requirement of this Act, the regulations or a directive, the inspector shall document the non-compliance in the inspection report.

### **Admissibility of certain documents**

**279** A copy made under subsection 276 (1) that purports to be certified by the inspector as being a true copy of the original is admissible in evidence in any proceeding to the same extent as, and has the same evidentiary value as, the original.

## OFFENCES

### Offences

**280** (1) A person is guilty of an offence if the person,

- (a) contravenes subsection 244 (1) (licence required);
- (b) contravenes section 245 (prohibition — past offence);
- (c) contravenes section 246 (prohibition — holding out as licensed);
- (d) contravenes subsection 259 (3) (licensee must comply with maximum number of children);
- (e) contravenes clause 269 (b) (records to be delivered);
- (f) causes a child to be cared for in a children's residence operated by a person who is not licensed, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care;
- (g) is a child's parent or a person under a legal duty to provide for the child and permits the child to be cared for in a children's residence or other place referred to in clause (f);
- (h) fails to comply with an order or direction made by a court under this Part;
- (i) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection.

### Penalty

(2) A person convicted of an offence under subsection (1) is liable to,

- (a) a fine of not more than \$1,000 for each day on which the offence continues or imprisonment for a term of not more than one year or both, in the case of an individual; or
- (b) a fine of not more than \$1,000 for each day on which the offence continues, if the person is not an individual.

### Offence — obstruction of inspector, false information, etc.

(3) A person is guilty of an offence if the person,

- (a) hinders, obstructs, or interferes with an inspector conducting an inspection under this Part, or otherwise impedes an inspector in exercising the powers or performing the duties of an inspector under this Part.
- (b) knowingly provides false information in an application under this Part or in a statement, report or return required to be provided under this Part or the regulations; or
- (c) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection.

### Penalty

(4) A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000.

### Limitation

(5) A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or inspector.

### Directors, officers and employees

(6) If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence.

## PART X PERSONAL INFORMATION

### DEFINITIONS

### Definitions

**281** In this Part,

“Assistant Commissioner” means an Assistant Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire adjoint”)

“capable” means able to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure of personal information and able to appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent and “capacity” has a corresponding meaning; (“capable”)

“Commissioner” means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire”)



“incapable” means not capable, and “incapacity” has a corresponding meaning; (“incapable”)

“information practices” means the policy or policies respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information; (“pratiques relatives aux renseignements”)

“proceeding” includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator; (“instance”)

“service” means a service or program that is provided or funded under this Act or provided under the authority of a licence; (“service”)

“service provider” includes a lead agency designated under section 30; (“fournisseur de services”)

“substitute decision-maker” means a person who is authorized under this Part to consent, withhold or withdraw consent on behalf of an individual to the collection, use or disclosure of personal information about the individual. (“mandataire spécial”)

### **Confidentiality provisions prevail**

**282** Subsections 87 (8), (9) and (10) and 134 (11) prevail over this Part.

## **MINISTER’S POWERS TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION**

### **Collection, use and disclosure of personal information by the Minister**

#### **Collection of personal information**

**283** (1) The Minister may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

1. Administering this Act and the regulations.
2. Determining compliance with this Act and the regulations.
3. Planning, managing or delivering services that the Ministry provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.
4. Conducting risk management and error management activities in respect of the services that the Ministry provides or funds, in whole or in part.
5. Conducting activities to improve or maintain the quality of the services that the Ministry provides or funds, in whole or in part.
6. Conducting research and analysis that relate to children and their families, including longitudinal studies, by or on behalf of the Ministry that relate to,
  - i. a service,
  - ii. the transition of children and their families between and out of services, including the resulting outcomes, or
  - iii. programs that support the learning, development, health and well-being of children and their families, including programs provided or funded in whole or in part by the Ministry or any other ministry of the Government of Ontario.

#### **Personal information required by Minister**

(2) The Minister may require any of the following persons to disclose to the Minister such personal information as is reasonably necessary for the purposes described in subsection (1):

1. A service provider.
2. Any other prescribed person who has information that is relevant to any of the purposes described in subsection (1).

#### **Information other than personal information**

(3) The Minister shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

#### **Personal information limited to what is reasonably necessary**

(4) The Minister shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.

### **Sharing with other ministers**

(5) The Minister and other ministers of the Crown in right of Ontario who may be prescribed may disclose personal information to and indirectly collect personal information from each other for the purposes set out in paragraphs 3 and 6 of subsection (1).

### **Deemed compliance**

(6) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under subsection (2) or (5) is deemed to be for the purposes of complying with this Act.

### **Personal information for research**

(7) The collection, use or disclosure of personal information to conduct research and analysis described in paragraph 6 of subsection (1) is subject to any requirements and restrictions that may be prescribed.

### **Notice required by s. 39 (2) of FIPPA**

(8) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or
- (b) any other method that may be prescribed.

### **Information requested by Minister**

#### **Collection of information by service providers**

**284** (1) The Minister may request that a service provider collect information, including personal information, directly from the individuals to whom it provides a service as is reasonably necessary for a prescribed purpose that is consistent with a purpose described in subsection 283 (1) and, upon being so requested, a service provider shall collect the information directly from the individuals.

#### **Disclosure to Minister**

(2) A service provider shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister.

### **Notice required by s. 39 (2) of FIPPA**

(3) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or
- (b) any other method that may be prescribed.

### **Notice to and by service providers**

(4) The Minister shall advise a service provider that collected personal information under subsection (1) of the notice referred to in subsection (3) and the service provider shall advise the individual to whom it provides a service of the information set out in the notice in the form and manner specified by the Minister.

## **COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION BY SERVICE PROVIDERS**

### **Application of Part**

**285** (1) Subject to subsections (2), (3), (4), (5) and (7), sections 286 to 332 apply to the collection, use and disclosure of personal information by a service provider.

#### **Exceptions — where other Acts apply to an institution**

(2) Sections 286 to 292 and 306 to 332 do not apply to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*.

#### **Exceptions — where other Acts apply to a health information custodian**

(3) Sections 286 to 292 and 295 to 332 do not apply to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* in respect of the collection, use or disclosure of personal health information.

#### **Exceptions — adoption matters**

(4) Sections 286 to 332 do not apply to,

- (a) the use or disclosure under section 227 by a licensee or a society of information that relates to an adoption; or

- (b) the collection, use or disclosure of information given to a designated custodian under section 224 or to another person under section 225.

**Exceptions — other matters**

- (5) Sections 286 to 332 do not apply to,
  - (a) records in the register maintained under subsection 133 (5);
  - (b) records to which subsection 130 (6) or (8) apply;
  - (c) reports for which an order was made under subsection 163 (6).

**Service provider's records**

- (6) Except if this Act or its regulations provide otherwise, this Part applies to any record in the custody or under the control of a service provider regardless of whether it was recorded before or after this Part comes into force.

**Where disclosure is prohibited under federal law**

- (7) For greater certainty, nothing in this Part permits or requires the disclosure of information whose disclosure is prohibited under the *Criminal Code* (Canada), the *Youth Criminal Justice Act* (Canada) or any other law of Canada.

**Collection, use and disclosure of personal information — requirement for consent**

**286** A service provider shall not collect personal information about an individual for the purpose of providing a service or use or disclose that information unless,

- (a) the service provider has the individual's consent under this Act and the collection, use or disclosure, to the best of the service provider's knowledge, is necessary for a lawful purpose; or
- (b) the collection, use or disclosure without the individual's consent is permitted or required by this Act.

**Collection, use and disclosure of information other than personal information**

**287** (1) A service provider shall not collect personal information for the purposes of providing a service or use or disclose that personal information if other information will serve the purpose of the collection, use or disclosure.

**Collection, use and disclosure of personal information limited to what is reasonably necessary**

(2) For the purposes of providing a service, a service provider shall not collect, use or disclose more personal information than is reasonably necessary to provide the service.

**Exception**

(3) This section does not apply to personal information that a service provider is required by law to collect, use or disclose.

**Indirect collection of personal information**

**With consent**

**288** (1) A service provider may collect personal information indirectly for the purpose of providing a service if the individual to whom the information relates consents to the collection being made indirectly.

**Without consent**

(2) A service provider may collect personal information indirectly for the purpose of providing a service and without the consent of the individual to whom the information relates if,

- (a) the information to be collected is reasonably necessary to provide a service or to assess, reduce or eliminate a risk of serious harm to a person or group of persons and it is not reasonably possible to collect personal information directly from the individual,
  - (i) that can reasonably be relied on as accurate and complete, or
  - (ii) in a timely manner;
- (b) the information is to be collected by a society from another society or from a child welfare authority outside of Ontario and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child;
- (c) the information is to be collected by a society and the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 35 (1);
- (d) the indirect collection of information is authorized by the Commissioner; or
- (e) subject to the requirements and restrictions, if any, that are prescribed, the indirect collection of information is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

### **Direct collection without consent**

**289** A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if,

- (a) the collection is reasonably necessary for the provision of a service and it is not reasonably possible to obtain consent in a timely manner;
- (b) the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or
- (c) the service provider is a society and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

### **Notice to individual re use or disclosure of information**

**290** Where a service provider collects personal information directly from an individual, the service provider shall give the individual notice that the information may be used or disclosed in accordance with this Part.

### **Permitted use**

**291** (1) A service provider may use personal information collected for the purpose of providing a service,

- (a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, including providing the information to an officer, employee, consultant or agent of the service provider, but not if the information was collected with the consent of the individual or under clause 288 (2) (a) and the individual expressly instructs otherwise;
- (b) if the service provider believes on reasonable grounds that the use is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons;
- (c) for a purpose for which this Act, another Act or an Act of Canada permits or requires a person to disclose it to the service provider;
- (d) for planning, managing or delivering services that the service provider provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;
- (e) for the purpose of risk management and error management activities;
- (f) for the purpose of activities to improve or maintain the quality of a service;
- (g) for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;
- (h) for the purpose of seeking the individual's consent, or the consent of the individual's substitute-decision maker, when the personal information used by the service provider for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, where applicable;
- (i) for the purpose of a proceeding or contemplated proceeding in which the service provider or an officer, employee, agent or former officer, employee or agent of the service provider is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;
- (j) for research conducted by the service provider, subject to the requirements and restrictions, if any, that may be prescribed; or
- (k) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

### **Exception**

(2) Despite clause (1) (a), where the individual to whom the personal information relates expressly instructs otherwise,

- (a) a society may nonetheless use that personal information,
  - (i) if it is reasonably necessary to assess, reduce or eliminate a risk of harm to a child, or
  - (ii) for a prescribed purpose related to a society's functions under subsection 35 (1); and
- (b) a service provider may nonetheless use that personal information if it is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.

### **Disclosure without consent**

**292** (1) A service provider may, without the consent of the individual, disclose personal information about an individual that has been collected for the purpose of providing a service,

- (a) to a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or to allow the agency to determine whether to undertake such an investigation;
- (b) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;
- (c) to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding;
- (d) for the purpose of contacting a relative, member of the extended family, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or otherwise not capable;
- (e) for the purpose of contacting a relative, member of the extended family or friend of the individual if the individual is deceased;
- (f) subject to section 294, for the purpose of complying with,
  - (i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or
  - (ii) a procedural rule that relates to the production of information in a proceeding;
- (g) if the service provider believes on reasonable grounds that the disclosure is necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or
- (h) if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada, subject to the requirements and restrictions, if any, that are prescribed.

**To assess, etc. risk of harm to a child**

(2) A society may disclose to another society or to a child welfare authority outside Ontario personal information that has been collected for the purpose of providing a service if the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

**For a prescribed purpose related to society's functions**

(3) A society may disclose personal information that has been collected for the purpose of providing a service if the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 35 (1).

**Definition**

(4) In this section,

"law enforcement" has the same meaning as in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

**Disclosure for planning and managing services, etc.**

**Disclosure to prescribed entity**

**293** (1) A service provider may disclose personal information collected by the service provider under the authority of this Act to a prescribed entity for the purposes of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of services, the allocation of resources to or planning for those services, including their delivery, if the prescribed entity meets the requirements under subsection (5).

**Disclosure to other person or entity**

(2) A service provider may, subject to the prescribed requirements and restrictions, disclose personal information collected by the service provider under the authority of this Act to a person or entity that is not a prescribed entity for the purposes described in subsection (1) and a person or entity to whom a service provider discloses personal information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

**Minister may require disclosure**

(3) The Minister may require a service provider to disclose information, including personal information, to a prescribed entity, if the prescribed entity meets the requirements under subsection (5), or to a person or entity that is not a prescribed entity, for the purposes described in subsection (1) and a person or entity, including a prescribed entity, to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

**Exception**

(4) Subsections (1), (2) and (3) do not apply to prescribed information in prescribed circumstances.

### **Requirements for prescribed entity**

- (5) A service provider may disclose personal information to a prescribed entity under subsection (1) or (3) if,
- (a) the prescribed entity has in place practices and procedures to protect the privacy of the individuals whose personal information it receives and to maintain the confidentiality of the information; and
  - (b) the Commissioner has approved the practices and procedures.

### **Exception**

- (6) Despite clause (5) (b), a service provider may disclose personal information to a prescribed entity under subsection (1) or (3) before the first anniversary of the day this section comes into force even if the Commissioner has not approved its practices and procedures.

### **Review of practices and procedures by Commissioner**

- (7) The Commissioner shall review the practices and procedures of each prescribed entity every three years after they were first approved and advise the service provider whether the prescribed entity continues to meet the requirements of subsection (5).

### **Prescribed entity or other person or entity may collect personal information**

- (8) A prescribed entity or a person or entity that is not a prescribed entity is authorized to collect the personal information that a service provider may disclose to it under subsection (1), (2) or (3).

### **Use and disclosure of personal information by prescribed entity, other person or entity**

- (9) Subject to the exceptions and additional requirements, if any, that are prescribed, a prescribed entity or a person or entity that is not a prescribed entity that receives personal information under subsection (1), (2) or (3) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law.

### **Deemed compliance**

- (10) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under this section is deemed to be for the purposes of complying with this Act.

### **Records of mental disorders**

#### **Definitions**

**294** (1) In this section,

“court” includes the Divisional Court; (“tribunal”)

“record of a mental disorder” means a record or a part of a record made about an individual concerning a substantial disorder of the individual’s emotional processes, thought or cognition which grossly impairs the individual’s capacity to make reasoned judgments. (“dossier relatif à un trouble mental”)

#### **Disclosure pursuant to summons, etc.**

- (2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a summons, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court or other body unless a physician states in writing that the physician believes that to do so,

- (a) is likely to detrimentally affect the treatment or recovery of the individual to whom the record relates; or
- (b) is likely to result in,
  - (i) injury to the mental condition of another individual, or
  - (ii) bodily harm to another individual.

#### **Court or body to determine whether to disclose**

- (3) Where the disclosure, transmittal or examination of a record of a mental disorder is required by a court or body before which a matter is in issue, the court or body shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

#### **Hearing**

- (4) Before making a determination under subsection (3), the court or body shall give notice to the physician and, if the court or body holds a hearing to determine whether the record should be disclosed, transmitted or examined, it shall be held in the absence of the public.

### **Matters to be considered**

(5) In making a determination under subsection (3), the court or body shall consider whether or not the disclosure, transmittal or examination of the record of a mental disorder referred to in the physician's statement is likely to have a result described in clause (2) (a) or (b) and, for that purpose, the court or body may examine the record.

### **Order**

(6) The court or body shall not order that the record of a mental disorder referred to in the physician's statement be disclosed, transmitted or examined if the court or body is satisfied that a result described in clause (2) (a) or (b) is likely, unless satisfied that to do so is essential in the interests of justice.

### **Conflict**

(7) Subsections (2) to (6) apply despite anything in the *Personal Health Information Protection Act, 2004*.

### **Return of record to service provider**

(8) Where a record of a mental disorder is ordered to be disclosed, transmitted or examined under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted, shall return the record to the service provider as soon as possible after the determination of the matter in issue in respect of which the record was required.

## **CONSENT**

### **Elements of consent for collection, use and disclosure of personal information**

**295** (1) If this Act or any other Act requires the consent of an individual to the collection, use or disclosure of personal information by a service provider, the consent,

- (a) must be a consent of the individual;
- (b) must be knowledgeable;
- (c) must relate to the information; and
- (d) must not be obtained through deception or coercion.

### **Implied consent for collection and use**

(2) A consent to the collection and use of personal information may be implied if the collection is made directly from the individual to whom the information relates and is collected for the purpose of providing a service.

### **Consent may be written or oral**

(3) A consent may be written or oral, but an oral consent may be relied on only if the service provider that obtains the consent makes a written record that sets out the following information:

- 1. The name of the individual who gave the consent.
- 2. The information to which the consent relates.
- 3. The manner in which the notice of purposes required by subsection (5) was provided to the individual.

### **Knowledgeable consent**

(4) A consent to the collection, use or disclosure of personal information is knowledgeable if it is reasonable in the circumstances to believe that the individual to whom the information relates knows,

- (a) the purposes of the collection, use or disclosure; and
- (b) that the individual may give, withhold or withdraw consent.

### **Notice of purposes**

(5) Unless it is not reasonable in the circumstances, an individual is deemed to know the purposes of the collection, use or disclosure of personal information about the individual if the service provider,

- (a) posts a notice describing the purposes where it is likely to come to the individual's attention;
- (b) makes such a notice readily available to the individual;
- (c) gives the individual a copy of such notice; or
- (d) otherwise communicates the content of such notice to the individual.

### **Transition**

(6) A consent that an individual gives, before the day that subsection (1) comes into force, to a collection, use or disclosure of personal information is a valid consent if it meets the requirements of this section for consent.

### **Withdrawal of consent**

**296** A consent may be withdrawn by the individual who gave the consent by providing notice to the service provider, but the withdrawal of the consent shall not have retroactive effect.

### **Conditional consent**

**297** If an individual places a condition on their consent to the collection, use or disclosure of personal information, the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal information by a service provider that is required by law or by established standards of professional or institutional practice.

### **Presumption of consent's validity**

**298** A service provider that has obtained an individual's consent to the collection, use or disclosure of personal information about the individual or who has received a copy of a document purporting to be a record of the individual's consent, may presume that the consent fulfils the requirements of this Act and that the individual has not withdrawn it, unless it is not reasonable to do so.

## **CAPACITY AND SUBSTITUTE DECISION-MAKING**

### **Presumption of capacity**

**299** An individual is presumed to be capable, and a service provider may rely on this presumption unless the service provider has reasonable grounds to believe that the individual is not capable.

### **Differing capacity**

#### **Re different information**

**300** (1) An individual may be capable with respect to some parts of personal information, but incapable with respect to other parts.

#### **At different times**

(2) An individual may be capable at one time, but incapable at another time.

### **Substitute decision-maker**

**301** (1) An individual who is capable may give, withhold or withdraw consent or may, if the individual is 16 or older, authorize in writing another individual who is 16 or older and capable to be the individual's substitute decision-maker.

#### **For child younger than 16**

(2) If the individual is a child younger than 16, the child's parent or a society or other person who is authorized to give, withhold or withdraw consent in the place of the parent may be the child's substitute decision-maker unless the information relates to,

- (a) treatment about which the child has made a decision in accordance with the *Health Care Consent Act, 1996*; or
- (b) counselling to which the child has consented on their own under this Act or the old Act.

### **Capable child prevails over substitute decision-maker**

(3) If the individual is a child younger than 16 who is capable and if there is a person who is authorized to act as the substitute decision-maker of the child under subsection (2), a decision of the child to give, withhold or withdraw the consent prevails over a conflicting decision by the substitute decision-maker.

### **Person authorized under PHIPA may be substitute decision-maker**

(4) Where an individual is not capable of consenting to the collection, use or disclosure of personal information, a person who would be authorized to consent to the collection, use or disclosure of personal health information on the individual's behalf under the *Personal Health Information Protection Act, 2004* may be the individual's substitute decision-maker.

### **Factors to consider for consent**

**302** (1) A person who consents under this Part on behalf of or in the place of an individual to a collection, use or disclosure of personal information by a service provider, who withholds or withdraws such a consent or who provides an express instruction under clause 291 (1) (a) shall take into consideration,

- (a) the wishes, values and beliefs that,
  - (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal information, or
  - (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal information;



- (b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;
- (c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and
- (d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

#### **Determination of compliance**

(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal information about the individual by a service provider or provides an express instruction under clause 291 (1) (a) and if the service provider is of the opinion that the substitute decision-maker has not complied with subsection (1), the service provider may apply to a body prescribed for the purposes of this section for a determination as to whether the substitute decision-maker complied with that subsection.

#### **Deemed application concerning capacity**

(3) An application to a body prescribed under subsection (2) is deemed to include an application to a prescribed body under subsection 304 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 304 within the previous six months.

#### **Parties**

- (4) The parties to the application are:
1. The service provider.
  2. The incapable individual.
  3. The substitute decision-maker.
  4. Any other person whom the prescribed body specifies.

#### **Power of prescribed body**

(5) In determining whether the substitute decision-maker complied with subsection (1), the prescribed body may substitute its opinion for that of the substitute decision-maker.

#### **Directions**

(6) If the prescribed body determines that the substitute decision-maker did not comply with subsection (1), it may give the substitute decision-maker directions and, in doing so, shall take into consideration the matters set out in clauses (1) (a) to (d).

#### **Time for compliance**

(7) The prescribed body shall specify the time within which the substitute decision-maker must comply with its directions.

#### **Deemed not authorized**

(8) If the substitute decision-maker does not comply with the directions of the prescribed body within the time specified by the prescribed body, the substitute decision-maker is deemed not to meet the requirements of subsection 301 (4).

#### **Public Guardian and Trustee**

(9) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the substitute decision-maker is required to comply with the directions and subsection (7) does not apply to the substitute decision-maker.

#### **Procedure**

(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

#### **Additional authority of substitute decision-maker**

**303** (1) If this Part permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent or withhold or withdraw consent on behalf of the individual to the collection, use or disclosure of personal information about the individual, the substitute decision-maker may also make the request, give the instruction or take the step on behalf of the individual.

#### **References to individual read as substitute decision-maker**

(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this Part to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not to the individual.

### **Determination of incapacity**

**304** (1) A service provider that determines that an individual is incapable shall do so in accordance with the requirements and restrictions, if any, that are prescribed.

### **Information about determination**

(2) If it is reasonable in the circumstances, a service provider shall provide, to an individual determined to be incapable, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed.

### **Review of determination**

(3) When a service provider determines that an individual is incapable, the individual or a prescribed person may apply to a body prescribed for the purposes of this section for a review of the determination.

### **Review body**

(4) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

### **Parties**

- (5) The parties to an application made under subsection (3) are,
- (a) the individual or prescribed person who applied for the review of the determination;
  - (b) the service provider who made the determination of incapacity; and
  - (c) any other persons whom the prescribed body specifies.

### **Powers of review body**

(6) A body prescribed for the purposes of this section may confirm the determination of incapacity or may determine that the individual is capable.

### **Restriction on repeated applications**

(7) If a determination that an individual is incapable is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the body prescribed for the purposes of this section gives leave in advance.

### **Grounds for leave**

(8) The prescribed body may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual's capacity.

### **Appointment of representative**

**305** (1) An individual who is 16 or older and who is determined to be incapable may apply to a body prescribed for the purposes of this section for appointment of a representative to consent on the individual's behalf to a collection, use or disclosure of personal information by a service provider.

### **Application by proposed representative**

(2) If an individual is incapable, another individual who is 16 or older may apply to a body prescribed for the purposes of this section to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of personal information.

### **Deemed application concerning capacity**

(3) An application to a prescribed body under subsection (1) or (2) is deemed to include an application to a prescribed body under subsection 304 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 304 within the previous six months.

### **Exception**

(4) Subsections (1) and (2) do not apply if the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

### **Parties**

- (5) The parties to the application are:
1. The individual to whom the personal information relates.
  2. The proposed representative named in the application.

3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26 (1) of the *Personal Health Information Protection Act, 2004*.
4. All other persons whom the prescribed body specifies.

### **Appointment**

- (6) In an appointment under this section, the prescribed body may authorize the representative to consent, on behalf of the individual to whom the personal information relates, to,
- (a) a particular collection, use or disclosure at a particular time;
  - (b) a collection, use or disclosure of the type specified by the prescribed body in circumstances specified by the prescribed body, if the individual is determined to be incapable at the time the consent is sought; or
  - (c) any collection, use or disclosure at any time, if the individual is determined to be incapable at the time the consent is sought.

### **Criteria for appointment**

- (7) The prescribed body may make an appointment under this section if it is satisfied that the following requirements are met:
1. The individual to whom the personal information relates does not object to the appointment.
  2. The representative consents to the appointment, is at least 16 and is capable.
  3. The appointment is in the best interests of the individual to whom the personal information relates.

### **Powers of prescribed body**

- (8) Unless the individual to whom the personal information relates objects, the prescribed body may,
- (a) appoint as representative a different individual than the one named in the application;
  - (b) limit the duration of the appointment;
  - (c) impose any other condition on the appointment; or
  - (d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

### **Termination**

- (9) A body prescribed for the purposes of this section may, on any person's application, terminate an appointment made under this section if,
- (a) the individual to whom the personal information relates or the representative requests the termination;
  - (b) the representative is no longer capable;
  - (c) the appointment is no longer in the best interests of the individual to whom the personal information relates; or
  - (d) the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

### **Procedure**

- (10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

## **INTEGRITY AND PROTECTION OF PERSONAL INFORMATION**

### **Steps to ensure accuracy, etc. of personal information**

#### **Personal information used by service provider**

**306** (1) A service provider that uses personal information for the purpose of providing a service shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.

#### **Personal information disclosed by service provider**

- (2) A service provider that discloses personal information that has been collected for the purpose of providing a service shall,
- (a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the service provider at the time of the disclosure; or

- (b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

### **Record of disclosed personal information**

(3) A service provider that discloses personal information that has been collected for the purpose of providing a service shall record the disclosures made under the prescribed provisions in the prescribed manner.

### **Steps to ensure collection of personal information is authorized**

**307** A service provider shall take reasonable steps to ensure that personal information is not collected without authority.

### **Steps to ensure security of personal information**

**308** (1) A service provider shall take reasonable steps to ensure that personal information that has been collected for the purpose of providing a service and that is in the service provider's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

### **Notice of theft, loss, etc. to individual**

(2) Subject to any prescribed exceptions and additional requirements, if personal information that has been collected for the purpose of providing a service and that is in a service provider's custody or control is stolen or lost or if it is used or disclosed without authority, the service provider shall,

- (a) notify the individual to whom the information relates at the first reasonable opportunity of the theft, loss or unauthorized use or disclosure; and
- (b) include in the notice a statement that the individual is entitled to make a complaint to the Commissioner under section 316.

### **Notice to Commissioner and Minister**

(3) If the circumstances surrounding the theft, loss or unauthorized use or disclosure meet the prescribed requirements, the service provider shall notify the Commissioner and the Minister of the theft, loss or unauthorized use or disclosure.

### **Handling of records**

**309** (1) A service provider,

- (a) shall take reasonable steps to ensure that the records of personal information collected for the purpose of providing a service that are in its custody or control are retained, transferred and disposed of in a secure manner; and
- (b) shall comply with any prescribed requirements in respect of the retention, transfer and disposal of those records.

### **Retention of records subject to access request**

(2) Despite subsection (1), a service provider that has custody or control of personal information that is subject to a request for access under section 312 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that they may have with respect to the request.

### **Disclosure to successor**

**310** (1) A service provider may disclose personal information about an individual to a potential successor of the service provider, for the purpose of allowing the potential successor to assess and evaluate the operations of the service provider, if the potential successor first enters into an agreement with the service provider to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

### **Transfer to successor**

(2) A service provider may transfer records of personal information about an individual to the service provider's successor if the service provider makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

### **Definitions**

(3) In this section,

"potential successor" and "successor" mean a potential successor or a successor that is a service provider or that will be a service provider if it becomes a successor.

### **Written public statement by service provider**

**311** (1) A service provider shall, in a manner that is practical in the circumstances, make available to the public a written statement in plain, easy-to-understand language that,

- (a) provides a general description of the service provider's information practices;

- (b) describes how to contact the service provider;
- (c) describes how an individual may obtain access to or request correction of a record of personal information about the individual that is in the custody or control of the service provider; and
- (d) describes how to make a complaint to the service provider and to the Commissioner under this Part.

#### **Use or disclosure contrary to service provider's information practices**

(2) If a service provider uses or discloses personal information about an individual, without the individual's consent, in a manner that is outside the scope of the service provider's description of its information practices under clause (1) (a), the service provider shall,

- (a) inform the individual of the uses and disclosures at the first reasonable opportunity, unless the individual does not have a right of access under section 312 to a record of the information;
- (b) make a note of the uses and disclosures; and
- (c) keep the note as part of the record of personal information about the individual that it has in its custody or under its control or in a form that is linked to that record.

### **INDIVIDUAL'S ACCESS TO PERSONAL INFORMATION**

#### **Individual's right of access**

**312** (1) An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless,

- (a) the record or the information in the record is subject to a legal privilege that restricts its disclosure to the individual;
- (b) another Act, an Act of Canada or a court order prohibits its disclosure to the individual;
- (c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, has not been concluded; or
- (d) granting the access could reasonably be expected to,
  - (i) result in a risk of serious harm to the individual or another individual,
  - (ii) lead to the identification of an individual who was required by law to provide information in the record to the service provider, or
  - (iii) lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence if the service provider considers it appropriate in the circumstances that the identity of the individual be kept confidential.

#### **Right of access to part of record not restricted**

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access under any of clauses (1) (a) to (d).

#### **Right of access to part of record not dedicated to provision of service**

(3) Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service to the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

#### **Consultation regarding harm**

(4) Before deciding to refuse to grant an individual access to a record of personal information under subclause (1) (d) (i), a service provider may consult with a member of the College of Physicians and Surgeons of Ontario, a member of the College of Psychologists of Ontario or a member of the Ontario College of Social Workers and Social Service Workers.

#### **Informal access**

(5) Nothing in this Part prevents a service provider from granting an individual access to a record of personal information to which the individual has a right of access, if the individual makes an oral request for access or does not make a request for access under section 313.

#### **Service provider may communicate with individual**

(6) Nothing in this Part prevents a service provider from communicating with an individual or the individual's substitute decision-maker with respect to a record of personal information to which the individual has a right of access.

### **Request for access**

**313** (1) An individual may exercise a right of access to a record of personal information by making a written request for access to the service provider that has custody or control of the information.

### **Details required**

(2) The request must contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts.

### **Service provider must assist individual making request**

(3) If the request does not contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts, the service provider shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2).

### **Response of service provider**

**314** (1) A service provider that receives a request from an individual for access to a record of personal information shall,

- (a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of the purpose and nature of the record and any term, code or abbreviation used in the record;
- (b) give a written notice to the individual stating that, after a reasonable search, the service provider has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies;
- (c) if the service provider refuses the request, in whole or in part, under any provision of this Part other than clause 312 (1) (c) or (d), give a written notice to the individual stating that the service provider is refusing the request, in whole or in part, providing a reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; or
- (d) subject to subsection (2), if the service provider refuses the request, in whole or in part, under clause 312 (1) (c) or (d), give a written notice to the individual stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316 and that the service provider is refusing,
  - (i) the request, in whole or in part, while citing which of clauses 312 (1) (c) and (d) apply,
  - (ii) the request, in whole or in part, under one or both of clauses 312 (1) (c) and (d), while not citing which of those provisions apply, or
  - (iii) to confirm or deny the existence of any record subject to clauses 312 (1) (c) and (d).

### **Exception**

(2) A service provider shall not act under subclause (1) (d) (i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the service provider to reveal to the individual, directly or indirectly, information to which the individual does not have a right of access.

### **Time for response**

(3) As soon as possible, but no later than 30 days after receiving the request, the service provider shall, by written notice to the individual, give the response required by subsection (1) or extend the deadline for responding by not more than 90 days if,

- (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or
- (b) the time required to undertake an assessment under subsection 312 (1) necessary to respond to the request within 30 days after receiving it would make it not reasonably practical to respond within that time.

### **Extension of time — notice and response**

(4) A service provider that extends the time limit under subsection (3) shall,

- (a) give the individual written notice of the extension setting out the length of the extension and the reason for it; and
- (b) respond as required by subsection (1) as soon as possible but no later than the expiry of the time limit as extended.

### **Expedited access**

(5) Despite subsections (3) and (4), if the individual provides the service provider with evidence satisfactory to the service provider that the individual requires access to the requested record of personal information within a specified time period, the service provider shall respond within that time period if the service provider is reasonably able to do so.

### **Frivolous or vexatious requests**

(6) A service provider that believes on reasonable grounds that a request for access to a record of personal information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316.

### **Deemed refusal**

(7) A service provider that does not respond to a request for access within the time required is deemed to have refused the request.

### **Right to complain**

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
- (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; and
  - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider.

### **Identity of individual**

(9) A service provider shall not make a record of personal information or a part of it available to an individual or provide a copy of it to an individual under clause (1) (a) without first taking reasonable steps to be satisfied as to the individual's identity.

### **No fee for access**

(10) A service provider shall not charge a fee for providing access to a record under this section, except in the prescribed circumstances.

## **CORRECTIONS TO RECORDS**

### **Correction to record**

#### **Interpretation**

**315** (1) In this section, a reference to a correction to a record or to correct a record includes the addition of, or adding, information to make the record complete.

#### **Written request**

(2) If a service provider has granted an individual access to a record of personal information and if the individual believes that the record is inaccurate or incomplete, the individual may request in writing that the service provider correct the record.

#### **Informal request**

(3) If the individual makes an oral request that the service provider correct the record, nothing in this section prevents the service provider from making the requested correction.

#### **Time for response**

(4) As soon as possible, but no later than 30 days after receiving a request for a correction under subsection (2), the service provider shall, by written notice to the individual, grant or refuse the individual's request or extend the deadline for responding by not more than 90 days if,

- (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider; or
- (b) the time required to undertake the consultations necessary to respond to the request within 30 days would make it not reasonably practical to respond within that time.

#### **Extension of time**

- (5) A service provider that extends the time limit under subsection (4) shall by written notice to the individual,
- (a) set out the length of the extension and the reason for it; and
  - (b) grant or refuse the individual's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended.

### **Frivolous or vexatious requests**

(6) A service provider that believes on reasonable grounds that a request for a correction is frivolous or vexatious or is made in bad faith may refuse to grant the request and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316.

**Deemed refusal**

(7) A service provider that does not respond to a request for a correction within the time required is deemed to have refused the request.

**Right to complain**

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
- (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; and
  - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider.

**Duty to correct**

(9) The service provider shall grant a request for a correction if the individual demonstrates, to the service provider's satisfaction, that the record is inaccurate or incomplete and gives the service provider the information necessary to enable the service provider to correct the record.

**Exceptions**

- (10) Despite subsection (9), a service provider is not required to correct a record of personal information if,
- (a) it consists of a record that was not originally created by the service provider and the service provider does not have sufficient knowledge, expertise or authority to correct the record; or
  - (b) it consists of a professional opinion or observation that was made in good faith about the individual.

**Manner of making the correction**

- (11) Upon granting a request for a correction, the service provider shall,
- (a) make the requested correction,
    - (i) by recording the correct information in the record or, if that is not possible, by ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect or incomplete and to direct the person to the correct information, and
    - (ii) by striking out the incorrect information in a manner that does not obliterate the record or, if that is not possible, by labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information;
  - (b) give notice to the individual of what has been done under clause (a); and
  - (c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the service provider has disclosed the information with respect to which the individual requested the correction of the record, unless the correction cannot reasonably be expected to have an effect on the ongoing provision of services.

**Notice of refusal**

- (12) A notice of refusal under subsection (4) or (5) must give the reasons for the refusal and inform the individual that the individual is entitled to,
- (a) prepare a concise statement of disagreement that sets out the correction that the service provider has refused to make;
  - (b) require that the service provider attach the statement of disagreement as part of the records that it holds of the individual's personal information and disclose the statement of disagreement whenever the service provider discloses information to which the statement relates;
  - (c) require that the service provider make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause (11) (c) if the service provider had granted the requested correction; and
  - (d) make a complaint about the refusal to the Commissioner under section 316.

**Rights of individual**

(13) If a service provider refuses a request for a correction, in whole or in part, or is deemed to have refused the request, the individual is entitled to take any of the actions described in subsection (12).

**Service provider's duty**

(14) If the individual takes an action described in clause (12) (b) or (c), the service provider shall comply with the requirements described in the applicable clause.

**No fee for correction**

(15) A service provider shall not charge a fee for correcting a record under this section, or for complying with subsection (14).



## COMPLAINTS, REVIEWS AND INSPECTIONS

**Complaint to Commissioner**

**316** (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Part or the regulations made for the purposes of this Part may make a complaint to the Commissioner.

**Time for complaint**

(2) A complaint made under subsection (1) must be in writing and must be filed within,

- (a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or
- (b) whatever longer period of time that the Commissioner permits if the Commissioner is satisfied that it does not result in prejudice to any person.

**Same, refusal of request**

(3) A complaint that an individual makes under clause 314 (1) (c) or (d), subsection 314 (8), 315 (6) or (8) or clause 315 (12) (d) must be in writing and must be filed within six months after the service provider refused or is deemed to have refused the individual's request.

**Response of Commissioner**

**317** (1) Upon receiving a complaint made under this Part, the Commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

- (a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint;
- (b) require the complainant to try to effect a settlement, within the time period that the Commissioner specifies, with the person about which the complaint is made; or
- (c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the Commissioner specifies, between the complainant and the person about which the complaint is made.

**Dealings without prejudice**

(2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified,

- (a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Part;
- (b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Part; and
- (c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 320, unless all parties expressly consent.

**Commissioner's review**

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Part if satisfied that there are reasonable grounds to do so.

**No review**

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

- (a) the person about which the complaint is made has responded adequately to the complaint;
- (b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Part;
- (c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;
- (d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or
- (e) the complaint is frivolous or vexatious or is made in bad faith.

### **Notice**

(5) Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision.

### **Same**

(6) Upon deciding to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the person about whom the complaint is made.

### **Commissioner's self-initiated review**

**318** (1) The Commissioner may, on the Commissioner's own initiative, conduct a review of any matter if the Commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this Part or the regulations and that the subject-matter of the review relates to the contravention.

### **Notice**

(2) Upon deciding to conduct a review under this section, the Commissioner shall give notice of the decision to every person whose activities are being reviewed.

### **Conduct of Commissioner's review**

**319** (1) In conducting a review under section 317 or 318, the Commissioner may make the rules of procedure that the Commissioner considers necessary and the *Statutory Powers Procedure Act* does not apply to the review.

### **Evidence**

(2) In conducting a review under section 317 or 318, the Commissioner may receive and accept any evidence and other information that the Commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.

### **Inspection powers**

**320** (1) In conducting a review under section 317 or 318, the Commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

- (a) the Commissioner has reasonable grounds to believe that,
  - (i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be, and
  - (ii) the premises contains books, records or other documents relevant to the subject-matter of the complaint or the review, as the case may be; and
- (b) the Commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Part or the regulations.

### **Review powers**

- (2) In conducting a review under section 317 or 318, the Commissioner may,
  - (a) demand the production of any books, records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;
  - (b) inquire into all information, records, information practices of a service provider and other matters that are relevant to the subject-matter of the review;
  - (c) demand the production for inspection of anything described in clause (b);
  - (d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or
  - (e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the service provider or person being reviewed may charge.

### **Entry to dwellings**

(3) The Commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

### **Search warrants**

(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 317 or 318, the justice of the peace may issue a warrant authorizing the entry by a person named in the warrant.

### **Time and manner for entry**

(5) The Commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with services that are being provided to any person on the premises at the time of entry.

### **No obstruction**

(6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information.

### **Written demand**

(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

### **Obligation to assist**

(8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

### **Removal of documents**

(9) If a person produces books, records and other documents to the Commissioner, other than those needed for the current provision of services to any person, the Commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the Commissioner is not able to review and copy them on the premises that the Commissioner has entered.

### **Return of documents**

(10) The Commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall promptly after the reviewing or copying return the documents to the person who produced them.

### **Admissibility of copies**

(11) A copy certified by the Commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

### **Answers under oath**

(12) In conducting a review under section 317 or 318, the Commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the Commissioner and compel them to give oral or written evidence on oath or affirmation.

### **Inspection of record without consent**

(13) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into, personal information without the consent of the individual to whom it relates, unless,

- (a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and
- (b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner's determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified.

### **Limitation on delegation**

(14) Despite subsection 327 (1), the power to make a determination under clause (13) (a) and to approve the brief written reasons under clause (13) (b) may not be delegated except to an Assistant Commissioner.

### **Document privileged**

(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court.

### **Protection**

(16) Except on the trial of a person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of a review by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

### **Protection under federal Act**

(17) The Commissioner shall inform a person giving a statement or answer in the course of a review by the Commissioner of the person's right to object to answer any question under section 5 of the *Canada Evidence Act*.

### **Representations**

(18) The Commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the Commissioner.

### **Representative**

(19) A person who is given an opportunity to make representations to the Commissioner may be represented by a lawyer or another person.

### **Access to representations**

(20) The Commissioner may permit a person to be present during the representations that another person makes to the Commissioner or to have access to them unless doing so would reveal,

- (a) the substance of a record of personal information, for which a service provider claims to be entitled to refuse a request for access made under section 313; or
- (b) personal information to which an individual is not entitled to request access under section 313.

### **Proof of appointment**

(21) If the Commissioner or an Assistant Commissioner has delegated their powers under this section to an officer or employee of the Commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the Commissioner or Assistant Commissioner, as the case may be.

### **Powers of Commissioner**

**321** (1) After conducting a review under section 317 or 318, the Commissioner may,

- (a) if the review relates to a complaint into a request by an individual under subsection 313 (1) for access to a record of personal information, make an order directing the service provider about whom the complaint was made to grant the individual access to the requested record;
- (b) if the review relates to a complaint into a request by an individual under subsection 315 (2) for correction of a record of personal information, make an order directing the service provider about whom a complaint was made to make the requested correction;
- (c) make an order directing any person whose activities the Commissioner reviewed to perform a duty imposed by this Part or the regulations;
- (d) make an order directing any person whose activities the Commissioner reviewed to cease collecting, using or disclosing personal information if the Commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Part or the regulations or an agreement entered into under this Part;
- (e) make an order directing any person whose activities the Commissioner reviewed to dispose of records of personal information that the Commissioner determines the person collected, used or disclosed in contravention of this Part or the regulations or an agreement entered into under this Part but only if the disposal of the records is not reasonably expected to adversely affect the provision of services to an individual;
- (f) make an order directing any service provider whose activities the Commissioner reviewed to change, cease or not implement any information practices specified by the Commissioner, if the Commissioner determines that the information practices contravene this Part or the regulations;
- (g) make an order directing any service provider whose activities the Commissioner reviewed to implement information practices specified by the Commissioner, if the Commissioner determines that the information practices are reasonably necessary in order to achieve compliance with this Part and the regulations;
- (h) make an order directing any person who is an agent or employee of a service provider, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent or employee to ensure that the service provider will comply with the order made against the service provider; or
- (i) make comments and recommendations on the privacy implications of any matter that is the subject of the review.

### **Terms of order**

(2) An order that the Commissioner makes under subsection (1) may contain the terms that the Commissioner considers appropriate.

### **Copy of order, etc.**

(3) Upon making comments, recommendations or an order under subsection (1), the Commissioner shall provide a copy of them, including reasons for any order made, to,

- (a) the complainant and the person about whom the complaint was made, if the Commissioner made the comments, recommendations or order after conducting a review under section 317 of a complaint;
- (b) the person whose activities the Commissioner reviewed, if the Commissioner made the comments, recommendations or order after conducting a review under section 318;
- (c) all other persons to whom the order is directed;
- (d) the body or bodies that are legally entitled to regulate or review the activities of a service provider directed in the order or to whom the comments or recommendations relate; and
- (e) any other person whom the Commissioner considers appropriate.

### **No order**

(4) If, after conducting a review under section 317 or 318, the Commissioner does not make an order under subsection (1), the Commissioner shall give the complainant, if any, and the person whose activities the Commissioner reviewed a notice that sets out the Commissioner's reasons for not making an order.

### **Appeal of order**

**322** (1) A person affected by an order of the Commissioner made under any of clauses 321 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

### **Certificate of Commissioner**

(2) In an appeal under this section, the Commissioner shall certify to the Divisional Court,

- (a) the order and a statement of the Commissioner's reasons for making the order;
- (b) the record of all hearings that the Commissioner has held in conducting the review on which the order is based;
- (c) all written representations that the Commissioner received before making the order; and
- (d) all other material that the Commissioner considers is relevant to the appeal.

### **Confidentiality of information**

(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

### **Court order**

(4) On hearing an appeal under this section, the court may, by order,

- (a) direct the Commissioner to make the decisions and to do the acts that the Commissioner is authorized to do under this Part and that the court considers proper; and
- (b) if necessary, vary or set aside the Commissioner's order.

### **Compliance by Commissioner**

(5) The Commissioner shall comply with the court's order.

### **Enforcement of order**

**323** An order made by the Commissioner under this Part that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect.

### **Further order of Commissioner**

**324** (1) After conducting a review under section 317 or 318 and making an order under subsection 321 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

### **Circumstances**

(2) The Commissioner may exercise the powers described in subsection (1) even if the order that the Commissioner rescinds or varies has been filed with the Superior Court of Justice under section 323.

### **Copy of order, etc.**

(3) Upon making a further order under subsection (1), the Commissioner shall provide a copy of it to the persons described in clauses 321 (3) (a) to (e) and shall include with the copy a notice setting out,

- (a) the Commissioner's reasons for making the order; and
- (b) if the order was made under any of clauses 321 (1) (c) to (h), a statement that the persons affected by the order have the right to appeal described in subsection (4).

### **Appeal**

(4) A person affected by an order that the Commissioner rescinds, varies or makes under any of clauses 321 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 322 (2) to (5) apply to the appeal.

### **Damages for breach of privacy**

**325** (1) If the Commissioner has made an order under this Part that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this Part or the regulations.

### **Same**

(2) If a person has been convicted of an offence under this Part and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct.

### **Damages for mental anguish**

(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award for mental anguish.

### **General powers of Commissioner**

**326** The Commissioner may,

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Part;
- (b) conduct public education programs and provide information concerning this Part and the Commissioner's role and activities;
- (c) receive representations from the public concerning the operation of this Part;
- (d) on the request of a service provider, offer comments on the service provider's actual or proposed information practices;
- (e) assist in investigations and similar procedures conducted by a person who performs similar functions to the Commissioner under the laws of Canada, except that in providing assistance, the Commissioner shall not use or disclose information collected by or for the Commissioner under this Part; and
- (f) in appropriate circumstances, authorize the collection of personal information about an individual in a manner other than directly from the individual.

### **Delegation by Commissioner**

**327** (1) The Commissioner may in writing delegate any of the Commissioner's powers, duties or functions under this Part, including the power to make orders, to an Assistant Commissioner or to an officer or employee of the Commissioner.

### **Subdelegation by Assistant Commissioner**

(2) An Assistant Commissioner may in writing delegate any of the powers, duties or functions delegated to the Assistant Commissioner under subsection (1) to any other officers or employees of the Commissioner, subject to the conditions and restrictions that the Assistant Commissioner specifies in the delegation.

### **Limitations re personal information**

**328** (1) The Commissioner and any person acting under the Commissioner's authority may collect, use or retain personal information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the collection, use or retention of the personal information and in no other circumstances.

### **Extent of information**

(2) The Commissioner and any person acting under the Commissioner's authority shall not in the course of carrying out any functions under this Part collect, use or retain more personal information than is reasonably necessary to enable the Commissioner to perform the Commissioner's functions relating to this Part or for a proceeding under it.

### **Confidentiality**

(3) The Commissioner and any person acting under the Commissioner's authority shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Part unless,

- (a) the disclosure is required for the purpose of exercising those functions;
- (b) the information relates to a service provider, the disclosure is made to a body that is legally entitled to regulate or review the activities of the service provider and the Commissioner or an Assistant Commissioner is of the opinion that the disclosure is justified;
- (c) the Commissioner obtained the information under subsection 320 (12) and the disclosure is required in a prosecution for an offence under section 131 of the *Criminal Code* (Canada) in respect of sworn testimony; or
- (d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence.

### **Same**

(4) Despite anything in subsection (3), the Commissioner and any person acting under the Commissioner's authority shall not disclose the identity of a person, other than a complainant under subsection 316 (1), who has provided information to the Commissioner and who has requested the Commissioner to keep the person's identity confidential, unless the disclosure is necessary to comply with section 125 (duty to report child in need of protection).

### **Information in review or proceeding**

(5) The Commissioner in a review under section 317 or 318 and a court, tribunal or other person, including the Commissioner, in a proceeding mentioned in section 325 or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a service provider is entitled to refuse a request for access made under section 313.

### **Not compellable witness**

(6) The Commissioner and any person acting under the Commissioner's authority shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise of their functions under this Part that they are prohibited from disclosing under subsection (3) or (4).

### **Immunity**

**329** No action or other proceeding for damages may be instituted against the Commissioner or any person acting under the Commissioner's authority for,

- (a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Part; or
- (b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Part.

## **PROHIBITIONS, IMMUNITY AND OFFENCES**

### **Non-retaliation**

**330** No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,

- (a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that any other person has contravened or is about to contravene a provision of this Part or the regulations;
- (b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of this Part or the regulations;
- (c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of this Part or the regulations; or
- (d) any person believes that the person will do anything described in clause (a), (b) or (c).

### **Immunity**

**331** (1) No action or other proceeding for damages may be instituted against a service provider or any other person for,

- (a) anything done, reported or said, in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Part; or

- (b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Part.

### **Crown liability**

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) of this section does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

### **Substitute decision-maker**

(3) A person who, on behalf of or in the place of an individual, gives, withholds or withdraws consent to a collection, use or disclosure of personal information about the individual, or makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Part and the regulations.

### **Reliance on assertion**

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under this Part, to the effect that the other person,

- (a) is a person who is authorized to request access to a record of personal information under subsection 313 (1); or
- (b) is a person who is authorized under subsection 301 (1), (2) or (4) to consent to the collection, use or disclosure of personal information about another individual.

### **Offences**

**332** (1) A person is guilty of an offence if the person,

- (a) wilfully collects, uses or discloses personal information in contravention of this Part or the regulations made for the purposes of this Part;
- (b) makes a request under this Act, under false pretences, for access to or correction of a record of personal information;
- (c) in connection with the collection, use or disclosure of personal information or access to a record of personal information, makes an assertion, knowing that it is untrue, to the effect that the person,
  - (i) is a person who is authorized to consent to the collection, use or disclosure of personal information about another individual, or
  - (ii) is a person entitled to access to a record of personal information under section 312;
- (d) disposes of a record of personal information in the custody or under the control of a service provider with an intent to evade a request for access to the record that the service provider has received under subsection 313 (1);
- (e) wilfully disposes of a record of personal information in contravention of section 309;
- (f) wilfully fails to comply with clause 308 (2) (a);
- (g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner in relation to this Part; or
- (j) contravenes section 330.

### **Penalty**

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction, to a fine of not more than \$5,000.

### **Officers, etc.**

(3) If a corporation commits an offence under this Part, every officer, member, employee or agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.

### **No prosecution**

(4) No person is liable to prosecution for an offence under this or any other Act by reason of complying with a requirement of the Commissioner in relation to this Part.



### **Consent of Attorney General**

(5) A prosecution for an offence under subsection (1) shall not be commenced without the consent of the Attorney General.

### **Presiding judge**

(6) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of an offence under subsection (1).

### **Protection of information**

(7) In a prosecution for an offence under subsection (1) or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Part, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal information, including, where appropriate,

- (a) removing the identifying information of any person whose personal information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

### **No limitation**

(8) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Part.

## **PART XI MISCELLANEOUS MATTERS**

### **Child and Family Services Review Board**

**333** (1) The Child and Family Services Review Board is continued under the name Child and Family Services Review Board in English and Commission de révision des services à l'enfance et à la famille in French.

### **Composition and duties**

(2) The Board is composed of the prescribed number of members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

### **Chair and vice-chairs**

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

### **Quorum**

(4) The prescribed number of members of the Board are a quorum.

### **Remuneration**

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

### **Police record checks**

**334** The Lieutenant Governor in Council may, by regulation, require the following persons to provide a police record check concerning the person to any other person or body in accordance with the regulations:

- 1. A person who provides or receives services under this Act.
- 2. A person residing, employed or volunteering in premises where services are provided or received under this Act.
- 3. Such other persons who may be prescribed.

### **Society may request police record checks from police, etc.**

**335** A society may, in prescribed circumstances or for a prescribed purpose, ask the Ontario Provincial Police, a municipal police force or a prescribed entity for police record checks or other prescribed information.

### **Review of Act**

**336** (1) The Minister shall periodically conduct a review of this Act or those provisions of it specified by the Minister.

### **Beginning of review**

(2) The Minister shall inform the public when a review under this section begins and what provisions of this Act are included in the review.

### **Consultation with children and young persons**

(3) The Minister shall consult with children and young persons when conducting a review under this section.

### **Written report**

(4) The Minister shall prepare a written report, in plain language, respecting the review, including the matters described in sections 337 and 338, and shall make that report available to the public.

### **Period for review**

(5) The first review shall be completed and the report made available to the public within five years after the day this section comes into force.

### **Subsequent reviews**

(6) Each subsequent review shall be completed and the report made available to the public within five years after the day the report on the previous review has been made available to the public.

### **Review to address rights of children and young persons**

**337** Every review of this Act shall address the rights of children and young persons in Part II.

### **Review to address First Nations, Inuit and Métis issues**

**338** Every review of this Act shall address the following matters:

1. The additional purpose of the Act described in paragraph 6 of subsection 1 (2), with a view to evaluating the progress that has been made in working with First Nations, Inuit and Métis peoples to achieve that purpose.
2. The provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person or in respect of First Nations, Inuit or Métis children, with a view to ensuring compliance by societies with those provisions.

## **PART XII REGULATIONS**

### **General**

#### **Lieutenant Governor in Council regulations**

**339** (1) The Lieutenant Governor in Council may make regulations for the purposes of this Act,

1. prescribing and governing a dispute resolution mechanism, in accordance with Jordan's Principle, to resolve inter-jurisdictional and intra-jurisdictional disputes in respect of services provided under this Act;
2. prescribing additional services that are services under this Act;
3. prescribing additional powers and duties of Directors and program supervisors;
4. prescribing additional persons and entities who are service providers;
5. governing the use of physical restraint under this Act, including prescribing standards and procedures for its use, requiring service providers to develop policies governing its use and prescribing provisions that must be or may not be included in those policies;
6. governing the use of mechanical restraints under this Act, including prescribing standards and procedures for their use;
7. prescribing and governing an internal procedure by which complaints, other than complaints under section 18 or 119, may be made to service providers, and prescribing and governing an external review by a specified entity of specified classes of such complaints;
8. exempting a service provider, lead agency or service, or any class of them, from any provision or requirement of this Act or the regulations for a specified period or periods;
9. defining any word or expression used in this Act that is not already defined in this Act and further defining any word or expression used in this Act that is already defined in this Act;
10. prescribing or otherwise providing for anything required or permitted by this Act to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations, which is not already provided for in this Part, except as otherwise provided in paragraph 1 of subsection 347 (2);
11. governing transitional matters that may arise due to the enactment of this Act or the repeal of the old Act.

### Conflicts

(2) If there is a conflict between a regulation made under paragraph 11 of subsection (1) and any provision of this Act or the regulations, the regulation made under paragraph 11 of subsection (1) prevails.

### Minister's regulations

(3) The Minister may make regulations for the purposes of this Act,

1. prescribing performance standards and performance measures for the provision of services to children in care, including prescribing a process for determining what the performance standards and performance measures should be, and implementing the performance standards and performance measures that are prescribed;
2. governing the determination of the bands and First Nations, Inuit or Métis communities with which a First Nations, Inuit or Métis child identifies;
3. governing how service providers, in making decisions in respect of any child, are to take into account the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression in order to give effect to the purpose set out in subparagraph 3 iii of subsection 1 (2);
4. governing how service providers, in making decisions in respect of any child, are to take into account the child's cultural and linguistic needs in order to give effect to the purpose set out in subparagraph 3 iv of subsection 1 (2);
5. governing how service providers, in making decisions in respect of any child, are to take into account regional differences in order to give effect to the purpose set out in paragraph 4 of subsection 1 (2);
6. governing how service providers, in the case of a First Nations, Inuk or Métis child, are to take into account the child's cultures, heritages, traditions, connection to community and the concept of the extended family, in order to give effect to the purpose set out in paragraph 6 of subsection 1 (2);
7. prescribing persons who may represent children and their parents in order to assist service providers in taking into account all the characteristics and needs of a child, and all the other factors referred to in subparagraphs 3 iii and iv and paragraphs 4 and 6 of subsection 1 (2) for the purposes set out in those subparagraphs and paragraphs, and respecting how such persons shall be selected or appointed and governing their roles and duties as representatives;
8. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where services are provided;
9. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
10. requiring that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents;
11. prescribing the qualifications, powers and duties of persons employed in providing services;
12. prescribing classes of persons employed or to be employed in providing services who must undertake training, prescribing that training and prescribing the circumstances under which that training must be undertaken;
13. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services are provided;
14. permitting notices, orders or other documents that are required under this Act to be provided in writing to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified;
15. governing how notices, orders and other documents or things are to be given or served under this Act, including providing rules for when they are deemed to be received;
16. prescribing forms and providing for their use;
17. modifying any provision or requirement of this Act or the regulations to accommodate persons with disabilities within the meaning of the *Accessibility for Ontarians with Disabilities Act, 2005*.

### Regulations: Part II (Children's and Young Persons' Rights)

**340** The Lieutenant Governor in Council may make regulations for the purposes of Part II,

1. governing how the rights of children and young persons in this Act are to be respected and promoted by service providers;
2. prescribing intervals for the purpose of section 9;
3. governing internal complaints procedures to be established under section 18;
4. establishing procedures for reviews under section 19;

5. prescribing an alternative dispute resolution method for the purpose of subsection 17 (1) and an alternative dispute resolution process other than the one established by the bands and communities referred to in subsection 17 (2) for the purpose of that subsection.

### **Regulations: Part III (Funding and Accountability)**

#### **Minister's regulations**

**341** (1) The Minister may make regulations for the purposes of Part III,

1. prescribing entities to whom funding may be provided for the purposes of clause 25 (c);
2. prescribing other purposes for which funding may be provided under clause 25 (c);
3. prescribing the information to be contained in or excluded from a summary of an order made available to the public under clause 33 (4) (b) or 43 (4) (b);
4. prescribing standards of services and procedures and practices to be followed by societies for the purposes of subsection 35 (2);
5. governing the management and operation of societies;
6. prescribing a system for determining the amounts of payments under subsection 40 (1);
7. prescribing terms that shall or may be included in accountability agreements for the purposes of subsection 41 (4);
8. governing the provision of services;
9. governing the accommodation, facilities and equipment to be provided,
  - i. in buildings in which services are provided, and
  - ii. in the course of the provision of services;
10. governing the establishment, management, operation, location, construction, alteration and renovation of buildings in which services are provided;
11. prescribing the accounts and records to be kept by societies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;
12. requiring service providers to keep records, and prescribing the form and content of those records;
13. providing for the recovery, by an agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
14. providing for the recovery of payments made to societies under Part III and the regulations;
15. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Residential Licensing), where residential care is provided to children;
16. prescribing reports to be made and information to be provided under section 56, their form and the intervals at which they are to be made or provided;
17. prescribing entities and the reports and information to be provided to them and the manner in which they are to be provided for the purpose of section 57;
18. prescribing information and the manner of making it public for the purpose of section 58;
19. prescribing other persons to whom a program supervisor shall give an inspection report for the purposes of clause 61 (1) (c);
20. prescribing rules to determine whether a child resides within an advisory committee's jurisdiction;
21. prescribing practices, procedures and further duties for advisory committees.

#### **Standards of service, etc.**

(2) A regulation made under paragraph 4 of subsection (1),

- (a) may exempt one or more societies from anything that is prescribed under that paragraph;
- (b) may prescribe standards of services that only apply to one or more societies provided for in the regulations;
- (c) may prescribe procedures and practices that are only required to be followed by one or more societies provided for in the regulations.

### **Amounts of payments to societies**

(3) A regulation made under paragraph 6 of subsection (1) is, if it so provides, effective with reference to a period before it is filed.

### **Lieutenant Governor in Council regulations**

- (4) The Lieutenant Governor in Council may make regulations for the purposes of Part III,
1. governing the transfer and assignment of assets of service providers and lead agencies for the purposes of section 29;
  2. establishing and respecting categories of lead agencies for the purposes of subsection 30 (4);
  3. prescribing the functions of each lead agency category for the purposes of subsection 30 (5);
  4. prescribing matters about which the Minister may issue directives for the purposes of subsection 32 (2);
  5. prescribing other duties of a society for the purposes of clause 35 (1) (g);
  6. respecting the composition of boards of directors of societies, including prescribing qualifications or eligibility criteria for board members, and requiring board members to undertake training programs and prescribing those programs;
  7. prescribing the number of First Nations, Inuit or Métis representatives on the boards of directors of societies, the manner of their appointment and their terms, for the purpose of subsection 36 (1);
  8. prescribing provisions to be included in the by-laws of societies for the purpose of subsection 36 (3);
  9. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
  10. prescribing fees that may be charged for services and the conditions under which a fee may be charged;
  11. respecting matters that relate to or arise as a result of an amalgamation under section 47 or a Minister's order under section 48, including rules governing court orders made with respect to a society;
  12. prescribing grounds for the purposes of subclause 60 (2) (c) (ii).

### **Restructuring**

(5) A regulation made under paragraph 11 of subsection (4) prevails over the *Corporations Act* or regulations made under that Act to the extent of any conflict.

### **Regulations: Part IV (First Nations, Inuit and Métis Child and Family Services)**

#### **Lieutenant Governor in Council regulations**

- 342** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,
1. modifying or excluding the application of any provision or requirement of this Act or the regulations to a First Nations, Inuit or Métis child and family service authority, a band or First Nations, Inuit or Métis community or specified persons or classes of persons, including persons caring for children under customary care, and providing for other provisions or requirements to apply instead of or in addition to the provisions or requirements of this Act and the regulations.

#### **Minister's regulations**

- (2) The Minister may make regulations for the purposes of Part IV,
1. governing the process for establishing lists of First Nations, Inuit or Métis communities in a regulation made under subsection 68 (1), including procedures that a community must follow and requirements that a community must meet;
  2. prescribing matters requiring consultation between societies, persons or entities and bands or First Nations, Inuit or Métis communities for the purposes of clause 72 (i);
  3. governing consultations with bands and First Nations, Inuit or Métis communities under sections 72 and 73 and prescribing the procedures and practices to be followed by societies, persons and entities and the duties of societies, persons and entities during the consultations;
  4. prescribing services and powers for the purposes of section 73.

### **Regulations: Part V (Child Protection)**

#### **Lieutenant Governor in Council regulations**

- 343** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part V,
1. prescribing jurisdictions outside Canada whose court orders may be recognized as extra-provincial child protection orders, and conditions for such recognition;

2. prescribing additional circumstances and conditions that constitute a 16 or 17 year old being in need of protection for the purpose of clause 74 (2) (o);
3. governing the exercise of the powers of entry set out in subsections 81 (6) and (10) and 86 (1) and (2);
4. prescribing methods of alternative dispute resolution for the purpose of section 95;
5. assigning to a Director any powers, duties or obligations of the Crown with respect to children who are in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
6. prescribing additional criteria for when an assessment may be ordered under section 98, and governing the scope of an assessment and the form of an assessment report under that section;
7. respecting applications for a review by the Board under subsection 109 (8);
8. prescribing additional practices and procedures for the purposes of subsection 109 (11);
9. prescribing the qualifications or experience a member of the Board is required to have in order to conduct reviews under subsection 109 (9), 119 (6) or 120 (5);
10. respecting the making of complaints to a society under subsection 119 (1) or to the Board under subsection 119 (5) or 120 (3);
11. prescribing matters for the purposes of paragraph 2 of subsection 119 (5) and paragraph 6 of subsection 120 (4);
12. prescribing additional orders that may be made by the Board for the purposes of clauses 119 (10) (d) and 120 (7) (f);
13. prescribing practices and procedures for the purposes of hearings conducted by the Board under subsection 119 (8) or during a review of a complaint under section 120;
14. respecting the format of warrants under sections 131 and 132 and the procedures to be followed in applying for, issuing, receiving and filing warrants of different formats;
15. prescribing manners of applying for a warrant under section 132, including a manner other than submitting an information on oath, setting out the circumstances under which those manners may be used and providing for any additional requirements that must be met if those manners are used;
16. respecting the manner in which the register referred to in subsection 133 (5) is to be kept;
17. requiring the removal of a name from the register referred to in subsection 133 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;
18. prescribing practices and procedures for hearings held under clause 134 (4) (b).

#### **Minister's regulations**

- (2) The Minister may make regulations for the purposes of Part V,
  1. prescribing requirements and purposes for the purpose of the definition of child protection worker;
  2. respecting the procedures to be followed by a society or a child and family service authority for the purposes of subsection 74 (4);
  3. prescribing additional provisions to be included in a temporary care agreement for the purpose of paragraph 7 of subsection 75 (10);
  4. prescribing the manner of varying a temporary care agreement under subsection 75 (12);
  5. prescribing duties and obligations of societies and rights and responsibilities of children in respect of agreements made under section 77 (agreements with 16 and 17 year olds), including prescribing the services and supports that may be provided under them, prescribing additional circumstances for making such agreements and provisions to be contained in them and governing their variation and termination;
  6. prescribing the complaint review procedure that societies are required to follow for the purpose of subsection 119 (2);
  7. governing agreements entered into under section 124, including prescribing entities required to enter into the agreements, the expiry, renewal and termination of the agreements, the provisions to be included in the agreements, the care and support to be provided to persons under the agreements, the terms and conditions on which the care and support is to be provided and any exceptions to the requirement that an agreement be entered into or that care and support be provided under section 124;
  8. prescribing support services for the purposes of paragraph 3 of subsection 124 (1);
  9. prescribing circumstances and conditions for the purposes of subsection 125 (4);
  10. respecting assessments to be made under subsection 126 (1).

### **Regulations: Part VI (Youth Justice)**

**344** The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

1. governing the establishment, operation, maintenance, management and use of places of temporary detention, of open custody and of secure custody;
2. governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises established, operated, maintained or designated for the purposes of the *Youth Criminal Justice Act* (Canada);
3. prescribing additional duties and functions of,
  - i. probation officers, and
  - ii. provincial directors;
4. prescribing the duties and functions of bailiffs;
5. prescribing the qualifications of probation officers;
6. prescribing additional duties and functions of persons in charge of places of temporary detention, of open custody and of secure custody;
7. prescribing reports to be made and information to be furnished under section 147, their form and the intervals at which they are to be made or furnished;
8. governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, of open custody or of secure custody;
9. prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, of open custody or of secure custody or premises in which a service is provided;
10. prescribing the number of members of the Board and the number of members that is a quorum;
11. prescribing additional powers, duties and procedures of the Board;
12. governing the exercise of the power of entry given under subsection 153 (5);
13. governing searches under subsection 155 (1);
14. prescribing procedures for the seizure and disposition of contraband found during a search;
15. respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part VI.

### **Regulations: Part VII (Extraordinary Measures)**

**345** The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

1. prescribing procedures for the admission of persons to and their discharge from secure treatment programs;
2. prescribing standards for secure treatment programs;
3. governing policies on the use of mechanical restraints required by section 160, including prescribing provisions that must be or may not be included;
4. prescribing standards for secure de-escalation rooms;
5. prescribing procedures to be followed when a child or young person is placed in or released from a secure de-escalation room;
6. prescribing the frequency of reviews under subsection 174 (6);
7. prescribing additional standards and procedures with which a service provider must comply under subsection 174 (9);
8. prescribing matters to be reviewed and prescribing additional reports under section 175;
9. prescribing procedures as intrusive procedures;
10. prescribing drugs, combinations of drugs or classes of drugs as psychotropic drugs.

### **Regulations: Part VIII (Adoption and Adoption Licensing)**

**346** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

1. designating a person or body to exercise powers and perform duties with respect to adoption;
2. governing the person or body designated under paragraph 1, including prescribing the powers and duties of the person or body;
3. prescribing criteria for the purposes of the definition of “birth parent” in subsection 179 (1);

4. prescribing matters for the purposes of clause 180 (4) (b);
5. prescribing special circumstances for the purposes of subsection 188 (9) (placement outside Canada);
6. governing applications for review under subsection 192 (3);
7. prescribing additional practices and procedures for the purposes of subsection 192 (7);
8. prescribing the qualifications or experience a member of the Board is required to have for the purpose of subsection 192 (8);
9. governing procedures to be followed by a Director in making a review under subsection 193 (3), what types of decisions and directions the Director is authorized to make after conducting a review, and any consequences following as a result of a decision or direction;
10. prescribing an alternative dispute resolution method for the purposes of subsections 198 (8) and 207 (9);
11. governing the placement of children for adoption;
12. prescribing rules and standards governing the placement of children for adoption by licensees;
13. governing openness orders under Part VIII;
14. prescribing persons for the purposes of clause 222 (3) (d);
15. prescribing the powers and duties of a designated custodian under section 223 and governing the fees that the designated custodian may charge in connection with the exercise of its powers and the performance of its duties;
16. governing the disclosure of information under section 224 to a designated custodian;
17. governing the disclosure of information under section 225 by the Minister, a society, a licensee or a designated custodian;
18. establishing and governing a mechanism for the review or appeal of a decision made by the Minister, a society, a licensee or a designated custodian concerning the disclosure of information under section 224 or 225;
19. governing the fees that a society, licensee or designated custodian may charge for the disclosure of information under section 224 or 225;
20. governing the inspection, removal or alteration of information related to an adoption for the purposes of clause 227 (1) (b);
21. exempting a licensee or class of licensees from any or all provisions or requirements of Part VIII or the regulations under it, either indefinitely or for a specified period;
22. governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
23. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 231 (c);
24. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 232 (e);
25. prescribing expenses that may be charged under clause 240 (d) and the conditions under which such expenses may be charged.

### **Functions of Central Authority**

(2) In subsection (3),

“Central Authority” means the Central Authority designated under clause 24 (a) of the *Intercountry Adoption Act, 1998*; (“Autorité centrale”)

“Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, set out in the Schedule to the *Intercountry Adoption Act, 1998*. (“Convention”)

### **Same**

(3) The Lieutenant Governor in Council may make regulations assigning functions of the Central Authority under Part VIII to public authorities, accredited bodies or persons in accordance with Article 22 of the Convention.

### **Minister’s regulations**

(4) The Minister may make regulations for the purposes of Part VIII,

1. prescribing the form of an affidavit of execution for the purposes of subsection 180 (12);
2. prescribing the manner in which placements are to be registered under subsection 183 (7);



3. prescribing persons for the purposes of subclause 188 (3) (b) (ii);
4. prescribing persons and entities and timing requirements for the purposes of clause 238 (b);
5. prescribing the accounts and records to be kept by licensees;
6. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided;
7. providing for the inspection of the records of licensees;
8. governing the qualifications of persons employed by licensees;
9. requiring licensees to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds.

### **Regulations: Part IX (Residential Licensing)**

#### **Lieutenant Governor in Council regulations**

**347** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

1. prescribing other residences for the purposes of paragraph 3 of the definition of “children’s residence” in section 243;
2. prescribing other places for the purposes of paragraph 12 of the definition of “children’s residence” in section 243;
3. prescribing circumstances in which a licence is required to provide residential care for the purposes of subparagraph 2 ii of section 244;
4. prescribing circumstances for the purposes of section 251;
5. prescribing matters about which the Minister may issue directives for the purposes of subsection 252 (1);
6. governing reviews and appeals under section 260;
7. governing the issuance, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
8. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 261 (f);
9. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 262 (g);
10. prescribing other powers and duties of an inspector for the purposes of subsection 273 (3);
11. prescribing other powers of an inspector for the purposes of clause 276 (1) (i);
12. prescribing provisions of Part IX or the regulations for the purposes of clause 280 (1) (i);
13. prescribing provisions of Part IX or the regulations for the purposes of clause 280 (3) (c).

#### **Minister’s regulations**

(2) The Minister may make regulations for the purposes of Part IX,

1. prescribing or otherwise providing for anything required or permitted by Part IX, except anything referred to in subsection (1) of this section, to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations;
2. specifying and governing classes of licence that may be assigned for the purposes of section 258;
3. governing the amount or method of determining the amount that a licensee may charge for the provision of residential care under the authority of a licence for the purposes of section 268, including governing reviews and variation of the amount or method and circumstances in which a licensee may charge a different amount than the amount that could otherwise be charged;
4. governing the management and operation of, and the accommodation, facilities, equipment and services to be provided in, children’s residences and other places where residential care is provided under the authority of a licence;
5. specifying and governing performance standards and performance measures with respect to the provision of services in children’s residences or other places where residential care is provided under the authority of a licence, including standards with respect to quality of care and responsiveness to cultural needs;
6. prescribing the accounts and records to be kept by licensees;
7. prescribing the qualifications, powers and duties of persons supervising children in children’s residences or other places where residential care is provided under the authority of a licence;

8. prescribing screening measures to be conducted for licensees, applicants for a licence or renewal of a licence and other persons providing residential care to children in children's residences or other places where residential care is provided under the authority of a licence;
9. governing procedures for the admission to and discharge of children from children's residences or other places where residential care is provided under the authority of a licence;
10. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided.

**Regulations: Part X (Personal Information)**

**348** The Lieutenant Governor in Council may make regulations for the purposes of Part X,

1. prescribing persons for the purpose of paragraph 2 of subsection 283 (2);
2. prescribing other ministers with whom the Minister may share information for the purposes of subsection 283 (5);
3. prescribing requirements and restrictions in relation to research and analysis for the purposes of subsection 283 (7);
4. prescribing and governing methods of giving notice under clauses 283 (8) (b) and 284 (3) (b);
5. prescribing the purposes for the collection under section 284;
6. prescribing purposes related to a society's functions for the purposes of clause 288 (2) (c), subclause 291 (2) (a) (ii) and subsection 292 (3);
7. specifying requirements that an express instruction mentioned in clause 291 (1) (a) must meet;
8. prescribing requirements and restrictions for the purposes of clauses 288 (2) (e), 291 (1) (j) and (k) and 292 (1) (h) and subsections 293 (2) and (3), 302 (10), 304 (1) and (4) and 305 (10);
9. prescribing entities for the purpose of section 293;
10. prescribing information and circumstances for the purposes of subsection 293 (4);
11. prescribing exceptions and additional requirements for the purposes of subsection 293 (9);
12. prescribing a body for the purposes of sections 302, 304 and 305;
13. prescribing information for the purpose of subsection 304 (2);
14. prescribing persons for the purpose of subsection 304 (3);
15. prescribing provisions and prescribing and governing the manner of recording disclosures for the purpose of subsection 306 (3);
16. prescribing exceptions and additional requirements for the purposes of subsection 308 (2);
17. prescribing requirements for the purposes of subsection 308 (3) and clause 309 (1) (b);
18. prescribing circumstances for the purposes of subsection 314 (10) and governing the fees that may be charged in those circumstances;
19. permitting notices, statements or any other things, that under this Part are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this section;
20. requiring service providers to provide information to the Commissioner and specifying the type of information to be provided and the time at which and manner in which it is to be provided.

**Regulations: Part XI (Miscellaneous Matters)**

**349** The Lieutenant Governor in Council may make regulations for the purposes of Part XI,

1. prescribing the number of members of the Board and the number of members that is a quorum;
2. prescribing additional powers, duties and procedures of the Board;
3. respecting police record checks for the purposes of section 334, including,
  - i. requiring different classes of persons to provide different types of police record checks or different types of information as part of a check,
  - ii. prescribing procedures and practices to be followed when a police record check is required,
  - iii. prescribing other persons for the purposes of paragraph 3 of section 334, and
  - iv. requiring police record checks to be obtained from jurisdictions outside Ontario in specified circumstances;
4. respecting police record checks for the purposes of section 335, including,

- i. prescribing other entities from whom a society may request police record checks or other information,
- ii. prescribing other information that may be requested,
- iii. prescribing circumstances in which and purposes for which the request may be made, and
- iv. prescribing procedures and practices to be followed when a police record check or other information is requested.

**PART XIII**  
**REPEAL, COMMENCEMENT AND SHORT TITLE**

**Repeal**

**350** The *Child and Family Services Act* is repealed.

**Commencement**

**351** The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**Short title**

**352** The short title of the Act set out in this Schedule is the *Child, Youth and Family Services Act, 2017*.

**SCHEDULE 2  
AMENDMENTS TO THE CHILD AND FAMILY SERVICES ACT**

**1 Clauses 15 (3) (a) and (b) of the *Child and Family Services Act* are repealed and the following substituted:**

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;

**2 (1) Subsection 27 (1) of the Act is repealed and the following substituted:**

**Consent to service**

**Consent to service: person 16 or older**

(1) Subject to clause (2) (b) and subsection (3), a service provider may provide a service to a person who is 16 years of age or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.

**(2) Subsections 27 (2) and (3) of the Act are repealed and the following substituted:**

**Consent to residential service: child under 16 or in society's care**

- (2) A service provider may provide a residential service to a child,
- (a) if the child is less than 16 years of age, with the consent of the child's parent; and
  - (b) if the child is in a society's lawful custody, with the society's consent,
- except where this Act provides otherwise.

**Exception — Part IV**

(3) Subsections (1) and (2) do not apply where a service is provided to a young person under Part IV (Youth Justice).

**(3) Subsection 27 (4) of the Act is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:**

- (c) where the placement is made under the authority of an agreement made under subsection 37.1 (1) (agreements with 16 and 17 year olds), in accordance with subsection 37.1 (5) (notice of termination).

**3 Subsection 29 (2) of the Act is repealed and the following substituted:**

**Child's age**

(2) No temporary care agreement shall be made in respect of a child who is 12 years of age or older, unless the child is a party to the agreement.

**4 (1) The definition of "child" in subsection 37 (1) of the Act is repealed.**

**(2) Subsection 37 (2) of the Act is amended by striking out "or" at the end of clause (k), by adding "or" at the end of clause (l) and by adding the following clause:**

- (m) the child is 16 or 17 years of age and a prescribed circumstance or condition exists.

**5 The Act is amended by adding the following section:**

**Society agreements with 16 and 17 year olds**

**37.1** (1) The society and a child who is 16 or 17 years of age may make a written agreement for services and supports to be provided for the child where,

- (a) the society has jurisdiction where the child resides;
- (b) the society has determined that the child is or may be in need of protection;
- (c) the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and
- (d) the child wants to enter into the agreement.

**Same**

(2) The society may make a written agreement under subsection (1) where a temporary care agreement in respect of the child is terminated, expires or is about to expire as described in section 33 and is not extended, and may do so before the agreement terminates or expires.

### **Term of agreement**

(3) The agreement may be for a period not exceeding 12 months, but may be renewed if the total term of the agreement, as extended, does not exceed 24 months.

### **Previous or current involvement with society not a bar to agreement**

(4) A child may enter into an agreement under this section regardless of any previous or current involvement with a society, and without regard to any time during which the child has been in a society's care pursuant to an agreement made under section 29 or pursuant to an order made under clause 51 (2) (d), paragraph 2 or 3 of subsection 57 (1) or subsection 65.2 (1).

### **Notice of termination of agreement**

(5) A party to an agreement made under this section may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

### **Agreement expires at 18**

(6) No agreement made under this section shall continue beyond the eighteenth birthday of the person who is its subject.

### **Current proceedings and orders must be terminated first**

(7) Despite subsection (4), an agreement may not come into force under this section until any temporary care agreement under section 29 or order for the care or supervision of a child under this Part is terminated.

### **Representation by Children's Lawyer**

(8) The Children's Lawyer may provide legal representation to the child entering into an agreement under this section if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

### **6 (1) The English version of subsection 40 (2) of the Act is amended by adding the following clause:**

(0.a) the child is less than 16 years old;

### **(2) The French version of subsection 40 (2) of the Act is revoked and the following substituted:**

#### **Mandat d'amener un enfant**

(2) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, à la suite d'une dénonciation faite sous serment par un préposé à la protection de l'enfance, qu'il existe des motifs raisonnables et probables de croire ce qui suit :

0.a) l'enfant a moins de 16 ans;

a) l'enfant a besoin de protection;

b) un autre plan d'action moins restrictif n'est pas disponible ou ne protégera pas suffisamment l'enfant.

### **(3) The English version of subsection 40 (7) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clause:**

(a.1) the child is less than 16 years old; and

### **(4) The French version of subsection 40 (7) of the Act is revoked and the following substituted:**

#### **Appréhension de l'enfant sans mandat**

(7) Le préposé à la protection de l'enfance peut, sans mandat, conduire un enfant dans un lieu sûr si, en se fondant sur des motifs raisonnables et probables, il croit ce qui suit :

a) l'enfant a besoin de protection;

a.1) l'enfant a moins de 16 ans;

b) la santé ou la sécurité de l'enfant risqueraient vraisemblablement d'être compromises pendant le laps de temps nécessaire à l'obtention d'une audience en vertu du paragraphe 47 (1) ou d'un mandat en vertu du paragraphe (2).

### **7 The Act is amended by adding the following section:**

#### **Exception, 16 or 17 year old brought to place of safety or apprehended with consent**

**40.1** (1) A child protection worker may bring a child who is 16 or 17 years old and who is subject to a temporary or final supervision order to a place of safety if the child consents.

#### **Temporary or final supervision order**

(2) In this section,

"temporary or final supervision order" means an order under clause 51 (2) (b) or (c), paragraph 1 or 4 of subsection 57 (1), subsection 64 (8) or 65.1 (10) or clause 65.2 (1) (a).

**8 Subsection 46 (1) of the Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:**

- (d) an agreement shall be made under section 37.1 (agreements with 16 and 17 year olds).

**9 The Act is amended by adding the following section:**

**Time in place of safety limited, 16 or 17 years old**

**46.1** As soon as practicable, but in any event within five days after a child who is 16 or 17 years old is brought to a place of safety with the child’s consent under section 40.1,

- (a) the matter shall be brought before a court for a hearing under subsection 47 (1); or
- (b) the child shall be returned to the person entitled to custody of the child under an order made under this Part.

**10 Subsection 47 (3) of the Act is repealed.**

**11 Section 57 of the Act is amended by adding the following subsection:**

**No order where child not subject to parental control**

(10) Where the court finds that a child who was not subject to parental control immediately before intervention under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this Part is in need of protection, but is not satisfied that a court order is necessary to protect the child in the future, the court shall make no order in respect of the child.

**12 Section 71.1 of the Act is amended by adding the following subsection:**

**Same**

(1.1) A society may provide care and maintenance to a person in accordance with the regulations if,

- (a) the person entered into an agreement with the society under section 37.1 (agreements with 16 and 17 year olds); and
- (b) the agreement expired on the person’s eighteenth birthday.

**13 Section 72 of the Act is amended by adding the following subsection:**

**Duty to report does not apply to older children**

(3.1) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17 years old, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 years old if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists.

**14 (1) Subsection 216 (1) of the Act is amended by adding the following clauses:**

- (a.2) prescribing additional circumstances and conditions that constitute a child under 18 years of age being in need of protection for the purpose of clause 37 (2) (m);

. . . . .

- (i) governing transitional matters that may arise due to the amendments to this Act made by Schedule 2 to the *Supporting Children, Youth and Families Act, 2017*.

**(2) Section 216 of the Act is amended by adding the following subsection:**

**Conflicts**

(1.1) If there is a conflict between a regulation made under clause (1) (i) and any provision of this Act or the regulations, the regulation made under clause (1) (i) prevails.

**(3) Subsection 216 (2) of the Act is amended by adding the following clauses:**

- (0.a) prescribing duties and obligations of societies and rights and responsibilities of children in respect of agreements made under section 37.1 (agreements with 16 and 17 year olds), including prescribing the services and supports that may be provided under them, prescribing additional circumstances for making such agreements and provisions to be contained in them and governing their variation and termination;

. . . . .

- (c) prescribing circumstances and conditions for the purposes of subsection 72 (3.1).

**15 The Act is amended by adding the following section:**

**Regulations: defining words or expressions in Act**

**223.0.1** The Lieutenant Governor in Council may make regulations defining any word or expression used in this Act that is not already defined in this Act and further defining any word or expression used in this Act that is already defined in this Act.

**Commencement**

**16 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 3**  
**AMENDMENTS TO THE CHILD, YOUTH AND FAMILY SERVICES ACT, 2017**

**1 Paragraph 7 of subsection 46 (5) of the *Child, Youth and Family Services Act, 2017* is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.**

**2 (1) Subsection 47 (3) of the Act is amended by striking out “subsection 113 (2) of the *Corporations Act*” and substituting “subsection 110 (2) of the *Not-for-Profit Corporations Act, 2010*”.**

**(2) Subsection 47 (4) of the Act is repealed and the following substituted:**

**Minister approval of articles of amalgamation**

(4) The societies shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister.

**3 (1) Paragraph 2 of subsection 48 (11) of the Act is amended by striking out “the *Corporations Act* or any letters patent, supplementary letters patent or by-laws” at the end and substituting “the *Not-for-Profit Corporations Act, 2010* or any articles or by-laws”.**

**(2) Subsection 48 (14) of the Act is repealed and the following substituted:**

**Minister approval of articles of amalgamation**

(15) A society shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister.

**4 Section 50 of the Act is repealed and the following substituted:**

**Conflict with society’s articles or by-laws**

**50** In the event of a conflict between sections 44 to 49 and a society’s articles or by-laws, sections 44 to 49 prevail.

**5 Subsection 87 (2) of the Act is repealed and the following substituted:**

**Application**

(2) This section applies to hearings held under this Part.

**6 Subsection 127 (2) of the Act is repealed and the following substituted:**

**Definition**

(2) In this section and section 129,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

**7 Sections 133 and 134 of the Act are repealed.**

**8 (1) Clauses 142 (1) (c) and (d) of the Act are repealed.**

**(2) Subsection 142 (3) of the Act is amended by striking out “or 134 (11)”.**

**9 Subsection 206 (1) of the Act is repealed and the following substituted:**

**Change of name**

(1) Subject to subsection (1.1), when the court makes an order under section 199, the court may, at the request of the applicant or applicants,

- (a) change the person’s surname to any surname that the person could have been given if the person had been born in Ontario to the applicant or applicants at the time of the order;
- (b) change the person’s forename;
- (c) change the person’s surname as described in clause (a) and change the person’s forename;
- (d) change the person’s single name to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name;
- (e) change the person’s single name to a name with at least one forename and a surname as described in clause (a); or
- (f) change the person’s forename and surname to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name.



## **Same**

(1.1) A court shall not make a change described in subsection (1) unless,

- (a) doing so is in the best interests of the child, if the person adopted is a child; and
- (b) the person adopted consents, if the person is 12 or older.

**10 Clause (a) of the definition of “non-profit agency” in subsection 229 (7) of the Act is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act”.**

**11 Section 282 of the Act is amended by striking out “and 134 (11)”.**

**12 Subsection 285 (5) of the Act is repealed and the following substituted:**

### **Exceptions — other matters**

(5) Sections 286 to 332 do not apply to,

- (a) records to which subsection 130 (6) or (8) apply; or
- (b) reports for which an order was made under subsection 163 (6).

**13 Subsection 341 (5) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.**

**14 Paragraphs 16, 17 and 18 of subsection 343 (1) of the Act are repealed.**

### **Commencement**

**15 (1) Subject to subsection (2), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**(2) Sections 1 to 4, 10 and 13 come into force on the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force.**

## SCHEDULE 4 AMENDMENTS TO OTHER ACTS

### *Assessment Act*

**1 Paragraph 13 of subsection 3 (1) of the *Assessment Act* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

### *Broader Public Sector Accountability Act, 2010*

**2 Clause (d) of the definition of “designated broader public sector organization” in subsection 1 (1) of the *Broader Public Sector Accountability Act, 2010* is repealed and the following substituted:**

- (d) every agency designated as a children’s aid society under subsection 34 (1) of Part III of the *Child, Youth and Family Services Act, 2017*,

### *Child Care and Early Years Act, 2014*

**3 (1) Subsection 18 (4) of the *Child Care and Early Years Act, 2014* is repealed and the following substituted:**

#### **Duty to report under *Child, Youth and Family Services Act, 2017***

(4) Nothing in this section affects the duty to report a suspicion under section 125 of the *Child, Youth and Family Services Act, 2017*.

**(2) Subsection 23 (10) of the Act is repealed and the following substituted:**

#### **Application of *Child, Youth and Family Services Act, 2017***

(10) Sections 266 and 267 of Part IX of the *Child, Youth and Family Services Act, 2017* apply with necessary modifications to proceedings before the Tribunal, its powers and appeals of its orders.

### *Children’s Law Reform Act*

**4 (1) Clause 4 (2) (b) of the *Children’s Law Reform Act* is amended by striking out “section 158 or 159 of the *Child and Family Services Act*” and substituting “section 217 or 218 of the *Child, Youth and Family Services Act, 2017*”.**

**(2) Clause 21 (2) (b) of the Act is repealed and the following substituted:**

- (b) information respecting the person’s current or previous involvement in any family proceedings, including proceedings under Part V of the *Child, Youth and Family Services Act, 2017* (Child protection), or in any criminal proceedings; and

**(3) Subsection 21.2 (1) of the Act is repealed and the following substituted:**

#### **CAS records search, non-parents**

#### **Definition**

(1) In this section,

“society” means an agency designated as a children’s aid society under the *Child, Youth and Family Services Act, 2017*.

**(4) Subsection 21.2 (9) of the Act is repealed and the following substituted:**

#### **Interpretation**

(9) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 87 (8) of the *Child, Youth and Family Services Act, 2017* or an order under clause 70 (1) (b) of this Act.

**(5) Subsection 21.3 (6) of the Act is repealed and the following substituted:**

#### **Interpretation**

(6) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 87 (8) of the *Child, Youth and Family Services Act, 2017* or an order under clause 70 (1) (b) of this Act.

**(6) Subsection 26 (1.1) of the Act is repealed and the following substituted:**

#### **Exception**

(1.1) Subsection (1) does not apply to an application under this Part that relates to the custody of or access to a child if the child is the subject of an application or order under Part V of the *Child, Youth and Family Services Act, 2017*, unless the application under this Part relates to,

- (a) an order in respect of the child that was made under subsection 102 (1) of the *Child, Youth and Family Services Act, 2017*;
- (b) an order referred to in subsection 102 (3) of the *Child, Youth and Family Services Act, 2017* that was made at the same time as an order under subsection 102 (1) of that Act; or

- (c) an access order in respect of the child under section 104 of the *Child, Youth and Family Services Act, 2017* that was made at the same time as an order under subsection 102 (1) of that Act.

**(7) Subsections 28 (2) and (3) of the Act are repealed and the following substituted:**

**Exception**

- (2) If an application is made under section 21 with respect to a child who is the subject of an order made under section 102 of the *Child, Youth and Family Services Act, 2017*, the court shall treat the application as if it were an application to vary an order made under this section.

**Same**

- (3) If an order for access to a child was made under Part V of the *Child, Youth and Family Services Act, 2017* at the same time as an order for custody of the child was made under section 102 of that Act, the court shall treat an application under section 21 of this Act relating to access to the child as if it were an application to vary an order made under this section.

***Christopher's Law (Sex Offender Registry), 2000***

**5 The definition of "youth custody facility" in subsection 4.1 (5) of *Christopher's Law (Sex Offender Registry), 2000* is repealed and the following substituted:**

"youth custody facility" means a place of open custody or a place of secure custody, as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*. ("lieu de garde")

***City of Toronto Act, 2006***

**6 (1) Clause (a) of the definition of "local board (restricted definition)" in subsection 8 (6) of the *City of Toronto Act, 2006* is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 145 (3) (a) of the Act is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*;

**(3) Clause (a) of the definition of "local board (restricted definition)" in section 156 of the Act is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

***Compensation for Victims of Crime Act***

**7 The definition of "child" in section 1 of the *Compensation for Victims of Crime Act* is amended by striking out "sections 158 and 159 of the *Child and Family Services Act*" and substituting "sections 217 and 218 of the *Child, Youth and Family Services Act, 2017*".**

***Coroners Act***

**8 (1) Clause 10 (2) (b) of the *Coroners Act* is repealed and the following substituted:**

- (b) a children's residence under Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017* or premises that had been approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, as it read before its repeal;

**(2) Subsection 10 (4.8) of the Act is repealed and the following substituted:**

**Death while restrained in secure treatment program**

(4.8) Where a person dies while being restrained and while committed or admitted to a secure treatment program within the meaning of Part VII of the *Child, Youth and Family Services Act, 2017*, the person in charge of the program shall immediately give notice of the death to a coroner and the coroner shall hold an inquest upon the body.

**(3) Section 22.1 of the Act is repealed and the following substituted:**

**Inquest mandatory**

**22.1** A coroner shall hold an inquest under this Act into the death of a child upon learning that the child died in the circumstances described in clauses 128 (a), (b) and (c) of the *Child, Youth and Family Services Act, 2017*.

***Corporations Tax Act***

**9 Clause (i) of the definition of "member of his or her family" in subsection 1 (2) of the *Corporations Tax Act* is amended by striking out "*Child and Family Services Act*" and substituting "*Child, Youth and Family Services Act, 2017*".**

### *Courts of Justice Act*

**10 (1) Paragraph 1 of the Schedule to section 21.8 of the *Courts of Justice Act* is amended by striking out “*Child and Family Services Act*, Parts III, VI and VII” and substituting “*Child, Youth and Family Services Act, 2017*, Parts V, VII and VIII”.**

**(2) Subsection 21.12 (1) of the Act is repealed and the following substituted:**

#### **Enforcement of orders**

(1) A judge presiding over the Family Court shall be deemed to be a judge of the Ontario Court of Justice for the purpose of prosecutions under Part V (Child Protection) and Part VIII (Adoption and Adoption Licensing) of the *Child, Youth and Family Services Act, 2017*, the *Children’s Law Reform Act*, the *Family Law Act* and the *Family Responsibility and Support Arrears Enforcement Act, 1996*.

**(3) Subsection 38 (2) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

### *Crown Employees Collective Bargaining Act, 1993*

**11 Clause (a) of the definition of “facility” in subsection 7 (5) of the *Crown Employees Collective Bargaining Act, 1993* is repealed and the following substituted:**

(a) premises where services are provided by the Minister under the *Child, Youth and Family Services Act, 2017*,

### *Early Childhood Educators Act, 2007*

**12 Subsection 32.1 (1) of the *Early Childhood Educators Act, 2007* is repealed and the following substituted:**

#### **Complaint, report of child in need of protection, etc.**

(1) This section applies with respect to a complaint if the Registrar believes, on reasonable grounds, that the complainant or any other person was likely required to make a report under section 125 of the *Child, Youth and Family Services Act, 2017* in relation to the conduct or actions of the member that are the subject of the complaint.

### *Education Act*

**13 (1) Clause 45 (1) (b) of the *Education Act* is repealed and the following substituted:**

(b) boards the person in a residence that is not a children’s residence as defined in Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

**(2) Section 47 of the Act is repealed and the following substituted:**

#### **Child subject to society care or supervision**

##### **Elementary school**

**47 (1)** A child who is under the care or supervision of a children’s aid society, receives child protection services from a children’s aid society or resides in a children’s residence or foster home within the meaning of the *Child, Youth and Family Services Act, 2017*, and who is otherwise qualified to be admitted to an elementary school, shall be admitted without the payment of a fee to an elementary school operated by the board of the school section or separate school zone, as the case may be, in which the child resides.

##### **Secondary school**

(2) A child who is under the care or supervision of a children’s aid society, receives child protection services from a children’s aid society or resides in a children’s residence or foster home within the meaning of the *Child, Youth and Family Services Act, 2017*, and who is otherwise qualified to be admitted to a secondary school, shall be admitted without the payment of a fee to a secondary school operated by the board of the secondary school district or separate school zone, as the case may be, in which the child resides.

### *Freedom of Information and Protection of Privacy Act*

**14 (1) Paragraphs 2, 3 and 4 of subsection 65 (8) of the *Freedom of Information and Protection of Privacy Act* are repealed and the following substituted:**

2. Disclosure vetoes registered under section 48.5 of the *Vital Statistics Act*.

3. Information and records in files that are unsealed under section 48.6 of that Act.

**(2) Paragraph 2 of subsection 67 (2) of the Act is repealed and the following substituted:**

2. Subsections 87 (8), (9) and (10), 98 (9) and (10), 130 (6), 133 (6), 134 (11) and 163 (6) and section 227 of the *Child, Youth and Family Services Act, 2017*.

**(3) Paragraph 2 of subsection 67 (2) of the Act is repealed and the following substituted:**

2. Subsections 87 (8), (9) and (10), 98 (9) and (10), 130 (6) and 163 (6) and section 227 of the *Child, Youth and Family Services Act, 2017*.

**(4) Paragraphs 4, 7 and 7.0.1 of subsection 67 (2) of the Act are repealed and the following substituted:**

4. Section 12 of the *Commodity Futures Act*.

. . . . .

7. Subsection 119 (1) of the *Labour Relations Act, 1995*.

- 7.0.1 Sections 89 and 90 and subsection 92 (6) of the *Legal Aid Services Act, 1998*.

***French Language Services Act***

**15 Clause (e) of the definition of “government agency” in section 1 of the *French Language Services Act* is repealed and the following substituted:**

- (e) a service provider as defined in the *Child, Youth and Family Services Act, 2017* or a board as defined in the *District Social Services Administration Boards Act* that is designated as a public service agency by the regulations,

***Health Care Consent Act, 1996***

**16 (1) Subsection 76 (2) of the *Health Care Consent Act, 1996* is amended by striking out “subsections 183 (2) to (6) of the *Child and Family Services Act* (withholding record of mental disorder)” at the end and substituting “subsections 294 (2) to (6) of the *Child, Youth and Family Services Act, 2017* (withholding record of mental disorder)”.**

**(2) Subsection 81 (3) of the Act is amended by striking out “section 124 of the *Child and Family Services Act*” and substituting “section 171 of the *Child, Youth and Family Services Act, 2017*”.**

***Health Protection and Promotion Act***

**17 (1) Clauses (b) and (c) of the definition of “institution” in subsection 21 (1) of the *Health Protection and Promotion Act* are repealed and the following substituted:**

- (b) premises that had been approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, as it read before its repeal,
- (c) “children’s residence” within the meaning of Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 39 (2) (e) of the Act is repealed and the following substituted:**

- (e) to prevent the reporting of information under section 125 of the *Child, Youth and Family Services Act, 2017* in respect of a child who is or may be in need of protection.

***Intercountry Adoption Act, 1998***

**18 (1) Subsection 1 (1) of the *Intercountry Adoption Act, 1998* is amended by adding the following definition:**

“prescribed” means prescribed by the regulations; (“prescrit”)

**(2) Section 5 of the Act is amended by adding the following subsection:**

**Police record check**

(3.1) The person who is the subject of the adoption homestudy and such other persons who may be prescribed shall provide a police record check concerning the person to the prescribed person or body in accordance with the regulations.

**(3) Section 8.1 of the Act is repealed and the following substituted:**

**Conditions of licence**

**8.1** (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

**Amending conditions**

- (2) A Director may, at any time, amend the conditions imposed on the licence.

**Notice**

- (3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

**Contents of notice**

- (4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with section 12.

### **Conditions take effect upon notice**

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **Licensee must comply**

(6) Every licensee shall comply with the conditions to which the licence is subject.

**(4) Section 9 of the Act is amended by adding "propose to" before "refuse" in the portion before clause (a).**

**(5) Section 9 of the Act is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:**

(c) a ground exists that is prescribed as a ground for refusing to issue a licence.

**(6) Section 10 of the Act is amended by striking out "may refuse to renew or may revoke" in the portion before clause (a) and substituting "may propose to revoke or refuse to renew".**

**(7) Section 10 of the Act is amended by striking out "or" at the end of clause (c), by adding "or" at the end of clause (d) and by adding the following clause:**

(e) a ground exists that is prescribed as a ground for revoking or refusing to renew a licence.

**(8) Clause 13 (3) (b) of the Act is repealed and the following substituted:**

(b) if the licensee is served with notice that the Director proposes to revoke the licence or refuse to grant the renewal, until the time for requesting a hearing has expired and, if a hearing is requested, until the Tribunal has made its decision.

**(9) Subsection 14 (1) of the Act is repealed and the following substituted:**

### **Suspension of licence**

(1) A Director may, by causing notice to be served on a licensee, suspend the licence, if in his or her opinion the manner in which intercountry adoptions are being facilitated is an immediate threat to the health, safety or welfare of children.

**(10) Subsection 14 (3) of the Act is repealed and the following substituted:**

### **When suspension takes effect**

(3) The suspension takes effect on the day the licensee receives the notice and is not stayed by a request for a hearing by the Tribunal.

**(11) Section 17 of the Act is repealed and the following substituted:**

### **Inspections by Director**

**17** (1) For the purpose of determining compliance with this Act and the regulations, a Director or a person who has a Director's written authorization may, at any reasonable time and without a warrant or notice, enter the premises of a licensee in order to conduct an inspection.

### **Limitation, dwelling**

(2) The power to enter and inspect a premises described in subsection (1) shall not be exercised to enter and inspect any room or place actually being used as a dwelling, except with the consent of the occupier.

### **Identification**

(3) A Director or a person who has a Director's written authorization conducting an inspection shall, upon request, produce proper identification.

### **Application of *Child, Youth and Family Services Act, 2017* provisions**

(4) The following provisions of the *Child, Youth and Family Services Act, 2017* apply with necessary modifications in respect of an inspection conducted under this section:

1. Section 276 (powers on inspection).
2. Section 279 (admissibility of certain documents).
3. Section 60 (inspection with a warrant).
4. Subsections 67 (3) to (6) (offences).

**(12) Section 18 of the Act is repealed and the following substituted:**

### **Licence and records to be delivered**

**18** If a licence is revoked or renewal of it refused, or if a licensee ceases to facilitate intercountry adoptions, the licensee shall,

- (a) promptly deliver the licence to a Director or to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

**(13) Subsection 20 (1) of the Act is amended by striking out “\$2,000” and substituting “\$5,000”.**

**(14) Subsection 20 (2) of the Act is amended by striking out “\$1,000” and substituting “\$5,000”.**

**(15) Subsections 20 (3) and (4) of the Act are amended by striking out “\$2,000” wherever it appears and substituting in each case “\$5,000”.**

**(16) Section 22 of the Act is repealed and the following substituted:**

*Child, Youth and Family Services Act, 2017, s. 227*

22 Directors and licensees under this Act are deemed to be licensees for the purposes of section 227 of the *Child, Youth and Family Services Act, 2017* (confidentiality of adoption records).

**(17) Section 24 of the Act is amended by adding the following clauses:**

- (e.1) respecting police record checks for the purposes of this Act, including,
  - (i) defining “police record check”,
  - (ii) requiring different classes of persons to provide different types of checks or different types of information as part of a check,
  - (iii) prescribing procedures and practices to be followed when a police record check is required,
  - (iv) for the purposes of subsection 5 (3.1), prescribing other persons who may be required to provide a police record check and prescribing persons and bodies to whom police record checks must be provided, and
  - (v) requiring police record checks to be obtained from jurisdictions outside Ontario in specified circumstances;

. . . . .

- (h.1) prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 9 (c);
- (h.2) prescribing grounds for which a licence may be revoked or the renewal of it refused for the purposes of clause 10 (e);
- (h.3) requiring applicants for licences and their renewal to provide police record checks;

. . . . .

- (j.1) prescribing persons and entities and timing requirements for the purposes of clause 18 (b);

*Jewish Family and Child Service of Metropolitan Toronto Act, 1980*

**19 (1) The Preamble to the *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* is amended by striking out “the *Child and Family Services Act, 1984*” and substituting “the *Child, Youth and Family Services Act, 2017*”.**

**(2) Section 1 of the Act is repealed and the following substituted:**

1 For the purposes of every Act, the Corporation is deemed to be a children's aid society designated under subsection 34 (1) of the *Child, Youth and Family Services Act, 2017* for the territorial jurisdiction in which it operates on the day that subsection comes into force, for all the functions set out in subsection 35 (1) of that Act.

**(3) Section 2 of the Act is repealed and the following substituted:**

2 Despite section 1, the powers conferred on the Corporation to bring children to a place of safety under section 81 of the *Child, Youth and Family Services Act, 2017* shall be exercised only within the City of Toronto.

**(4) Section 3 of the Act is repealed.**

**(5) Section 4 of the Act is amended by striking out “Metropolitan” before “Toronto”.**

*Long-Term Care Homes Act, 2007*

**20 Subclause 95 (2) (a) (i) of the *Long-Term Care Homes Act, 2007* is repealed and the following substituted:**

- (i) the *Child, Youth and Family Services Act, 2017*,

*Ministry of Community and Social Services Act*

**21 Subclause 7 (b) (i) of the *Ministry of Community and Social Services Act* is repealed and the following substituted:**

- (i) who is in extended society care under Part V of the *Child, Youth and Family Services Act, 2017*, or

***Ministry of Correctional Services Act***

**22 Clause 43 (3) (a) of the *Ministry of Correctional Services Act* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

***Municipal Act, 2001***

**23 (1) Clause (a) of the definition of “local board” in subsection 10 (6) of the *Municipal Act, 2001* is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 216 (3) (a) of the Act is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*;

**(3) Clause (a) of the definition of “local board” in section 223.1 of the Act is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

***Ontario Works Act, 1997***

**24 Clause 10 (e) of the *Ontario Works Act, 1997* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

***Pay Equity Act***

**25 (1) The Appendix to the Schedule to the *Pay Equity Act* is amended by striking out the heading “Ministry of Community and Social Services” and substituting the following:**

Ministry of Community and Social Services

Ministry of Children and Youth Services

**(2) Clauses 1 (a), (b), (q), (r) and (t) under the heading set out in subsection (1) of this section are repealed and the following substituted:**

(a) operates a children’s residence under the authority of a licence issued under subsection 254 (3) of the *Child, Youth and Family Services Act, 2017*;

(b) provides residential care under the authority of a licence issued under subsection 254 (3) of the *Child, Youth and Family Services Act, 2017* unless the provider is a foster parent;

. . . . .

(q) provides services for young persons under Part VI of the *Child, Youth and Family Services Act, 2017* or under an agreement with the Ministry of Children and Youth Services;

(r) provides children’s services funded or purchased by the Ministry of Children and Youth Services or the Ministry of Community and Social Services under the *Child, Youth and Family Services Act, 2017*;

. . . . .

(t) provides a service funded under or provided under the authority of a licence issued under the *Child, Youth and Family Services Act, 2017*.

**(3) Paragraph 2 under the heading set out in subsection (1) of this section is repealed and the following substituted:**

2. Societies, as defined in the *Child, Youth and Family Services Act, 2017*.

***Pension Benefits Act***

**26 Paragraph 9 of subsection 1 (5) of the *Pension Benefits Act* is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”.**

***Perpetuities Act***

**27 Subsection 17 (2) of the *Perpetuities Act* is repealed and the following substituted:**

**Definition**

(2) For the purposes of subsection (1),

“issue” means issue of a person, whether born within or outside marriage, subject to sections 217 and 218 of the *Child, Youth and Family Services Act, 2017*.

***Personal Health Information Protection Act, 2004***

**28 (1) Subparagraph 2 ii of subsection 23 (1) of the *Personal Health Information Protection Act, 2004* is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”.**



**(2) Clause 40 (3) (b) of the Act is amended by striking out “under Part IV of the *Child and Family Services Act*” and substituting “under Part VI of the *Child, Youth and Family Services Act, 2017*”.**

**(3) Clause 43 (1) (e) of the Act is repealed and the following substituted:**

- (e) to the Public Guardian and Trustee, the Children’s Lawyer, a children’s aid society, a residential placement advisory committee established under subsection 63 (1) of the *Child, Youth and Family Services Act, 2017* or a designated custodian under section 223 of that Act so that they can carry out their statutory functions;

***Police Record Checks Reform Act, 2015***

**29 (1) Paragraph 8 of subsection 2 (2) of the *Police Record Checks Reform Act, 2015* is repealed and the following substituted:**

- 8. A search requested by a children’s aid society for the purpose of performing its functions under subsection 35 (1) of the *Child, Youth and Family Services Act, 2017*.

**(2) Item 6 of the Table to section 1 of the Schedule to the Act is amended by striking out “*Child and Family Services Act*” under Column 3 and Column 4 and substituting in each case “*Child, Youth and Family Services Act, 2017*”.**

***Private Hospitals Act***

**30 Clause (c) of the definition of “private hospital” in section 1 of the *Private Hospitals Act* is repealed and the following substituted:**

- (c) a children’s residence licensed under Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

***Provincial Advocate for Children and Youth Act, 2007***

**31 (1) Clause 1 (a) of the *Provincial Advocate for Children and Youth Act, 2007* is repealed and the following substituted:**

- (a) provide an independent voice for children and youth, including First Nations, Inuit and Métis children and youth and children with special needs, by partnering with them to bring issues forward;

**(2) The definitions of “child”, “Child and Family Services Review Board”, “children’s aid society service”, “Director”, “residential licensee”, “service” and “youth” in subsection 2 (1) of the Act are repealed and the following substituted:**

“child” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“enfant”)

“Child and Family Services Review Board” means the Child and Family Services Review Board continued under Part XI of the *Child, Youth and Family Services Act, 2017*; (“Commission de révision des services à l’enfance et à la famille”)

“children’s aid society service” means the functions of a children’s aid society listed in subsection 35 (1) of the *Child, Youth and Family Services Act, 2017*; (“service d’une société d’aide à l’enfance”)

“Director” means the Director appointed under subsection 53 (1) of the *Child, Youth and Family Services Act, 2017*; (“directeur”)

“residential licensee” means the holder of a licence issued under Part IX of the *Child, Youth and Family Services Act, 2017*; (“titulaire de permis d’un foyer”)

“service”, for the purposes of clauses 1 (d) and 15 (2) (b), has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*, except it does not include a service described in clause (h) of that definition; (“service”)

“youth” means one or more young persons within the meaning of the *Child, Youth and Family Services Act, 2017*. (“jeune”)

**(3) Subsection 2 (2) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

**(4) Subsection 3 (3) of the Act is repealed.**

**(5) Clauses 15 (1) (a) and (c) of the Act are repealed and the following substituted:**

- (a) provide advocacy to children and youth who are seeking or receiving services that are provided or funded under the *Child, Youth and Family Services Act, 2017* or provided under the authority of a licence issued under that Act;

. . . . .

- (c) promote the rights under Part II of the *Child, Youth and Family Services Act, 2017* of children in care;

**(6) Clause 15 (4) (a) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

**(7) Clauses 16 (1) (f), (g), (j), (m) and (o) of the Act are repealed and the following substituted:**

- (f) provide advice and make recommendations to entities, including governments, ministers, agencies and service providers responsible for services,
  - (i) under the *Child, Youth and Family Services Act, 2017*, or
  - (ii) that are provided for in the regulations;
- (g) educate children in care, their families and staff of agencies and service providers about the rights of children in care under Part II of the *Child, Youth and Family Services Act, 2017*;
- . . . . .
- (j) provide advocacy to children in care regarding complaints made with respect to rights under Part II of the *Child, Youth and Family Services Act, 2017*;
- . . . . .
- (m) meet with children who have undergone emergency admission to a secure treatment program under the *Child, Youth and Family Services Act, 2017* to explain, in language suitable to their understanding, the children's right to a review of the admission;
- . . . . .
- (o) provide information to children and youth and their families on how to access services described in clause 15 (1) (a);

**(8) Paragraphs 3 and 4 of subsection 16.4 (1) of the Act are repealed and the following substituted:**

- 3. Matters that are the subject of licensing inspections or reviews of orders made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) under the *Child, Youth and Family Services Act, 2017* or the subject of inspections or reviews by the Ministry, where the investigation by the Advocate would, in the opinion of the Director, interfere with the inspection or review.
- 4. Matters that are eligible for resolution by a complaints or review process under this Act or the *Child, Youth and Family Services Act, 2017*, other than the reviews referred to in paragraphs 2 and 3, until after the complaints or review process is completed.

**(9) Subsection 18.1 (3) of the Act is repealed and the following substituted:**

**Duty to report under the *Child, Youth and Family Services Act, 2017***

(3) Nothing in this section affects the duty to report a suspicion under section 125 of the *Child, Youth and Family Services Act, 2017*.

**(10) Subsection 21.1 (2) of the Act is repealed and the following substituted:**

**Prohibition: identifying child**

(2) Despite paragraph 10 of section 20, the Advocate shall not disclose in an investigative report the name of or any identifying information about the child to whom the investigation relates, and nothing in this section limits the prohibition against identifying a child set out in subsection 87 (8) of the *Child, Youth and Family Services Act, 2017*.

***Public Sector Labour Relations Transition Act, 1997***

**32 The *Public Sector Labour Relations Transition Act, 1997* is amended by adding the following section:**

**Children's aid societies**

**8.1** (1) This Act applies upon the amalgamation of two or more children's aid societies.

**Predecessor and successor employers**

(2) For the purposes of this Act, the children's aid societies that are amalgamated are the predecessor employers and the children's aid society that exists when the amalgamation takes effect is the successor employer.

**Changeover date**

(3) For the purposes of this Act, the changeover date is the date on which the amalgamation takes effect.

**Definition**

(4) In this section,

"children's aid society" means a corporation that is a children's aid society under the *Child, Youth and Family Services Act, 2017*.

***Residential Tenancies Act, 2006***

**33 Clause 5 (e) of the *Residential Tenancies Act, 2006* is amended by striking out "*Child and Family Services Act*" at the end and substituting "*Child, Youth and Family Services Act, 2017*".**

***Substitute Decisions Act, 1992***

**34** The Schedule to the *Substitute Decisions Act, 1992* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.

***Vital Statistics Act***

**35 (1)** Clause 10 (2) (b) of the *Vital Statistics Act* is repealed and the following substituted:

(b) every consent required by the *Child, Youth and Family Services Act, 2017* for the child’s adoption has been given or dispensed with; or

(2) Subsection 28 (1) of the Act is amended by striking out “subsection 162 (3) of the *Child and Family Services Act*” and substituting “subsection 222 (3) of the *Child, Youth and Family Services Act, 2017*”.

(3) Subsections 30 (1) and (2) of the Act are amended by striking out “*Child and Family Services Act*” wherever it appears and substituting in each case “*Child, Youth and Family Services Act, 2017*”.

***Workplace Safety and Insurance Act, 1997***

**36** The definitions of “place of secure custody”, “place of secure temporary detention” and “young person” in subsection 14 (1) of the *Workplace Safety and Insurance Act, 1997* are repealed and the following substituted:

“place of secure custody” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de garde en milieu fermé”)

“place of secure temporary detention” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de détention provisoire en milieu fermé”)

“young person” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“adolescent”)

**Commencement**

**37 (1)** Subject to subsections (2), (3) and (4), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Subsection 4 (1) comes into force on the first day that subsection 1 (1) of the *All Families are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* and section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.

(3) Subsection 29 (1) comes into force on the first day that subsection 2 (2) of the *Police Record Checks Reform Act, 2015* and subsection 35 (1) of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.

(4) Subsection 29 (2) comes into force on the first day that item 6 of the Table to section 1 of the Schedule to the *Police Record Checks Reform Act, 2015* and section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.