

1984 BILL 35

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Second Session, 20th Legislature, 33 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 35**

**CHILD WELFARE ACT**

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THE MINISTER OF SOCIAL SERVICES AND  
COMMUNITY HEALTH

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 35

1984

### CHILD WELFARE ACT

(Assented to , 1984)

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

terpretation

#### 1(1) In this Act,

- (a) “adoption order” means an order made under section 63;
- (b) “biological mother” means the woman who gave birth to the child;
- (c) “biological father” means the man
  - (i) who is married to the biological mother at the time of the birth of the child,
  - (ii) acknowledged by the biological mother as the biological father of the child,
  - (iii) declared by a court to be the biological father of the child, or
  - (iv) who satisfies the Minister that he is the biological father of the child;
- (d) “child” means a person under the age of 18 years;
- (e) “child welfare worker” means a person appointed by a director as a child welfare worker;
- (f) “Children’s Guardian” means the person appointed by the Minister as the Children’s Guardian for the purposes of this Act;
- (g) “Court” means the Provincial Court;
- (h) “custody agreement” means an agreement entered into under section 8;

- (i) “director” means a person designated by the Minister as a director for the purposes of this Act;
- (j) “foster parent” means a person approved as a foster parent by a director;
- (k) “guardian” means
  - (i) a person who is or is appointed a guardian of the child under Part 7 of the *Domestic Relations Act*, or
  - (ii) a person who is a guardian of the child under an agreement or order made pursuant to this Act;
- (l) “Indian” means an Indian as defined in the *Indian Act* (Canada);
- (m) “Minister” means the Minister of Social Services and Community Health;
- (n) “peace officer” means a member of a municipal police force, a member of the Royal Canadian Mounted Police or a special constable;
- (o) “permanent guardianship agreement” means an agreement entered into under section 10;
- (p) “permanent guardianship order” means a permanent guardianship order made under section 32;
- (q) “placement” means the placement under this Act of a child by a director in a home, institution or any other place;
- (r) “private guardianship order” means a private guardianship order made under section 53;
- (s) “protective services” means any services provided to a child under this Act except those provided under section 72;
- (t) “secure treatment certificate” means a secure treatment certificate issued under section 41;
- (u) “secure treatment institution” means an institution prescribed by the Minister as a secure treatment institution;
- (v) “secure treatment order” means a secure treatment order made under section 42 and includes a renewal order;
- (w) “sibling” means a person who has the same biological mother or biological father as an adopted person;
- (x) “supervision order” means a supervision order made under section 26 and includes a renewal order;
- (y) “support agreement” means an agreement entered into under section 7;
- (z) “support services” means protective services prescribed as support services in the regulations;
- (z.1) “temporary guardianship order” means a temporary guardianship order made under section 29 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 lost;
- (b) the guardian of the child is dead and the child has no other guardian;
- (c) the guardian of the child is unable or unwilling to provide the child with necessities of life, including failing to obtain for the child or to permit the child to receive 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 the child will be physically injured or sexually abused by the guardian of the child;
- (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
- (f) the child has been emotionally injured by the guardian of the child;
- (g) the guardian of the child is unable or unwilling to protect the child from emotional injury;
- (h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment;
- (i) the condition or behaviour of the child prevents the guardian of the child from providing the child with adequate care appropriate to meet the child's needs.

(3) For the purposes of this Act,

- (a) a child is emotionally injured
  - (i) if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development, and
  - (ii) there are reasonable and probable grounds to believe that the emotional injury is 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) the mental or emotional condition of the guardian of the child or 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 the child's body as a result of the non-accidental application of force or an agent to the child's 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 the child is inappropriately exposed or subjected to sexual contact, activity or behaviour.

(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*.

Matters 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:

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

(b) the interests of a child should be recognized and protected;

(c) 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 individual family members and society;

(d) a child, if the child is capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting the child and the child's opinion should be considered by those making decisions that affect the child;

(e) the family is responsible for the care and supervision of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end

(i) if protective services are necessary to assist the family 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 family, and

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

(f) any decision concerning the removal of a child from the child's family 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 to the child if the child remains with the family, is removed from the family or is returned to the family, and

- (iv) the merits of allowing the child to remain with the family compared to the merits of removing the child from the family;
- (g) if it is not inconsistent with the protection of a child who may be in need of protective services, the child's family 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;
- (h) any decision concerning the placement of a child outside the child's family should take into account
  - (i) the benefits to the child of a placement that respects 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 benefits to the child of a placement within or as close as possible to the child's 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) whether or not the proposed placement is suitable for the child;
- (i) the provision of protective services is intended to remedy or alleviate the condition that caused the child to be in need of protective services;
- (j) if a child is being provided with care under this Act, the 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;
- (k) if a child is being provided with care under this Act, 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;
- (l) a person who assumes responsibility for the care of a child under this Act should endeavour to make the child aware of the child's familial, cultural, social and religious heritage;
- (m) there should be no unreasonable delay in making or implementing a decision affecting a child.

## **PART 1**

### **PRELIMINARY INTERVENTION**

Reporting child  
in need

- 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 a director.
- (2)** Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.



	<p>(3) This section does not apply to information that is privileged as a result of a solicitor-client relationship.</p> <p>(4) 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.</p> <p>(5) Notwithstanding and in addition to any other penalty provided by this Act, if a director has reasonable and probable grounds to believe that a person has not complied with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the director shall advise the appropriate governing body of that profession or occupation of the failure to comply.</p> <p>(6) Any person who fails to comply with subsection (1) 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.</p>
Peace officer	<p><b>4</b> If a peace officer, on reasonable and probable grounds, believes that a child committed an offence under an Act of the Parliament of Canada while the child was under the age of 12 years, the peace officer may report the matter to a director.</p>
Investigation	<p><b>5(1)</b> A director shall examine a report made under section 3 or 4 and any other allegation or evidence that a child may be in need of protective services and shall cause the matter to be investigated, unless he is satisfied that</p> <ul style="list-style-type: none"> <li>(a) the report or allegation was made maliciously,</li> <li>(b) the report or allegation was made without reasonable and probable grounds for the belief,</li> <li>(c) the report or allegation or evidence is unfounded, or</li> <li>(d) it would be consistent with the protection of the child to refer a member of the family or the family to community resources for services.</li> </ul> <p>(2) If a director refers a member of the family or the family to a community resource under subsection (1), the community resource shall report to the director any matter respecting the protection of the child that may require investigation by the director.</p> <p>(3) If, after an investigation, a director is of the opinion that the child is in need of protective services, he shall take whatever measures he considers appropriate under this Act.</p>
Emergency care	<p><b>6(1)</b> If a director is satisfied that a child may be in need of protective services because the guardian of the child cannot be located after a reasonable search or has died or become incapacitated, the director may appoint a person 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.</p> <p>(2) The person appointed under subsection (1) may</p> <ul style="list-style-type: none"> <li>(a) enter the residence,</li> </ul>

- (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 person is appointed under subsection (1), no liability attaches to that person in the course of carrying out his duties under subsection (2) or to any child welfare worker assisting that person in carrying out those duties 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

**7(1)** A director 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 director,

- (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 with his guardian.

(2) A director 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 the director is

- (a) satisfied that the child is living independently of his guardian, and
- (b) of the opinion that
  - (i) the child is in need of protective services, and
  - (ii) as a result of the provision of support services, the child's survival, security or development will be adequately protected if the child continues to live independently of his guardian.

Custody  
agreement

**8(1)** A director 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 director if, in the opinion of the director,

- (a) the child is in need of protective services, and
- (b) the survival, security or development of the child cannot be adequately protected if the child remains with his guardian.

(2) A director 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 director if the director is

- (a) satisfied the child is living independently of his guardian, and

(b) of the opinion that

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

(ii) the survival, security or development of the child cannot be adequately protected if the child remains with his guardian.

(3) Before entering into a custody agreement in respect of a child, the director shall consult with the child if, in the opinion of the director, the child is capable of expressing an opinion.

(4) A custody agreement may be renewed for terms of not more than 6 months each, but the cumulative period during which the child is in the custody of 1 or more directors or the subject of a temporary guardianship order shall not be more than 2 years.

(5) Notwithstanding subsection (4), custody agreements may be entered into with respect to a child for a further cumulative period of not more than 2 years if the child has not been in the custody of 1 or more directors or the subject of a temporary guardianship order during the 5 years immediately preceding the term of the new custody agreement.

Terms of custody  
agreement

**9** A custody agreement between a guardian or a child and a director shall include terms prescribing

(a) the plan for the care of the child, including a description of the services to be provided,

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

(c) the extent of the delegation of the authority of the guardian to the director, and

(d) 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 director.

Permanent  
guardianship  
agreement

**10(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 director may enter into a permanent guardianship agreement in the prescribed form under which the Children's Guardian will assume the guardianship of the child.

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

(a) the guardianship of any person who was a guardian of the child at the time the agreement was entered into is terminated,

(b) the agreement 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 notice of the agreement,

(c) the Children's Guardian is the sole guardian of the child for all purposes, and

(d) the agreement may be terminated only pursuant to section 11.

**11(1)** If a guardian of a child has entered into a permanent guardianship agreement with respect to a newborn child, that guardian 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 terminating the agreement.

(2) The applicant shall give notice of the time and place of the application in any manner not less than 1 day before the application is made to

(a) the Children's Guardian, and

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

(3) The Court may adjourn a hearing under this section for a period of not more than 15 days or for any longer period that the parties agree to.

(4) 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.

(5) 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 a 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.

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

(7) An order made under this section does not come into effect until the applicant serves the Children's Guardian with a copy of the order.

**12(1)** A director may enter into an agreement in the prescribed form with all the guardians 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 to be provided between the child and the guardians or any other person;

(b) the conditions, if any, under which the director will consult with the guardians on matters affecting the child;

(c) the contributions, financial or otherwise, that will be made by a guardian other than the Children's 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.

Minor parent

**13** Any agreement entered into under this Act by a person under 18 years of age is as valid as if that person had attained the age of 18.

### **PART 3**

#### **COURT ORDERS**

Supervision order  
application

**14(1)** A director may apply to the Court in the prescribed form for an order under section 26 authorizing the director to provide supervision of the child and the persons with whom the child resides if, in the opinion of the director,

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

(b) supervision of the child and the persons with whom the child resides is necessary to ensure that the survival, security or development of the child is protected, and

(c) there are reasonable and probable grounds to believe that the child's survival, security or development will be adequately protected as a result of the supervision.

(2) If a director applies under subsection (1), he shall include with the application recommendations with respect to the terms of the proposed supervision.

Temporary  
guardianship  
application

**15** A director may apply in the prescribed form to the Court for a temporary guardianship order under section 29 in respect of a child if, in the opinion of the director,

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

(b) the survival, security or development of the child cannot be adequately protected if the child remains with his guardian,

but it can be anticipated that within a reasonable time

(c) the child may be returned to the custody of his guardian, or

(d) if the child is 16 years of age or over, the child will be able to live independently.

Permanent  
guardianship  
application

**16(1)** A director may make an application in the prescribed form to the Court for a permanent guardianship order under section 32 in respect of a child if, in the opinion of the director,

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

(b) the survival, security or development of the child cannot adequately be protected if the child remains with or is returned to a guardian other than the Children's Guardian, and

Apprehension  
order

(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.

(2) A guardian of the child may make an application in the prescribed form to the Court for a permanent guardianship order under section 32 in respect of a child if the guardian wishes to relinquish guardianship of the child.

**17(1)** If a director has reasonable and probable grounds to believe that a child is in need of protective services, the director 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 an order

(a) authorizing the director to apprehend the child, or

(b) if the judge or justice is satisfied that the child may be found in a place or premises, authorizing the director, a child welfare worker or any person named in the order and any peace officer called on to assist him to enter, if necessary by force, that place or premises and to search for and apprehend the child.

(2) If, in the opinion of the director, it would be impracticable to appear personally before a judge or justice to apply for an order in accordance with subsection (1), the director may make the application by telephone or other means of telecommunication to a judge of the Court designated by the chief judge of the Court.

(3) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the Court.

(4) For the purposes of subsection (3), an oath may be administered by telephone or other means of telecommunication.

(5) The information submitted by telephone or other means of telecommunication shall include the following:

(a) a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice;

(b) a statement of the director's grounds for believing that a child is in need of protective services and the identity of the child, if the identity is known;

(c) a statement of the director's grounds for believing that the child will be found in the place or premises to be searched;

(d) a statement as to any prior application for an order under this section in respect of the same child of which the director has knowledge.

(6) A judge of the Court referred to in subsection (2) who is satisfied that an application made by telephone or other means of telecommunication

(a) conforms to the requirements of subsection (5), and

(b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1)

may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (1).

(7) If a judge of the Court makes an order under subsection (6),

(a) the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,

(b) the director, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge of the Court making the order and the time, date and place at which it was made, and

(c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.

(8) An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under subsection (1).

(9) Notwithstanding subsection (1), a child welfare worker or peace officer may apprehend a child who is actually or apparently under 16 years of age without an order 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, 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's life or health is seriously and imminently endangered because the child has been or there is substantial risk that he will be physically injured or sexually abused.

Notice of  
apprehension

**18(1)** If a child has been apprehended, the director shall notify the guardian of the child forthwith that the child has been apprehended.

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

(3) Notice under subsection (1) shall include a statement of the reasons for the apprehension and the rights of the guardian under section 19.

(4) The validity of proceedings under this Act is not affected if the director is unable, after reasonable effort, to give notice in accordance with this section.

Court application  
after  
apprehension

**19(1)** If a child is apprehended under section 17 and is not returned to the custody of his guardian within 2 days after being apprehended, the director shall apply in the prescribed form to the Court for a

supervision order, a temporary or permanent guardianship order or an order returning the child to the custody of his guardian.

(2) An application under subsection (1) shall be heard not more than 10 days after the child is apprehended.

(3) The guardian of a child who is apprehended and is not returned to the custody of his guardian within 2 days after the apprehension may serve the director with a demand notice in the prescribed form not more than 5 days after the apprehension.

(4) Notwithstanding subsection (2), if the director is served with a demand notice under subsection (3), the application under subsection (1) shall be heard not more than 1 day after the director is served.

(5) If the director 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 hearing.

(6) Notification under subsection (5) may be made by any method and may be oral or in writing.

(7) If the director 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 hearing not less than 2 days before the date of the hearing.

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

(a) if it is not satisfied that the child is in need of protective services, order the director 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  
director

**20(1)** Subject to subsection (2), if a child has been apprehended, a director has exclusive custody of the child, is responsible for his care, maintenance and well being and may

(a) authorize the provision of any essential medical, surgical, dental or other remedial treatment that is recommended by 2 or more physicians or dentists, as the case may be, without the consent of the guardian of the child, or

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

(2) If a child is apprehended because the guardian of the child refuses to permit essential medical, surgical or remedial treatment that is recommended by a physician, the director shall apply to the Court for an order authorizing the treatment.

(3) The director shall serve the guardian of the child with notice of the time and place at which an application under subsection (2) is to be heard not less than 1 day before the time fixed for the hearing.

(4) If it is satisfied that the treatment is in the best interest of the child, the Court may authorize the treatment notwithstanding that the guardian of the child refuses to consent to the treatment.



(5) If a child is treated pursuant to an order under this section, no liability attaches to the person treating the child by reason only that the guardian of the child did not consent to the treatment.

(6) If a director confines a child pursuant to subsection (1)(b), the director shall appear before the Court within 1 day of the confinement

(a) to show cause why the confinement was necessary, and

(b) if necessary, to apply for an order authorizing the confinement of the child for a further period of not more than 8 days.

(7) An application pursuant to subsection (6) may be heard by a judge of the Court, a judge of the Court of Queen's Bench or a justice of the peace.

**21(1)** Notice of the nature, time and place of the hearing of an application for a supervision order or a temporary or permanent guardianship order, other than an application under section 19, shall be served personally by the applicant on

(a) all the guardians of the child,

(b) a director, if the applicant is not a director,

(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 care of that foster parent for more than 6 months immediately preceding the application, and

(e) any other person in whose care the child was when the child was apprehended, if the child was in the continuous care of that person for more than 6 months immediately preceding the application.

(2) Notice under subsection (1) shall be served at least 5 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) if an order is made under clause (a), extend or reduce the time within which service may be effected;

(c) if an order is made under clause (a), extend the time within which a hearing shall be held;

(d) 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;

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

(f) dispense with service on a guardian of the child other than the Children's Guardian if another guardian has been served;

	(g) dispense with service on any person other than a guardian of the child.
Exclusion from hearing	<p><b>22(1)</b> Subject to subsection (2), if the Court is satisfied that</p> <p>(a) the evidence or information presented to the Court may be seriously injurious or seriously prejudicial to the child, or</p> <p>(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,</p> <p>the Court may exclude any person including a guardian of the child 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.</p> <p>(2) The Court may not exclude a director, the Children's Guardian or a lawyer representing any of the parties.</p>
Ban on publication	<p><b>23(1)</b> Except with the consent of the Court, no person shall publish by any means any report of a proceeding under this Act in respect of a child in which the name of the child or a guardian of the child, or in which any information serving to identify the child or a guardian of the child, is disclosed.</p> <p>(2) Any person who contravenes subsection (1) 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.</p>
Adjournments	<p><b>24(1)</b> 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.</p> <p>(2) If the Court adjourns under subsection (1), it may make any interim order providing for the custody of or access to the child during the adjournment that it considers appropriate.</p>
General powers of Court	<b>25</b> After a hearing under this Part, the Court may make any order it has jurisdiction to make under this Part or Part 4 if it is satisfied as to the appropriateness of that order notwithstanding that it is not the order applied for by a director or a guardian of the child.
Supervision order	<p><b>26(1)</b> The Court may make a supervision order for a period of not more than 6 months if it is satisfied that</p> <p>(a) a child is in need of protective services,</p> <p>(b) mandatory supervision of the child and a person residing with the child and the compliance by that person with the terms of the order are necessary to adequately protect the survival, security or development of the child, and</p> <p>(c) all persons residing with the child will comply with the terms of the order.</p> <p>(2) The Court shall consider the recommendations of the director with respect to the terms of the supervision before making an order under this section.</p>

(3) A supervision order shall

- (a) require that a director supervise the child within the residence of the child, and
- (b) set out reasonable terms in respect of
  - (i) the frequency of visits at the residence by a child welfare worker,
  - (ii) the assessment or treatment of the child or any person residing with the child, and
  - (iii) any other terms the Court considers necessary.

Breach of  
supervision order

**27(1)** If, on application by a director in the prescribed form, the Court is satisfied that a guardian has failed to comply with a term of a supervision order, the Court may make a temporary guardianship order or a permanent guardianship order in respect of the child without hearing any further evidence that the child is in need of protective services.

(2) Section 21 applies to the service of notice of the time and place of the hearing of an application under subsection (1).

Restraining order

**28(1)** If a child is the subject of a supervision order or a temporary or permanent guardianship order and a director has reasonable and probable grounds to believe that a person has physically or emotionally injured or sexually abused the child, or is likely to physically or emotionally injure or sexually abuse the child, the director may apply by originating notice to the Court of Queen's Bench for an order restraining that person

- (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 periods of not more than 6 months each.

(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.

(4) A person who is restrained under a restraining order may apply to the Court of Queen's Bench for a review of the order.

(5) On hearing an application under subsection (4), the Court of Queen's Bench may continue, vary or terminate the order.

Temporary  
guardianship  
order

**29(1)** The Court may make an order appointing the Children's Guardian 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, and
- (b) the survival, security or development of the child may not be adequately protected if the child remains with his guardian

but it can be anticipated that within a reasonable time

(c) the child may be returned to the custody of his guardian, or

(d) if the child is 16 years of age or over, the child will be able to live independently.

(2) If the Court makes an order under subsection (1), the Children's Guardian becomes a joint guardian with any other guardian of the child and, subject to any order under subsection (4), 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) Not more than 30 days after an order is made under subsection (1), the director shall file with the Court a plan for the care of the child, including a description of the services to be provided.

(4) On making a temporary guardianship order or at any time during its term, the Court, on the application of a director 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 director 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 Children's Guardian, who is legally responsible for the maintenance of the child,

or

(b) order a guardian other than the Children's Guardian to submit prior to the expiration of the term of the temporary guardianship order to an assessment in order to assist the director 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.

(5) The Court shall consider the recommendations of the director in respect of an assessment before making an order under subsection (4)(b).

Review of  
supervision or  
temporary  
guardianship  
order

**30(1)** If the Court has made a supervision or temporary guardianship order and the appeal period for the order has expired, the Court may review the order

(a) at any time on the application in the prescribed form of a director, 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.

Term of temporary guardianship	<p>(2) On reviewing an order under this section, the Court may consider any matter it thinks is relevant, and shall consider the following:</p> <ul style="list-style-type: none"> <li>(a) whether the circumstances that caused the child to be in need of protective services have changed;</li> <li>(b) the protective services that have been provided to the child or the family of the child;</li> <li>(c) whether the director has followed the plan for the care of the child filed with the Court;</li> <li>(d) whether a guardian, other than the Children's Guardian, has complied with the order.</li> </ul> <p>(3) On hearing an application under this section, the Court may</p> <ul style="list-style-type: none"> <li>(a) continue, vary or terminate the original order, or</li> <li>(b) make an order pursuant to section 26, 29 or 32.</li> </ul> <p>(4) The Court may extend the period of the original order pending the hearing of an application under this section.</p> <p><b>31(1)</b> The total cumulative period during which a child is in the custody of 1 or more directors or the subject of a temporary guardianship order shall not be more than 2 years.</p> <p>(2) Notwithstanding subsection (1), the Court may make a temporary guardianship order with respect to a child for a further cumulative period of not more than 2 years if the child has not been in the custody of 1 or more directors or the subject of a temporary guardianship order during the 5 years immediately preceding the date of the application.</p> <p>(3) Notwithstanding subsection (1), if the Court is satisfied that there are good and sufficient reasons for doing so, it may make an order of temporary guardianship for 1 further period of not more than 1 year.</p>
Permanent guardianship order	<p><b>32(1)</b> The Court, on application pursuant to this Part by a director, may make a permanent guardianship order appointing the Children's Guardian as guardian of the child if it is satisfied that</p> <ul style="list-style-type: none"> <li>(a) the child is in need of protective services or is the subject of a temporary guardianship order,</li> <li>(b) the survival, security or development of the child cannot be adequately protected if the child remains with or is returned to his guardian, and</li> <li>(c) it cannot be anticipated that the child could or should be returned to the custody of his guardian within a reasonable time.</li> </ul> <p>(2) The Court, on application pursuant to this Part by a guardian of a child, may make a permanent guardianship order appointing the Children's Guardian as guardian of the child if</p> <ul style="list-style-type: none"> <li>(a) the guardian wishes to relinquish his guardianship, and</li> <li>(b) the child consents to the order, if the child is 12 years of age or over.</li> </ul>

(3) If the Court makes a permanent guardianship order, the Children's Guardian 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) A director shall send the Children's Guardian and 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 a director, order that financial contributions be made to the maintenance of the child by a person, other than the Children's Guardian, who is legally responsible for the maintenance of the child.

(6) On making a permanent guardianship order or at any time during its term, the Court, on the application of a director, a former guardian of the child or any other person with whom the child has a significant relationship, may make an order prescribing the access to be provided between the child and the former guardian or that other person.

(7) The Court shall not make an order under subsection (6) unless it is satisfied that the access provided by the order will not interfere with the adoption of the child.

(8) If an order is made under subsection (6), a director, the child, if the child is 12 years of age or over, or the person to whom access is provided in the order may apply to the Court for a review of the order.

(9) On hearing an application under subsection (8), the Court may continue, vary or terminate the original order.

Termination of  
permanent  
guardianship  
order

**33(1)** If a child is the subject of a permanent guardianship order, the Children's Guardian, if he is satisfied that the child should be returned to the guardianship of the person who was the guardian of the child 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 him with care and maintenance for a further period prescribed in the regulations so that he can complete a course of studies or other training.

Joint guardian

**34(1)** If a child is the subject of a permanent guardianship order, any adult may make an application in the prescribed form to the Court to be appointed as guardian of the child jointly with the Children's Guardian.

(2) The applicant shall serve notice of the time and place at which the application is to be heard on the Children's Guardian not less than 30 days before the date of the hearing.

(3) The Court may make an order appointing a person as a guardian of a child jointly with the Children's Guardian if it is satisfied that

(a) the person is capable of assuming 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) the child has consented, if the child is 12 years of age or over,
- (d) the Children's Guardian is of the opinion that it cannot reasonably be anticipated that the child will be adopted within a reasonable 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 Children's Guardian

- (a) 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, and
- (b) has sole authority to consent to the adoption of the child.

(5) If the Court makes an order appointing a joint guardian, it may, on the application of the Children's Guardian or the joint guardian and on being satisfied that the Children's Guardian 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 Children's Guardian shall consult with the joint guardian on matters affecting the child.

Review of joint guardianship

**35(1)** If the Court makes an order under section 34, the Children's Guardian, the joint guardian or the child, if the child is 12 years of age or over, may apply to the Court in the prescribed form at any time for a review of the order.

(2) The applicant shall serve notice of the date and place at which the application for a review is to be heard on the Children's Guardian, the joint guardian and the child, if the child is 12 years of age or over, not less than 5 days before the date of the hearing.

(3) The Court may, on hearing the application and in accordance with section 34, continue, vary or terminate any order made under section 34.

Parents' marriage

**36** If a child born out of wedlock is the subject of a permanent guardianship order and subsequently the biological mother and biological father of that child marry each other, the biological 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

**37** The right of the Children's Guardian to the custody of a child under a temporary or permanent guardianship order or a permanent 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 person who is a party to the proceedings under this Act, or

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

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

**Duration of order** **38(1)** A temporary guardianship order remains in effect until

- (a) the order expires or is terminated by a court,
- (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 a court,
- (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.

**Maintenance** **39** In making an order requiring a person to pay maintenance for a child under this Act, the Court shall consider all relevant circumstances, including

- (a) the income, earning capacity, property and other financial resources or benefits of that person, his spouse and 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 of that person,
- (d) the child's aptitude for and reasonable prospects of obtaining an education,
- (e) the legal or moral obligation of that 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 that person.

**Death of child** **40(1)** When a child who is the subject of a permanent guardianship agreement or order dies, the Children's Guardian 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 Children's Guardian 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 other guardian of the child within a reasonable time, or
- (b) the other guardian of the child is unable to pay for the burial or other disposition of the body of the child.

#### **PART 4**

#### **SECURE TREATMENT**

Secure treatment  
certificate

**41(1)** If a child is the subject of a temporary or permanent guardianship order, a director may issue a secure treatment 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 secure treatment certificate shall include a statement showing

- (a) the reason for the confinement,
- (b) the duration of the certificate,
- (c) the date, place and time at which the appearance to show cause under subsection (5) will be held,
- (d) that the child may be represented by a lawyer at any appearance before the Court, and
- (e) the address and telephone number of the nearest office of the Legal Aid Society.

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

(4) A secure treatment certificate shall be served on the child in respect of whom it is issued not more than 1 day after it is issued.

(5) The director shall appear before the Court not more than 5 days after a secure treatment 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.

(6) The director may apply in accordance with section 42 for a secure treatment order when he appears under subsection (5).

Secure treatment  
order

**42(1)** If a child is the subject of a temporary or permanent guardianship order, a director may apply in the prescribed form to the Court for a secure treatment order.

(2) The director shall serve a 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 hearing of an application under subsection (1) not less than 2 days before the date of the hearing.

(3) The Court may make a secure treatment order in respect of a child for a period of not more than 30 days if it 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 remedy the disorder.

(4) A director shall specify the secure treatment institution in which a child shall be confined pursuant to a secure treatment order.

(5) A secure treatment order is sufficient authority for any person to confine the child in a secure treatment institution for the period stated in the order or the period of the guardianship order, whichever is the shorter.

(6) If the Court makes a secure treatment order it shall

- (a) inform the child of the reason for doing so, and
- (b) provide the child, his guardian and his lawyer with a copy of the order and a written statement showing
  - (i) the reasons 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 a director,
  - (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 secure treatment 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.

(7) A secure treatment order may be renewed in accordance with this section on the application in the prescribed form of a director 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 guardianship order, whichever is the shorter.

Secure treatment  
institution

**43(1)** A secure treatment 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 secure treatment institution specified by a director and to detain the child while he is being conveyed to the secure treatment institution.

(2) On a secure treatment certificate or order being issued, the person in charge of the secure treatment institution specified by a director shall admit the child to the secure treatment 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 in accordance with the standards prescribed in the regulations, and

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

Transfer

**44** When the child named in a secure treatment certificate or order is in a secure treatment institution, a director may transfer the child to another secure treatment institution and the certificate or order is sufficient authority for any peace officer, child welfare worker or member of the staff of the secure treatment institution to detain the child while he is being transferred.

Leave of absence

**45(1)** During the term of a secure treatment certificate or order, a director may grant the child a leave of absence from the secure treatment institution for medical, humanitarian or rehabilitative reasons on any terms and conditions that the director considers necessary.

(2) When a child who is the subject of a secure treatment certificate or order

(a) leaves a secure treatment institution when a leave of absence has not been granted, or

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

a director may order any child welfare worker or peace officer to return the child to a secure treatment institution.

(3) On receipt of an order pursuant to subsection (2), every child welfare worker or peace officer is empowered to apprehend, without an order of a court or a warrant, the child named in the director's order, to convey the child to the nearest secure treatment institution and to detain the child while he is being conveyed to the secure treatment institution.

Search and  
apprehension  
order

**46(1)** If a director has reasonable and probable grounds to believe that a child who is the subject of a secure treatment certificate or order

(a) has left a secure treatment institution when a leave of absence has not been granted, or

(b) has left a secure treatment institution pursuant to a leave of absence but has not returned within the time prescribed,

the director 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 an order authorizing the director, a child welfare worker or any person named in the order and any peace officer called on to assist him to enter, if necessary by force, any place or premises specified in the

order, to search for, apprehend and convey the child to any secure treatment institution and to detain the child while he is being conveyed to a secure treatment institution.

(2) The judge or justice may make an order under this section if he is satisfied that the child may be found in the place or premises specified in the order.

(3) If, in the opinion of the director, it would be impracticable to appear personally before a judge or justice to apply for an order in accordance with subsection (1), the director may make the application by telephone or other means of telecommunication to a judge of the Court designated by the chief judge of the Court.

(4) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the Court.

(5) For the purposes of subsection (4), an oath may be administered by telephone or other means of telecommunication.

(6) The information submitted by telephone or other means of telecommunication shall include the following:

(a) a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice;

(b) a statement of the director's belief that the child is the subject of a secure treatment certificate or order and

(i) has left the secure treatment institution without a leave of absence, or

(ii) has not returned to the secure treatment institution within the time prescribed;

(c) a statement of the director's grounds for believing that the child will be found in the place or premises to be searched;

(d) a statement as to any prior application for an order under this section in respect of the same child of which the director has knowledge.

(7) A judge of the Court referred to in subsection (3) who is satisfied that an application made by telephone or other means of telecommunication

(a) conforms to the requirements of subsection (6), and

(b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1)

may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (1).

(8) If a judge of the Court makes an order under subsection (7),

(a) the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,

(b) the director, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge of the Court making the order and the time, date and place at which it was made, and

(c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.

(9) An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under subsection (1).

Review

**47(1)** A child with respect to whom a secure treatment order has been made or a guardian of the child 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 10 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 a director of the application.

(5) The director 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 Children's Guardian, and

(c) the person in charge of the secure treatment institution in which the child is confined

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

Order of Court  
on review

**48(1)** After hearing an application for the review of a secure treatment order, the Court may make an order in accordance with section 42 confirming, varying or terminating the secure treatment order.

(2) An order made under subsection (1) shall not extend the period of the secure treatment order reviewed.

(3) The director shall provide the child, his guardian, his lawyer and the person in charge of the secure treatment institution in which the child is confined with a copy of the order made under subsection (1).

**PART 5**  
**PRIVATE GUARDIANSHIP**

Private  
guardianship

**49(1)** Any adult who has had the continuous care 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) If it is satisfied that it is in the best interests of the child to do so, the Court may waive the requirement in subsection (1) that

- (a) the child or the applicant resides in Alberta, or
- (b) the applicant has had the continuous care of the child for more than 6 months.

(3) No application shall be made for a private guardianship order in respect of a child who is the subject of a temporary guardianship order.

(4) No application shall be made for a private guardianship order in respect of a child who is the subject of a permanent guardianship order unless the appeal period for the order has expired.

Notice

**50(1)** The applicant shall serve a notice of the nature, time and place of the hearing of the application not less than 30 days before the date of the hearing on

- (a) the guardian of the child,
- (b) the child, if the child is 12 years of age or over, and
- (c) a director, if the Children's Guardian is not the guardian.

(2) The Court may

- (a) if it considers it appropriate to do so
  - (i) order that service of the notice 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

**51(1)** The Court, on hearing an application for a private guardianship order, may require the applicant to provide it with a report in the prescribed form prepared by a qualified person respecting

- (a) the suitability of the applicant as a guardian,
- (b) the ability and willingness of the applicant to assume the responsibility of a guardian towards the child, and
- (c) whether 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 agreement or order, the report required under subsection (1) shall be prepared by a director.

(3) If the child is not the subject of a permanent guardianship agreement or order, the applicant shall serve a copy of the report required under subsection (1) on a director not less than 2 days before the report is provided to the Court.

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

(5) If a director intends to make representations to the Court under subsection (4), he shall notify the Court and the applicant not less than 2 days before the date of the hearing of the application.

Consent to  
guardianship

**52(1)** A private guardianship 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) a guardian of the child other than the Children's Guardian, or
- (b) the child

if the Court is satisfied that it is in the best interests of the child to do so.

(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.

Private  
guardianship  
order

**53** If the Court is satisfied that

- (a) the applicant is able and willing to assume the responsibility of a guardian towards the child, and
- (b) it is in the best interests of the child,

the Court may make a private guardianship order appointing the applicant as a guardian of the child.

Effect of order

**54(1)** Notwithstanding Part 7 of the *Domestic Relations Act*, for all purposes when a private guardianship order is made the applicant is a guardian of the child.

(2) Notwithstanding Part 7 of the *Domestic Relations Act*, if the Court makes a private guardianship order, it may make a further order terminating the guardianship of any other guardian of the child if

- (a) the Court is satisfied that the other guardian of the child consents to the termination, or
- (b) for reasons that appear to it to be sufficient, the Court considers it necessary or desirable to do so.

**PART 6**  
**ADOPTION**

Interpretation	<p><b>55(1)</b> Notwithstanding section 1(1)(g), in this Part, “Court” means the Court of Queen’s Bench.</p> <p>(2) Notwithstanding section 80, an appeal from an order of the Court under this Part may be made</p> <ul style="list-style-type: none"><li>(a) only to the Court of Appeal, and</li><li>(b) not more than 30 days after the date on which the order is made.</li></ul>
Application for adoption order	<p><b>56(1)</b> Any adult 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> <p>(2) If it is satisfied that it is in the best interests of the child to do so, the Court may waive the requirement in subsection (1) that the child or the applicant resides in Alberta.</p> <p>(3) No application shall be made for an adoption order in respect of a child who is the subject of a permanent guardianship order unless the appeal period for the order has expired.</p>
Certificate of director	<p><b>57(1)</b> If a child is the subject of a permanent guardianship agreement or order and a director places the child with an adult with a view to the adoption of the child by that adult, the director shall provide that adult with a certificate including</p> <ul style="list-style-type: none"><li>(a) the number given to the registration of the birth of the child and the child’s name,</li><li>(b) a statement that the Children’s Guardian is the guardian of the child pursuant to a permanent guardianship agreement or order, and</li><li>(c) the consent of the Children’s Guardian to the adoption of the child by that adult.</li></ul> <p>(2) The certificate of the director is sufficient evidence without further proof that the Children’s Guardian is the guardian of the child and consents to the adoption.</p>
Service	<p><b>58(1)</b> The applicant shall serve notice of the nature, time and place of the hearing of the application not less than 30 days before the date of the hearing on</p> <ul style="list-style-type: none"><li>(a) the guardian of the child,</li><li>(b) the child, if the child is 12 years of age or over, and</li><li>(c) a director, if the Children’s Guardian is not the guardian of the child.</li></ul> <p>(2) The Court may</p> <ul style="list-style-type: none"><li>(a) if it considers it appropriate to do so</li></ul>



(i) order that service of the notice 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

**59(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 assuming 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 agreement or order, the report required under subsection (1) shall be prepared by a director.

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

(4) On being served with notice of an application for an adoption order, the director 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 a director intends to make representations to the Court under subsection (4), he shall notify the Court and the applicant not less than 2 days before the application is to be heard.

Consent to adoption

**60(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 Children's Guardian, 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 camera	<b>61</b> Unless the Court otherwise directs, all proceedings relating to the adoption of a child shall be heard in camera.
Director's application	<p><b>62</b> If an application for an adoption order in respect of a child who is the subject of a permanent guardianship agreement or order is not heard by the Court within 12 months after the application is filed with the Court, a director may</p> <ul style="list-style-type: none"> <li>(a) proceed with the application on behalf of the applicant, or</li> <li>(b) apply to the Court for an order terminating the proceedings.</li> </ul>
Adoption order	<p><b>63</b>(1) If the Court is satisfied that</p> <ul style="list-style-type: none"> <li>(a) the applicant is capable of assuming and willing to assume the responsibility of a parent toward the child, and</li> <li>(b) it is in the best interests of the child that the child be adopted by the applicant,</li> </ul> <p>the Court may order the adoption of the child by the applicant.</p> <p>(2) The Court shall not order the adoption of a child 10 days of age or younger.</p> <p>(3) An adoption order shall be in the prescribed form, and shall show the name of the child prior to the adoption.</p> <p>(4) 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.</p> <p>(5) On the request of the adopting parent and, if the child is 12 years of age or over, with the consent of the child the Court may change the given name of the child in the adoption order.</p> <p>(6) When an adoption order is made, the surname of the adopting parent becomes the surname of the child unless the Court orders otherwise.</p>
Effect of order	<p><b>64</b>(1) 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.</p> <p>(2) Subject to subsection (3), for all purposes when an adoption order is made the adopted child ceases to be the child of his existing parents, whether his biological mother and biological father or his adopting parents under a previous adoption, and his existing parents cease to be his parents and guardians.</p> <p>(3) If a person adopts the child of his spouse, the child does not cease to be the child of that spouse and that spouse does not cease to be the parent and guardian of the child.</p> <p>(4) In any testamentary or other document, whether made before or after the coming into force of this section, unless the contrary is expressed, a reference to a person or a group or class of persons</p>

described in terms of their relationship by blood or marriage to another person shall be deemed to refer to or to include, as the case may be, a person who comes within the description as a result of his own adoption or the adoption of another person.

(5) For all purposes, on an adoption order being made, the relationship between the adopted child and any other person is the same as it would be if the adopting parent were the biological mother or biological father of the adopted child.

(6) Subsections (2), (4) 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) A marriage between 2 persons is prohibited if, as a result of an adoption order, the relationship between them is such that their marriage would be prohibited by the law respecting those relationships that bars the lawful solemnization of marriage.

(8) This section

(a) applies and shall be deemed always to have applied with respect to an adoption made under any enactment 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.

(9) An adoption order terminates any other order made under this Act except a restraining order made under section 28.

Voluntary  
disclosure

**65(1)** If an adoption order is made under this Act or any predecessor to this Act, an application for the disclosure of the identity of the adopted person, his biological mother, his biological father or his sibling may be made to the Minister at any time by

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

(b) the biological mother of the adopted person,

(c) the biological father of the adopted person, or

(d) an adult sibling of the adopted person.

(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) if the applicant is an adopted person, if the name of the biological mother, biological father or sibling of the adopted person is entered,

(b) if the applicant is the biological mother or biological father of an adopted person, if the name of the adopted person is entered, or

(c) if the applicant is a sibling of an adopted person, if the name of the adopted person is entered.

(3) Notwithstanding section 66, if the applicant is an adopted person and the Minister determines that

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

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

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

(4) Notwithstanding section 66, if the applicant is the biological mother of an adopted person and the Minister determines that the name of the adopted person is entered in the record, the Minister shall disclose the identity of each to the other.

(5) Notwithstanding section 66, if the applicant is the biological father of an adopted person and the Minister determines that the name of the adopted person is entered in the record, the Minister shall disclose the identity of each to the other.

(6) Notwithstanding section 66, if the applicant is the sibling of an adopted person and the Minister determines that the name of the adopted person is entered in the record, the Minister shall disclose the identity of each to the other.

(7) If an applicant withdraws his application under subsection (1), the Minister shall remove the name of the applicant from the record.

(8) On being advised by an adopting parent that an adopted child has died before attaining the age of 18 years, the Minister shall enter the name of the child in the record under subsection (2) and the fact of his death.

(9) Notwithstanding subsections (3), (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

**66(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 Children's Guardian, if he was the guardian of the child immediately before the making of the order,

(c) the Public Trustee, if the Children's Guardian was the guardian of the child immediately before the making of the order,

(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, the Registrar under the *Indian Act* (Canada).

	<p>(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 <i>Indian Act</i> (Canada) with a copy of the original birth certificate of the child.</p> <p>(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.</p> <p>(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.</p> <p>(5) The Minister shall not disclose the identity of the biological mother or biological father of an adopted child to any person except in accordance with section 65.</p> <p>(6) Notwithstanding subsections (3) and (4), the Minister or the clerk of the Court may provide a certified copy of the adoption order in respect of an adopted person to that person if he is 18 years of age or over.</p>
Disclosure	<p><b>67(1)</b> Notwithstanding section 66, the Minister may give information that does not disclose the identity of the adopted child, his biological mother, his biological father, his sibling or his adopting parents to the adopted child, his biological mother, his biological father, his sibling or his adopting parents.</p> <p>(2) A person referred to in subsection (1) may provide the Minister with information that the Minister may disclose under subsection (1).</p>
Assistance	<p><b>68(1)</b> 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 agreement or order 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.</p> <p>(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.</p>
Setting aside	<p><b>69(1)</b> 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.</p> <p>(2) Notice of the nature, time and place of the hearing of an application to set aside the adoption order shall be served by the applicant on</p> <p>(a) the Minister,</p>

- (b) the adopting 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 person who was the guardian of the child immediately before the adoption order was made,
- (e) the Public Trustee, if the Children's Guardian was the guardian of the child immediately before the adoption order was made, and
- (f) any other person who in the opinion of the Court should be served.

(3) If the adoption order is set aside, the applicant for the order setting it aside shall serve a copy of the order setting it aside on all those required to be served under subsection (2).

(4) When an adoption order 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 relationships to one another of the child and all persons are re-established as they were immediately before the adoption order was made,
- (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, and
- (e) unless the Court orders otherwise, the child's
  - (i) given name returns to the given name, if any, he had before the adoption order was made, and
  - (ii) surname returns to the surname he had before the adoption order was made.

**Foreign orders**     **70** An adoption effected according to the law of any other jurisdiction has the same effect in Alberta as an adoption under this Act.

**Payment**     **71(1)** Any 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 \$10 000 and in default of payment to imprisonment for a term not exceeding 6 months.

(2) Subsection (1) does not apply to fees, expenses or disbursements incurred in respect of an adoption or proposed adoption and paid to

- (a) a qualified person who prepares a report pursuant to this Part,
- (b) a lawyer, or
- (c) a physician who examines, treats or immunizes the child.

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

## **PART 7**

### **GENERAL**

#### **Handicapped Child**

Handicapped  
child

**72(1)** A director may enter into an agreement in the prescribed form with the guardian of a child with respect to the provision of services to the family or the child if, in the opinion of the director, the child is a handicapped child.

(2) An agreement under this section shall include terms prescribing

(a) whether the child will be placed in the care or custody or under the control or supervision of a director in order to permit the provision of services or financial assistance to the guardian of the child to meet the special needs of the child,

(b) the nature and amount of the services or the financial assistance to be provided to the guardian of the child in accordance with the regulations, and

(c) the contribution, financial or otherwise, to be made by the guardian of the child for the services provided in respect of the child.

#### **Indian Child**

Indian child

**73(1)** In this section “band”, “council of the band” and “reserve” have the same meaning that they have under the *Indian Act* (Canada).

(2) If a director has reason to believe that a child is an Indian, a member of a band and a resident of a reserve, the director shall consult with a chief of the council or the council of the band or the designate of either of them before entering into a permanent guardianship agreement or applying for a supervision order or a temporary or permanent guardianship order in respect of the child.

(3) If a director has reason to believe that a child is an Indian and a member of a band but is not a resident of a reserve, the director shall

(a) ask the guardian of the child to consent to the director’s consulting with a chief of the council or the council of the band, and

(b) if the guardian consents, consult with a chief of the council or the council of the band or the designate of either of them before entering into a permanent guardianship agreement or applying for a supervision order or a temporary or permanent guardianship order.

(4) If the Court makes a supervision order or a temporary or permanent guardianship order in respect of a child who is an Indian and a member of a band, the Minister shall provide a chief of the council or the council of the band or the designate of either of them with a copy of the order not more than 20 days after the date of the order.

(5) If, after this Act comes into force, a person adopts a child who is an Indian, that person shall

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

(b) as soon as, in the opinion of that person, the child is capable of understanding his status as an Indian, inform the child of that status.

(6) On making an adoption order, a court, if it has reason to believe the adopted child is an Indian, shall inform the adopting parent of the requirements of subsection (1).

### **Evidence**

Witnesses

**74(1)** In a proceeding before it under this Act, the Court may, on the application of a party or on its own motion,

(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 other hearing, any documents and exhibits received in evidence at any other 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 readily available, may

(a) accept evidence by affidavit, or

(b) accept hearsay evidence.

Confidential  
evidence

**75(1)** Notwithstanding Part XIX of the *Criminal Code* (Canada), the Court may issue a subpoena requiring

(a) the Commission under the *Alcoholism and Drug Abuse Act*,

(b) a board under the *Hospitals Act*,

(c) a board under the *Mental Health Act*,

(d) the Director under the *Public Health Act*, or

(e) the Director under the *Venereal Diseases Prevention Act*,

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



(2) The person named in a subpoena or his designate 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 person is required to produce any documents, records or other information that is otherwise confidential under the *Alcoholism and Drug Abuse Act*, the *Hospitals Act*, the *Mental Health Act*, the *Public Health Act* or the *Venereal Diseases Prevention Act*, as the case may be, the documents, records or other information shall be dealt with in accordance with this section.

(4) The person named in the subpoena or his designate shall permit the Minister, a guardian of the child, the child, if the child is 12 years of age or over, or a lawyer representing any 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

## **76 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.

## **Court Proceedings**

- Right to appear**    **77(1)** In any proceedings before the Court under Part 3 or 4,
- (a) a foster parent or any other person who has had continuous care and custody of the child for not less than 6 months, and
  - (b) any other person, with the consent of the Court,
- may appear and make representations to the Court.
- (2) Notwithstanding subsection (1), the only parties to a proceeding under Part 3 or 4 or an appeal from that proceeding are the child, the child's guardian, the director and, in the case of an application under section 34, the applicant.
- (3) Notwithstanding subsection (2), a child may examine the Court record only with the consent of the Court.
- Legal representation**    **78(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 under Part 3 or 4, the Court may direct that the child be represented by a lawyer if
- (a) the child, the guardian of the child or a director requests the Court to do so, and
  - (b) the Court is satisfied that the interests or views of the child would not be otherwise adequately represented.
- (2) If the Court directs that a child be represented by a lawyer pursuant to subsection (1),
- (a) it shall refer the child to the Legal Aid Society of Alberta, or
  - (b) it shall refer the matter to the Attorney General, if it is satisfied that there is no legal aid assistance available to the child.
- (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.
- (4) If a referral is made under subsection (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.

## **Maintenance**

- Enforcement of maintenance**    **79** 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 director 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 director under Part 4, except section 56(1), of the *Maintenance and Recovery Act*.

### **Appeals to Court of Queen's Bench**

Time for appeal	<p><b>80(1)</b> 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> <ul style="list-style-type: none"> <li>(a) a guardian of the child other than the Children's Guardian,</li> <li>(b) the child, if he is 12 years of age or over,</li> <li>(c) the child, if he is the subject of a secure treatment order, or</li> <li>(d) a director.</li> </ul> <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.</p>
Stay of order	<p><b>81</b> Any person who is entitled to appeal pursuant to section 80 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.</p>
Procedure on appeal	<p><b>82(1)</b> An appeal to the Court of Queen's Bench under this Act shall be commenced by</p> <ul style="list-style-type: none"> <li>(a) filing a notice of appeal setting forth the grounds of the appeal with the clerk of the Court, and</li> <li>(b) filing a copy of the notice of appeal in the Court of Queen's Bench.</li> </ul> <p>(2) If a notice of appeal is filed pursuant to this section, 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.</p> <p>(3) The appellant shall serve the notice of appeal on</p> <ul style="list-style-type: none"> <li>(a) the guardian of the child other than the Children's Guardian,</li> <li>(b) the child, if he is 12 years of age or over,</li> <li>(c) the child, if he is the subject of a secure treatment order, and</li> <li>(d) a director.</li> </ul> <p>(4) 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.</p> <p>(5) On subsections (3) and (4) being complied with, the Court of Queen's Bench shall set down the appeal for hearing.</p> <p>(6) 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.</p>

	<p>(7) Notwithstanding subsections (5) and (6), if an appeal is not heard within 90 days of the filing of the notice of appeal, unless the Court of Queen's Bench grants leave to extend the time within which the appeal shall be heard, the clerk of the Court of Queen's Bench shall fix the next available date as the date on which the appeal shall be heard and shall notify the parties of the time and place of the hearing.</p>
Decision of Court	<p><b>83(1)</b> On hearing an appeal, 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.</p> <p>(2) The Court of Queen's Bench may</p> <ul style="list-style-type: none"> <li>(a) confirm the order or refusal,</li> <li>(b) revoke or vary the order made, or</li> <li>(c) make any order the Court could have made in the hearing before it.</li> </ul>
	<p style="text-align: center;"><b>Appeal to an Appeal Panel</b></p>
Appeal Panel	<p><b>84(1)</b> The Minister may establish 1 or more Appeal Panels each consisting of not fewer than 3 nor more than 7 persons appointed by the Minister.</p> <p>(2) A member of an Appeal Panel may be appointed for a term of not more than 3 years and for not more than 2 consecutive terms.</p> <p>(3) The Minister shall</p> <ul style="list-style-type: none"> <li>(a) designate the chairman, vice-chairman and secretary of an Appeal Panel,</li> <li>(b) prescribe the number of members of an Appeal Panel that constitutes a quorum, and</li> <li>(c) authorize and provide for the payment of the remuneration and expenses of the members of an Appeal Panel.</li> </ul>
Power of the Appeal Panel	<p><b>85(1)</b> Any Appeal Panel may hear an appeal made pursuant to section 86.</p> <p>(2) An Appeal Panel may, subject to this Act and the regulations, confirm, reverse or vary the decision of the director appealed from and the decision of an Appeal Panel is final.</p> <p>(3) The <i>Administrative Procedures Act</i> applies to the proceedings of the Appeal Panel.</p> <p>(4) An appellant may be represented at the hearing of the appeal by a lawyer or by any other person prescribed by the regulations.</p>
Administrative appeals	<p><b>86(1)</b> Any</p> <ul style="list-style-type: none"> <li>(a) child,</li> <li>(b) guardian of a child, or</li> </ul>

- (c) foster parent or other person who has had the continuous care of the child for more than 6 months

who is affected by a decision of a director may appeal that decision in accordance with this section.

(2) An appeal may be made from a decision of a director respecting the following:

- (a) the removal from or placement in a foster home, an adoptive home or any other place of a child who is the subject of a temporary or permanent guardianship order or a permanent guardianship agreement;
- (b) the permitting or refusing to permit any person who has a significant relationship with the child to visit a child who is the subject of a permanent 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 66 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) the refusal or failure of a director to enter into an agreement under Part 2 or to apply to the Court under Part 3 in respect of a child who, in the opinion of that director, is in need of protective services;
- (f) the refusal or failure of a director to enter into an agreement under section 72 in respect of a handicapped child;
- (g) any other matter prescribed in the regulations as being subject to an appeal to an Appeal Panel.

(3) A notice of appeal in the prescribed form shall be served on the director whose decision is the subject of the appeal 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 a director to become a foster parent or to have a child who is the subject of a permanent guardianship agreement or order placed in his home for the purposes of adopting that child and whose application is refused may appeal that decision.

### **General**

#### **Delegation**

**87(1)** The Minister may delegate any of the duties or powers conferred or imposed on him under this Act, except the power to delegate under subsection (2) and the power to make regulations under section 95, to any person or government for any purpose in connection with the administration of this Act.

(2) The Minister may delegate any of the duties or powers conferred or imposed on a director or the Children's Guardian by a court or under this Act, including the power to form an opinion, to receive a report under section 3 or 4 or to delegate or subdelegate, to any

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

(3) A director or the Children's Guardian may delegate any of the duties or powers conferred or imposed on him by a court or under this Act, including the power to form an opinion, to receive a report under section 3 or 4 or to delegate or subdelegate to

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

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

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

**Agreements**      **88** The Minister or a director may enter into an agreement with any person for the purpose of that person providing protective services to a child under this Act.

**Engagement of consultants**      **89(1)** The Minister may appoint experts or persons having special technical or other knowledge to advise an Appeal Panel under this Part.

(2) A person appointed under subsection (1) may be paid the remuneration and expenses the Minister prescribes.

**Minor guardian**      **90** This Act is applicable to a parent or guardian even if that parent or guardian is under the age of 18 years notwithstanding that he does 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**      **91(1)** Except in proceedings under this Act or in accordance with section 65, 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 66, 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 or the lawyer of any of them;

(b) the child to whom the information relates or his lawyer;

(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 member of a police force or an agent of the Attorney General if the person disclosing the information has reasonable and probable grounds to believe that an offence under an Act of the Parliament of Canada or Alberta has been committed;

- (e) a teacher if he has responsibility for the education of a child to whom the information relates;
- (f) the board of an approved hospital or health unit that is responsible for providing services to the child to whom the information relates;
- (g) any person employed or engaged by the Minister;
- (h) any person assisting the Minister in the administration of this Act;
- (i) any person employed in the administration of child protection legislation in another province;
- (j) any person with the consent in writing of the Minister, the child or a guardian of the child.

(3) Notwithstanding subsection (2), no information shall be disclosed or communicated pursuant to this section without the consent in writing of the Attorney General or his agent if that information was provided by an agent of the Attorney General.

(4) Notwithstanding subsection (2), the name of a person who reports to the Minister pursuant to section 3 or 4 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.

(6) Any person who contravenes this section 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.

#### Records

**92(1)** In this section, “record” includes

- (a) a document, record, report, return, memorandum or other information whether in writing or in electronic form or represented or reproduced by any other means, and
- (b) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.

(2) A person required to do so by the regulations shall keep records with respect to a child who is the subject of an investigation, agreement or order under this Act or any predecessor to this Act.

(3) The records shall be kept

- (a) at the person’s place of business in Alberta, or
- (b) subject to any terms and conditions the Minister may impose, at a place in Alberta or elsewhere approved by the Minister.

(4) The records shall be kept until 100 years after the year to which the information contained in the records relates.

(5) Notwithstanding subsection (4), the Minister may order the destruction or consent to the destruction of records required to be kept under this section.

(6) The records that are required to be kept by a person shall be made available by that person for inspection by the Minister or a person authorized by the Minister whether or not those records are in that person's possession.

(7) Any person who contravenes this section 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.

Maintenance by  
the Minister

**93**(1) The Minister shall pay

(a) the costs incurred for the care and maintenance of a child who is in the custody of a director or under the guardianship of the Children's Guardian, and

(b) the costs of any assessment ordered to be made under section 29.

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

(3) The Minister may recover the costs he incurs under this Act for the care and maintenance of a child.

Appointments

**94**(1) The Minister shall designate 1 or more individuals as directors for the purposes of this Act.

(2) The Minister shall appoint an individual as Children's Guardian for the purposes of this Act.

(3) A director may appoint an individual with the qualifications prescribed by the regulations as a child welfare worker for the purposes of this Act.

(4) For the purposes of this Act, a child welfare worker has all the powers of a peace officer.

Regulations

**95**(1) The Lieutenant Governor in Council may make regulations

(a) respecting procedures for the assessment and placement of children under this Act;

(b) prescribing the standards to be met in providing protective services including the qualifications of persons to be employed in providing those services;

(c) prescribing the rules to be followed in a proceeding before the Court under this Act;

(d) prescribing the forms including notices to be used in any application made to the Court under this Act;

(e) prescribing the professions or occupations to which section 3(5) applies;

(f) prescribing qualified persons for the purposes of Parts 5 and 6.



(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) prescribing the amount, nature and conditions of services and financial assistance provided under this Act;
- (c) prescribing the protective services that are support services;
- (d) prescribing the rates payable by the Minister for the provision of any protective services under this Act;
- (e) prescribing the period for which a person may be provided with care and maintenance under section 33(2);
- (f) prescribing institutions as secure treatment institutions;
- (g) prescribing the standards of diagnostic and treatment services to be provided in a secure treatment institution;
- (h) prescribing the level of security required for the confinement of a child in a secure treatment institution;
- (i) defining “handicapped child” for the purposes of this Act;
- (j) respecting the amount, nature, conditions and reviews of any financial assistance granted under section 68;
- (k) prescribing a schedule of fees that will be paid by the Minister to lawyers appointed under section 78;
- (l) prescribing matters that may be the subject of an appeal to an Appeal Panel;
- (m) prescribing those persons who may represent an appellant at a hearing before an Appeal Panel;
- (n) prescribing those persons required to keep records under this Act;
- (o) prescribing any other matter required to be prescribed under this Act.

**PART 8**

**TRANSITIONAL AND CONSEQUENTIAL**

Transitional

**96(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 desig-*

nated 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

**97** *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

**98** *The Fatality Inquiries Act is amended*

(a) in section 11(a) by striking out “institution (as defined in Part 2 of the *Child Welfare Act*)” and substituting “secure treatment institution (as defined in the *Child Welfare Act*), facility or place designated as a place of open or secure custody pursuant to the *Young Offenders Act* (Canada)”;

(b) in section 12(a) by striking out “institution (as defined in Part 2 of the *Child Welfare Act*)” and substituting “secure treatment institution (as defined in the *Child Welfare Act*), facility or place designated as a place of open or secure custody pursuant to the *Young Offenders Act* (Canada)”;

(c) by repealing section 13 and substituting the following:

**13** The Children’s Guardian shall immediately notify a medical examiner of the death of any child under his guardianship or in the custody of a director pursuant to the *Child Welfare Act*.

Amends RSA  
1980 cH-11

**99** *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

**100** *The Maintenance and Recovery Act is amended*

(a) in section 7 by adding “or Part 2, 3 or 4 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 pursuant 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 pursuant 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 Children’s Guardian 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

**101** *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 Children’s Guardian pursuant to the *Child Welfare Act*, the consent may be given by the Children’s Guardian,

Amends RSA  
1980 cM-13

**102** *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 Children’s Guardian 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

**103** *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

**104** *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 Children’s Guardian pursuant to”.*

Amends RSA  
1980 cS-3

**105** *The School Act is amended by repealing section 1(i)(ii) and substituting the following:*

- (ii) the Children’s Guardian with respect to a child who is under the guardianship of the Children’s Guardian pursuant to the *Child Welfare Act*, and

Amends RSA  
1980 cS-14

**106** *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

**107** *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, or

Amends RSA  
1980 cS-16

**108** *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

**109** *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 Children’s Guardian pursuant to the *Child Welfare Act*,

Amends RSA  
1980 cV-4

**110** *The Vital Statistics Act is amended*

- (a) *by repealing section 9(2) and substituting the following:*

(2) If, at the time of the registration of the adoption, or at any time thereafter, there is in the office of the Director a registration of the birth of the person adopted, the Director, on production of evidence satisfactory to him of the identity of the person shall

(a) delete the original registration from the registration files, and

(b) substitute a registration of adoption in accordance with the facts contained in the order of adoption showing

(i) the date and the place of birth of the adopted person recorded in the original registration,

(ii) as the father of the adopted person, the adopting father, together with particulars pertaining to him, and

(iii) as the mother of the adopted person, the adopting mother, together with the particulars pertaining to her.

(b) in section 9(3) by striking out “new registration” and substituting “registration of adoption”;

(c) in section 11 by striking out “new registration” wherever it occurs and substituting “registration of adoption”;

(d) in section 11(b) by striking out “section 57(1) and (2)” and substituting “Part 6”.

General amendment

**111** In the following enactments, “Director of Child Welfare” is struck out wherever it occurs and “Children’s Guardian” is substituted:

<i>Act</i>	<i>Section number</i>
<i>Alberta Health Care Insurance Act</i>	13
<i>Maintenance Order Act</i>	4
<i>Vital Statistics Act</i>	6

Repeals RSA 1980 cC-8

**112** The Child Welfare Act, being chapter C-8 of the Revised Statutes of Alberta 1980, is repealed.

Repeals section 55

**113(1)** Section 55 is repealed on Proclamation.

(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.

Coming into force

**114** This Act comes into force on Proclamation.