

# EXPLANATORY NOTES

## BILL

### No. 33

#### An Act to amend *The Child and Family Services Act*

Clause  
of Bill

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- 1 *The Child and Family Services Amendment Act, 2016*
- 2 *The Child and Family Services Act*
- 3 **Existing Provision**

#### Interpretation

- 2 (1) In this Act:
  - (a) “**agency**” means a band or any other legal entity that has entered into an agreement pursuant to section 61;
  - (a.1) “**band**” means a band as defined in the *Indian Act* (Canada) and includes the council of a band;
  - (b) “**Band List**” means a Band List as defined in the *Indian Act* (Canada);
  - (c) “**board**” means the Family Services Board established pursuant to subsection 43(1);
  - (d) “**child**” means, except where a contrary intention is expressed, an unmarried person actually or apparently under 16 years of age;
  - (e) “**court**” means, except where a contrary intention is expressed, the Provincial Court of Saskatchewan or the Court of Queen’s Bench;
  - (f) “**department**” means the department over which the minister presides;
  - (g) “**director**” means a person appointed by the minister pursuant to clause 57(a) as a director for all or any of the purposes of this Act and, in the absence of an appointment, means the minister;
  - (h) “**family review panel**” means a family review panel established pursuant to subsection 40(1);
  - (i) “**family services**” means services designed to strengthen, enhance and maintain the family unit;

- (j) **“foster care services”** means the provision of residential services to a child by and in the home of a person who is:
    - (i) approved by a director to care for the child; and
    - (ii) not the child’s parent or a person with whom the child has been placed for adoption;
  - (k) **“judge”** means, except where a contrary intention is expressed, a judge of the court;
  - (l) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
  - (m) **“officer”** means a person designated by the minister pursuant to clause 57(b) as an officer for the purposes of this Act and includes a director;
  - (n) **“parent”** means, except in Part V:
    - (i) the mother of a child;
    - (ii) the father of a child;
    - (iii) a person to whom custody of a child has been granted by a court of competent jurisdiction or by a deed or agreement of custody;
    - (iv) a person with whom a child resides and who stands *in loco parentis* to the child;
  - (o) **“person having a sufficient interest”** means a person designated by the court to be a person having a sufficient interest in a child pursuant to section 23;
  - (p) **“place of safety”** means a place or one of a class of places designated by a director as a place of safety and may include a foster home, a hospital or the home of an extended family member;
  - (q) **“protection hearing”** means a hearing held to determine whether a child is in need of protection;
  - (r) **“residential services”** means family services or other services provided to a child outside the child’s home;
  - (s) **“status Indian”** means a person who is:
    - (i) registered as an Indian; or
    - (ii) entitled to be registered as an Indian; pursuant to the *Indian Act* (Canada).
- (2) A reference in this Act to an Act of the Parliament of Canada is a reference to that Act as amended from time to time.

1989-90 cC-7.2 s2; 1994 c27 s20; 1994 c35 s3.

## Explanation

This section defines most of the terms used in the Act and regulations. Definitions are arranged in alphabetical order. Clause (f) is repealed; new clause 1.1. “Department” is replaced with “ministry”.

## 4 Existing Provision

### Persons having sufficient interest

23(1) Subject to subsection (2), where an application for a protection hearing has been made, the court may, on an oral or written request, by order designate as a person having a sufficient interest in a child:

(a) a person who, in the opinion of the court, is a member of the child's extended family;

(b) where the child is a status Indian:

(i) whose name is included in a Band List; or

(ii) who is entitled to have his or her name included in a Band List;

the chief of the band in question or the chief's designate; or

(c) any other person who is not a parent of the child but who, in the opinion of the court, has a close connection with the child.

(2) Where a request pursuant to subsection (1) is made, the court:

(a) may direct the person making the request to notify each parent and the department of the request within any time and in any manner that the court considers appropriate; and

(b) shall consider the views, if any, of each parent and the department before making an order pursuant to subsection (1).

(3) Where the court makes an order pursuant to subsection (1), the court shall give directions respecting the service of notices on the person designated as a person having a sufficient interest in a child.

(4) A person designated pursuant to subsection (1) as a person having a sufficient interest in a child is a party to a protection hearing respecting that child.

1989-90 cC-7.2 s23.

### Explanation

“Department” is replaced with “ministry”.

## 5 Existing Provision

### Assessment

32(1) The court may request that:

(a) a child who is the subject of a protection hearing;

(b) a parent of the child mentioned in clause (a); or

(c) any person having a sufficient interest in the child mentioned in clause (a); undergo medical, psychological, developmental or educational assessment performed by a person qualified in the relevant discipline to assist the court in determining the best interests of the child for the purposes of making an order pursuant to section 36 or 37.

- (2) The costs of an assessment pursuant to subsection (1) shall be paid:
- (a) in the case of:
    - (i) a child, by the parent; or
    - (ii) an adult, by the adult who is assessed;
  - (b) with the consent of a director employed by the department, by the department; or
  - (c) where the child or the parent is receiving family services from an agency, by the agency, with the consent of a director employed by the agency.
- (3) A report of an assessment pursuant to subsection (1) is to be filed with the court by the person who completed the assessment.

1989-90 cC-7.2 s32; 1994 c35 s6.

### **Explanation**

“Department” is replaced with “ministry”.

## **6 Existing Provision**

### **Time limit**

- 33**(1) Subject to subsections (2) and (3), on a protection hearing, the court shall:
- (a) determine pursuant to subsection 36(1) whether the child is a child in need of protection; and
  - (b) make an order pursuant to subsection 36(3) or section 37;
- within 60 days of the day on which the protection hearing commences unless the court does not have sufficient evidence on which to make an order.
- (2) If the court:
- (a) is unable to hear all the evidence; and
  - (b) does not sit again in the period described in subsection (1);
- the protection hearing shall be adjourned to the next available court day.
- (3) If a protection hearing is stayed pending the determination of a custody application pursuant to *The Children’s Law Act*, the time for a determination and order pursuant to subsection (1) does not include the period of the stay of proceedings.

1989-90 cC-7.2 s33; 1990-91 cC-8.1 s63.

### **Explanation**

“*The Children’s Law Act*” is replaced with “*The Children’s Law Act, 1997*”.

## 7 Existing Provision

### Variation

39(1) Subject to subsection (2), the court may, on the application of any party to the original protection hearing, vary or terminate an order made pursuant to section 37 where:

- (a) there has been a change in circumstances; and
- (b) it is in the best interests of the child to vary or terminate the order.

(2) Subsection (1) does not apply with respect to a child who has been:

- (a) permanently committed to the minister; and
- (b) adopted or placed in a home for the purpose of adoption.

(3) The party who applies for a hearing pursuant to subsection (1) shall give 15 days' notice in writing of the day fixed for the hearing to the other parties to the original protection hearing.

(4) All parties to the original protection hearing are entitled to be heard at a hearing pursuant to subsection (1).

(5) The court may award costs against any party to an application pursuant to subsection (1) other than:

- (a) the minister; or
- (b) an employee of the department.

(6) The provisions of this Part respecting protection hearings apply, with any necessary modification, to a hearing pursuant to subsection (1).

1989-90 cC-7.2 s39.

### Explanation

“Department” is replaced with “ministry”.

## 8 Existing Provision

### Voluntary committal

46(1) Subject to subsections (2) and (3), a parent may voluntarily commit his or her child to the minister.

(2) A voluntary committal pursuant to subsection (1) is to be:

- (a) made on a form supplied by the department or an agency, as the case may require; and
- (b) subject to section 49, signed by each parent and the director.

(3) No voluntary committal pursuant to this section is to be made until the child is at least 72 hours old.

(4) **Repealed.** 2004, c.5, s.2.

(5) Except as provided in sections 49 and 50, a voluntary committal made pursuant to this section is not revocable.

(6) A parent who is under the age of 18 years may voluntarily commit his or her child to the minister pursuant to this section, and that voluntary committal is as valid and effectual as if the parent was 18 years of age.

1989-90 cC-7.2 s46; 1990-91 c10 s2; 1994 c35 s9; 2004, c.5, s.2.

### **Explanation**

“Department” is replaced with “ministry”.

## **9 Existing Provision**

### **Return of child**

**50(1)** Where a child has been voluntarily committed to the minister pursuant to section 46, the voluntary committal may be revoked by the parent who made it:

(a) at any time within 14 days after the day on which the voluntary committal was signed; and

(b) where, within one year from the day on which the voluntary committal was signed, the child has not been placed for adoption pursuant to *The Family Services Act* or *The Adoption Act, 1998*, at any time within that year;

by delivering to the director a written notice of revocation.

(2) Where the director receives a notice pursuant to subsection (1), the director shall, where practicable, inform the other parent.

(3) Where a child who has been voluntarily committed to the minister pursuant to section 46 has not been placed for adoption pursuant to *The Family Services Act* or *The Adoption Act, 1998*, the court may, on application, extend the time for revocation set forth in clause (1)(b) if, in the opinion of the court, it is in the best interests of the child within the meaning of *The Adoption Act, 1998*.

(4) If, following the delivery of a written notice pursuant to subsection (1), a dispute arises as to which parent is to have custody of the child:

(a) an application may be made pursuant to section 6 of *The Children’s Law Act*; and

(b) if no application is made pursuant to clause (a) forthwith, the director shall make that application;

and the court shall make an order for interim custody of the child.

1989-90 cC-7.2 s50; 1990-91 cC-8.1 s63; 2004,  
c.5, s.2.

### **Explanation**

“*The Children’s Law Act*” replaced with “*The Children’s Law Act, 1997*”.

## 10 Existing Provision

### Indian child welfare agreements

61(1) The minister may, having regard to the aspirations of people of Indian ancestry to provide services to their communities, enter into agreements with a band or any other legal entity in accordance with the regulations:

- (a) for the provision of services or the administration of all or any part of this Act by the band or legal entity as an agency; or
- (b) for the exercise by the agency of those powers of the minister pursuant to this Act that are specified in the agreement

(2) An agency that enters into an agreement pursuant to subsection (1) is responsible for the exercise of the powers of the minister to the extent to which those powers are specified in the agreement.

1994 c35 s13.

### Explanation

Marginal note amended: “Indian” replaced with “Aboriginal”. Minor wording changes to update language and reflect current drafting standards.

## 11 Existing Provision - None

### 62.1 Agreement provisions

#### Explanation

There have been increasing demands on government regarding public accountability. At the same time, government has increasingly recognized the significant role of communities in the delivery of services. As government has gained experience in partnering with community for service delivery, it has been recognized that current legislation is vague regarding the terms and conditions of agreements, resulting in inconsistent application.

To support stronger relationships and mutual accountability, recent trends in Saskatchewan legislative development have included increased definition regarding the minimum criteria required by such agreements (e.g., *The Regional Parks Act, 2013*).

A review of Canadian child welfare legislation found similar criteria. Those criteria, however, legislated the duties and responsibilities assigned to the minister and director.

This provision includes explicit criteria to be included in agreements with First Nations Child and Family Services Agencies, as well as any others prescribed in regulation. Provisions also enable the termination of existing agreements which do not include a fixed contractual term or termination provisions where, in the opinion of the minister, it is in the public interest to do so. Ninety days' written notice of intent to terminate the agreement will be provided, per standard contractual language.

## 12 Existing Provision

### Finality of certain orders

66(1) Where:

(a) the time for appealing:

(i) an order of committal pursuant to this or any *Family Services Act* or *Child Welfare Act*; or

(ii) an order dispensing with a parent's signature pursuant to section 49;

has expired; and

(b) either:

(i) an order of adoption has been made with respect to the child; or

(ii) the child has been placed in a home for the purpose of adoption pursuant to *The Adoption Act, 1998* or *The Family Services Act*;

the order is final and conclusive and the validity of the order shall not be challenged in any court.

(2) While an order of committal or a voluntary committal is in force and the child has been placed for adoption:

(a) no application by a parent shall be allowed; and

(b) no order, decision or judgment shall be made;

granting to a parent a right of custody, guardianship or maintenance of, or right of access to, the child pursuant to this Act, *The Children's Law Act* or any other Act or law.

(3) While an order of committal or a voluntary committal is in force and the child has been placed for adoption, no application shall be made to the court for a declaration of parentage pursuant to Part VI of *The Children's Law Act*.

1989-90 cC-7.2 s66; 1990-91 cC-8.1 s63; 2004, c.5, s.2.

### Explanation

"*The Children's Law Act*" replaced with "*The Children's Law Act, 1997*".

## 13 Existing Provision

### Non-compellability

73 The minister, members of the board, members of family review panels, mediators, officers and employees of the department, members of boards of directors of agencies, officers and employees of agencies and all other persons who are employed in or assist in the administration of this Act:

(a) are not compellable to give evidence with respect to:

(i) written or oral statements made to them; or

(ii) knowledge or information acquired by them;

in the performance of their duties pursuant to this Act; and

(b) shall not be required to produce any written statement mentioned in subclause

(a)(i) at a trial, hearing or other proceeding.

1989-90 cC-7.2 s73; 1994 c35 s15.

### Explanation

“Department” is replaced with “ministry”.

## 14 Existing Provision

### Confidentiality

74(1) Notwithstanding section 18 of *The Social Services Administration Act*, members of the board, members of family review panels, mediators, officers and employees of the department, members of boards of directors of agencies, officers and employees of agencies, foster parents and all other persons who are employed in or assist with the administration of this Act:

(a) shall preserve confidentiality with respect to:

(i) the name and any other information that may identify a person that comes to their attention pursuant to:

(A) this Act;

(B) *The Family Services Act*, not including Part III; or

(C) *The Child Welfare Act*, not including Part II; and

(ii) any files, documents, papers or other records dealing with the personal history or record of a person that have come into existence through anything done pursuant to:

(A) this Act;

(B) *The Family Services Act*, not including Part III; or

(C) *The Child Welfare Act*, not including Part II; and

(b) shall not disclose or communicate the information mentioned in clause (a) to any other person except as required to carry out the intent of this Act or as otherwise provided in this section.

(2) The minister, a director or an officer may disclose or communicate information mentioned in subsection (1) relating to a child to:

(a) the guardian, parent or foster parent of that child; or

- (b) the child to whom the information relates.
- (3) On the request of a person, the minister or a director may:
  - (a) disclose; or
  - (b) authorize an officer to disclose;
 information mentioned in subsection (1) relating to that person in any form that the minister or director considers appropriate.
- (4) Notwithstanding subsection (2) or (3), no person shall, except while giving evidence in a protection hearing, disclose to anyone who is not an officer or a peace officer the name of a person who:
  - (a) makes a report pursuant to section 12; and
  - (b) requests that his or her name not be disclosed.
- (5) Any information that may be disclosed to the person to whom it relates may, with the written consent of the person to whom it relates, be disclosed to any other person.
- (5.1) Information mentioned in subsection (1) may be released where, in the opinion of the minister, the benefit of the release of information clearly outweighs any invasion of privacy that could result from the release.
- (5.2) The information mentioned in subsection (5.1) may be released in any form that the minister considers appropriate.
- (6) Any disclosure of information pursuant to this section does not constitute a waiver of Crown privilege, solicitor-client privilege or any other privilege recognized in law.
 

1989-90 cC-7.2 s74; 1992 c21 s4; 1994 c35 s16;  
2014, c.E-13.1, s.62.

## **Explanation**

“Department” is replaced with “ministry”.

Clause (b) is amended by adding “or in the regulations” after “section”. The regulations will be amended to describe those circumstances, besides the purpose of carrying out the intent of the Act, in which information may be disclosed.

A new subsection (5.01) provides authority to disclose information without written consent and identifies that the circumstances in which this may be done will be specified in regulations.

Subsections 74(5.1) and (5.2) contain minor language adjustments, reflective of current legislative drafting standards.

## **15 Existing Provision**

### **No action against department, etc.**

**79(1)** No action lies or shall be instituted against the minister, the department, a peace officer or any officer or employee of the department or agent of the minister, where the minister, department, peace officer, officer, employee or agent is acting pursuant to the authority of this Act, the regulations or an order made pursuant to this Act, for

any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them, pursuant to or in exercise of or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

(2) An agency, or any officer or employee of an agency, is entitled to the same protection provided to the minister in subsection (1).

1989-90 cC-7.2 s79; 1994 c35 s18.

### **Explanation**

“Department” is replaced with “ministry”.

## **16 Existing Provision**

### **Regulations**

**80** For the purposes of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing standards for and governing the operation and maintenance of any facility established pursuant to section 6;
- (c) governing the qualifications of officers;
- (d) respecting the establishment, operation, provision and maintenance of family services;
- (e) respecting the establishment, operation, provision and maintenance of mediation services pursuant to section 15;
- (f) governing agreements between the minister and any other person or category of persons pursuant to this Act;
- (g) prescribing terms and conditions under which agreements pursuant to this Act may be entered;
- (h) respecting the provision of financial assistance pursuant to this Act;
- (i) prescribing further duties and powers of registrars;
- (j) respecting reviews to be conducted by family review panels and prescribing rules of practice and procedure;
- (k) respecting reviews to be conducted by the Family Services Board;
- (l) respecting the making of applications to the court and family review panels by telephone;
- (m) prescribing any forms that may be required for the administration of this Act;
- (n) prescribing the contents of any notice required to be made or sent pursuant to this Act;
- (o) prescribing:
  - (i) the fees payable for any services rendered or provided pursuant to this Act;

- (ii) the persons by whom and to whom the fees mentioned in subclause (i) are to be paid; and
- (iii) the circumstances in which the payment of any fees mentioned in subclause (i) may be waived;
- (p) establishing categories of persons providing services pursuant to this Act;
- (q) prescribing the qualifications of and remuneration for any category of persons providing services pursuant to this Act;
- (r) providing for the administration of programs to carry out the intent of this Act;
- (r.1) **Not yet proclaimed.**
- (r.2) prescribing the contents of any report required pursuant to this Act;
- (r.3) governing the records to be kept by any person or category of persons providing any type of service pursuant to this Act or the regulations;
- (r.4) subject to section 74, governing the access of any person or category of persons to any records made or kept pursuant to this Act or the regulations;
- (s) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (t) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1989-90 cC-7.2 s80; 1994 c35 s19.

### **Explanation**

Clause (r.5) is added to specify that the circumstances in which information may be released without written consent will be specified in regulations.

## **17 Existing Provision**

### **Coming into force**

**Prepared by the Ministry of Social Services.**