

EXPLANATORY NOTES

BILL

NO. 86

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

Clause
Of Bill

1 *The Child and Family Services Amendment Act, 2017*

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- (f) **Repealed.** 2016, c 13, s.3.
- (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;
 - (l.1) **“ministry”** means the ministry over which the minister presides;
 - (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, s.2; 1994, c27, s.20; 1994, c35,
s.3; 2016, c 13, s.3.

Explanation

This section defines most of the terms used in the Act and regulations. Definitions are arranged in alphabetical order. Clauses (c) and (h) are repealed, as all references to family review panels and boards and all related sections in the Act are being repealed. Definitions (clauses) added include, “business day”, “dispute resolution”, and “peace officer”.

Language modernized to include terms used in current practice and replace Latin terms wherever possible: The definition of “parent” in clause (n) is expanded to clarify the roles of the parent, the minister, and individuals caring for children on behalf of the minister.

4 Existing Provision

Child's best interests

4 Where a person or court is required by any provision of this Act other than subsection 49(2) to determine the best interests of a child, the person or court shall take into account:

- (a) the quality of the relationships that the child has with any person who may have a close connection with the child;
- (b) the child's physical, mental and emotional level of development;
- (c) the child's emotional, cultural, physical, psychological and spiritual needs;
- (d) the home environment proposed to be provided for the child;
- (e) the plans for the care of the child of the person to whom it is proposed that the custody of the child be entrusted;
- (f) where practicable, the child's wishes, having regard to the age and level of the child's development;
- (g) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (h) the effect on the child of a delay in making a decision.

1989-90, c C-7.2, s.4.

Explanation

Section 4 is repealed and replaced. Changes reframe the focus of a child's development to a needs-based assessment and the support required to optimize a child's potential. It further stresses the importance of cultural and spiritual heritage to a child's upbringing, promoting a holistic approach to the best interests of a child. Several other Canadian jurisdictions have similar provisions. Minor wording changes are made to conform to current drafting standards. Amendments align with changes made in *The Adoption Amendment Act, 2016*.

5 Existing Provision

Emergency care

7(1) Where a child is:

- (a) found without his or her parent; and
- (b) in need of assistance to return to the parent;

an officer or a peace officer may take custody of the child.

(2) Where a peace officer believes on reasonable and probable grounds that a child has been wrongfully removed or retained from the person who has the right to custody of the child without the consent of that person, the peace officer may take custody of the child.

(3) Where a peace officer has taken custody of a child pursuant to subsection (1) or (2), the peace officer shall deliver the child to an officer or the person who has the right to custody of the child.

(4) Where an officer has:

- (a) taken custody of a child pursuant to subsection (1); or
- (b) received a child from a peace officer pursuant to subsection (3);

the officer may provide interim care for the child and arrange for the child's return as soon as possible to the person who has the right to custody of the child.

(5) The minister may:

- (a) authorize any expenditures required to return a child pursuant to subsection (4) to a person who has a right to custody of the child; and
- (b) require the person who has a right to custody of the child to reimburse the minister for any expenses incurred pursuant to clause (a).

(6) The amount to be reimbursed pursuant to clause (5)(b):

- (a) is a debt owing to the minister; and
- (b) may be recovered from the person mentioned in clause (5)(b) by:
 - (i) suit;
 - (ii) counterclaim; or
 - (iii) set-off, including the set-off of any amounts owed to the person by any other agency of the Government of Saskatchewan.

1989-90 cC7.2 s7.

Explanation

Section 7 is repealed and replaced to conform to current drafting standards. "Where" is replaced with "If".

6 Existing Provision

Interim care, child under 12

8 (1) Where a peace officer believes on reasonable and probable grounds that a child who is actually or apparently under 12 years of age has committed an act that, if the child were 12 years of age or more, would constitute an offence pursuant to any Act or any Act of the Parliament of Canada while out of the supervision of a person who has a right to custody of the child, the peace officer:

(a) may take the child into custody as an agent of a person who has a right to custody of the child; and

(b) shall:

(i) return the child to a person who has a right to custody of the child or a person acting on that person's behalf at the earliest opportunity; or

(ii) place the child with an officer who shall ensure the return of the child to a person who has a right to custody of the child, or to a person acting on that person's behalf, at the earliest opportunity.

(2) Where a child is placed in the custody of an officer pursuant to subclause (1)(b)(ii), the officer shall provide interim care for the child until the child is returned to a person mentioned in subclause (1)(b)(ii).

(3) The minister may authorize any expenditures made pursuant to subsection 2).

1989-90, c C-7.2, s.8.

Explanation

Minor wording changes to conform to current drafting standards. Clarification in subsection (3) that expenditures are limited to those associated with the provision of interim care.

7 Existing Provision

Agreements for residential services

9(1) Subject to subsection 68(2), a parent who:

(a) through special circumstances is unable to care for his or her child; or

(b) because of the special needs of his or her child is unable to provide the services required by the child; may enter into an agreement with the director for a term not exceeding one year for the purpose of providing residential services for the child.

(2) Unless an agreement pursuant to subsection (1) provides otherwise, the parent remains the guardian of the child for the duration of the agreement.

(3) Every agreement pursuant to subsection (1) shall include a provision stating that the parent may seek advice from an independent third party prior to entering into the agreement.

(4) Subject to subsection (5), an agreement pursuant to subsection (1) may be renewed from time to time.

(5) The total period of all agreements pursuant to subsection (1) shall not exceed 24 months, unless the director, having regard to the best interests of the child, rules that an extension is required.

(6) If the child who is the subject of an agreement pursuant to subsection (1) has attained 12 years of age, an officer shall explain the agreement to the child and, where practicable, take the views of the child into account.

1989-90, c C-7.2, s.9.

Explanation

Subsection 9(1) is repealed and substituted to update language and conform to current drafting standards.

8 Existing Provision

Child in need of protection

11 A child is in need of protection where:

(a) as a result of action or omission by the child's parent:

(i) the child has suffered or is likely to suffer physical harm;

(ii) the child has suffered or is likely to suffer a serious impairment of mental or emotional functioning;

(iii) the child has been or is likely to be exposed to harmful interaction for a sexual purpose, including involvement in prostitution and including conduct that may amount to an offence within the meaning of the *Criminal Code*;

(iv) medical, surgical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner has not been or is not likely to be provided to the child;

(v) the child's development is likely to be seriously impaired by failure to remedy a mental, emotional or developmental condition; or

(vi) the child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child;

(b) there is no adult person who is able and willing to provide for the child's needs, and physical or emotional harm to the child has occurred or is likely to occur; or

(c) the child is less than 12 years of age and:

(i) there are reasonable and probable grounds to believe that:

(A) the child has committed an act that, if the child were 12 years of age or more, would constitute an offence under the *Criminal Code*, the *Narcotic*

- Control Act (Canada) or Part III or Part IV of the Food and Drug Act (Canada); and*
- (B) family services are necessary to prevent a recurrence; and
- (ii) the child's parent is unable or unwilling to provide for the child's needs.
- 1989-90, c C-7.2, s.11; 1999, c.14, s.3.

Explanation

"Where" is replaced with "If". "Domestic violence" replaced with "interpersonal violence". Stigmatizing language ("prostitution") is replaced with language that more accurately describes children and youth as victims of sexual exploitation, including commercial exploitation. Title of federal legislation is updated.

9 Existing Provision

Duty to investigate

13 Where a report is made pursuant to subsection 12(1) or (4), an officer or peace officer shall investigate the information set out in the report if, in the opinion of the officer or peace officer, reasonable grounds exist to believe that a child is in need of protection.

1999, c.14, s.4.

Explanation

"Where" is replaced with "If". Minor wording change.

10 Existing Provision

Warrant for access to child

13.1(1) A justice of the peace or a judge may issue a warrant pursuant to this section where the justice or judge is satisfied by information on the oath of an officer or peace officer that:

- (a) there are reasonable grounds to believe that a child may be in need of protection;
 - (b) a person refuses to give the officer or peace officer access to the child; and
 - (c) access to the child is necessary to determine if the child is in need of protection.
- (2) In a warrant issued pursuant to subsection (1), the justice of the peace or judge may do one or more of the following:
- (a) authorize an officer or peace officer named in the warrant to enter premises specified in the warrant and to search for the child;

- (b) require a person to disclose the location of the child;
 - (c) require a person to allow the officer or peace officer to interview or to visually examine the child or to do both;
 - (d) authorize the officer or peace officer to take the child away from the premises for an interview or a medical examination;
 - (e) authorize a duly qualified medical practitioner or other health care provider to examine the child.
- (3) Where an officer is authorized by a warrant to enter premises pursuant to clause (2)(a), the officer may be assisted by a peace officer in carrying out the powers conferred by the warrant.
- (4) If a child is taken away from premises for an interview or medical examination pursuant to a warrant, the officer or peace officer must return the child to a person who has a right to custody of the child when the interview or medical examination is completed unless the officer or peace officer proceeds pursuant to section 17.
- (5) An application for a warrant may be made in person, by telephone or by any other means of electronic communication.
- (6) No person shall obstruct any person who is authorized to make an entry pursuant to this section.

1999, c.14, s.4.

Explanation

“Where” is replaced with “If”.

11 Existing Provision

Duty to offer family services

14(1) Where, on investigation, an officer concludes that a child is in need of protection, the officer shall:

- (a) notify the parent in writing of the officer’s conclusion; and
- (b) offer family services to the parent.

(2) Where a parent acknowledges the need for family services and agrees to the provision of those services, a director may enter into an agreement with the parent for the provision of family services.

(3) Section 9 applies, with any necessary modification, to an agreement for residential services made pursuant to this section.

(4) Where the parent and the director do not enter into an agreement pursuant to subsection (2) and an officer believes that the child is in need of protection, the officer shall, within 30 days of giving notice to the parent pursuant to clause (1)(a):

- (a) apply to the court for a protection hearing; or

- (b) submit the officer's reasons for that belief to a mediator pursuant to section 15.
- (5) An application pursuant to clause (4)(a) may be made by telephone in accordance with the regulations.

1989-90, c C-7.2, s.14.

Explanation

"Where" is replaced with "If". Subsection 14(4) is repealed and substituted. Clause 14(b) is no longer required as less formal dispute resolution services will be offered as an alternative to legal proceedings.

12 Existing Provision

Mediation services

15(1) Where an officer has concluded that a child is in need of protection, the officer may offer to the parent to submit the officer's reasons for that conclusion to a mediator for the purpose of obtaining assistance in concluding an agreement with the parent for the provision of family services.

(2) Mediation offered pursuant to subsection (1) shall be carried out by a person who, in the opinion of a director, is:

- (a) qualified to provide mediation services; and
- (b) representative of community parenting standards.

(3) Where:

(a) the parent and the director do not enter into an agreement pursuant to subsection (1); and

(b) an officer believes that the child is in need of protection;

the officer shall, as soon as is practicable, apply to the court for a protection hearing.

(4) An application pursuant to subsection (3) may be made by telephone in accordance with the regulations.

1989-90, c C-7.2, s.15; 1994, c 35, s.5.

Explanation

Section 15 is repealed and substituted. References to mediation are repealed and replaced with dispute resolution services.

The purpose (section 3) of *The Child and Family Services Act* is "to promote the well-being of children in need of protection by offering, wherever appropriate, services that are designed to maintain, support and preserve the family in the least disruptive manner". Working with parents and/or youth outside of the court system to resolve disputes regarding ministry intervention and services is important. While dispute resolution will not be a formal process offered as an alternative to a legal proceeding,

legal proceedings may be adjourned at the discretion of the court. Mediation services will continue to be an available option. No intent to expand scope to include requests by a child or their representative for dispute resolution services.

Minor wording changes are made to be consistent with terms used in current practice.

13 Existing Provision

Protective intervention orders

- 16(1)** Subject to subsection (2), where an officer has reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protection, the officer may apply to the court for a protective intervention order directed to that person.
- (2) An officer shall give three clear days' notice of an application pursuant to subsection (1) to the person to whom the protective intervention order is proposed to be directed and to each parent.
- (3) Where, on an application pursuant to subsection (1), the court is of the opinion that contact between a child and another person would cause the child to be in need of protection, the court may make a protective intervention order containing any terms and conditions that the court considers to be in the best interests of the child, including, without limiting the generality of the foregoing, a direction to a person named in the order to refrain from any contact or association with the child.
- (4) Subject to subsections (5) and (6), a protective intervention order is effective for any period specified in the order that does not exceed six months.
- (5) At any time before the expiry of a protective intervention order, an officer or a person named in the order may apply to the court to:
- (a) make changes in or additions to the terms and conditions contained in the order;
 - (b) decrease the period for which the order is to remain in force; or
 - (c) where the court is of the opinion that contact between the child and the person named in the order would no longer cause the child to be in need of protection, terminate the order.
- (6) An officer may:
- (a) before the expiry; or
 - (b) within 15 days after the expiry;
- of a protective intervention order, apply to the court to extend the order for an additional period of not more than six months.
- (7) Subsections (2) and (3) apply, with any necessary modification, to an application made pursuant to subsection (5) or (6).
- (8) The total of the periods of all orders made pursuant to this section with respect to a child shall not exceed 24 months unless the court determines that an extension

is required because contact between the child and the person named in the order continues to cause the child to be in need of protection.

(9) In this section, “**child**” includes a person who is actually or apparently 16 or 17 years of age and has entered into an agreement pursuant to section 10 or has been apprehended pursuant to section 18.

1989-90, c C-7.2, s.16; 1999, c.14, s.5.

Explanation

Minor wording changes to be consistent with language used in current practice and conform to current drafting standards. “Clear days” substituted for “business days”; “where” substituted for “if”.

Subsection 16(6) is repealed and replaced to conform to current drafting standards.

Subsection 16(8) is amended to add ‘protective intervention’ before “order” to improve clarity and interpretation of the Act.

14 Existing Provision

Apprehension

17(1) Where an officer or peace officer concludes, on reasonable and probable grounds, that a child is in need of protection and at risk of incurring serious harm, the officer or peace officer shall:

(a) take all reasonable steps that he or she considers necessary to provide for the safety or welfare of the child, including, in the case of an officer, the offer of family services where practicable; or

(b) where no other arrangements are practicable, apprehend the child and remove the child to a place of safety.

(2) Where a peace officer apprehends a child pursuant to subsection (1), the peace officer shall immediately report the matter to an officer who shall be responsible for the care of the child.

(3) Where at any time an officer no longer believes that a child apprehended pursuant to subsection (1) would be at risk of incurring serious harm if returned, the officer shall return the child to a person who has a right to custody of the child.

(4) If a child apprehended pursuant to subsection (1) is not returned to a person who has a right to custody of the child within 48 hours of being apprehended, an officer shall:

(a) if a family review panel has been appointed in the region or locality where the apprehension occurred, apply for a review pursuant to section 20 of the reasons for the apprehension; and

- (b) within seven days, not including the day on which the child was apprehended, make an application to the court for a protection hearing.
- (5) If a child apprehended pursuant to subsection (1) is returned to a person who has a right to custody of the child prior to the review pursuant to section 20, an officer shall withdraw the application for review.
- (6) Applications pursuant to subsection (4) may be made by telephone in accordance with the regulations.
- (7) The director may, prior to a protection hearing, grant access to a child apprehended pursuant to subsection (1) to his or her parent or any other person on any terms and conditions that, in the opinion of the director, would be in the best interests of the child.

1989-90, c C-7.2, s.17.

Explanation

“Where” is replaced with “if”. Subsection 17(4) is repealed and replaced to remove references to family review panels and boards. Subsection 17(5) is repealed. Subsection 17(7) is amended by replacing “prior to” and substituting “before”.

15 Existing Provision

Apprehension – persons aged 16 and 17

18(1) Where:

- (a) an officer concludes, on reasonable and probable grounds, that a person who is actually or apparently 16 or 17 years of age is in need of protection within the meaning of section 11; and
- (b) the director considers the circumstances to be of an exceptional nature; an officer may apprehend the person and remove that person to a place of safety.
- (2) An officer who apprehends a person pursuant to subsection (1) shall, within seven days after the day on which the person is apprehended, make an application to the court for a protection hearing.
- (3) The provisions of this Part, other than sections 14, 15, 17 and 20, apply, with any necessary modification, to proceedings pursuant to this section.
- (4) Notwithstanding any other provision of this Act, where a person is apprehended pursuant to subsection (1), the minister shall provide family services to the person prior to the protection hearing.

1989-90, c C-7.2, s.18; 1999, c.14, s.6.

Explanation

Amendment includes minor wording changes to be consistent with terms used in current practice and conform to current drafting standards. Subsection 18(3) is

amended by striking out “20” as it references family review panels and boards which are being repealed. “Prior” replaced with “before”.

16 Existing Provision

Notification

- 19(1) Where a peace officer or officer apprehends a child pursuant to subsection 17(1), an officer shall, as soon as is practicable, in writing or orally:
- (a) notify the parent of the grounds for the apprehension of the child;
 - (b) provide the parent with the office address and office telephone number of the officer; and
 - (c) inform the parent of the advisability of consulting legal counsel.
- (2) Where the officer mentioned in subsection 17(4) has applied for a review pursuant to clause 17(4)(a), an officer shall, as soon as is practicable, in writing or orally, notify the parent of the place, date and time of the review.

1989-90, c C-7.2, s.19.

Explanation

“Where” is replaced with “if”. Subsection 19(2) is repealed as all references to family review panels and boards are being repealed.

17 Existing Provision

Review by family review panel

- 20(1) Subject to subsection (2), a review by a family review panel of the reasons for the apprehension of a child shall:
- (a) be held not more than seven days after the day of apprehension;
 - (b) be completed in one day; and
 - (c) proceed whether or not the parent is present.
- (2) Where the parent is willing to have the child remain in the care of the minister until the protection hearing, the parent may at any time discontinue a review by a family review panel by giving notice, orally or in writing, of his or her intention to the registrar or the officer.
- (3) On a review pursuant to this section:
- (a) an officer shall orally summarize the reasons for concluding that the child would, if returned to the person who has a right to custody of the child, be at risk of incurring serious harm; and
 - (b) the family review panel:
 - (i) shall, if the parent is present, permit the parent an opportunity to

- be heard;
- (ii) may, subject to the regulations, determine its own procedure; and
 - (iii) is not bound by rules of law concerning evidence.
- (4) If, after hearing the reasons of the officer, the family review panel is satisfied that the conclusion of the officer is justified, the family review panel shall recommend that the apprehension be continued.
- (5) If the family review panel does not make a recommendation for continued apprehension pursuant to subsection (4), the family review panel shall recommend in writing to the director and to the person who has a right to custody of the child that the child be returned to the person who has the right to custody, subject to any terms and conditions that the panel may recommend.
- (6) If the parent:
- (a) is not present at a review held pursuant to this section; and
 - (b) has not received a notice pursuant to subsection (5);
- the officer shall inform the parent of any recommendation made pursuant to subsection (4) or (5).

1989-90, c C-7.2, s.20.

Explanation

Section 20 is being repealed. All references to family review panels and boards and all related section are being repealed.

18 Existing Provision

Child returned

21(1) If:

- (a) a child who has been apprehended pursuant to subsection 17(1) is returned pursuant to subsection 17(3) or 20(5) to a person who has a right to custody of the child; and
 - (b) the officer continues to believe that the child is in need of protection;
- the officer shall offer family services to the parent.
- (2) Section 14 applies, with any necessary modification, where an officer offers family services pursuant to subsection (1).
- (3) If an agreement is entered into pursuant to subsection 14(2), the officer shall withdraw the application for a protection hearing.

1989-90, c C-7.2, s.21.

Explanation

Subsection 21 (1) is repealed and substituted to conform to current drafting standards. Reference to subsection 20(5) is deleted as section 20 is being repealed.

19 Existing Provision

Fixing day for hearing

22(1) On the making of an application for a protection hearing by an officer, the court shall fix a day, time and place for the protection hearing in accordance with this section.

(2) Where a child is apprehended, the day fixed for the protection hearing is to be:

(a) as soon as is practicable; and

(b) not later than 30 days after the day on which the application is made.

(3) Where an officer has applied for a protection hearing pursuant to subsection 14(4) or 15(3), the day fixed for the protection hearing is to be:

(a) as soon as is practicable; and

(b) not later than 30 days after the day on which the application is made.

(4) Notwithstanding subsections (2) and (3), where a court does not sit in the period described in subsection (2) or (3), the day of the protection hearing is to be the next available court day.

1989-90, c C-7.2, s.22.

Explanation

“Where” is replaced with “if”.

20 Existing Provision

Notice of hearing

24(1) An officer shall give three clear days’ notice of a protection hearing to each parent.

(2) Any person entitled to notice pursuant to subsection (1) may, in writing, waive the requirement that he or she be given notice in accordance with that subsection.

(3) A notice pursuant to subsection (1) shall contain:

(a) the day, time and place of the protection hearing; and

(b) a summary of the reasons forming the basis for the conclusion that the child is in need of protection.

1989-90, c C-7.2, s.24.

Explanation

“Clear days” is replaced with “business days”. “Shall” replaced with “must”. Wording change in 24(1) to establish that all parties, not just parents, are served notice of legal proceedings.

21 Existing Provision

Order prohibiting publication

26(1) A protection hearing or any part of a protection hearing may, in the discretion of the court, be held *in camera*.

(2) The court may make an order prohibiting the publication of a report of a protection hearing or any part of a protection hearing, if the court believes that the publication of the report:

- (a) would not be in the best interests of any child directly or indirectly involved in the hearing; or
- (b) would be likely to identify, have an adverse effect on or cause hardship to:
 - (i) the child who is the subject of the hearing; or
 - (ii) any other child.

1989-90, c C-7.2, s.26.

Explanation

Change in drafting standard to move away from the use of Latin wherever possible.

Subsection (2) is revised to clarify that publication of a report or any part of the report of a protection hearing is prohibited.

22 Existing Provision

Evidence of witnesses

28(1) Subject to subsection (2) and section 12 of *The Evidence Act*, the evidence of witnesses at a protection hearing shall be taken on oath or affirmation.

(2) The court may, in its discretion, admit evidence by affidavit or any other means authorized by The Queen's Bench Rules for the taking of evidence.

(3) The court may admit hearsay evidence if, in the opinion of the court, the evidence is credible and trustworthy and it would not be in the best interests of a child for the child to testify.

(4) Subsection (3) applies, with any necessary modification, to a person who is 16 or 17 years of age and, for the purposes of this subsection, section 4 applies, with any necessary modification, to that person.

1989-90 cC-7.2 s28; 1990-91, c C-8.1, s.63; 1999, c.14, s.8; 2006, c.19, s.2.

Explanation

"Shall" is replaced with "must". Subsection 28(2) is amended by striking out "in its discretion" and conforms to current drafting standards.

23 Existing Provision

Child may be heard

- 29**(1) At a protection hearing, the court may, if it considers it to be in the best interests of a child who is the subject of the hearing, order that the child be:
- (a) served with notice of the hearing within the time and in the manner considered appropriate by the court and permitted to be present at the hearing or any part of it; or
 - (b) brought before the court and interviewed by the court.
- (2) Notwithstanding that a child receives notice pursuant to clause (1)(a), the child shall not be considered a party to the protection hearing.

1989-90, c C-7.2, s.29.

Explanation

Amendment incorporates changes to *The Children's Law Act, 1997*, which establishes a Counsel for Children Program to provide legal representation to children who are the subject of child protection proceedings when the Court of Queen's Bench or the Provincial Court directs a child be represented.

24 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, 1997*, the time for a determination and order pursuant to subsection (1) does not include the period of the stay of proceedings.

1989-90, c C-7.2, s.33; 1990-91, c C-8.1, s.63;
2016, c 13, s.6.

Explanation

Section 33 is repealed and restructured to add a new subsection referenced in 33(1). Amendments conform to drafting standards.

25 Existing Provision**Interim orders**

35(1) Where the court adjourns a protection hearing pursuant to subsection 34(1), the court may make an interim order that the child:

- (a) remain with or be returned to his or her parent;
- (b) remain with, or be placed in the care of, a person having a sufficient interest in the child; or
- (c) remain or be placed in the care of the minister.

(2) In making an interim order pursuant to subsection (1), the court:

- (a) shall consider the best interests of the child; and
- (b) may make the order subject to any terms and conditions, including access to the child by the parent or a person designated pursuant to section 23, that the court considers appropriate.

1989-90, c C-7.2, s.35.

Explanation

“Where” is replaced with “If”.

26 Existing Provision**Protection hearing**

36(1) On a protection hearing, the court shall determine whether the child is in need of protection.

(2) Where the court determines that a child is in need of protection, the officer shall present to the court the officer’s recommendations respecting an order to be made pursuant to section 37.

(3) If the court determines that a child is not in need of protection, it shall dismiss the application and order the return of the child to a person who has a right to custody of the child.

(4) An order pursuant to subsection (3) does not constitute an order for custody of the child.

1989-90, c C-7.2, s.36.

Explanation

“Where is replaced with “If”.

27 Existing Provision

Expiry of orders

38(1) Subject to subsection (2), on the expiry of an order pursuant to clause 37(1)(b) or (c), an officer shall return the child to a person who has a right to custody of the child.

(2) An officer may:

- (a) before the expiry; or
- (b) within 15 days after the expiry;

of an order mentioned in subsection (1) or an order pursuant to subsection 37(6), apply for a hearing to determine whether the child continues to be in need of protection.

(3) Where an officer has applied for a hearing pursuant to subsection (2), the court shall fix a day, time and place for the hearing in accordance with subsection (4).

(4) The day fixed for a hearing pursuant to subsection (2) is to be:

- (a) as soon as practicable; and
- (b) not later than 30 days after the day on which the application is made.

(5) The officer shall give notice of a hearing pursuant to subsection (2) in accordance with section 24.

(6) The provisions of this Part respecting protection hearings apply, with any necessary modification, to a hearing held pursuant to subsection (2).

(7) Where an application is made pursuant to subsection (2), the order mentioned in subsection (1) is deemed to continue until the disposition of the hearing pursuant to subsection (8), notwithstanding the expiry of that order.

(8) At a hearing pursuant to subsection (2), the court shall:

- (a) determine whether the child continues to be in need of protection; and
- (b) make any order authorized by section 36 or 37, as the case may require.

(9) Subject to subsection 68(1), the total of the periods of all orders made pursuant to clause 37(1)(c) shall not exceed 24 months unless the court determines, after considering the best interests of the child, that an extension is required.

(10) The total of the periods of all orders made pursuant to subsection 37(6) shall not exceed 18 months unless the court determines, after considering the best interests of the child, that an extension is required.

1989-90, c C-7.2, s.38; 1994, c 35, s.8.

Explanation

Amendments are made to conform to current drafting standards. “Where” is replaced with “If”. Incorrect reference in 38(4) to a hearing pursuant to subsection (2) is corrected.

28 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 ministry.

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

1989-90, c C-7.2, s.39; 2016, c 13, s.7.

Explanation

Minor wording change; "Where" is replaced with "If".

29 Existing Provision

Family review panels

40(1) The minister may, by order, establish, for any region or locality, a family review panel consisting of members appointed by the minister from among those persons who, in the opinion of the minister, are representative of community parenting standards.

(2) Subject to section 42, a family review panel shall review child apprehensions pursuant to section 17 occurring within its region or locality.

(3) For the purposes of subsection (1), the minister may, by order, divide Saskatchewan into regions and prescribe the boundaries of those regions.

1989-90, c C-7.2, s.40.

Registrar

- 41**(1) The minister may appoint a registrar for any region or locality for the purposes of this Part.
- (2) A registrar is the chief administrative officer of a family review panel and shall:
- (a) receive applications on behalf of the family review panel;
 - (b) designate facilities and offices that are to be used by the family review panel;
 - (c) designate the times at which the family review panel shall conduct reviews at any place; and
 - (d) exercise any other powers and perform any other duties that are set forth in this Act or prescribed in the regulations.

1989-90, c C-7.2, s.41.

Review of particular matters

- 42**(1) A registrar shall direct at least one and not more than three members of a family review panel to review a particular matter.
- (2) Where a family review panel has been established for a region or locality but no members of the panel are available, a registrar may direct one or more members of a family review panel for another region or locality to review a particular matter by conference telephone call.
- (3) A review by any members of a family review panel directed by a registrar pursuant to subsection (1) or (2) to review a particular matter is deemed to be a review by the family review panel.

1989-90, c C-7.2, s.42.

Family Services Board

- 43**(1) The minister may, by order, establish a Family Services Board.
- (2) The board shall consist of members appointed by the minister from among those persons who, in the opinion of the minister, are interested and knowledgeable in the programs and services administered or provided pursuant to this Act.
- (3) Any person who is aggrieved by a decision of:
- (a) the director; or
 - (b) any person acting on behalf of the minister or director;
- pursuant to this or the regulations may request that the decision be reviewed by the minister or, with the approval of the minister, by the board.
- (4) A request for review pursuant to subsection (3) does not stay or otherwise affect the validity of the decision with respect to which the review is requested.
- (5) On completing a review pursuant to subsection (3), the board shall submit its recommendations respecting the decision to the minister.
- (6) On completing the review the minister may:
- (a) confirm;

(b) reverse; or
(c) vary;
the decision with respect to which the review was requested.

1989-90, c C-7.2, s.43.

Explanation

All references to family review panels and boards are being repealed.

30 Existing Provision

Dispensing with signature

49(1) Where a form for voluntary committal has been signed by only one parent, an application may be made to the court at any time after the child is three days old for an order dispensing with the requirement that the other parent sign the voluntary committal.

1989-90, c C-7.2, s.49; 2004, c.5, s.2.

Explanation

Minor wording change: “Where” is replaced with “If”.

31 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, 1997*; 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, c C-7.2, s.50; 1990-91, c C-8.1, s.63;

2004, c.5, s.2; 2016, c 13, s.9.

Explanation

"Where" is replaced with "If". Amendments direct that notice of revocation shall be delivered to a director in writing to be consistent with *The Adoption Act, 1998*.

References to *The Family Services Act* are deleted as children placed for adoption under this legislation have reached the age of majority. Subsection 50(1)(a) increases the revocation period from 14 to 21 days to align with *The Adoption Amendment Act, 2016*.

32 Existing Provision

Minister is parent

52(1) Where a child:

(a) has been apprehended and has not been returned to a person who has a right to custody of the child; or

(b) is in the custody of the minister pursuant to an order made pursuant to clause 37(1)(c) or subsection 37(3);

the minister shall have all the rights and responsibilities of a parent except with respect to adoption proceedings.

(2) Subject to subsection (3), the minister shall:

(a) have all the rights and responsibilities of a parent; and

(b) be the guardian of the person;

of a child who is committed permanently to the minister pursuant to subsection 37(2) or section 46.

(3) The public guardian and trustee for Saskatchewan shall be the guardian of the property of a child mentioned in subsection (2).

1989-90, c C-7.2, s.52; 2001, c.33, s.23.

Explanation

Section 52 is repealed and replaced to amend the reference to Minister as parent. In no other Canadian jurisdiction is the Minister referred to as parent. Parental rights to guardianship of their child are only severed as a result of an adoption order.

33 Existing Provision

Placement considerations

53 In any case where an officer is arranging residential services for a child or an order is to be made by the court pursuant to subsection 37(1), the officer or court shall, having regard to the best interests of the child:

- (a) consider the feasibility of placing the child with a member of the child's extended family; and
- (b) where practicable, attempt to maintain the child in an environment that is consistent with the child's cultural background.

1989-90, c C-7.2, s.53.

Explanation

"Where" is replaced with "If".

34 Existing Provision

Foster care agreements

54(1) Where foster care services are provided pursuant to this Act, the director shall enter into a written agreement with the person providing those services setting out the duties and responsibilities of each party with respect to the care provided.

(2) None of the rights or powers vested in the minister pursuant to this Act are impaired by any terms or conditions of an agreement made pursuant to subsection (1).

(3) Every agreement made pursuant to subsection (1) is deemed to contain a provision reserving to the director the right to remove the child from the person providing foster care where, in the opinion of the director, the welfare of the child requires that removal.

1989-90, c C-7.2, s.54

Explanation

Minor wording changes: "Where" is replaced with "If"; "the director" replaced with "a director".

35 Existing Provision

Support by minister

- 55(1) Subject to subsection (2), where residential services are provided pursuant to this Act, the minister:
- (a) shall, subject to the terms and conditions of any agreement for residential services, be responsible for the expense of sheltering, supporting, educating, caring and providing appropriate counselling and rehabilitative services for the child; and
 - (b) may, for the purposes of clause (a), make any necessary expenditures in advance or otherwise.
- (2) The minister is not responsible for any expenses pursuant to clause (1)(a) except:
- (a) expenses for which the parent of the child would otherwise be responsible; or
 - (b) in the case of expenses that are related to residential services provided to a child by an agency, expenses for which the minister agrees to be responsible.
- (3) The minister may assume responsibility for any of the expenses mentioned in clause (1)(a) of any child of a child described in subsection (1).
- (4) Notwithstanding subsection (1), if:
- (a) a child is 16 years of age or older; and
 - (b) the minister considers it to be in the best interests of the child;
- the minister may discontinue the minister's responsibility for the expense of providing the services described in clause (1)(a) for the child.
- (5) Subject to the regulations, the minister may enter into agreements by which the minister is obliged to make payments for the provision of residential services pursuant to this section.

1989-90, c C-7.2, s.55; 1994, c 35, s.10.

Explanation

"Where" is replaced with "If" and "pursuant to" is replaced with "mentioned in".

36 Existing Provision

Extension of support

56(1) This section applies to persons:

- (a) who, immediately before attaining 18 years of age, were committed to the minister pursuant to subsection 37(2) or section 46 or were in the custody of the minister pursuant to an order made pursuant to subsection 37(3);
- (b) who have not attained 21 years of age; and
- (c) who:
 - (i) are continuing their education;
 - (ii) require assistance or training to enable them to continue their education or obtain employment; or
 - (iii) because of a mental or physical disability or impairment, require care or participation in a program to assist them in their mental or physical development or in the acquisition of life skills.

(2) Subject to subsection (3), the minister may, pursuant to an agreement with a person described in subsection (1), pay on behalf of that person any of the expenses described in clause 55(1)(a) or provide the person with any of the services described in that clause.

(3) The minister shall not make payments or provide services pursuant to subsection (2) with respect to a person:

- (a) after the person attains 21 years of age; or
- (b) after the person completes his or her education if that occurs before the person attains 21 years of age.

(4) Where a person described in subsection (1) lacks capacity to enter into an agreement, the minister may, in accordance with subsections (2) and (3), pay expenses on behalf of the person or provide services to the person without entering into an agreement.

2000, c 6, s.2.

Explanation

“Where” is replaced with “If”.

37 Existing Provision

Reciprocal agreements

60(1) The minister may enter into arrangements with the appropriate provincial, federal, territorial or state authority in any jurisdiction within or outside Canada with respect to:

(a) the transfer to the authority by the minister of the custody or guardianship rights of the minister with respect to a child or children in the custody of or committed to the minister;

(b) the transfer to the minister by the authority of the custody or guardianship of any child lawfully in the custody of or committed to the authority.

(2) Where the minister assumes responsibility for the custody or guardianship of a child pursuant to subsection (1), the child is deemed to be placed in the custody of the minister or committed to the minister, as the case may be, pursuant to this Act.

(3) Any proceedings with respect to the review, variation or extension of the custody or guardianship of a child transferred to the minister pursuant to this section shall be taken in accordance with this Act.

1989-90, c C-7.2, s.60.

Explanation

“Where” is replaced with “If”.

38 Existing Provision

Appeal to Queen’s Bench

63(1) In this section, “**originating court**” means the court that made the order that is the subject of the appeal.

(2) Any party may, within 30 days from the date of the order, appeal any order made pursuant to this Act to a judge of Her Majesty’s Court of Queen’s Bench for Saskatchewan.

(3) Notwithstanding any other Act or law, in the case of an order of committal pursuant to subsection 37(2), no extension of the time for appeal set forth in subsection (1) shall be granted if the child has been placed in a home for adoption pursuant to *The Adoption Act, 1998* or *The Family Services Act*.

(4) A judge sitting in appeal may:

(a) receive further evidence on questions of fact;

(b) confirm the order appealed against;

(c) rescind the order appealed against and substitute any order that the originating court could have made;

- (d) refer the matter, with instructions, to the originating court for re-hearing of all or part of the evidence.
- (5) If the order appealed against involves the custody of a child, the order, unless the judge sitting in appeal decides otherwise, shall be stayed until:
- (a) the final disposition of the appeal; or
 - (b) where the matter is referred to the originating court pursuant to clause (4)(d), the determination of the originating court on the re-hearing.
- (6) Notwithstanding subsection (2), if the originating court is Her Majesty's Court of Queen's Bench for Saskatchewan or the Unified Family Court for Saskatchewan, an order is to be appealed to the Court of Appeal.

1989-90, c C-7.2, s.63; 2004, c.5, s.2.

Explanation

Subsections 63(3) and (5) are repealed and substituted to incorporate minor wording changes. Reference to time for appeal corrected from subsection (1) to subsection (2). "Shall be" is replaced with "is" and "Where" is replaced with "If".

39 Existing Provision

Costs

- 65(1) Subject to subsection (2), the judge sitting in appeal may make any order respecting costs that the judge considers appropriate.
- (2) The tariff of fees for solicitors and counsel in Her Majesty's Court of Queen's Bench for Saskatchewan established pursuant to section 28 of *The Queen's Bench Act, 1998* applies to all proceedings on appeal.

1989-90, c C-7.2, s.65; 2004, c.65, s.3.

Explanation

65(2) repealed and replaced to conform to current drafting standards and include minor wording changes to be consistent with terms used in practice.

40 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, 1997* 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, 1997*.

1989-90, c C-7.2, s.66; 1990-91, c C-8.1, s.63;

2004, c.5, s.2; 2016, c 13, s.12.

Explanation

All adoption placements are now made pursuant to *The Adoption Act, 1998*. References to *The Family Services Act* and *The Child Welfare Act* are deleted as children placed for adoption pursuant to this legislation have reached the age of majority.

41 Existing Provision

Information on status

67 The director shall, on the request of a parent whose child is committed to the minister:

- (a) by an order pursuant to subsection 37(2); or
- (b) pursuant to section 46;

inform the parent as to whether or not the child has been adopted or placed for adoption.

1989-90, c C-7.2, s.67.

Explanation

Amendment includes minor wording changes to conform to current drafting standards and terms used in practice.

42 Existing Provision

Termination of committal

68(1) Where a child has been committed to the minister pursuant to subsection 37(2) or section 46, or has been placed in the custody of the minister pursuant to clause 37(1)(c) or subsection 37(3), the committal or order expires when:

- (a) the child attains 18 years of age;
- (b) the child is adopted;
- (c) the child marries;
- (d) the committal of the child is terminated by an order of the court; or
- (e) the committal is otherwise terminated pursuant to this Act;

whichever occurs first.

(2) An agreement made pursuant to section 9 or 10 shall not extend beyond the eighteenth birthday of the person with respect to whom the agreement was made.

1989-90, c C-7.2, s.68.

Explanation

68(1) is repealed and replaced. The amendment includes minor wording changes to conform to current drafting standards.

43 Existing Provision

Extra-provincial orders

69(1) Where, by an order made by a court of competent jurisdiction in any other province or territory of Canada or in any state or country, full parental rights and responsibilities with respect to a child have been absolutely and for all purposes legally vested in any person, organization, province, territory, state or country or the legal representative of any of them, other than a parent of the child, the order has the same force and effect in Saskatchewan as if it had been made pursuant to this Act.

(2) Any statement, consent or declaration made by anyone in whom full parental rights and responsibilities have been vested as mentioned in subsection (1) has the same effect as it would have had if made by the parent of the child.

1989-90, c C-7.2, s.69.

Explanation

“Where” is replaced with “If”.

44 Existing Provision

Representation

70 Any party to a proceeding in court pursuant to this Act may be represented by legal counsel.

1989-90, c C-7.2, s.70.

Explanation

“Legal counsel” replaced with “lawyer”, consistent with terms used in practice.

45 Existing Provision

Subpoena

72(1) On the application of a party or on its own motion, the court may:

- (a) compel the attendance of any person at a hearing pursuant to this Act for the purpose of giving evidence; and
- (b) require the production of any document;

in the same manner as a judge may compel the attendance of witnesses or production of documents in summary conviction proceedings.

- (2) A subpoena issued pursuant to subsection (1) may be served:
- (a) by delivering it personally to the person to whom it is directed; or
 - (b) if the person to whom it is directed cannot be found, by leaving it for that person at his or her last or usual place of residence with a person at that place who appears to be a resident of that place and at least 16 years of age.
- (3) Service of a subpoena pursuant to subsection (2) may be proved by the affidavit of the person who served it.
- (4) Every subpoena issued pursuant to subsection (1) remains in force until the completion of the hearing of the matter for which it is issued.
- (5) Where a hearing is adjourned, a witness who has been served with a subpoena is required to attend the adjourned hearing.
- (6) Where:
- (a) a person fails to comply with the terms of a subpoena issued pursuant to subsection (1); and
 - (b) it is proved that the person was served with the subpoena;
- the court may issue a warrant to compel the attendance of the person in the same manner as a judge may issue a warrant in summary conviction proceedings.

1989-90, c C-7.2, s.72.

Explanation

“Where” is replaced with “If”. Amendments conform to current drafting standards and include minor wording changes.

46 Existing Provision

Non-compellability

73 The minister, members of the board, members of family review panels, mediators, officers and employees of the ministry, 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, c C-7.2, s.73; 1994, c 35, s.15; 2016, c 13, s.13.

Explanation

Section 73 is repealed and replaced. Amendments conform to current drafting standards. All references to family review panels and boards are being repealed. List of those not compellable expanded to include directors.

47 Existing Provision

Time

76 Where the time for filing any document or application with a court expires on a day on which the offices of the court are closed, the document or application may be filed on the next day on which the offices of the court are open.

1989-90, c C-7.2, s.76.

Explanation

“Where” is replaced with “If”.

48 Existing Provision

Notice

77(1) Unless otherwise specifically provided, any notice required by this or the regulations to be given to any person may be given by:

- (a) personal service on the person by delivery of a copy of the notice;
- (b) sending a copy of the notice by registered or certified mail to the last known address of the person or to the address of the person as shown in the records of the department.

(2) The giving of notice pursuant to subsection (1) may be proved by an affidavit of service of the person effecting service.

(3) Notwithstanding subsection (1), a document may be served on a person by delivering a copy to the person’s solicitor if the solicitor accepts service by endorsing his or her name on a true copy of the document indicating that he or she is the solicitor for that person.

(4) Notice given by registered mail or certified mail is deemed to have been given on the seventh day after the day on which the notice was mailed.

(4.1) Where a person to whom any notice must be given pursuant to this Act or the regulations is outside Saskatchewan, the notice may be given in any manner provided by this Act or it may be served in any manner provided by a similar statute or regulation of the jurisdiction in which the person is present.

(5) Where a doubt exists as to the person to whom a notice pursuant to this should be given, an officer may apply to the court for directions.

(6) Notice given in accordance with directions pursuant to subsection (5) is sufficient notice for the purposes of this Act.

(7) Where, on an application without notice, the court is satisfied that:

- (a) prompt personal service of a notice cannot be effected;
- (b) the whereabouts of a person to be served cannot be determined;

- (c) the person to be served is evading service;
- (d) service of the documents would endanger the safety of the child or the parent who has custody of the child; or
- (e) on considering the circumstances, an order is necessary.

the court may make an order for substituted or other service, by letter, advertisement or otherwise as it considers reasonable or it may make an order dispensing with service.

(8) Where a court makes an order for substituted or other service pursuant to subsection (7), the court may direct the manner of proving that service has been effected.

(9) Subject to subsection (10), no proceedings other than proceedings pursuant to Part V are invalidated by failure to give a notice that is required by this Act or the regulations to be given where the failure to give notice is caused by the fact that the existence of the person to whom notice should have been given was unknown to the officer or other person who was required to give the notice.

(10) A person who is required to give notice pursuant to this Act or the regulations shall exercise reasonable diligence to ascertain the existence of all persons to whom notice should be given.

1989-90, c C-7.2, s.77; 1994, c 35, s.17; 1999, c.14, s.10; 2016, c28, s.6.

Explanation

Amendments include minor wording changes and conform to current drafting standards. “Department” replaced with “Ministry”; “Solicitor” replaced with “Lawyer”; “Where” replaced with “If”.

49 Existing Provision

Procedural defects

78 The court may, on application, waive any defect or irregularity in any proceedings pursuant to this Act other than proceedings pursuant to Part V, including:

- (a) a failure to act within the time prescribed by this Act; and
- (b) a defect or irregularity in proceedings before a family review panel.

1989-90, c C-7.2, s.78.

Explanation

Amendments are made to conform to current drafting standards. All references to family review panels and boards are being repealed.

50 Existing Provision

No action against ministry, etc.

79(1) No action lies or shall be instituted against the minister, the ministry, a peace officer or any officer or employee of the ministry or agent of the minister, where the minister, ministry, 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, c C-7.2, s.79; 1994, c 35, s.18; 2016, c 13, s.15

Explanation

Section 79 is repealed and new section is substituted. Amendments include minor wording changes to be consistent with terms used in practice. “Director” is added to list of those against whom no action can be taken, to be consistent with section 73.

51 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) governing the varying or terminating of financial assistance pursuant to subsection 56.3(2); **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;
- (r.5) subject to section 74, governing the disclosure of any information collected or recorded 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, c C-7.2, s.80; 1994, c 35, s.19; 2016, c 13,
s.16.

Explanation

Minor wording changes to conform to current drafting standards and terms used in practice. Dispute resolution is being offered in place of mediation services. Clauses (i), (j), (k), and (r.1) are repealed. In clause (l) the words “and family review panels” are deleted – all references to family review panels and board and all related sections are being repealed. Clauses (r.4) and (r.5) are repealed and replaced with new (r.4). New clauses (r.6) and (r. 7) are standard regulation-making provisions to authorize sub-delegation, allowing for the piggy backing of established codes and standards.

52 Existing Provision

Offences

81(1) For the purposes of this section, “**abuse**” means:

- (a) to act or omit to act so as to result in physical injury to a child;
 - (b) to act or omit to act so as to result in substantial impairment of a child’s mental or emotional functioning as evidenced by a mental or behavioral disorder;
 - (c) to exploit a child or treat a child cruelly;
 - (d) to contact a child for a sexual purpose; or
 - (e) to allow or encourage a child to engage in prostitution.
- (2) Any person who:
- (a) having the care, custody, control or charge of a child, neglects, abuses, wilfully abandons or exposes the child to abuse or abandonment or causes or procures the child to be abused, abandoned or exposed;
 - (b) detains or harbours a child after a demand has been made by an officer or a person acting on behalf of the minister for delivery of the child;
 - (c) induces or attempts to induce a child who:
 - i) has been taken into the care and custody of the minister by apprehension pursuant to this Act;
 - (ii) has been placed in the custody of the minister pursuant to clause 37(1)(c) or subsection 37(3);
 - (iii) has been committed to the minister pursuant to subsection 37(2) or section 46;
 - (iv) is deemed to be in the custody of or committed to the minister pursuant to subsection 60(2), as the case may be;
 - (v) is in the custody of an officer pursuant to section 7 or 8; or
 - (vi) is receiving residential services pursuant to section 9 or 10; to leave the premises in which the child has been lawfully placed;
 - (d) contravenes a protective intervention order made pursuant to section 16;
 - (e) contravenes subsection 12(1); or
 - (f) contravenes subsection 13.1(6) or 82(4);
- is guilty of an offence and liable on summary conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than 24 months or to both fine and imprisonment.

1989-90, c C-7.2, s.81; 1999, c 14, s.11.

Explanation

Clause 81(1)(e) is amended to replace “engage in prostitution” with “be exposed or encouraged to engage in harmful interaction for a sexual purpose”.

53 Existing Provision

Warrant

82(1) Where an officer believes on reasonable and probable grounds that a contravention of clause 81(2)(b) has occurred, the officer may apply to a justice of the peace or a judge for a warrant to be issued pursuant to subsection (2).

(2) Where a justice of the peace or a judge is satisfied by the oath of an officer that the officer believes on reasonable and probable grounds that:

- (a) a contravention of clause 81(2)(b) has occurred; and
- (b) there is evidence of a contravention of clause 81(2)(b) to be found at the place to be searched;

the justice of the peace or judge may issue a warrant under his or her hand.

(3) A warrant issued pursuant to subsection (2) authorizes the person named in the warrant to enter the place named in the warrant and every part of the place named in the warrant and of the premises connected with that place to:

- (a) examine the place and connected premises;
- (b) search for and seize and take possession of any thing that there are reasonable and probable grounds to believe will afford evidence of a contravention of clause 81(2)(b); and
- (c) remove the child from the place and premises.

(4) No person shall obstruct any person who is authorized to make an entry pursuant to this section.

1989-90, c C-7.2, s.82.

Explanation

Amendments are made to conform to current drafting standards; wording changes are made to be consistent with terms used in practice.

54 Existing Provision

Transitional

83(1) Subject to subsections (2) and (3), every committal, order and agreement that:

- (a) was made pursuant to any former *Family Services Act* or *Child Welfare Act*;
- and

(b) is in force on the day before the day on which this Act comes into force; is continued and may be executed, enforced, amended, varied or discharged in the same manner as if made pursuant to this Act.

(2) Notwithstanding section 46 of this Act, a voluntary committal that:

- (a) is in force on the day before the coming into force of this Act;
- (b) was validly made pursuant to *The Family Services Act*; and
- (c) was signed by the mother of the child and not by the father;

does not require the signature of the father, an order of the court dispensing with the father's signature or an affidavit of the mother.

(3) Notwithstanding section 46 of this Act, a voluntary committal that:

- (a) is in force on the day before the coming into force of this Act;
- (b) is validly made pursuant to *The Family Services Act* within the 30 days immediately preceding the day on which this Act comes into force;

may be revoked in accordance with that Act at any time within 30 days from the day on which it was made.

(4) Where, prior to the coming into force of this Act, a child has been apprehended but the matter has not been brought before a judge pursuant to section 21 of The Family Services Act:

- (a) the officer shall, within 30 days of the day on which the child was apprehended, file with the court an application for a protection hearing; and
- (b) the protection hearing is to be commenced within 30 days of the day on which the application was filed. **Not yet proclaimed**

(5) Where a matter has been brought before a judge pursuant to section 21 of The Family Services Act but a hearing has not been held prior to the coming into force of this Act, a protection hearing pursuant to section 36 of this Act shall be commenced within 30 days of the day on which this Act comes into force. **Not yet proclaimed**

(6) The provisions of this Act respecting protection hearings apply, with any necessary modification, to protection hearings mentioned in subsections (4) and (5). **Not yet proclaimed**

(7) A hearing pursuant to section 21 of The Family Services Act that was commenced prior to the coming into force of this Act shall be concluded within 60 days of the day on which this Act comes into force unless the court does not have sufficient evidence to make an order. **Not yet proclaimed**

(8) The provisions of this Act respecting reviews by family review panels do not apply to:

- (a) apprehensions made; or
- (b) matters brought before a judge pursuant to section 21 of *The Family Services Act*;

prior to the coming into force of this Act.

1989-90, c C-7.2, s.83.

Explanation

Subsections 83(4) to (7), inclusive, are being repealed. These transitional amendments have not yet been proclaimed. Any child brought into care under *The Family Services Act* has reached the age of majority.

55 Existing Provision

SS 1994, c.35

1 *The Child and Family Services Amendment Act, 1994* is amended in the manner set forth in this section.

Transfer of guardianship

56.1(1) Where, in the opinion of the minister, it is in the best interest of the child to do so, the minister may enter into an agreement with a person to transfer to that person:

- (a) personal guardianship of a child who is committed to the minister pursuant to subsection 37(2); and
- (b) the minister's right and responsibilities with respect to the child.

(2) Prior to entering into an agreement pursuant to subsection (1), the minister shall:

- (a) make all reasonable effort to notify the parent of the child;
- (b) where the child is a status Indian whose name is included in a Band List of who is entitled to have his or her name included in a Band List, notify the child's band or the agency, if any, that is providing family services to members of the child's band of the minister's intention to enter into the agreement;
- (c) take into account the views, with respect to whether entering the agreement is in the best interests of the child, of:
 - (i) the parent, if the parent has been located; and
 - (ii) the child's band or the agency, if any, that is providing family services to members of the child's band; and
- (d) cause a report to be prepared in accordance with the regulations to assist the minister in determining whether entering the agreement is in the best interests of the child.

(3) Subject to subsection (4), an order for the permanent committal of a child pursuant to subsection 37 (2) is terminated when an agreement pursuant to subsection (1) is executed with respect to that child, and the person who enters into the agreement with the minister:

- (a) acquires all the rights and responsibilities of a parent of the child; and
- (b) shall be the personal guardian of the child.

(4) Consent to the adoption of a child who is the subject of an agreement pursuant to subsection (1) must be given:

- (a) by the birth parents, if the child has a birth parent who is alive; or
- (b) by the personal guardian, if the child does not have a birth parent who is alive.

(5) The minister shall not enter into an agreement pursuant to this section with respect to a child who has been placed for adoption within the meaning of The Adoption Act.

Not yet proclaimed

Transfer of custody

56.2(1) Subject to subsection (2), where, in the opinion of the minister, it is in the best interest of the child to do so, the minister may enter into an agreement with a person to transfer to that person the custody of a child who is placed in the custody of the minister pursuant to subsection 37(3).

(2) Each parent of the child and each person who is given rights with respect to the child by an order pursuant to subsection 37(3) must be a party to an agreement pursuant to subsection (1).

(3) Prior to entering into an agreement pursuant to subsection (1), the minister shall:

(a) where the child is a status Indian whose name is included in a Band List or who is entitled to have his or her name included in a Band List, notify the child's band or the agency, if any, that is providing family services to member of the child's band of the minister's intention to enter into the agreement;

(b) take into account the views, with respect to whether entering the agreement is in the best interests of the child, of:

(i) the parent; and

(ii) the child's band or the agency, if any, that is providing family services to members of the child's band; and

(c) cause a report to be prepared in accordance with the regulations to assist the minister in determining whether entering the agreement is in the best interests of the child.

(4) An order placing a child in the custody of the minister pursuant to subsection 37(3) is terminated when an agreement pursuant to subsection (1) is executed, and the person entering into the agreement with the minister shall have custody of the child.

Not yet proclaimed

Financial assistance

56.3(1) The minister may provide financial assistance by way of grant or other similar means in accordance with the regulations to a person who enters into an agreement pursuant to subsection 56.1(1) or 56.2(1) where, in the opinion of the minister, financial assistance is required by reason of:

(a) the special needs of the child; or

(b) the special circumstances of the transfer of guardianship or custody of the child

(2) Where financial assistance is provided pursuant to subsection (1), the minister may:

(a) review the financial assistance from time to time; and

(b) vary or terminate the financial assistance in accordance with the regulations.

80(r.1) governing the varying or terminating of financial assistance pursuant to subsection 56.3(2);

Explanation

Section 11 of SS 1994, c.35 is repealed. Sections 56.1, 56.2, and 56.3 included in *The Child and Family Services Amendment Act, 1994*, are **not yet proclaimed**. The Ministry engaged with a number of First Nations stakeholders, but the parties were unable to agree on implementation. At the time, no other jurisdiction had similar provisions. **Not yet proclaimed** provision regarding regulation making provision is no longer required as 56.3(2) is being repealed.

56 Existing Provision

Coming into force

84 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

1989-90, c C-7.2, s.84.

Explanation

The amendment Act will come into force on Assent.

Prepared by the Ministry of Social Services.