

1983 BILL 105

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 105

CHILD WELFARE ACT

THE MINISTER OF SOCIAL SERVICES
AND COMMUNITY HEALTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 105

1983

CHILD WELFARE ACT

(Assented to , 1983)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) “adoption order” means an order made under section 59;
- (b) “child” means a person under the age of 18 years;
- (c) “child welfare worker” means a person appointed by the Minister as a child welfare worker;
- (d) “compulsory care certificate” means a compulsory care certificate issued under section 39;
- (e) “compulsory care institution” means an institution prescribed by the Minister as a compulsory care institution;
- (f) “compulsory care order” means a compulsory care order made under section 40 and includes a renewal order;
- (g) “Court” means the Provincial Court;
- (h) “custody agreement” means an agreement entered into under section 7;
- (i) “foster parent” means a person approved as a foster parent by the Minister;
- (j) “guardian” means
 - (i) a person who is or is appointed as the guardian of the child under Part 7 of the *Domestic Relations Act*, or
 - (ii) a person who is the guardian of the child under an agreement or order made pursuant to this Act;
- (k) “guardianship agreement” means an agreement entered into under section 9;
- (l) “Indian” means an Indian as defined in the *Indian Act* (Canada);

- (m) “Minister” means the Minister of Social Services and Community Health;
 - (n) “permanent guardianship order” means a permanent guardianship order made under section 29;
 - (o) “supervision order” means a supervision order made under section 24 and includes a renewal order;
 - (p) “support agreement” means an agreement entered into under section 6;
 - (q) “support services” means services prescribed as support services in the regulations;
 - (r) “temporary guardianship order” means a temporary guardianship order made under section 26 and includes a renewal order.
- (2) For the purposes of this Act, a child is in need of protective services if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:
- (a) the child has been abandoned or is lost;
 - (b) the child’s guardian is dead and he has no other guardian;
 - (c) the child’s guardian is unable, neglects or refuses to provide the child with necessities of life, including essential medical, surgical or other remedial treatment that has been recommended by a physician;
 - (d) the child has been or there is substantial risk that he will be physically injured or sexually abused by his guardian;
 - (e) the child’s guardian is unable or unwilling to protect the child from physical injury or sexual abuse;
 - (f) the child has been emotionally injured by his guardian;
 - (g) the child’s guardian is unable or unwilling to protect the child from emotional injury;
 - (h) the child’s condition or behaviour prevents him from receiving adequate care appropriate to meet his needs and his guardian is unable or unwilling to provide him with the services required to remedy his condition or behaviour;
 - (i) the child is under the age of 12 years, has been involved in the commission of an offence under a statute of Canada and the Attorney General has consented to the child’s being dealt with under this Act.
- (3) For the purposes of this Act,
- (a) a child is emotionally injured if there is substantial, sustained and observable impairment of his mental or emotional functioning
 - (i) that is evidenced by a mental or behavioural disorder including anxiety, depression, withdrawal, aggression or delayed intellectual development, and

- (ii) that may be the result of
 - (A) rejection,
 - (B) deprivation of affection or cognitive stimulation,
 - (C) exposure to domestic violence or severe domestic disharmony,
 - (D) inappropriate criticism, threats, humiliation, accusations or expectations of or towards the child, or
 - (E) chronic alcohol or drug abuse by anyone living in the same residence as the child;

(b) a child is physically injured if there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to his body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

(c) a child is sexually abused if he is exposed or subjected to sexual contact, activity or behaviour that is inappropriate to the child's age, experience or emotional or physical development.

(4) Subject to this Act, a person who is a guardian of a child under an agreement or order made under this Act is a guardian under the *Domestic Relations Act*.

Principles to be considered

2 In exercising any authority or making any decision pursuant to this Act, a Court and all persons shall consider the following principles:

(a) that the family is the basic unit of society and its well-being should be supported and preserved;

(b) that the family has the right to the least invasion of its privacy and interference with its freedom that is compatible with its own interest, the interest of the family members and society;

(c) that parents are responsible for the care and supervision of their children and every child should have an opportunity to enjoy a parent-child relationship as a wanted and valued member of a family, and to that end

(i) if support services are necessary to assist a parent in providing for the care of a child, those services should be supplied to the family in so far as it is reasonably practicable to do so in order to support the family unit and to prevent the need to remove the child from the custody of his parents, and

(ii) a child should be removed from the custody of his parents either partially or entirely only when other less intrusive measures are not sufficient to protect the survival, security or development of the child;

(d) that no child should be removed from the custody of his parents merely because the Minister is better able to financially provide the necessities of life;

- (e) that any decision concerning the removal of a child from the custody of his parents should take into account
 - (i) the benefits to the child of maintaining, wherever possible, the child's familial, cultural, social and religious heritage,
 - (ii) the benefits to the child of stability and continuity of care and relationships,
 - (iii) the risks, both emotional and physical, to the child of returning the child to or allowing the child to remain in the custody of his parents, and
 - (iv) the merits of allowing the child to remain in the custody of his parents compared to the merits of removing the child from the custody of his parents;
- (f) that, if it is not inconsistent with the protection of a child who may be in need of protective services, and the parents are in agreement, the parents should be referred to community resources for services that would support and preserve the family and prevent the need for any other intervention under this Act;
- (g) that any decision concerning the provision of protective services to a child outside his family should take into account
 - (i) the benefits to the child of his placement with a family of his own familial, cultural, social and religious heritage,
 - (ii) the benefits to the child of stability and continuity of care and relationships,
 - (iii) the benefits to the child of his placement within or as close as possible to his home community,
 - (iv) the mental, emotional and physical needs of the child and the child's mental, emotional and physical stage of development, and
 - (v) the ability of the family with which he is to be placed to meet the needs of the child;
- (h) that the provision of protective services is intended to remedy or alleviate the condition that caused the child to be in need of protective services;
- (i) that a child should be provided with a level of care that is adequate to meet the needs of the child and consistent with community standards and available resources, if the Minister is the guardian of the child or the child is in his custody;
- (j) that a plan for the care of a child should be developed that will address the child's need for stability and continuity of care and relationships, if the Minister is the guardian of the child or the child is in his custody;
- (k) that a child, if he is capable of forming his own opinions, is entitled to an opportunity to express his opinion on matters affecting him;
- (l) that any decision concerning a child should take into account the interests of the child;

(m) that there should be no unreasonable delay in making or implementing a decision affecting a child.

PART 1

PRELIMINARY INTERVENTION

Reporting
ill-treatment

3(1) Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to the Minister.

(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential.

(3) No action lies against a person reporting pursuant to this section unless the reporting is done maliciously or without reasonable and probable grounds for the belief.

(4) Notwithstanding and in addition to any other penalty provided by this Act, if a person does not comply with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the Minister may advise the appropriate governing body of that occupation or profession of the failure to comply.

(5) If the Minister advises a governing body pursuant to subsection (4), the person who failed to comply with subsection (1) is subject to sanction under the Act regulating that person's profession or occupation.

Investigation

4 The Minister shall examine any report made under section 3 and any other allegation or evidence that a child may be in need of protective services and, unless the Minister is satisfied that

- (a) the report or allegation was made maliciously,
- (b) the report or allegation was made without reasonable and probable grounds for the belief,
- (c) the report or allegation or evidence is unfounded, or
- (d) it would be consistent with the protection of the child to refer his parents to community resources for services,

he shall cause an investigation to be made into the matter.

Homemaker

5(1) If the Minister is satisfied that a child may be in need of protective services because his guardian cannot be located after a reasonable search or has died or become incapacitated, the Minister may appoint a homemaker to care for the child in the residence in which the child was found until the guardian can be located or other satisfactory arrangements can be made for the care of the child.

(2) A homemaker appointed under subsection (1) may

- (a) enter the residence,
- (b) live in the residence,
- (c) carry on normal housekeeping activities in the residence that are necessary for the care of the child, and

(d) exercise reasonable control over all children residing in the residence.

(3) When a homemaker is appointed under subsection (1), no liability attaches to the homemaker in the course of carrying out his duties under subsection (2) by reason only of the entry into and occupation of the residence without the consent of the owner or occupier.

PART 2 AGREEMENTS

Support
agreement

6(1) The Minister may enter into an agreement in the prescribed form with the guardian of a child with respect to the provision of support services to the family or the child if, in the opinion of the Minister,

(a) the child is in need of protective services, and

(b) as a result of the provision of the support services, the child's survival, security or development will be adequately protected if the child remains in his residence.

(2) The Minister may enter into an agreement in the prescribed form with a child who is 16 years of age or over with respect to the provision of support services to the child if, in the opinion of the Minister,

(a) the child is in need of protective services, and

(b) as a result of the provision of support services, the child's survival, security or development will be adequately protected if the child remains in his residence.

Custody
agreement

7(1) The Minister may enter into an agreement in the prescribed form for a term of not more than 6 months with the guardian of a child under which custody of the child is given to the Minister if, in the opinion of the Minister,

(a) the child is in need of protective services, and

(b) the survival, security or development of the child cannot be adequately protected in his residence.

(2) The Minister may enter into an agreement in the prescribed form for a term of not more than 6 months with a child who is 16 years of age or over under which custody of the child is given to the Minister if, in the opinion of the Minister,

(a) the child is in need of protective services, and

(b) the survival, security or development of the child cannot be adequately protected in his residence.

(3) A custody agreement may be renewed for terms of not more than 6 months each, but the cumulative period of the agreement and its renewals shall not exceed 2 years unless, in the opinion of the Minister, extraordinary circumstances warrant that the cumulative period be more than 2 years.

(4) No custody agreement shall be made in respect of a child 12 years of age or over unless

(a) the child consents, or

(b) a psychologist registered under Part 2 of the *Psychologists Act* or a physician certifies that the child is incapable of understanding and appreciating the terms of the agreement.

Terms of custody agreement

8 A custody agreement between a guardian and the Minister shall include terms prescribing

(a) the visits or other access to be provided between the child and his guardian or any other person,

(b) the extent of the delegation of the authority of the guardian to the Minister, and

(c) the contributions, financial or otherwise, to be made by the guardian for the maintenance of the child while he is in the custody of the Minister.

Guardianship agreement

9(1) If a child has been in the actual custody of at least 1 of his guardians for a cumulative period of less than 6 months, all the guardians of the child and the Minister may enter into an agreement in the prescribed form under which the Minister will assume the guardianship of the child.

(2) When an agreement is made pursuant to this section

(a) it is binding on any parent who at the time the agreement was entered into was not a guardian of the child, whether or not he had any notice of the agreement,

(b) the Minister is the sole guardian of the child for all purposes, and

(c) it may be terminated only pursuant to section 10.

Application to Court

10(1) If a guardian of a child has entered into a guardianship agreement with respect to a newborn child, he or any person claiming to be a parent of that child may make an application in the prescribed form to the Court within 10 days of the birth of the child for an order under this section.

(2) The applicant shall give notice of the time and place of the application in any manner not less than 12 hours before the application is made to

(a) the Minister, and

(b) if the applicant is not the guardian who entered into the guardianship agreement, that guardian.

(3) If the applicant is the guardian who entered into the guardianship agreement, the Court may terminate the agreement if it is satisfied that the applicant and any other former guardian of the child are capable of assuming and willing to assume the responsibilities of guardianship of the child.

(4) If the applicant claims to be a parent of the child and the Court is satisfied that the applicant is a parent of the child, the Court may terminate the guardianship agreement and do any 1 or more of the following:

- (a) declare the applicant to be the parent of the child;
- (b) appoint the applicant as a guardian of the child if the Court is satisfied that
 - (i) the applicant is capable of assuming and willing to assume the responsibilities of guardianship of the child, and
 - (ii) it is in the best interests of the child that the applicant be appointed guardian;
- (c) direct that the child be placed in the custody of the applicant or any other guardian of the child.

(5) If the Court makes an order under subsection (4) appointing the applicant as a guardian, the applicant becomes the equal guardian of the child with any other guardian.

(6) An order made under this section does not come into effect until the applicant serves the Minister with a copy of the order.

Access and
maintenance
agreements

11(1) The Minister may enter into an agreement in the prescribed form with another guardian of a child who is the subject of a temporary guardianship order.

(2) The agreement may include the following:

- (a) the visits or other access that will be provided between the child and the other guardian or any other person;
- (b) the conditions, if any, under which the Minister will consult with the other guardian on matters affecting the child;
- (c) the contributions, financial or otherwise, that will be made by the other guardian for the maintenance of the child while he is the subject of a temporary guardianship order;
- (d) any other matter relating to the guardianship of the child.

PART 3 COURT ORDERS

Supervision

12(1) The Minister may make an application to the Court in the prescribed form for an order authorizing the Minister to provide supervision of the persons with whom a child resides if, in the opinion of the Minister,

- (a) the child is in need of protective services,
- (b) supervision of the persons with whom the child resides is necessary to ensure that the survival, security or development of the child is protected, and
- (c) as a result of that supervision the child's survival, security or development will be adequately protected while the child is in that residence.

(2) In this section, “supervision” means the provision of support services, periodic visits to the residence by a child welfare worker and interviews between a child welfare worker and the child or any person residing with the child.

Temporary
guardianship

13 The Minister may make an application in the prescribed form to the Court for a temporary guardianship order in respect of a child if, in the opinion of the Minister,

- (a) the child is in need of protective services,
- (b) the survival, security or development of the child cannot be adequately protected if the child remains in his residence, and
- (c) it may reasonably be anticipated that within a reasonable time
 - (i) the child may be returned to the custody of his guardian, or
 - (ii) in the case of a child 16 years of age or over the child may be permitted to reside in a place satisfactory to the Minister.

Permanent
guardianship

14(1) The Minister may make an application in the prescribed form to the Court for a permanent guardianship order in respect of a child who is already the subject of a temporary guardianship order or who, in the opinion of the Minister, is in need of protective services if, in the opinion of the Minister,

- (a) the survival, security or development of the child cannot adequately be protected if the child remains in or is returned to his residence,
- (b) it cannot reasonably be anticipated that the child will be returned to the custody of his guardian within a reasonable period of time, and
- (c) guardianship in the Minister and the permanent placement of the child in an appropriate surrogate family or home will be beneficial to the child.

(2) A guardian of the child may make an application in the prescribed form to the Court for a permanent guardianship order in respect of a child if the guardian wishes to relinquish guardianship of the child.

Crisis
intervention

15(1) A child welfare worker or peace officer may take a child under 16 years of age into protective care without a warrant if he has reasonable and probable grounds to believe that the child is in need of protective services because

- (a) the child has been abandoned, is lost or has no guardian,
- (b) the child has left the custody of his guardian without the consent of the guardian and, as a result, the guardian is unable to provide the child with the necessities of life, or
- (c) the child has been or there is substantial risk that he will be seriously physically injured by the guardian, or if circumstances

indicate that the guardian is unable or unwilling to protect the child, and the child's life or health is seriously and imminently endangered.

(2) If the Minister has reasonable and probable grounds to believe that a child may be in need of protective services, the Minister may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace for a warrant authorizing a peace officer, the Minister or any person authorized by the Minister to enter any premises, using force if necessary, for the purpose of searching for the child and taking the child into protective care.

Notice of taking **16(1)** If a child has been taken into protective care, the guardian of the child shall be notified by the Minister forthwith that the child has been taken into protective care.

(2) Notification under subsection (1) may be by any method and may be oral or in writing.

Notice of objection **17(1)** If a child is taken into protective care under section 15 and the child is returned to the custody of his guardian within 48 hours after the taking, the guardian of the child may file a notice of objection in the prescribed form with the Court not more than 30 days after the taking.

(2) The guardian shall serve the Minister with a copy of the notice of objection.

(3) Service under subsection (2) may be by registered mail.

(4) If the guardian files a notice of objection under subsection (1), the Minister, after being served with the notice, shall appear before the Court to show cause why the child was taken into protective care.

(5) The Minister shall serve the guardian with notice of the time and place of the appearance not less than 10 days before the date of the appearance.

Application by the Minister **18(1)** If a child is taken into protective care under section 15 and is not returned to the custody of his guardian within 48 hours after the taking, the Minister shall make an application in the prescribed form to the Court for a supervision order or a temporary or permanent guardianship order.

(2) An application under subsection (1) shall be made not more than 10 days after the taking.

(3) The guardian of a child who is taken into protective care under section 15 and is not returned to the custody of his guardian within 48 hours after the taking may serve the Minister with a demand notice in the prescribed form not more than 5 days after the taking.

(4) Notwithstanding subsection (2), if the Minister is served with a demand notice under subsection (3), the Minister shall make the application under subsection (1) not more than 24 hours after he is served.

(5) If the Minister is not served with a demand notice, he shall serve the guardian of the child and the child, if the child is 12 years of age

or over, with notice of the time and place of the application not less than 2 days before the date of the application.

(6) If the Minister is served with a demand notice, he shall forthwith notify the guardian and the child, if the child is 12 years of age or over, of the time and place of the application.

(7) Notification under subsection (6) may be made by any method and may be oral or in writing.

(8) The Court, on an application under this section, may

(a) if it is not satisfied that the child is in need of protective services, order the Minister to return the child to the custody of his guardian, or

(b) if it is satisfied that the child is in need of protective services, make any order with respect to the child it may make under this Part.

Custody in
the Minister

19(1) If a child has been taken into protective care, the Minister has exclusive custody of the child, is responsible for his care, maintenance and well being and may

(a) authorize the provision of such medical, surgical or other remedial treatment as the Minister considers necessary without the consent of the guardian of the child, or

(b) confine the child in a compulsory care institution if the Minister considers it necessary to do so in order to protect the survival, security or development of the child.

(2) If the Minister authorizes the provision of medical, surgical or other remedial treatment to a child pursuant to subsection (1)(a), the guardian of the child is deemed to have consented to the provision of the medical, surgical or other remedial treatment.

(3) If the Minister confines a child pursuant to subsection (1)(b) the Minister shall apply within 24 hours of the confinement for an order authorizing the confinement of the child for a further period of not more than 8 days.

(4) An application pursuant to subsection (3) may be heard by a judge of the Court, a judge of the Court of Queen's Bench or a justice of the peace.

Notice of
application

20(1) Notice of the nature, time and place of an application for a supervision order or a temporary or permanent guardianship order, other than an application under section 18, shall be served personally by the applicant on

(a) all guardians of the child,

(b) the Minister, if he is not the applicant,

(c) the child, if the child is 12 years of age or over,

(d) a foster parent of the child, if the child was in the continuous custody of that foster parent for more than 6 months immediately preceding the application, and

(e) any other person in whose care and custody the child was when the child was taken into protective care, if the child was in the continuous care and custody of that person for a period of not less than 6 months immediately preceding the application.

(2) Notice under subsection (1) shall be served at least 10 days before the date fixed for the hearing.

(3) If the Court is satisfied that it is proper to do so, the Court, on the ex parte application of the applicant at any time before the time fixed for the hearing, may do any of the following:

(a) authorize service ex juris, service by registered mail or any other form of substitutional service;

(b) authorize service on a guardian appointed under the *Dependent Adults Act* in respect of the guardian of a child instead of on the guardian of the child;

(c) authorize service on the director of a mental health facility instead of on the guardian, if the guardian of a child is a patient as defined in the *Mental Health Act*;

(d) authorize the giving of a shorter period of notice;

(e) dispense with service on a person other than the guardian or the Minister.

Exclusion from hearing

21(1) Subject to subsection (2), if the Court is satisfied that because of the unusual nature of the case

(a) the evidence or information presented to the Court may be seriously injurious or seriously prejudicial to the child, or

(b) it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the court room,

the Court may

(c) exclude any person including the guardian or the child from all or part of the proceedings if the Court considers that person's presence to be unnecessary to the conduct of the proceedings, or

(d) ban the publication of the names or any other information identifying the parties.

(2) The Court may not exclude the Minister or a lawyer representing any of the parties.

Adjournments

22 The Court may adjourn a hearing under this Part for a period of not more than 30 days or for such longer period as the parties agree to.

General powers of Court

23 After a hearing under this Part, the Court may make any order it may make under this Act if it is satisfied as to the appropriateness of that order notwithstanding that it is not the order applied for by the Minister or the guardian of the child.

Supervision order

24(1) The Court may make a supervision order for a period of not more than 6 months if it is satisfied that

- (a) a child is in need of protective services,
- (b) mandatory supervision of the child and a person residing with the child and the compliance by that person with the conditions of the order are necessary to adequately protect the survival, security or development of the child, and
- (c) all persons residing with the child will comply with the conditions of the order.

(2) A supervision order shall

- (a) require that the Minister supervise the child within the residence of the child, and
- (b) set out the conditions recommended by the Minister in respect of
 - (i) the frequency of visits to the residence by a child welfare worker, and
 - (ii) the assessment or treatment of any person residing with the child.

Restraining order

25(1) If a child is the subject of a supervision order, the Minister may apply by originating notice to the Court of Queen's Bench for an order restraining any named person who in the opinion of the Minister has or is likely to physically injure or sexually abuse the child

- (a) from residing with the child, or
- (b) from contacting the child or associating in any way with the child.

(2) The Court of Queen's Bench may make an order under this section for a period of not more than 6 months.

(3) If the Court of Queen's Bench makes an order under this section restraining a parent of the child, the Court may make a further order prescribing the contributions, financial or otherwise, to be made by that parent for the maintenance of the child.

Temporary guardianship order

26(1) The Court may make an order appointing the Minister as a guardian of a child for a period of not more than 1 year if it is satisfied that

- (a) the child is in need of protective services,
- (b) the survival, security or development of the child may not be adequately protected if the child remains within his residence, and
- (c) it may reasonably be anticipated that within a reasonable time
 - (i) the child may be returned to the custody of his guardian, or
 - (ii) if the child is 16 years of age or over, the child may be permitted to reside in a place satisfactory to the Minister.

(2) If the Court makes an order under subsection (1), the Minister becomes a joint guardian with any other guardian of the child and, subject to any order under subsection (3), may exercise all of the authority of a guardian of the child to the exclusion of any other guardian except with respect to a proceeding under Part 6.

(3) On making a temporary guardianship order or at any time during its term, the Court, on the application of the Minister or a guardian of the child, may

(a) on being satisfied that the matter cannot be resolved by agreement or the terms of an agreement have not been complied with, make an order prescribing

(i) the access to be provided between the child and a guardian or any other person with whom the child has a significant relationship,

(ii) the conditions under which the Minister shall consult with the guardian on matters affecting the child, or

(iii) the contributions, financial or otherwise, to be made by a guardian, other than the Minister, who is legally responsible for the maintenance of the child,

or

(b) order the examination and assessment of a guardian other than the Minister prior to the expiration of the term of the temporary guardianship order in order to assist the Minister or the Court, as the case may be, to determine that guardian's fitness to resume custody of the child when the term of the order ends.

Review of supervision or temporary guardianship order

27(1) If the Court has made a supervision order or temporary guardianship order, it may review the order if the appeal period has expired

(a) at any time on the application, in the prescribed form, of the Minister, or

(b) once during the term of the order on the application, in the prescribed form, of

(i) a guardian of the child, or

(ii) the child, if the child is 12 years of age or over.

(2) On hearing an application under this section the Court, if it is satisfied that it is proper to do so, may

(a) continue, vary or terminate the original order, or

(b) make an order pursuant to section 26 or 29.

(3) The Court may extend the period of the original order pending the hearing of an application under this section.

Term of temporary guardianship

28(1) Notwithstanding any other provision of this Act but subject to subsection (2), the total cumulative period during which a child may be the subject of a temporary guardianship order is 2 years.

(2) If on hearing an application for a permanent guardianship order the Court is satisfied that it may reasonably be anticipated that the child could or should be returned to the custody of his guardian within a reasonable period of time, the Court may make an order of temporary guardianship for a further period of not more than 1 year.

29(1) The Court, on application pursuant to this Part by the Minister, may make a permanent guardianship order appointing the Minister as guardian of the child if it is satisfied that

(a) the child is in need of protective services or is already the subject of a temporary guardianship order,

(b) the survival, security or development of the child cannot be adequately protected if the child remains in or is returned to the family home,

(c) it cannot reasonably be anticipated that the child could or should be returned to the custody of his guardian within a reasonable period of time, and

(d) it may reasonably be anticipated that

(i) the child can be placed permanently with an appropriate surrogate family, or

(ii) if the child is 16 years of age or over, the child may be permitted to reside in a place satisfactory to the Minister.

(2) The Court, on application pursuant to this Part by the guardian of a child, may make a permanent guardianship order appointing the Minister as guardian of the child if it is satisfied that

(a) the guardian wishes to relinquish his guardianship, and

(b) the child consents to the order, if the child is 12 years of age or over.

(3) If the Court makes a permanent guardianship order, the Minister is the sole guardian of the person of the child and the Public Trustee is the sole trustee of the estate of the child.

(4) The Minister shall send the Public Trustee a copy of the permanent guardianship order.

(5) If the Court makes a permanent guardianship order it may, on the application of the Minister, order that financial contributions be made to the maintenance of the child by a person, other than the Minister, who was legally responsible for the maintenance of the child before the permanent guardianship order was made.

(6) If the Court makes a permanent guardianship order the Minister may, if he is satisfied that it would not interfere with the placement of the child for the purpose of his adoption, enter into an agreement with a former guardian of the child or any other person with whom the child has a significant relationship setting out the access to be provided between the child and that person.

Termination
of permanent
guardianship
order

30(1) If a child is the subject of a permanent guardianship order, the Minister, if he is satisfied that the child should be returned to the guardianship of the person who was the child's guardian before the order was made, may apply to the Court for an order terminating the permanent guardianship order.

(2) When a child who is the subject of a permanent guardianship order attains 18 years of age, the Minister may continue to provide that child with care and maintenance for a further period of not more than 10 months so that the child can complete a course of studies or other training.

Joint guardian

31(1) If the Court makes a permanent guardianship order, any person may make an application in the prescribed form to the Court to be appointed as guardian of the child jointly with the Minister.

(2) An application under this section shall be served on the Minister not less than 10 days before the date set for the hearing.

(3) The Court may make an order appointing a person as a guardian of a child jointly with the Minister if the Court is satisfied that

(a) the person is capable of and willing to assume the responsibility of joint guardianship of the child,

(b) the person has had a significant and continuing relationship with the child,

(c) if the child is 12 years of age or over, the child consents,

(d) the Minister is of the opinion that it cannot reasonably be anticipated that the child will be adopted within a reasonable period of time, and

(e) the appointment of that person as a joint guardian will be beneficial to the child.

(4) If the Court makes an order under subsection (3), the Minister, subject to any order of the Court under subsection (5), may exercise all of the authority of a guardian of the child to the exclusion of the other guardian.

(5) If the Court makes an order appointing a joint guardian, it may, on the application of the Minister or the joint guardian, and on being satisfied that the Minister and the joint guardian have been unable to negotiate an agreement or have not complied with the terms of an agreement, make an order prescribing

(a) the access that will be provided between the joint guardian and the child, and

(b) the conditions under which the Minister shall consult with the joint guardian on matters affecting the child.

Review of joint
guardianship

32(1) If the Court makes an order under section 31, the Minister or the joint guardian may apply to the Court in the prescribed form at any time for a review of the order.

(2) The applicant shall serve the application for a review on the other guardian not less than 5 days before the hearing.

(3) The Court may, on hearing the application and in accordance with section 31, continue, vary or terminate any order made under section 31.

Parents' marriage **33** If a child born out of wedlock is the subject of a permanent guardianship order and subsequently the parents of that child marry each other, the father of the child is deemed to have been given or served with all notices required to be given to or served on a guardian of the child before the date of the marriage.

Right to custody **34** The Minister's right to the custody of a child under a temporary or permanent guardianship order or guardianship agreement takes precedence over the right to custody given by any custody order not made under this Act, whether the custody order

(a) was granted to a parent of the child or to any other person, or

(b) was granted before or after the making of the guardianship order or the execution of the guardianship agreement, as the case may be,

and during the existence of the temporary or permanent guardianship order or the guardianship agreement the effect of the custody order is suspended.

Duration of order **35(1)** A temporary guardianship order remains in effect until

(a) the order expires or is terminated by the Court, the Court of Queen's Bench or the Court of Appeal,

(b) the child attains the age of 18 years, or

(c) the child marries,

whichever occurs first.

(2) A permanent guardianship order remains in effect until

(a) the order is terminated by the Court, the Court of Queen's Bench or the Court of Appeal,

(b) an adoption order is made in respect of the child,

(c) the child attains the age of 18 years, or

(d) the child marries,

whichever occurs first.

Service on Indian band **36** If the Court makes a supervision order, temporary guardianship order or permanent guardianship order in respect of a child who is an Indian and a member of a band as defined in the *Indian Act* (Canada), the Minister shall provide the chief of the council of the band with a copy of the order not more than 20 days after the date of the order.

Maintenance **37** In making an order for maintenance under this Act, the Court shall consider all relevant circumstances, including

(a) the income, earning capacity, property and other financial resources or benefits of the person and his or her spouse, or any other person residing with that person,

- (b) the needs of the child,
- (c) the present and past standard of living of the child and the person,
- (d) the child's aptitude for and reasonable prospects of obtaining an education,
- (e) the legal or moral obligation of the person to provide support for any other person,
- (f) the assets of the child, excluding an award of general damages or a settlement paid to compensate the child for a personal injury,
- (g) any other legal right of the child to support other than out of public money, and
- (h) the needs of the person.

Death of child **38(1)** When a child who is the subject of a permanent guardianship order dies, the Minister may

- (a) consent to an autopsy of the body of the child, and
- (b) arrange for the burial or other disposition of the body of the child.

(2) When a child who is the subject of a temporary guardianship order dies, the Minister may arrange for the burial or other disposition of the body of the child if

- (a) he is unable after making reasonable efforts to locate the parents of the child within a reasonable period of time, or
- (b) the parents of the child are unable to pay for the burial or other disposition of the body of the child.

PART 4 COMPULSORY CARE

Compulsory care certificate **39(1)** If a child is the subject of a temporary or permanent guardianship order, the Minister may issue a compulsory care certificate in the prescribed form for a period of not more than 5 days in respect of the child if he has reasonable and probable grounds to believe that

- (a) the child is suffering from a mental or behavioural disorder,
- (b) the child is in a condition presenting a danger to himself or others, and
- (c) it is necessary to confine the child in order to protect the survival, security or development of the child.

(2) A compulsory care certificate shall include a statement showing

- (a) the authority under which the certificate was issued,
- (b) the reason for the confinement,
- (c) the duration of the certificate,

(d) the date, place and time at which the appearance to show cause under subsection (5) will be held,

(e) that the child may be represented by a lawyer at any appearance before the Court, and

(f) the address and telephone number of the nearest office of the Legal Aid Society.

(3) A compulsory care certificate is sufficient authority for any person to confine the child who is the subject of the certificate in a compulsory care institution for the period stated in the certificate.

(4) A compulsory care certificate shall be served on the child in respect of whom it is issued not more than 24 hours after it is issued.

(5) The Minister shall appear before the Court not more than 5 days after a compulsory care certificate is issued

(a) to show cause why the certificate was issued, and

(b) to satisfy the Court that subsections (2) and (4) have been complied with.

Compulsory
care order

40(1) If the Minister is a guardian of a child, he may apply, in the prescribed form, to the Court for a compulsory care order.

(2) If the Court is satisfied that

(a) the child is suffering from a mental or behavioural disorder,

(b) the child is in a condition presenting a danger to himself or others, and

(c) it is necessary to confine the child in order to protect the survival, security or development of the child,

it may make a compulsory care order in respect of the child for a period of not more than 30 days.

(3) The Minister shall specify the compulsory care institution in which a child shall be confined pursuant to a compulsory care order.

(4) A compulsory care order is sufficient authority for any person to confine the child in a compulsory care institution for the period stated in the order or the period of the Minister's guardianship, whichever is the shorter.

(5) If the Court makes a compulsory care order it shall

(a) inform the child of the reason for doing so, and

(b) provide the child and his guardian and his lawyer, if present at the hearing, with a copy of the order and a written statement that includes

(i) the authority and reason for the confinement,

(ii) the period of the confinement and the date on which it terminates,

(iii) that the order may be reviewed or appealed on the application of the child, his guardian or the Minister,

(iv) that the child may obtain a copy of the form prescribed for making an application for a review from the person in charge of the compulsory care institution,

(v) that the child may be represented by a lawyer at any application to the Court, and

(vi) the address and telephone number of the nearest office of the Legal Aid Society.

(6) A compulsory care order may be renewed in accordance with this section on the application of the Minister in the prescribed form for a period of not more than 60 days in the case of the first renewal or 90 days in the case of any subsequent renewal or the period of the Minister's guardianship, whichever is the shorter.

Compulsory care institution

41(1) A compulsory care certificate or order is sufficient authority for any peace officer or child welfare worker to apprehend and convey the child named in it to the compulsory care institution specified by the Minister and to detain the child while he is being conveyed to the compulsory care institution.

(2) On a compulsory care certificate or order being issued, the person in charge of the compulsory care institution specified by the Minister shall admit the child to the compulsory care institution if the child is not already resident in that institution and shall be responsible for ensuring that the child is provided with

(a) the diagnostic and treatment services that the child is in need of and the staff of the compulsory care institution has the resources to provide, and

(b) the level of security that is reasonably required for the confinement of the child in accordance with the regulations.

Transfer

42 When the child named in a compulsory care certificate or order is in a compulsory care institution, the Minister may transfer the child to another compulsory care institution and the certificate or order is sufficient authority for any peace officer or child welfare worker or any member of the staff of the compulsory care institution to detain the child while he is being transferred.

Leave of absence

43(1) During the term of a compulsory care certificate or order, the Minister may grant the child a leave of absence from the compulsory care institution for medical, humanitarian or rehabilitative reasons on any terms and conditions that the Minister considers necessary.

(2) When a child who is the subject of a compulsory care certificate or order

(a) leaves a compulsory care institution when a leave of absence has not been granted, or

(b) leaves a compulsory care institution pursuant to a leave of absence but fails to return within the time prescribed,

the Minister may order any peace officer to return the child to a compulsory care institution.

(3) On receipt of an order pursuant to subsection (2), every peace officer is empowered to apprehend without a warrant the child named

in the order and convey him to the nearest compulsory care institution and to detain the child while he is being conveyed to the compulsory care institution.

(4) If a child who is the subject of a compulsory care certificate or order

(a) leaves a compulsory care institution when a leave of absence has not been granted, or

(b) leaves a compulsory care institution pursuant to a leave of absence but fails to return within the time prescribed,

the Minister may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace, for a warrant authorizing a peace officer, the Minister or any person authorized by the Minister to enter any premises, using force if necessary, for the purpose of searching for, apprehending and conveying the child to any compulsory care institution and detaining the child while he is being conveyed to a compulsory care institution.

Review

44(1) A child with respect to whom a compulsory care order has been made or his guardian may apply to the Court in the prescribed form for a review of the order.

(2) An application for a review may be made only

(a) once during the period of the order, and

(b) once during the period of a renewal of the order.

(3) The hearing of a review shall be held not more than 14 days after the application is filed with the Court or within any further period the Court directs.

(4) The clerk of the Court shall notify the Minister, if he is not the applicant, of the application.

(5) The Minister shall send a notice of the date, time and place of the hearing of the review by the Court by registered mail or by any other method approved by the Court to

(a) the child,

(b) a guardian of the child other than the Minister, and

(c) the person in charge of the compulsory care institution in which the child is confined

not less than 5 days before the date fixed for the hearing.

Order of Court
on review

45(1) After hearing an application for a review of a compulsory care order, the Court may make an order pursuant to section 40 confirming, varying or terminating the compulsory care order.

(2) No order may be made under subsection (1) extending the period of the compulsory care order reviewed.

(3) The Minister shall provide the child, his guardian and his lawyer, if present at the hearing, and the person in charge of the compulsory care institution in which the child is confined with a copy of the order made under subsection (1).

PART 5
PRIVATE GUARDIANSHIP

- Private guardianship **46(1)** Any adult person who has had the continuous custody of a child for a period of more than 6 months may apply to the Court in the prescribed form for a private guardianship order in respect of the child if the child or the applicant resides in Alberta.
- (2) The Court may waive the requirement in subsection (1) that the child or the applicant reside in Alberta.
- (3) No application shall be made for a private guardianship order in respect of a child who is the subject of a permanent guardianship order until all relevant appeal periods in respect of that order have expired.
- Notice **47(1)** The applicant shall serve a copy of the application at least 30 days before the date the application is to be heard on
- (a) the guardian of the child,
 - (b) the child, if the child is 12 years of age or over, and
 - (c) the Minister, if he is not the guardian.
- (2) The Court may
- (a) if it considers it appropriate to do so
 - (i) order that service of the application be made substitutionally or ex juris, or
 - (ii) shorten the period of service required under subsection (1), or
 - (b) dispense with service on the child if the Court, for reasons that appear to it to be sufficient, considers it necessary or desirable to do so.
- Report **48(1)** An application for a private guardianship order shall be accompanied by a report in the prescribed form prepared by a qualified person
- (a) on the suitability of the applicant as a guardian,
 - (b) that the applicant is capable of and willing to assume the responsibility of a guardian towards the child, and
 - (c) that it is in the best interests of the child that the applicant be appointed as a guardian of the child.
- (2) If the child is the subject of a permanent guardianship order or guardianship agreement, the report required under subsection (1) shall be prepared by the Minister.
- (3) If the child is not the subject of a permanent guardianship order or guardianship agreement, the applicant shall serve a copy of the report required under subsection (1) on the Minister at the time of service of the application.

	<p>(4) On being served with a copy of an application for a private guardianship order, the Minister may conduct an investigation with respect to the proposed guardianship and may make representations to the Court at the time the application is heard.</p> <p>(5) If the Minister intends to make representations to the Court under subsection (4), he shall notify the Court and the applicant not less than 48 hours before the application is to be heard.</p>
Consent to guardianship	<p>49(1) A private guardianship order shall not be made without the consent in the prescribed form of</p> <p>(a) the guardian of the child, and</p> <p>(b) the child, if the child is 12 years of age or over.</p> <p>(2) Notwithstanding subsection (1), the Court may make an order dispensing with the consent of</p> <p>(a) a guardian of the child other than the Minister, or</p> <p>(b) the child</p> <p>if the Court is satisfied that it is in the best interests of the child to do so.</p> <p>(3) A consent to guardianship executed in any province in a form prescribed for consents in that province is as good and sufficient as if it had been executed in the form prescribed under this Act.</p>
Effect of order	<p>50(1) Notwithstanding Part 7 of the <i>Domestic Relations Act</i>, for all purposes when a private guardianship order is made the applicant is a guardian of the child.</p> <p>(2) Notwithstanding Part 7 of the <i>Domestic Relations Act</i>, the Court may make a further order terminating the guardianship of any other guardian of the child if</p> <p>(a) the Court is satisfied that the other guardian of the child consents to the termination, or</p> <p>(b) except if the Minister is a guardian of the child, the Court, for reasons that appear to it to be sufficient, considers it necessary or desirable to do so.</p>

PART 6
ADOPTION

Interpretation	<p>51(1) In this Part, “Court” means the Court of Queen’s Bench.</p> <p>(2) Notwithstanding section 75, an appeal from an order of the Court under this Part</p> <p>(a) may be made only to the Court of Appeal, and</p> <p>(b) may be made not more than 30 days after the date on which the order is made.</p>
Application for adoption order	<p>52(1) Any adult person may apply to the Court in the prescribed form for an adoption order in respect of a child if the child or the applicant resides in Alberta.</p>

(2) The Court may waive the requirement in subsection (1) that the child or the applicant reside in Alberta.

(3) No application shall be made for an adoption order in respect of a child who is the subject of a permanent guardianship order until all relevant appeal periods in respect of that order have expired.

Certificate
of Minister

53(1) If a child is the subject of a permanent guardianship order or guardianship agreement and the Minister places the child with an adult person with a view to the adoption of the child by that person, the Minister shall provide that person with a certificate including

(a) the number given to the registration of the birth of the child and the child's given name, if any,

(b) a statement that the Minister is the guardian of the child pursuant to a permanent guardianship order or guardianship agreement, and

(c) the Minister's consent to the adoption of the child by that adult.

(2) The certificate of the Minister is sufficient evidence without further proof that the Minister is the guardian of the child and consents to the adoption.

Service

54(1) The applicant shall serve a copy of the application at least 30 days before the date the application is to be heard on

(a) the guardian of the child,

(b) the child, if the child is 12 years of age or over, and

(c) the Minister, if he is not the guardian.

(2) The Court may

(a) if it considers it appropriate to do so

(i) order that service of the application be made substitutionally or ex juris, or

(ii) shorten the period of service required under subsection (1),

or

(b) dispense with service on the child if the Court, for reasons that appear to it to be sufficient, considers it necessary or desirable to do so.

Report

55(1) An application for an adoption order shall be accompanied by a report in the prescribed form prepared by a qualified person

(a) on the suitability of the applicant as an adoptive parent,

(b) that the applicant is capable of and willing to assume the responsibility of a parent towards the child, and

(c) that it is in the best interests of the child that the child be adopted by the applicant.

(2) If the child is the subject of a permanent guardianship order or guardianship agreement, the report required under subsection (1) shall be prepared by the Minister.

(3) If the child is not the subject of a permanent guardianship order or guardianship agreement, the applicant shall serve a copy of the report required under subsection (1) on the Minister at the time of service of the application.

(4) On being served with a copy of an application for an adoption order, the Minister may conduct an investigation with respect to the proposed adoption and may make representations to the Court at the time the application is heard.

(5) If the Minister intends to make representations to the Court under subsection (4), he shall notify the Court and the applicant not less than 48 hours before the application is to be heard.

Consent to adoption

56(1) An adoption order shall not be made without the consent in the prescribed form of

- (a) the guardian of the child, and
- (b) the child, if the child is 12 years of age or over.

(2) Notwithstanding subsection (1), the Court may make an order dispensing with the consent of

- (a) the guardian of the child other than the Minister, or
- (b) the child

if the Court, for reasons that appear to it to be sufficient, considers it necessary or desirable to do so.

(3) A consent to an adoption executed in any province in a form prescribed for consents in that province is as good and sufficient as if it had been executed in the form prescribed under this Act.

Proceedings in private

57 Unless the Court otherwise directs, all proceedings relating to the adoption of a child shall be heard in private.

Minister's application

58 If an application for an adoption order in respect of a child who is the subject of a permanent guardianship order or guardianship agreement is not heard by the Court within 12 months after the application is filed with the Court, the Minister may

- (a) proceed with the application on behalf of the applicant, or
- (b) apply to the Court for an order terminating the proceedings.

Adoption order

59(1) If the Court is satisfied that

- (a) the applicant is capable of and willing to assume the responsibility of a parent toward the child, and
- (b) it is in the best interests of the child that the child be adopted by the applicant,

the Court may order the adoption of the child by the applicant.

(2) An adoption order shall be in the prescribed form and shall not show the surname of the child prior to the adoption, but shall identify the child by reference to his given name prior to the adoption and the number given to the registration of his birth prior to the adoption, if that number is available.

(3) If the adopting parent is a widow or widower and the deceased spouse was a party to the original application for the adoption order, the Court may, on the request of the adopting parent and with the consent of the child, if the child is 12 years of age or over, name both the applicant and the deceased spouse as the adopting parents of the child.

(4) On the request of the adopting parent and with the consent of the child, if the child is 12 years of age or over, the Court may change the given name of the child in the adoption order.

Effect of order

60(1) Except when a person adopts the child of his spouse, for all purposes when an adoption order is made the adopted child is the child of the adopting parent and the adopting parent is the parent and guardian of the adopted child as if the child had been born to that parent in lawful wedlock.

(2) Except when a person adopts the child of his spouse, for all purposes when an adoption order is made the adopted child ceases to be the child of his existing parents, whether his biological parents or his adopting parents under a previous adoption, and his existing parents cease to be his parents and guardians.

(3) If a person adopts the child of his spouse, for all purposes on adoption

(a) the child is the child of the adopting parent and his spouse,

(b) the adopting parent and his spouse are the parents and guardians of the child as if the child had been born to them in lawful wedlock, and

(c) the child ceases to be the child of his existing parents, whether his biological parents or his adopting parents under a previous adoption, and his existing parents cease to be the child's parents and guardians.

(4) A reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person in any will, conveyance or other document, whenever made, shall, unless the contrary is expressed, be deemed to include an adopted child.

(5) The relationship to one another of all persons, whether the adopted child, the adopting parent, the biological parent or any other person, shall be determined in accordance with subsections (1), (2), (3) and (4).

(6) Subsections (2), (3) and (5) do not apply for the purposes of the laws relating to incest and to the prohibited degrees of marriage to remove any persons from a relationship in consanguinity that, but for this section, would have existed between them.

(7) This section

(a) applies and shall be deemed always to have applied with respect to an adoption made under any legislation heretofore in force, and

(b) is binding on the Crown for the purpose of construing this Act and the rights of succession affecting adopted children,

but nothing in this section affects an interest in property that has vested in a person before the making of an adoption order.

Indian child **61** If a person adopts a child who is an Indian, that person shall endeavour to

(a) take any measures on behalf of the child necessary for the child to exercise any rights he may have as an Indian, and

(b) inform the child of his status as an Indian before the child reaches the age of majority.

Voluntary disclosure **62(1)** If an adoption order in respect of a child is made under this Act or any predecessor to this Act, an application for the disclosure of the identity of the child or his mother or father may be made to the Minister at any time by

(a) the adopted child, if he has reached the age of 18 years,

(b) the mother of the child at the time of the birth of the child, or

(c) the father or putative father of the child at the time of the birth of the child.

(2) On receipt of an application, the Minister shall enter the name of the applicant in a record kept for the purpose and shall examine the record to determine

(a) when the applicant is an adopted child, if the name of the mother or father of the child is entered, or

(b) when the applicant is the mother or father of an adopted child, if the name of the child is entered.

(3) Notwithstanding subsection (2), the Minister shall not enter in the record the name of a putative father who applies under subsection (1) unless

(a) the mother of the child acknowledges the applicant as the father of the child at any time,

(b) a Court, whether Provincial Court or Court of Queen's Bench, has declared that the applicant is the father of the child, or

(c) the Minister is satisfied that there is clear and sufficient evidence that the applicant is the father of the child.

(4) Notwithstanding section 63, if the applicant is an adopted child and the Minister determines that

(a) the name of the applicant's mother is entered in the record, the Minister shall disclose the identity of each to the other, or

(b) the name of the applicant's father is entered in the record, the Minister shall disclose the identity of each to the other.

(5) Notwithstanding section 63, if the applicant is the mother of the adopted child and the Minister determines that the name of the child is entered in the record, the Minister shall disclose the identity of the child to the applicant and of the applicant to the child.

(6) Notwithstanding section 63, if

(a) the applicant is the father of the adopted child,

(b) his name is capable of being entered in the record, and

(c) the Minister determines that the name of the child is entered in the record,

the Minister shall disclose the identity of the child to the applicant and of the applicant to the child.

(7) Notwithstanding subsections (4), (5) and (6), if, after reasonable effort, the Minister cannot locate a person whose name is entered in the record, the Minister shall provide the information only to the person that he can locate.

Limited
distribution
of orders

63(1) Not more than 35 days after an adoption order is made, the clerk of the Court shall send a certified copy of the order to

(a) the adopting parent,

(b) the Minister,

(c) the Public Trustee,

(d) the Director of Vital Statistics, together with any other information that the Director requires to enable him to carry out the requirements of the *Vital Statistics Act*, and, if the adopted child was born outside Alberta, an additional certified copy of the adoption order, and

(e) if the adopted child is an Indian, to the Registrar under the *Indian Act (Canada)*.

(2) If a child who is an Indian is adopted under this Act or any predecessor to this Act, the Director of Vital Statistics, on the request of the child or his guardian, shall provide the Registrar under the *Indian Act (Canada)* with a copy of the original birth certificate of the child.

(3) The clerk of the Court shall seal all documents in the hands of the Court that relate to an adoption and those documents are not available for inspection by any person except on order of the Court or with the consent in writing of the Minister.

(4) The Minister shall seal all documents in his hands that relate to an adoption and those documents are not available for inspection by any person except on order of the Court or with the consent in writing of the Minister.

Financial
assistance

64(1) The Minister may provide financial assistance in accordance with the regulations to any person who adopts a child who was at

the time of the adoption the subject of a permanent guardianship order or guardianship agreement if the Minister is satisfied that the adoption of the child is desirable but would place an undue burden on the financial resources of the adopting parents.

(2) If financial assistance has been provided under subsection (1), the Minister may review the financial assistance from time to time and may vary or terminate the financial assistance in accordance with the regulations.

Setting aside

65(1) Any person may apply to the Court for an order setting aside an adoption order.

(2) No application to set aside an adoption order shall be commenced after the expiration of 1 year from the date of the order except on the ground that the order was procured by fraud and then it may be set aside only if it is in the best interests of the adopted child to do so.

(3) Notice of an application to set aside the order shall be served by the applicant on

(a) the Minister,

(b) the adoptive parent, if he is not the applicant,

(c) the adopted child, if he is 12 years of age or over and is not the applicant,

(d) the Public Trustee, and

(e) any other person who in the opinion of the Court should be served.

(4) When an order of adoption is set aside, from the date of the setting aside of the order

(a) the child ceases to be the child of the adopting parent,

(b) the adopting parent ceases to be the parent and guardian of the child,

(c) the relationship to one another of the child and all persons is re-established as it was immediately before the adoption order was made, and

(d) unless the Court orders otherwise, guardianship of the child returns to the person who was his guardian immediately before the adoption order was made.

Foreign orders

66 An adoption effected according to the law of any other jurisdiction has the same effect in Alberta as an adoption under this Act.

Payment

67(1) A person who gives or receives or agrees to give or receive any payment or reward, whether directly or indirectly, to procure or assist in procuring a child for the purposes of adoption is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term not exceeding 6 months.

(2) Subsection (1) does not apply to the payment of the fees and expenses of a qualified person who prepares a report pursuant to this

Part or to the payment of fees and disbursements to a lawyer in connection with an adoption or proposed adoption.

(3) No prosecution shall be commenced under this section except on the written authority of the Minister.

**PART 7
GENERAL AND APPEALS**

Evidence

68(1) In a proceeding before it under this Act, the Court may

- (a) compel the attendance of any person and require him to give evidence on oath,
- (b) require the production by any person of any documents or things, and
- (c) exercise the powers that are conferred for those purposes on a justice of the peace under Part XIX of the *Criminal Code* (Canada).

(2) The record of the evidence given at any hearing, any documents and exhibits received in evidence at any hearing and an order of the Court are admissible in evidence in a hearing under this Act.

(3) The evidence of each witness in a Court proceeding under this Act shall be taken under oath and forms part of the record.

(4) Notwithstanding subsection (3), the Court, if it considers it proper to do so and it is satisfied that no better form of evidence is available, may

- (a) accept evidence by affidavit, or
- (b) accept hearsay evidence.

Confidential evidence

69(1) Notwithstanding Part XIX of the *Criminal Code* (Canada), the Court may issue a subpoena requiring

- (a) the Commission under the *Alcohol and Drug Abuse Act*,
- (b) a board under the *Hospitals Act*, or
- (c) a board under the *Mental Health Act*

to produce any documents, records or other information it has in its possession or under its control that may relate to the proceedings before the Court with respect to a child.

(2) The person or a person authorized by the Commission, board or Minister named in a subpoena shall attend at the time and place stated in the subpoena with any documents, records or other information that may relate to the proceedings before the Court and shall remain in attendance throughout the proceedings unless he is excused by the Court.

(3) If as the result of the issuing of a subpoena under subsection (1),

- (a) the Commission under the *Alcohol and Drug Abuse Act* or an employee of the Commission,

(b) a board under the *Hospitals Act*, an employee of a board, a physician, the Minister of Hospitals and Medical Care or a person authorized by that Minister, or

(c) a board under the *Mental Health Act*, an employee of a board, a physician, the Minister of Hospitals and Medical Care or a person authorized by that Minister

is required to produce any documents, records or other information that is otherwise confidential under the *Alcohol and Drug Abuse Act*, the *Hospitals Act* or the *Mental Health Act*, as the case may be, the documents, records or other information shall be dealt with in accordance with this section.

(4) The person, Commission or board named in the subpoena shall permit the Minister and a guardian of the child or a lawyer representing either of them to examine the documents, records or other information before the time stated in the subpoena.

(5) The Minister or a guardian of the child may apply to the Court at the time stated in the subpoena or at any other time during the proceedings before the Court to have all or part of the documents, records or other information admitted into evidence.

(6) Notwithstanding any other section in this Act, an application under subsection (5) and any part of the proceedings relating to the documents, records or other information shall be heard in camera.

(7) At the conclusion of the proceedings before the Court the documents, records or other information or part of them introduced in evidence shall be sealed by the clerk of the Court and that part of the record of the proceedings relating to the documents, records or other information shall not be made available to the public.

(8) If the Court makes an order at any time during the proceedings before it and that order is appealed to the Court of Queen's Bench, that part of the hearing before the Court of Queen's Bench that relates to the documents, records or other information shall be heard in camera.

Age of child **70** In any proceedings under this Act

(a) the testimony of a parent of the child as to the age of the child,

(b) a birth or baptismal certificate or a copy of it purporting to be certified by the Director of Vital Statistics, or

(c) in the absence of the testimony or the certificate or copy referred to in clauses (a) and (b), any other information relating to the age of the child that the Court considers reliable, including inferences the Court may draw from the child's appearance or from statements made by the child in direct or cross-examination,

is sufficient evidence as to the age of the child.

Right to appear
before Court

71(1) In any proceedings before the Court under Part 3 or 4,

	<p>(a) a foster parent or any other person who has had continuous care and custody of the child for a period of not less than 6 months, and</p> <p>(b) any other person, with the consent of the Court,</p> <p>may appear and make representations to the Court.</p> <p>(2) Notwithstanding subsection (1), the only parties to a proceeding under Part 3 or 4 or an appeal from those proceedings are the child, the child's guardian and the Minister.</p>
Legal representation	<p>72(1) If an application is made for a supervision order or a temporary or permanent guardianship order or a child is the subject of a supervision order or a temporary or permanent guardianship order and the child is not represented by a lawyer in a proceeding, the Court may direct that the child be represented by a lawyer if</p> <p>(a) the child, the guardian of the child or the Minister requests the Court to do so, and</p> <p>(b) the Court is satisfied that the interests or views of the child would not be otherwise adequately represented.</p> <p>(2) If the Court directs that a child be represented by a lawyer pursuant to subsection (1)</p> <p>(a) it shall refer the child to the Legal Aid Society of Alberta, or</p> <p>(b) if the Court is satisfied that there is no legal aid assistance available to the child, it shall refer the matter to the Attorney General.</p> <p>(3) If a referral is made under subsection (2)(b), the Attorney General shall appoint or cause to be appointed a lawyer to represent the child.</p>
Costs of lawyer	<p>73 If a referral is made under section 72(2)(b), the Court may make an order directing that the costs of the lawyer be paid by the child, the guardian of the child or the Minister or apportioned among all or any of them, having regard to the means of the child and the guardian.</p>
Enforcement of maintenance	<p>74 If the Court makes an order under this Act directing that financial contribution to the maintenance of a child be made by a person, the clerk of the Court shall, on the Minister filing an affidavit of default in the prescribed form, issue a summons to the person who is in default and the order may be enforced by the Minister under Part 4, except section 56(1), of the <i>Maintenance and Recovery Act</i>.</p>
Appeal to Court of Queen's Bench	<p>75(1) An order of the Court made under this Act may be appealed to the Court of Queen's Bench not more than 30 days after the date on which the order is made or renewed by</p> <p>(a) a guardian of the child other than the Minister,</p> <p>(b) the child, if he is 12 years of age or over,</p> <p>(c) the child, if he is the subject of a compulsory care order, or</p> <p>(d) the Minister.</p>

(2) If the Court refuses to make an order under this Act, the applicant may appeal the refusal to the Court of Queen's Bench not more than 30 days after the date of the refusal.

Stay of order

76(1) Any person who is entitled to appeal pursuant to section 75 may apply to the Court at the time an order is made by the Court for an order staying the execution of the order of the Court for a period of 5 days and, if a notice of appeal is filed during that period, pending the hearing of the appeal.

(2) If a notice of appeal is filed pursuant to section 77, the appellant may apply to the Court of Queen's Bench for an order staying the execution of the order appealed pending the hearing of the appeal.

Court of
Queen's Bench

77(1) An appeal to the Court of Queen's Bench under this Act shall be commenced by

(a) filing a notice of appeal setting forth the grounds of the appeal with the clerk of the Court, and

(b) filing a copy of the notice of appeal in the Court of Queen's Bench.

(2) The appellant shall serve the notice of appeal on

(a) the guardian of the child,

(b) the child, if he is 12 years of age or over, and

(c) the Minister.

(3) On a notice of appeal being filed with the clerk of the Court, the clerk shall forward to the Clerk of the Court of Queen's Bench the record of the evidence taken and all other material in the possession of the Court that pertains to the matter being appealed not more than 7 days from the time the notice of appeal is filed with the clerk of the Court.

(4) On subsections (2) and (3) being complied with, the Court of Queen's Bench shall set down the appeal for hearing at a regular sitting of that Court.

(5) Unless the Court of Queen's Bench otherwise directs, the appeal shall come on for a hearing at the first sitting of the Court of Queen's Bench to be held after the filing of the notice of appeal in the Court of Queen's Bench.

(6) On the hearing, the Court of Queen's Bench shall determine the appeal on the material filed with or forwarded to the Court of Queen's Bench and such further evidence as the Court of Queen's Bench may require or permit to be given.

(7) The Court of Queen's Bench may

(a) confirm the order or refusal,

(b) revoke or vary the order made, or

(c) make any order the Court could have made in the hearing before it.

- Appeal Panel **78(1)** There is hereby established an Appeal Panel consisting of not fewer than 3 or more than 7 persons appointed by the Minister.
- (2) The Appeal Panel shall hear all appeals made pursuant to section 80.
- (3) The Minister shall
- (a) designate the chairman, vice-chairman and secretary of the Appeal Panel,
 - (b) prescribe the number of members of the Appeal Panel that constitutes a quorum, and
 - (c) authorize and provide for the payment of the expenses of the members of the Appeal Panel who are not employees of the Government.

- Power of the Appeal Panel **79(1)** The Appeal Panel may, subject to this Act and the regulations, confirm, reverse or vary the decision of the Minister appealed from and the decision of the Appeal Panel is final.
- (2) The Appeal Panel may award costs against the Crown to a successful applicant in accordance with the regulations.
- (3) The *Administrative Procedures Act* applies to the proceedings of the Appeal Panel.
- (4) An appellant may be represented at the hearing of the appeal by a lawyer or by any other person prescribed by the regulations.

- Administrative appeals **80(1)** Any
- (a) child,
 - (b) guardian of a child, or
 - (c) foster parent or other person who has had the continuous care and custody of the child for a period of more than 6 months
- who is affected by a decision of the Minister may appeal that decision in accordance with this section.
- (2) An appeal may be made from a decision of the Minister respecting the following:
- (a) the removal from or placement in a foster home, an adoptive home or any other facility of a child who is the subject of a temporary or permanent guardianship order or guardianship agreement;
 - (b) the permitting or refusal to permit a parent or other member of the child's family to visit a child who is the subject of a permanent guardianship order or guardianship agreement;
 - (c) the disclosure of or refusal to disclose information in the possession of the Minister that relates to the appellant except information to which section 63 applies;
 - (d) the provision of or refusal to provide any support services to a child 16 years of age or over by entering into a support agreement or custody agreement;

(e) any matter prescribed in the regulations.

(3) A notice of appeal in the prescribed form shall be served on the Minister not more than 30 days after the date on which the appellant receives notice of the decision appealed.

(4) A person who has applied to the Minister to become a foster parent or to have a child who is the subject of a permanent guardianship order or guardianship agreement placed in his home for the purposes of adopting that child and whose application is refused may appeal that decision.

Delegation

81 The Minister may delegate any of the powers or duties conferred or imposed on him under this Act, except the power to make regulations, or by any court, including the power to subdelegate, to

(a) a person employed in the administration of this Act,

(b) a foster parent in respect of a particular child,

(c) any other person who is providing care to a child in respect of that child, or

(d) any person or government for any purpose in connection with the administration of this Act.

Agreements

82 The Minister may enter into an agreement with any person for the purpose of that person providing support services to a child under this Act.

Minor guardian

83(1) Any agreement entered into under this Act by a guardian under 18 years of age is as valid as if that person had attained the age of 18.

(2) The provisions of this Act are applicable to a parent or guardian even if that parent or guardian is under the age of 18 years notwithstanding that he did not have a guardian ad litem or a next friend, but the Court may appoint the Public Trustee or any other person to safeguard the parent's or guardian's interest in any proceeding before the Court.

Confidentiality

84(1) The Minister and any person employed or assisting in the administration of this Act shall preserve secrecy with respect to the name and any other identifying information of a person that comes to his attention under this Act and shall not disclose or communicate that information to any other person except as otherwise provided in this section.

(2) Subject to section 63, the Minister or any person employed or assisting in the administration of this Act may disclose or communicate any information referred to in subsection (1) to the following:

(a) the guardian, parent or foster parent of the child to whom the information relates;

(b) the child to whom the information relates if the child is 16 years of age or over;

(c) a physician, certified psychologist or registered social worker who is responsible for any care or treatment being provided to

the child to whom the information relates or for any assessment in respect of that child;

(d) a teacher as defined in the *Teaching Profession Act* if the child to whom the information relates is his pupil;

(e) the board of an approved hospital or health unit that is responsible for providing services to the child to whom the information relates;

(f) any person employed or engaged by the Minister;

(g) any person assisting the Minister in the administration of this Act;

(h) any person employed in the administration of child protection legislation in another province;

(i) any person with the consent in writing of the Minister.

(3) Notwithstanding subsection (2), no information shall be disclosed or communicated pursuant to this section without the consent in writing of the Minister if that information was provided by legal counsel acting on behalf of the Crown in right of Alberta.

(4) Notwithstanding subsection (2), the name of a person who reports to the Minister pursuant to section 3 shall not be disclosed or communicated to any person without the consent in writing of the Minister.

(5) No liability attaches to the Minister or any other person who discloses or communicates information in accordance with this section if the disclosure or communication is made in the administration of this Act or for the protection of the child.

Maintenance by
the Minister

85(1) The Minister shall pay

(a) the costs incurred for the maintenance of a child who is in the care or custody of the Minister or under the guardianship of the Minister, and

(b) the costs of any assessment ordered to be made under section 26.

(2) Subsection (1) does not affect the liability of the parents of a child to provide maintenance for the child.

(3) The Minister may recover the costs he incurs for the maintenance of a child in accordance with this Act.

Offences

86 Any person who

(a) wilfully causes a child to be in need of protective services, or

(b) contravenes any provision of this Act

is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.

Regulations

87(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing the standards to be met in providing protective services including the qualifications of persons to be employed in providing those services;
 - (b) prescribing the rules to be followed in a proceeding before the Court under this Act;
 - (c) prescribing the forms to be used in any application made to the Court under this Act;
 - (d) prescribing the professions to which section 3(4) applies;
 - (e) respecting costs that may be awarded against the Crown under section 79.
- (2) The Minister may make regulations
- (a) prescribing the forms to be used under this Act other than the forms prescribed under subsection (1);
 - (b) respecting the amount, nature and conditions of support services provided under section 6;
 - (c) respecting the rates payable by the Minister for the provision of any support services under this Act;
 - (d) prescribing institutions as compulsory care institutions;
 - (e) respecting the level of security required for the confinement of a child in a compulsory care institution;
 - (f) prescribing qualified persons for the purposes of Parts 5 and 6;
 - (g) respecting the amount, nature, conditions and reviews of any financial assistance granted under section 64;
 - (h) prescribing a schedule of fees that will be paid by the Minister to lawyers appointed under section 72;
 - (i) prescribing matters that may be the subject of an appeal to the Appeal Panel;
 - (j) prescribing those persons who may represent an appellant at a hearing before the Appeal Panel.

PART 8

TRANSITIONAL AND CONSEQUENTIAL

transitional

88(1) *In this Part "former Act" means the Child Welfare Act, being chapter C-8 of the Revised Statutes of Alberta 1980.*

(2) If a child is a permanent ward of the Crown under the former Act, he is deemed to be the subject of a permanent guardianship order under this Act.

(3) If a child is a temporary ward of the Crown under the former Act, the former Act applies to his wardship as if this Act had not come into force.

(4) *If a child is the subject of an order of the Court returning the child to his parent or guardian under the inspection and supervision of the Director of Child Welfare, a child welfare worker or a person designated by the Director under section 15 of the former Act, the former Act applies to the order during the term of the order as if this Act had not come into force.*

(5) *If there is an agreement between the Director of Child Welfare and the parent, guardian or custodian of a child under section 28 of the former Act, the former Act applies to the agreement during the period of the agreement as if this Act had not come into force.*

(6) *If a child is a temporary ward of the Crown under the former Act and the wardship terminates after the coming into force of this Act, the wardship may be renewed as if it were a temporary guardianship order under this Act but the period of wardship shall not be included in computing the cumulative maximum period of the temporary guardianship order.*

(7) *If there is an agreement between the Director of Child Welfare and the parent, guardian or custodian of the child under section 28 of the former Act, the agreement may be renewed under this Act as if it were a custody agreement but the term of the agreement under the former Act shall not be included in computing the cumulative maximum period of the custody agreement.*

(8) *Any application or proceeding that was commenced under the former Act shall be concluded under the former Act as if this Act had not come into force.*

Amends
RSA 1980 cA-38

89 *The Alcoholism and Drug Abuse Act is amended by adding the following after section 8(6):*

(7) *If the Provincial Court issues a subpoena pursuant to the Child Welfare Act, the Commission or an employee of the Commission shall release, in accordance with that Act, any information, file, record, document or paper in respect of the child to whom the proceedings before the Provincial Court relate or with respect to a guardian of that child.*

Amends
RSA 1980 cF-6

90 *The Fatality Inquiries Act is amended in section 12(a) by striking out “correctional institution (as defined in Part 2 of the Child Welfare Act)” and substituting “compulsory care institution (as defined in the Child Welfare Act)”.*

Amends
RSA 1980 cH-11

91 *The Hospitals Act is amended by adding the following after section 40(5):*

(5.1) *Notwithstanding subsection (3) or any other law, if the Provincial Court issues a subpoena pursuant to the Child Welfare Act, a board, an employee of a board, a physician, the Minister or a person authorized by the Minister shall release, in accordance with that Act, any diagnosis, record or information in respect of the child to whom the proceedings before the Provincial Court relate or with respect to a guardian of that child.*

Amends
RSA 1980 cM-2

92 *The Maintenance and Recovery Act is amended*

(a) in section 7 by adding “or of the Child Welfare Act” after “Part 2, 3 or 4” wherever it occurs;

(b) *by repealing section 8(a) and substituting the following:*

(a) “agreement” means an agreement entered into pursuant to section 10 or to Part 2 of the *Child Welfare Act*, whether or not varied by an order;

(c) *by repealing section 8(c) and substituting the following:*

(c) “order” means an order made pursuant to this Part or to Part 3 of the *Child Welfare Act*, whether or not varied by a further order under this Part;

(d) *in section 21(1)(d) by striking out “made a temporary or permanent ward of the Crown or by instrument of surrender the mother surrenders custody of a child to the Director of Child Welfare for the purposes of adoption” and substituting “under the guardianship of the Minister pursuant to the Child Welfare Act”;*

(e) *in section 54 by striking out “, or Part 4 of the Child Welfare Act, 1966” wherever it occurs.*

Amends
RSA 1980 cM-6

93 *The Marriage Act is amended by repealing section 18(2)(d) and substituting the following:*

(d) if the applicant is under the guardianship of the Minister pursuant to the *Child Welfare Act*, the consent may be given by the Minister.

Amends
RSA 1980 cM-13

94 *The Mental Health Act is amended*

(a) *in section 1(j) by striking out “a ward of the Crown under” and substituting “under the guardianship of the Minister pursuant to”;*

(b) *by adding the following after section 37(6):*

(6.1) Notwithstanding subsection (4) or any other law, if the Provincial Court issues a subpoena pursuant to the *Child Welfare Act*, a Board, an employee of the Board, a physician, the Minister or a person authorized by the Minister shall release, in accordance with that Act, any diagnosis, record or information in respect of the child to whom the proceedings before the Provincial Court relate or with respect to a guardian of that child.

Amends
RSA 1980 cP-20

95 *The Provincial Court Act is amended*

(a) *by repealing section 22(a);*

(b) *by repealing section 22(c) and substituting the following:*

(c) “child in need of protective services” means a child in need of protective services under the *Child Welfare Act*.

(c) *in section 27*

(i) *by striking out “neglected children” and substituting “a child in need of protective services”;*

(ii) *by striking out “Child Welfare Commission” wherever it occurs and substituting “Minister of Social Services and Community Health”.*

Amends
RSA 1980 cP-36 **96** *The Public Trustee Act is amended in section 4(f) by striking out “made a ward of the Crown under” and substituting “under the guardianship of the Minister pursuant to”.*

Amends
RSA 1980 cS-3 **97** *The School Act is amended by repealing section 1(i)(ii) and substituting the following:*

(ii) the Minister of Social Services and Community Health with respect to a child who is under the guardianship of that Minister pursuant to the *Child Welfare Act*, and

Amends
RSA 1980 cS-14 **98** *The Social Care Facilities Licensing Act is amended by repealing section 1(f)(ii) and substituting the following:*

(ii) a building or part of a building, other than a home maintained by a person to whom the children living in that home are related by blood or marriage, in which care, supervision or lodging is provided for 4 or more children under the age of 18 years, but does not include a place of accommodation designated by the Minister as not constituting a child caring institution, or

Amends
RSA 1980 cS-15 **99** *The Social Care Facilities Review Committee Act is amended by repealing section 1(b)(ii) and substituting the following:*

(ii) a building or part of a building, other than a home maintained by a person to whom the children living in that home are related by blood or marriage, in which care, supervision or lodging is provided for 4 or more children under the age of 18 years, but does not include a place of accommodation designated by the Minister as not constituting a child caring institution;

Amends
RSA 1980 cS-16 **100** *The Social Development Act is amended in section 5(1) by adding “or the *Child Welfare Act*” after “of this Act”.*

Amends
RSA 1980 cT-8 **101** *The Treatment Services Act is amended by repealing section 2(1)(b) and substituting the following:*

(b) support as a child under the guardianship of the Minister pursuant to the *Child Welfare Act*,

Amends
RSA 1980 cV-4 **102** *The Vital Statistics Act is amended in section 11(b) by striking out “section 57(1) and (2)” and substituting “section 60”.*

General
amendment **103** *In the following enactments, “Director of Child Welfare” is struck out wherever it occurs and “Minister of Social Services and Community Health” is substituted:*

Act	Section number
Alberta Health Care Insurance Act	13
Fatality Inquiries Act	13
Maintenance Order Act	4
Provincial Court Act	26
Vital Statistics Act	6

Repeals
RSA 1980 cC-8 **104** *The Child Welfare Act is repealed.*

105(1) *Section 51 is repealed.*

(2) An application for an adoption order commenced before the coming into force of this section shall be concluded as if this section had not come into force.

106 *This Act comes into force on Proclamation.*