

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

FRANCES BAARS and DEREK BAARS

Applicants

and

THE CHILDREN'S AID SOCIETY OF HAMILTON

Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*.

APPLICANTS' APPLICATION RECORD

April 11, 2017

Justice Centre for Constitutional Freedoms

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26 Arrowsmith Road
Hamilton, Ontario L8E 4H8

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TABLE OF CONTENTS

| Tab | Page No. |
|-----|---|
| 1. | Notice of Application, issued April 11, 20171-12 |
| 2. | Affidavit of Frances Baars, sworn April 10, 201713-23 |
| A. | <i>Child and Family Services Act</i> , R.S.O. 1990, c. C.11.....24-164 |
| B. | “About Us” Webpage for The Children’s Aid Society of Hamilton.....165-166 |
| C. | “Children’s Aid Society of Hamilton needs foster families”, hamiltonnews.com.....167 |
| D. | SAFE Homestudy Report for Frances and Derek Baars, December 11, 2015.....168-181 |
| E. | Foster Parent(s) - Society Service Agreement, dated December 17, 2015.....182-190 |
| F. | Letter from The Children’s Aid Society of Hamilton to Derek and Frances Baars, dated March 16, 2016.....191 |
| G. | Letter from Derek and Frances Baars to The Children’s Aid Society of Hamilton, dated April 13, 2016.....192-194 |
| H. | Letter from Derek and Frances Baars to The Children’s Aid Society of Hamilton, dated January 9, 2017.....195 |
| I. | Letter from Derek and Frances Baars to The Children’s Aid Society of Hamilton, dated January 27, 2017.....196 |
| J. | Letter from The Children’s Aid Society of Hamilton to Derek and Frances Baars, dated January 31, 2017.....197 |

Court File No.

17/6/225

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

FRANCES BAARS and DEREK BAARS

Applicants

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THE CHILDREN'S AID SOCIETY OF HAMILTON

Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*.

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing, on April 25, ²⁰¹⁷~~2016~~, at the Superior Court of Justice, ~~330 University Avenue, Toronto, Ontario, M5G 1R7~~ ^{45 Main St. E. Hamilton, Ontario L8N 2B7} ✓

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date APR 11 2017 Issued by D. Plakus

Local registrar
Superior Court of Justice
45 Main Street East
Hamilton, Ontario L8N 2B7

TO The Children's Aid Society of Hamilton
 26 Arrowsmith Road
 Hamilton, Ontario L8E 4H8

APPLICATION

The Applicants make application for:

1. A Declaration that The Children's Aid Society of Hamilton ("Respondent") violated the Applicants' freedom of conscience and religion, freedom of expression, and right to be free from discrimination under sections 2(a), 2(b) and 15 of the *Canadian Charter of Rights and Freedoms*, respectively, by:
 - a. Creating, in bad faith and for an improper purpose, a requirement for foster parents to actively or proactively inform the children in their care that the fictional character of the Easter Bunny is real.
 - b. Ordering the Applicants to tell the foster children in their care that the Easter Bunny is a real entity, in violation of the Applicants' consciences and religious beliefs, and threatening to close their foster home if the Applicants refused;
 - c. Closing the Applicants' foster home, due solely to the Applicants' unwillingness to proactively inform the children in their care that the Easter Bunny is real (the "Closure"); and
 - d. Creating a false justification for the Closure by falsely alleging that the Applicants, based on their religious faith, would discriminate against a same-sex couple interested in adopting a child, when this allegation is false, defamatory and not supported by any evidence;
2. A Declaration that the Closure is unreasonable, discriminatory and contrary to fundamental rights and freedoms found in sections 2(a), 2(b) and 15 of the *Canadian Charter of Rights and Freedoms*;
3. An Order requiring The Children's Aid Society of Hamilton to note in the Applicants' file that the Respondent's decision to close the Applicants' foster home violated their *Charter* rights and freedoms;
4. Costs of this Application; and
5. Such further and other relief as this Honourable Court may deem just.

The grounds for the Application are:

The Applicants

1. Frances Baars is a 31 year old woman, with a diploma in Early Childhood Education and extensive experience as a nanny and a homemaker.
2. Derek Baars is a 36 year old man, with a Masters degree, and is in the process of becoming an ordained minister.
3. Frances and Derek have been married since 2010. They have a strong religious faith and are members of the Reformed Presbyterian Church of North America.

The Respondent

4. The Children's Aid Society of Hamilton was established in 1894, and is mandated under the *Child and Family Services Act*, RSO 1990 c C11 as a "children's aid society." The Respondent is funded, and subject to, the Government of Ontario through the Ministry of Children and Youth Services.

Approval of the Applicants' Foster Home

5. On May 29, 2015, the Baars applied to the Respondent to serve as foster parents by opening a foster home in Troy, Ontario.
6. In July 2015, the Baars successfully completed the Respondent's Parent Resources for Information, Development and Education (PRIDE) training. During the course it had been explained to the Baars that they would not be expected to do anything that contradicted their beliefs. During the course, the Baars had raised these matters, such as the fact that they do not celebrate Halloween. They were told by the Respondents' trainers that in those situations, the children's worker would pick up the children to take them trick-or-treating to ensure the parents' wishes in those areas were met.
7. The requisite SAFE Homestudy Report, was completed on December 11, 2015. Within the extensive Report, signed by Susan Ross, Homestudy Worker, and Karen Chardola, Supervisor, the Respondent noted:

- “Frances presents as friendly, kind and calm. She is open in her communications and easily understood. She is a good listener and takes her time to respond....She is careful not to be insensitive to others as she knows that she can easily be upset by insensitivity to her feelings. Frances knows that other people have different beliefs and ways of life from her and is fine with this. She respects and values human life in all of its aspects. Her judgement appears sound and she appears to be capable of sizing up a situation and behaving in an appropriate manner....Frances is usually in an upbeat, positive frame of mind. She rarely feels anger at someone and feels that it is important to understand the other person’s perspective before rushing to judgment.”
- “Derek presents as a very thoughtful communicator. He is very open to waiting patiently for others to finish speaking before responding and then chooses his words carefully. He appears very open to learning from others and in adapting his methods if there are better ones. He likes to be proactive with problem solving and anticipate an issue before it becomes a problem.... He is open to all cultures and beliefs...Derek is respectful of others beliefs that may be different from his. He advised that he feels it is not his job to change others....Derek appears to have good judgement and is appropriate in his behaviour and responses to others.
- “Derek and Frances present as having a loving, stable relationship. They both care about what is in the best interests of the other.”
- “The Baar’s are very careful with their money and live within their means.”
- “The accomodation [sic] and safety was done on November 5/15. There were only a couple of areas that needed to be addressed and they were done so.”
- “They also know the value of teaching life skills and would involve a child in cooking, cleaning etc. dependent upon age. They are excited to take a child outdoors to explore as well....They feel it is important to learn and build on a child’s strengths....They hope to have other children over (friends and relatives [sic] children) to encourage socialization and sharing....They both understand the need to be consistent with discipline. What type of discipline they use would depend on the child....They understand the agency’s policy of non physical discipline and agree to abide by it. They are both uncomfortable with it [physical discipline] at any rate. They are both aware of the need to provide appropriate clothing, food and shelter as well as medical treatment for a child.”
- “The Baar’s both appear to have insight into the needs of children who have been placed in care....They both understand the need for stability for children and how coming into foster care and moving placements causes emotional problems for children....They will do whatever is helpful to assist a child with visits. They are comfortable having contact with the natural family should it pose not [sic] risk for them. They understand the need to be positive about the natural family and encourage visits....They would not expect the child to automatically blend into their way of living and understand that transitions take time. They advised that they will be respectful of the child’s culture and do what they can to educate a child about it. They admitted they were somewhat surprised about this as they did not realize it was such an important part of fostering, but are perfectly willing to do so. The only thing they feel they can not do is something that would go against their own beliefs.”
- “The Baar’s home is neat, clean and welcoming. They are aware of the dangers of the road out front and have put an extra lock on the door out of reach of children. They are safety conscious. Both Derek and Frances appear to have gentle, patient natures. They are cooperative and helpful. They are both positive thinkers and look on the bright side of things despite disappointments they have had.”
- “It is recommended that Frances Ann Baars and Derek Henry Baars be approved for Foster Care.”

8. Of particular relevance, the Respondent also noted in the Homestudy Report:

- The Baars are Protestant (Free Reformed) and their beliefs are a major part of their lives. They do not celebrate holidays such as Christmas or Easter as others do. They understand that most of Canadian society does celebrate these so the child will not be isolated from that. They do not endorse Santa Claus or the Easter Bunny as they do not wish to lie to children. They are willing to give the children chocolate at Easter if the parents wish that they do so. They would also assist a child making Christmas gifts for their loved ones and would purchase gifts for them. However, they will be told who is giving the gifts. Frances' family does celebrate Christmas with gifts but usually closer to New Years and the children would be involved in that. They celebrate Canadian holidays such as Thanksgiving, but not Halloween.

9. On December 17, 2015, the Baars entered into a "Foster Parent(s) - Society Service Agreement" with the Respondent. On the very next day, December 18, 2015, because of the urgent need for foster homes, the Respondent placed two sisters from the same biological family, ages three and four, with the Baars. The placement of the girls with the Baars marked a time of tremendous happiness and joy for the Baars. The couple welcomed the children with open hearts and arms.

10. Thereafter, on December 31, 2015, the Respondent notified the Baars that their homestudy had been approved and officially welcomed them as foster parents and members of the Children's Aid Society of Hamilton.

11. The Respondent appointed Tracey Lindsay as the Baars' Placement Support Worker.

Applicants' Service as Foster Parents

12. It was intended that the two sisters placed with the Baars would be with them temporarily, and eventually reunited with their biological family. Each week the girls were given supervised visits with their mother and their father. A communication book passed back and forth each week from the girls' mother to the Baars. The Baars would provide updates on how the girls were doing, and the girls' mother would respond, often providing further specific directions and desires she had for the girls' care. The Baars carried out each of these instructions, regardless of cost or inconvenience to themselves.

13. During the holidays, the Baars gave the girls gifts and the girls joined the Baars' extended family for dinner. Both the Baars and the girls had an enjoyable time.
14. Unfortunately, issues arose on or about January 6, 2016, when the Baars were first introduced to Tracey Lindsay as their "Placement Support Worker". At this meeting, Ms. Lindsay met the girls and acknowledged that they were well cared for in all respects. Ms. Lindsay challenged the Baars on how they were going to celebrate Easter with the girls, however. Ms. Lindsay insisted that the Baars must inform their foster girls that the fictitious character known as the Easter Bunny was a real entity. Ms. Lindsay informed the Baars that it was part of their duty as foster parents to teach the girls about the Easter Bunny, because it is ostensibly part of Canadian culture. The Baars were confused by and felt uncomfortable about Ms. Lindsay's aggressive insistence and insinuations that they were not meeting the children's needs, since the girls were happy and content. Neither of the foster girls' biological parents had ever communicated to the Baars that they required or desired that the Baars tell their girls that the Easter Bunny or Santa Claus was real.
15. Ms. Lindsay admitted that the Easter Bunny was not real, but she did not consider it to be lying to tell children it was real; she believed it to be an essential part of every Canadian child's experience. Ms. Lindsay became defensive and insistent when the Baars informed her that the Easter Bunny was not real, and they were not going to tell anyone that it was real. The Baars assumed that their support worker would pay more attention to the good work they were doing with the girls, and that the Easter Bunny would become a non-issue.
16. Each subsequent time Ms. Lindsay spoke with the Baars, however, she reiterated this requirement that the Baars celebrate Easter with the foster children by informing them that the Easter Bunny was real. The Baars informed Ms. Lindsay that on Easter they intended to hide chocolate eggs and have the girls find them, and play other games. Ms. Lindsay was not satisfied by this. Ms. Lindsay's insistence and aggression on this point caused the Baars stress and anxiety and they felt attacked and very uncomfortable.

17. Further, in late January or early February 2016, Ms. Lindsay complained to the Baars that the girls' mother had wanted a picture of them with a person dressed as Santa Claus. However, the girls' mother had never communicated such a desire to the Baars. Ms. Lindsay conveyed her displeasure with the Baars for failing to photograph the girls with Santa Claus, as though this were a material and significant failing on the part of the Baars in their role as responsible foster parents.
18. The Baars are kind-hearted, conscientious, capable and responsible foster parents. Ms. Lindsay's (and by extension, the Respondent's) petty criticism of the Baars based on their religious beliefs ignored the caring and safe environment that the Baars created for the children in their care. Ms. Lindsay's criticisms against the Baars *vis-a-vis* Santa Claus and the Easter Bunny intensified through January and February 2016.

Violation of Applicants' Charter Rights

19. Despite the fact that the Baars had informed Ms. Lindsay that during Easter, they would give their foster girls chocolate, hide candies and get them new outfits, Ms. Lindsay continued to insist that the Baars tell their foster girls that the Easter Bunny was real. The Baars informed her they would not do so, because to do so would be lying and they believe all lying to be morally wrong. Ms. Lindsay threatened to take the girls away from the Baars and close their foster home if they continued to refuse.
20. The Baars informed Ms. Lindsay that they were not trying to convince the girls that there was no such entity as the Easter Bunny. The Baars had no intention of telling the girls that the Easter Bunny was not real, unless they were directly asked by the girls. Ms. Lindsay informed the Baars that this was not sufficient – that to fulfil their responsibilities as foster parents that they must positively tell their foster girls that the Easter Bunny was a real entity
21. The Baars offered to let the girls stay with another family over the Easter period. Ms. Lindsay refused this offer.
22. Near the end of February of 2016, Ms. Lindsay told the Baars that other senior staff of the Respondent had confirmed Ms. Lindsay's ultimatum to the Baars (that they tell the foster girls that the Easter

Bunny was real, or their foster home would be closed). This caused the Baars severe hurt, anxiety and frustration. During this same conversation, Ms. Lindsay also informed the Baars that she was concerned that the Baars would not treat a prospective same-sex adoptive couple “well.” In doing so, Ms. Lindsay repeatedly made derogatory statements and disparaging accusations against the Baars based on their Christian faith. The Baars had not interacted with any prospective adoptive couples, because the plan with their foster girls was that they would be reunited with their biological family. The Baars repeatedly explained to Ms. Lindsay that they would respect any same-sex adoptive parents as people worthy of dignity and respect. Yet, Ms. Lindsay, without any evidentiary foundation whatsoever, persisted in making statements to the Baars to the effect that they would discriminate against same-sex couples. Ms. Lindsay informed the Baars that she intended to prevent the Baars from ever encountering a same-sex couple, and that she intended to close the Baars’ foster home. The Baars were deeply offended by these unfounded allegations.

23. On March 3, 2016, Ms. Lindsay told the Baars that their foster home would be shut down and the girls would be taken away the next morning. The Baars requested a transition period for the girls, which was denied. Ms. Lindsay’s denial of a transitional period was cruel and unnecessary, and was not in the best interests of the children, or the Baars. The Baars could not answer the girls’ questions about where they were going. The only information the Respondent provided was that the sisters would be kept together, and this information was provided only after the Baars had specifically asked.
24. The Baars appealed to the Respondent to keep their foster home open. In conversation with Ms. Lindsay, the Baars inquired whether they could keep their home open for infants, since there would be no need to tell infants that Santa Claus or the Easter Bunny were real. The Baars also inquired whether their home could be kept open for children from families that did not engage in the cultural practices of Santa Clause and the Easter Bunny. Ms. Lindsay refused to accept any accommodation or exception to her requirement that the Baars tell their foster children that Santa Claus and the Easter Bunny were real.

25. On the morning of March 4, 2016, the Respondent removed the foster girls from the Baars' home, and closed the Baars' foster home.

Attempts to Appeal the Decision

26. Following the closure of their home, the Baars reached out to the United Foster Parents of Canada Corporation (UFPCC) seeking their help in appealing the decision and mediating a resolution. The Baars were later informed that representatives of UFPCC had met with the Respondent to appeal the closure of the Baars' foster home. Following the meeting, UFPCC told the Baars that their efforts were fruitless, and there was nothing further they could do to help.
27. On March 16, 2016, the Respondent sent a letter to the Baars confirming that their foster home had been closed. This letter alleged that the Baars were "not in agreement with supporting the parent's wishes for the children's care". The letter further alleged that "the parent's cultural and religious beliefs are to be supported" and alleged that the Respondent had not been able "to come to a resolution that supported the children's needs". The letter was signed by Ms. Lindsay and Karen Chardola, the Respondent's Supervisor of Resource, Placement and Support.
28. After receiving the letter, the Baars contacted Ms. Chardola, and asked what they could do to appeal the decision. Ms. Chardola stated that there was no appeal, and that they were shut down because they were not prepared to change their behaviour to meet cultural needs. The Baars asked Ms. Chardola if they could tell their side of the story, and she told them to write a letter which would be put in their file.
29. In a letter dated April 13, 2016, to Ms. Lindsay and Ms. Chardola, the Baars' reiterated their position, and their appeals to keep their home open.
30. The Respondent did not respond to the Baars' letter or advise the Baars of any other options to appeal the closure of their foster home.

Applicants' Request for Their File

31. The Baars continued to be concerned at how the closing of their foster home by the Respondent would affect the Baars' future chances of serving as foster or adoptive parents. In December 2016, the Baars called the respondent to request a copy of their file. Eventually after several calls, they were connected with Julie Joel who told them to send a fax specifying whether the file would be used for legal or personal use and the Respondent would send a consent form to the Baars in order to release their file. On January 9, 2017, the Baars sent a letter to the Respondent requesting their file.
32. The Baars received a call from the Respondent's senior counsel, James Wood, in which he tersely stated that the Baars' file belonged to the Respondent and would not be released to them.
33. On January 27, 2017, the Baars reiterated their request for their file, and received a written reply from the Respondent on January 31, 2017, confirming the Respondent's prior refusal to provide the Baars with their file.

Legal Basis for Declaration

34. The *Canadian Charter of Rights and Freedoms* prohibits the Respondent from compelling or coercing the Baars to act contrary to their conscience and sincerely-held religious beliefs. By threatening to close down the Baars' foster home, the Respondent sought to compel and coerce the Baars to tell their foster children that the Easter Bunny was real, in violation of the Baars' religious beliefs against lying and saying that the Easter Bunny is real. When the Baars' refused to violate their conscience and sincerely-held religious beliefs, the Respondent closed the Baars' foster home. These actions violated the Baars' freedom of conscience and religion under section 2(a) of the *Charter*.
35. The *Charter* also prohibits the Respondent from compelling the Baars to express a particular message. By demanding the Baars to tell their foster children that the Easter Bunny was real, and closing their foster home when they refused, the Respondent violated the Baars' freedom of expression under section 2(b) of the *Charter*.

36. Section 15 of the *Charter* prohibits the Respondent from discriminating against people on the basis of their race, national or ethnic origin, colour, religion, sex, age or mental or physical disability and analogous grounds. The Respondent discriminated against the Baars on the basis of the Baars' religion by demanding that the Baars violate their religious beliefs and tell their foster children that the Easter Bunny was real, in order to maintain a foster home. The Respondent also falsely alleged that the Baars would treat same-sex people poorly on account of the Baars' religious beliefs.

The following documentary evidence will be used at the hearing of the Application:

37. Affidavit of Frances Baars; and

38. Such further and other material as counsel may advise and this Honourable Court will permit.

Date: April 11th, 2017

Justice Centre for Constitutional Freedoms

Marty Moore

Barrister and Solicitor
#253, Elbow Drive SW
Calgary, AB T2V 1K2
Phone: (587) 998-1806
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FRANCES BAARS AND DEREK BAARS
v.
THE CHILDREN'S AID SOCIETY OF HAMILTON

Court file no.

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Hamilton

NOTICE OF APPLICATION

Justice Centre for Constitutional Freedoms
#253 Elbow Dr. SW
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Solicitor for the Applicants

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

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Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*.

AFFIDAVIT OF FRANCES BAARS

I, Frances Ann Baars, of the City of Calgary, MAKE OATH AND SAY:

1. I have personal knowledge of the matters and facts hereinafter deposed to by me, except where same are stated to be based upon information and belief, in which cases I believe them to be true.

The Applicants

2. I am 31 years old and received a diploma in Early Childhood Education from Conestoga College. I am also an experienced nanny, babysitter and a homemaker.
3. I am married to Derek Baars, age 36. Derek has a Masters degree, and is in the process of becoming an ordained minister of the Reformed Presbyterian Church of North America (RPCNA).
4. Derek and I have been married since 2010. We desired to have children of our own, but have been unable to conceive. We have a strong religious faith and are members of the RPCNA.

The Respondent

5. On May 29, 2015, Derek and I applied to the Respondent, the Children's Aid Society of Hamilton, to open a foster home. The Children's Aid Society of Hamilton was established in 1894, and is mandated under the *Child and Family Services Act*, RSO 1990 c C11 (attached as **Exhibit "A"** to this affidavit) as a "children's aid society." The Respondent is funded, and subject to, the Government of Ontario

through the Ministry of Children and Youth Services (see print out from the Respondent's website, <http://www.hamiltoncas.com/en/about/us/>, attached as **Exhibit "B"** to this affidavit).

Approval of Our Foster Home

6. At the time of our application to the Respondent, we were aware of the need for foster parents that the Respondent had. The Respondent continues to have an urgent need for more foster parents, as reported on by the Hamilton News (see <https://www.hamiltonnews.com/community-story/7065355-children-s-aid-society-of-hamilton-needs-foster-families/>, attached as **Exhibit "C"** to this Affidavit).
7. In July of 2015, Derek and I successfully completed the Respondent's Parent Resources for Information, Development and Education (PRIDE) training. During this week-long course, the trainers explained to us that we would not be expected to do anything that contradicts our beliefs. We had talked with the trainers about the fact that we do not celebrate Halloween, for example. The trainers told us that in such a situation, the foster children's worker would pick up the children to take them trick-or-treating to ensure the parents' wishes in those areas were met, if necessary.
8. From May 29, 2015 to November 25, 2015, the Respondent conducted an extensive process called a "homestudy", including numerous interviews and home visits. The SAFE Homestudy Report was completed on December 11, 2015 (attached as **Exhibit "D"** to this affidavit), and recommended that we be approved for foster care.
9. On December 17, 2015, Derek and I entered into a "Foster Parent(s) - Society Service Agreement" with the Respondent (attached as **Exhibit "E"** to this affidavit). Due to the urgent need for foster homes, the very next day (December 18, 2015) the Respondent brought two biological sisters, ages three and four, to live with us. From the beginning, it was our delight to have the girls with us. We loved them from the moment that they came to us.

Our Service as Foster Parents

10. The Respondent informed us that they intended for the two young girls to stay with us temporarily until they could eventually be reunited with their biological family. Each week the girls were given supervised visits with their mother and their father. A communication book was exchanged each week between the girls' mother and us. I would write updates on how the girls were doing, and the girls' mother would respond, often providing further specific directions and desires she had for the girls' care. These instructions included directions to bathe the girls every other evening, oil their hair daily with a particular brand of olive oil, give the girls a particular kind of body lotion and take them to the doctor at a particular time. We carefully carried out each of the instructions.
11. When the holiday season came, the girls accompanied Derek and me to my parents' house for dinner with my extended family. We made sure the girls had an enjoyable time and they received presents from us, the same as the other children in my extended family.
12. Unfortunately, issues arose on or about January 6, 2016, when our Homestudy Worker Susan Ross brought our "Placement Support Worker" Tracey Lindsay to our home to meet us. At this meeting, Ms. Lindsay interviewed the girls and acknowledged to us that they looked well cared for in all respects. However, Ms. Lindsay challenged Derek and I on how we were going to celebrate Easter with the girls. Ms. Lindsay informed us that it was part of our duty as foster parents to teach the girls about the giant imaginary rabbit known as the Easter Bunny, because she considered it part of Canadian culture. My husband and I were confused by Ms. Lindsay's insinuations that we were not meeting the children's needs, since the girls were happy and content. As Ms. Lindsay continued to insist that we tell the girls the Easter Bunny was real, I asked her if she actually believed in the Easter Bunny or realized that it was fictitious. After evading this question initially, she finally admitted that the Easter Bunny was not real, but she did not consider it lying to tell children it was real; she believed it to be an essential part of every Canadian child's experience.

13. Thereafter, each subsequent time Ms. Lindsay called us she would reiterate the “requirement” that we celebrate Easter with the foster children by informing them that the Easter Bunny was real. This made us feel attacked and very uncomfortable. We informed Ms. Lindsay that on Easter we intended to hide chocolate eggs and have the girls find them, and play other games. Ms. Lindsay was dissatisfied with our response. She pressed us, insisting that we inform the foster girls in our care that the Easter Bunny was real as part of the Easter celebration.
14. We thought about complaining about Ms. Lindsay’s repeated insistence and threatening demeanour regarding Easter Bunny to her superiors, but reassured ourselves that the Respondent could see that we were taking excellent care of the girls, and that that was much more important. The girls were well fed, well dressed, and we did many activities with them, such as regularly taking the girls to the park near our home, attending and hosting playdates with other children the same ages as the girls, playing educational games, and painting with the girls, which provided hours of entertainment for them.
15. Unfortunately, Ms. Lindsay was unimpressed with a warm house and a loving environment. In late January or early February 2016, she found another pretence for criticising our care of the girls. She informed us that the girls’ mother had wanted a picture of them with a Santa Claus. This was a surprise to us, because the biological parents had not requested this. Despite weekly communications with the girls’ mother, she had never told us she wanted her girls to have a picture with a Santa Claus. Ms. Lindsay castigated us on several occasions for not having the girls photographed with Santa Claus, indicating that, as foster parents, we were required to do so because, apparently, it was a part of the girls’ cultural needs.
16. We were increasingly alarmed at Ms. Lindsay’s fixations, and the air of unreality that our relationship with her was taking on. From our perspective, we were doing everything that a good foster parent should. The girls in our care were loved and well cared for. Ms. Lindsay’s constant haranguing was a source of stress and anxiety. After phone calls with Ms. Lindsay, it was hard to put on a smile and

pretend all was well, for the girls' sake. Further, I could not discuss these phone calls with Derek until the girls were sleeping, so as not to disturb their sense of security in our home, which resulted in my having trouble sleeping.

Violation of Applicants' Charter Rights

17. In late February 2016, Ms. Lindsay dramatically escalated the issue by informing us that the girls would be taken away from us and our foster home permanently closed if we refused to inform the girls that the Easter Bunny was a real entity. My husband and I were shocked, and had an awful sense of unreality. We were distressed by Ms. Lindsay's fixation on this issue. We informed Ms. Lindsay that we were being reasonable by doing Easter activities which we would not otherwise participate in, such as hiding and finding chocolate eggs, buying special 'Easter' dresses for the girls, etc.. While going out of our way to comply with Ms. Lindsay's wishes as much as we could, we would not lie, for we believe all lying to be morally wrong. We also reminded Ms. Lindsay of the girls' happiness in our home, and our desire to care for them until they could be returned to their parental home.
18. We also repeatedly told Ms. Lindsay that we were not making any effort to convince the girls that there was no such entity as the Easter Bunny, and that we had no intention of telling the girls that the Easter Bunny was not real, unless the girls directly asked us. However, Ms. Lindsay insisted that to fulfil our responsibilities as foster parents, we must positively tell the girls that the Easter Bunny was a real entity.
19. Seeing that we could not fulfil Ms. Lindsay's requirement without violating our beliefs that it is wrong to lie, we offered to let the girls stay with another foster family over the Easter period. Ms. Lindsay refused to consider this offer.
20. On or about the end of February, we again spoke with Ms. Lindsay over the phone. She informed us that she had met with other senior staff of the Respondent, who apparently confirmed that our foster girls would be taken from us, and that our foster home would be closed, if we refused to tell the girls

proactively that the Easter Bunny was real. We could not believe what we were hearing, and felt anxious and frustrated. During the same conversation, Ms. Lindsay also introduced a new, offensive and entirely unfounded complaint against us: she informed us that she was personally afraid that if a same-sex adoptive couple met us, that we would not treat them well. Ms. Lindsay repeatedly made derogatory statements and disparaging accusations against us based on our Christian faith. She stated that she did not think we would treat same sex couples with respect, and that we might teach the children who were to be adopted that the couple was “living in sin”, thereby prejudicing the foster children against the adoptive parents.

21. Ms. Lindsay’s comments did not relate to any actual situations we were facing as foster parents. We had not interacted with any prospective adoptive couples, nor would we be doing so, because the plan with our foster girls was that they would be reunited with their biological family. We repeatedly protested this offensive allegation. We assured Ms. Lindsay that we would treat any same-sex adoptive parents as people worthy of dignity and respect. Yet, Ms. Lindsay, without any factual basis or grounding, persisted in telling us that because of our religious faith, we would discriminate against same-sex couples. Ms. Lindsay told us that she intended to prevent us from ever encountering a same-sex couple, and that she intended to close our foster home.

22. On March 3, 2016, Ms. Lindsay told us that our foster home would be shut down, and the girls would be taken away the next morning. We requested a transition period for the girls, which was denied. This denial was cruel and needless. We did not think such a sudden transition was wise or appropriate for the girls, who should have been given more than 24 hours to process the change. We were required to tell the girls that they were going to leave our home the next day. They asked us many questions. They are intelligent girls, who wanted to know everything, and trusted us to tell them the truth. We could not answer the girls’ questions about where they were going, because Ms. Lindsay refused to provide any information. It was only after we specifically asked Ms. Lindsay that we were able to

assure the girls that they would be kept together. We had poured our lives into taking care of the girls. To have them suddenly ripped away from us was deeply painful.

23. The girls' most persistent question was why they were being taken away from us. There was no good answer to this question. We did not want to discuss the Easter Bunny or Ms. Lindsay's other unreasonable and offensive accusations. We explained to them that we believed in telling the truth, and that we were in trouble for refusing to tell them something that was not true, because we did not believe in lying.
24. We earnestly appealed to the Respondent to keep our foster home open. In conversation with Ms. Lindsay, we asked if the Respondent would keep our home open, even if it was just for infants. We also asked Ms. Lindsay whether our home could be kept open for children from families that did not engage in the cultural practices of Santa Claus and the Easter Bunny. The Respondent refused all these requests.
25. On the morning of March 4, 2016, the Respondent removed the foster girls from our home. It seemed unreal. The girls knew the worker who picked them up, so they went easily, even with a smile as she got them engaged. I don't think they fully understood. They had often been picked up by various drivers to visit their mother. The girls viewed it as a short trip away, saying things like "see you later" and "when we come back". They didn't seem to grasp that they weren't coming back. When they left, we smiled and waved for their sake, wanting their transition to go as well as we could possibly make it go. It was the days after they left that the house felt empty without them. I lacked desire to do anything. As remains of their belongings kept popping up—we had so little time to pack the girls' belongings that we weren't able to collect everything—it finally struck me that they weren't coming back. Several weeks later the girls' worker stopped by to pick up their remaining belongings, including the scrapbooks I had made for the girls, which I had purposely held on to so I could finish the scrapbooks before sending them on. The scrapbooks were my final way of showing our love and care,

and to provide them with reminders of all the good times we had together. A picture of the girls is still on our fridge, so we can remember the happy times we shared.

Attempts to Appeal the Decision

26. After the girls were taken away and we had been told we could no longer be foster parents, we contacted the United Foster Parents of Canada Corporation (UFPCC) seeking their help in appealing the Respondent's decision and mediating a resolution. A few weeks after we contacted UFPCC in early March 2016, we were informed that representatives of UFPCC had met with the Respondent to appeal the closure of our foster home. We had not been notified in advance of this meeting, or invited to attend. Following the meeting, UFPCC told us that their meeting with the Respondent had been fruitless and there was nothing further they could do to help.
27. On March 16, 2016, the Respondent sent us a letter (attached as **Exhibit "F"** to this affidavit) confirming that they had closed our foster home.
28. After receiving the letter, we called Ms. Karen Chardola, the Respondent's Supervisor of Resource, Placement and Support, who along with Ms. Lindsay had signed the letter, and asked what we could do to appeal the closure of our home. Ms. Chardola stated that there was no appeal, and that our home was shut down because we were not prepared to change our behaviour to meet cultural needs. We asked Ms. Chardola if we could tell our side of the story, and she told us to write a letter which would be put in our file.
29. In a letter dated April 13, 2016, to Ms. Lindsay and Ms. Chardola (attached as **Exhibit "G"** to this affidavit), we reiterated our position.
30. The Respondent did not respond to our letter, or advise us of any other options to appeal their closure of our foster home.

Our Request for Our File

31. We are concerned at how the Respondent's closure of our foster home will limit our chances of serving as foster parents, or even adoptive parents, in the future. In December 2016, we called the Respondent to request a copy of our file. Eventually after several calls, we were connected with Julie Joel, who told us to send a fax specifying whether we needed the file for legal or personal use. Ms. Joel said that once they received the fax, they would send us a consent form in order to release our file. On January 9, 2017, we sent a letter to the Respondent requesting our file (attached as **Exhibit "H"** to this affidavit).
32. After we sent our letter, we received a call from the Respondent's senior counsel, James Wood, in which he tersely stated that our file belonged to the Respondent and would not be released to us.
33. On January 27, 2017, we sent another letter requesting our file (attached as **Exhibit "I"** to this affidavit), and received a written reply from the Respondent on January 31, 2017 (attached as **Exhibit "J"** to this affidavit), confirming the Respondent's prior refusal to provide us with our file.
34. We verily believe that it is not a cultural requirement to believe in the Easter Bunny or to promote belief in this entity as real. Neither of our foster girls' biological parents had ever communicated to us that they required or desired that we tell their girls that the Easter Bunny or Santa Claus is real. We are capable, loving and responsible caretakers. We are informed by our counsel, and do verily believe, that Canada is a multicultural society where many people believe many things, and yet each person must be treated equally before the law. We believe that there are many Canadians of diverse ethnic and cultural backgrounds who do not believe in, or celebrate, the Easter Bunny, and who could nevertheless be good foster parents. There are many Canadians who do not believe in the Easter Bunny, Santa Claus, or God, for that matter. Yet they are permitted to be foster parents without being subjected to the emotional and procedural abuses that our foster girls suffered through, and that we suffered through.

35. We want very much to be foster parents again; to help and serve children in need. The unfair and biased record created by the Respondent, without proper process or any meaningful avenue of appeal is an offence to the Rule of Law and procedural fairness, and our *Charter* rights as Canadians.

36. I respectfully make this Affidavit in support of the accompanying Application and for no improper purpose.

Sworn before me at the City of Calgary,
in the Province of Alberta, on April 10th, 2017.



Marty Moore
Barrister and Solicitor


.....

FRANCES BAARS AND DEREK BAARS
v.
THE CHILDREN'S AID SOCIETY OF HAMILTON

Court file no.

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Hamilton

AFFIDAVIT OF FRANCE BAARS

Sworn April 10th, 2017

Justice Centre for Constitutional Freedoms
#253 Elbow Dr. SW
Calgary, AB T2V 1K2

Marty Moore

Phone: (587) 998-1806

Fax: (587) 747-5310

Law Society of Alberta #18786

Solicitor for the Applicants

THIS IS EXHIBIT " A "
referred to in the Affidavit of
France Baars

Sworn before me this 10th
day of April A.D. 20 17

Marty Moore
A Commissioner in and for the Province of Alberta

Barrister and Solicitor

Français

Child and Family Services Act

R.S.O. 1990, CHAPTER C.11

Consolidation Period: From January 1, 2017 to the e-Laws currency date.

Last amendment: 2016, c. 23, s. 38.

Legislative History: 1992, c. 32, s. 3; 1993, c. 27, Sched.; 1994, c. 27, s. 43 (2); 1996, c. 2, s. 62; 1999, c. 2, s. 1-35 (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the Legislation Act, 2006); 1999, c. 6, s. 6; 1999, c. 12, Sched. E, s. 1; 1999, c. 12, Sched. G, s. 16; 2001, c. 13, s. 5; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. D, s. 1; 2004, c. 3, Sched. A, s. 78; 2005, c. 5, s. 7; 2005, c. 25, s. 14-33 (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the Legislation Act, 2006); 2006, c. 1, s. 2; 2006, c. 2, s. 45; 2006, c. 5, s. 1-50; 2006, c. 19, Sched. D, s. 2; 2006, c. 21, Sched. C, s. 100, 101; 2006, c. 24, s. 1; 2006, c. 34, s. 28; 2006, c. 35, Sched. C, s. 14; 2007, c. 9, s. 25; 2008, c. 5, s. 12-14; 2008, c. 21; 2009, c. 2, s. 1-15; 2009, c. 11, s. 3; 2009, c. 33, Sched. 6, s. 45; 2009, c. 33, Sched. 7, s. 1; 2010, c. 10, s. 23; 2010, c. 15, s. 217; 2011, c. 12; Table of Public Statute Provisions Repealed Under Section 10.1 of the Legislation Act, 2006; 2012, c. 8, Sched. 7; 2014, c. 11, Sched. 6, s. 2; 2016, c. 5, Sched. 33, s. 7; 2016, c. 23, s. 38.

CONTENTS

1. Paramount purpose and other purposes
2. Duties of service providers
- INTERPRETATION
3. Definitions
- CONSENTS AND PARTICIPATION IN AGREEMENTS
4. Consents and agreements
- PART I
FLEXIBLE SERVICES
DIRECTORS AND PROGRAM SUPERVISORS
5. Directors and program supervisors
6. Powers of program supervisor
- APPROVALS AND FUNDING
7. Provision of services directly or by purchase
8. Approval of agencies
9. Approval of premises for provision of services
10. Terms and conditions and services to adults
11. Co-ordinating or advisory groups
12. Security for payment of funds
13. Approved agency
14. Placements must comply with Act and regulations
- CHILDREN'S AID SOCIETIES
15. Children's Aid Society
16. Appointment of local director
17. Duties of Director with respect to societies
18. Designation of places of safety
19. Financial provisions
20. Local board
- 20.1 Directives to societies
- 20.2 Resolution of issues by prescribed method of alternative dispute resolution
- AGREEMENTS WITH OTHER GOVERNMENTS
21. Minister may make agreements with other governments
- REVOCATION AND TAKE-OVER POWERS
22. Powers of Minister
23. Minister's order to cease activity
24. Minister has powers of board
- OFFENCES
25. Offence

PART II

VOLUNTARY ACCESS TO SERVICES

- [26.](#) Definitions
- [CONSENTS](#)
- [27.](#) Consent to service
- [28.](#) Counselling service: child twelve or older
- [TEMPORARY CARE AGREEMENTS](#)
- [29.](#) Temporary care agreement
- [SPECIAL NEEDS AGREEMENTS](#)
- [30.](#) Special needs agreements
- [31.](#) Sixteen and seventeen year olds
- [EXPIRY AND TERMINATION OF AGREEMENTS](#)
- [32.](#) Agreement expires at eighteen
- [33.](#) Notice of termination of agreement
- [REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE](#)
- [34.](#) Residential placement review
- [35.](#) Recommendations
- [36.](#) Review by Child and Family Services Review Board

PART III

CHILD PROTECTION

- [37.](#) Interpretation
- [LEGAL REPRESENTATION](#)
- [38.](#) Legal representation of child
- [PARTIES AND NOTICE](#)
- [39.](#) Parties
- [COMMENCING CHILD PROTECTION PROCEEDINGS](#)
- [40.](#) Warrants, orders, apprehension, etc.
- [SPECIAL CASES OF APPREHENSION OF CHILDREN](#)
- [41.](#) Apprehension of children in care
- [42.](#) Apprehension of child under twelve
- [43.](#) Runaways
- [POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION](#)
- [44.](#) Authority to enter, etc.
- [HEARINGS AND ORDERS](#)
- [45.](#) Rules re hearings
- [46.](#) Time of detention limited
- [47.](#) Child protection hearing
- [48.](#) Territorial jurisdiction
- [49.](#) Power of court
- [50.](#) Evidence
- [51.](#) Adjournments
- [51.1](#) Use of prescribed methods of alternative dispute resolution
- [52.](#) Delay: court to fix date
- [53.](#) Reasons, etc.
- [ASSESSMENTS](#)
- [54.](#) Order for assessment
- [55.](#) Consent order: special requirements
- [56.](#) Society's plan for child
- [57.](#) Order where child in need of protection
- [57.1](#) Custody order
- [57.2](#) Effect of custody proceedings
- [ACCESS](#)
- [58.](#) Access order
- [59.](#) Access: where child removed from person in charge
- [59.1](#) Review of access order made concurrently with custody order
- [59.2](#) Restriction on access order
- [PAYMENT ORDERS](#)
- [60.](#) Order for payment by parent
- [SOCIETY AND CROWN WARDSHIP](#)
- [61.](#) Placement of wards
- [62.](#) Society wards – medical treatment and marriage
- [63.](#) Custodianship of wards

| | | |
|------------------------|--|--|
| 63.1 | Society's obligation to a Crown ward | REVIEW |
| 64. | Status review | |
| 65. | Court may vary, etc. | |
| 65.1 | Status review, Crown ward and former Crown wards | |
| 65.2 | Court order | |
| 66. | Director's annual review of Crown wards | |
| 67. | Investigation by judge | |
| 68. | Complaint to society | |
| 68.1 | Complaint to Board | APPEALS |
| 69. | Appeal | EXPIRY OF ORDERS |
| 70. | Time limit | |
| 71. | Expiry of orders | EXTENDED CARE |
| 71.1 | Extended care | DUTY TO REPORT |
| 72. | Duty to report child in need of protection | |
| 72.0.1 | Action by organization receiving report of child pornography | |
| 72.1 | Duty of society | |
| 72.2 | Duty to report child's death | REVIEW TEAMS |
| 73. | Review team | COURT-ORDERED ACCESS TO RECORDS |
| 74. | Record | |
| 74.1 | Warrant for access to record | |
| 74.2 | Telewarrant | CHILD ABUSE REGISTER |
| 75. | Register | |
| 76. | Hearing re registered person | POWERS OF DIRECTOR |
| 77. | Director's power to transfer | HOMEMAKERS |
| 78. | Homemaker | OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S BEHALF |
| 79. | Abuse, failure to provide for reasonable care, etc. | |
| 80. | Restraining order | |
| 81. | Recovery because of abuse | |
| 82. | Prohibition | |
| 83. | Offence | |
| 84. | Offence | |
| 85. | Offences | CHILD'S RELIGIOUS FAITH |
| 86. | How child's religious faith determined | INJUNCTIONS |
| 87. | Injunction | PART IV |
| | | YOUTH JUSTICE |
| 88. | Definitions | PROGRAMS AND OFFICERS |
| 89. | Services and programs | |
| 90. | Appointments by Minister | |
| 92. | Reports and information | TEMPORARY DETENTION |
| 93. | Open and secure detention | CUSTODY |
| 94. | Detention under Provincial Offences Act | |
| 95. | Young persons in open custody | CUSTODY REVIEW BOARD |
| 96. | Custody Review Board | |
| 97. | Application to Board | |

APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION

| | | |
|--------------|---|--|
| <u>98.</u> | Apprehension | |
| | | <u>INSPECTIONS AND INVESTIGATIONS</u> |
| <u>98.1</u> | Inspections and investigations | |
| | | <u>PART V</u> |
| | | <u>RIGHTS OF CHILDREN</u> |
| <u>99.</u> | Definition | |
| | | <u>LOCKING UP</u> |
| <u>100.</u> | Locking up restricted | |
| | | <u>CORPORAL PUNISHMENT</u> |
| <u>101.</u> | No corporal punishment | |
| | | <u>RIGHTS OF CHILDREN IN CARE</u> |
| <u>103.</u> | Rights of communication, etc. | |
| <u>103.1</u> | Limitations on rights | |
| <u>104.</u> | Personal liberties | |
| <u>105.</u> | Plan of care | |
| <u>106.</u> | Parental consent, etc. | |
| <u>107.</u> | Right to be heard | |
| <u>108.</u> | Right to be informed | |
| | | <u>COMPLAINT AND REVIEW PROCEDURES</u> |
| <u>109.</u> | Internal complaints procedure | |
| <u>110.</u> | Further review | |
| <u>111.</u> | Minister to advise persons affected of any decision | |
| | | <u>PART VI</u> |
| | | <u>EXTRAORDINARY MEASURES</u> |
| <u>112.</u> | Definitions | |
| | | <u>SECURE TREATMENT PROGRAMS</u> |
| <u>113.</u> | Minister may establish or approve programs | |
| | | <u>COMMITMENT TO SECURE TREATMENT</u> |
| <u>114.</u> | Application for order for child's commitment | |
| <u>115.</u> | Oral evidence | |
| <u>116.</u> | Assessment | |
| <u>117.</u> | Commitment to secure treatment: criteria | |
| <u>118.</u> | Period of commitment | |
| <u>119.</u> | Reasons, plans, etc. | |
| | | <u>EXTENSION OF PERIOD OF COMMITMENT</u> |
| <u>120.</u> | Extension | |
| | | <u>RELEASE BY ADMINISTRATOR</u> |
| <u>121.</u> | Release | |
| | | <u>REVIEW OF COMMITMENT</u> |
| <u>122.</u> | Review of commitment | |
| <u>123.</u> | ss. 120 (3-6), 121, 122 apply | |
| | | <u>EMERGENCY ADMISSION</u> |
| <u>124.</u> | Emergency admission | |
| | | <u>POLICE ASSISTANCE</u> |
| <u>125.</u> | Powers of peace officers, period of commitment | |
| | | <u>SECURE ISOLATION</u> |
| <u>126.</u> | Director's approval | |
| <u>127.</u> | Secure isolation | |
| <u>128.</u> | Review of use of secure isolation | |
| | | <u>REVIEW TEAMS</u> |
| <u>129.</u> | Review team | |
| | | <u>PSYCHOTROPIC DRUGS</u> |
| <u>132.</u> | Consents required for use of psychotropic drug | |
| | | <u>ADDITIONAL DUTY OF REVIEW TEAMS</u> |
| <u>133.</u> | Review of certain recommended procedures | |
| | | <u>PROFESSIONAL ADVISORY BOARD</u> |
| <u>134.</u> | Professional Advisory Board | |
| <u>135.</u> | Request for review | |
| | | <u>PART VII</u> |
| | | <u>ADOPTION</u> |
| <u>136.</u> | Interpretation | |

| | |
|--------------------------------|---|
| | <u>CONSENT TO ADOPTION</u> |
| <u>137.</u> | Consents |
| <u>138.</u> | Dispensing with consent |
| <u>139.</u> | Late withdrawal of consent |
| | <u>PLACEMENT FOR ADOPTION</u> |
| <u>141.</u> | Only societies and licensees may place children, etc. |
| <u>141.1</u> | Limitation on placement by society |
| <u>141.1.1</u> | Adoption planning |
| <u>141.2</u> | Where child an Indian or native person |
| <u>142.</u> | Adoption homestudy |
| <u>143.</u> | Access orders terminate |
| | <u>DECISION TO REFUSE TO PLACE CHILD OR TO REMOVE CHILD AFTER PLACEMENT</u> |
| <u>144.</u> | Decision of society or licensee |
| <u>145.</u> | Notice to Director |
| | <u>OPENNESS ORDERS</u> |
| <u>145.1</u> | No access order in effect |
| <u>145.1.1</u> | Access order in effect |
| <u>145.1.2</u> | Access order in effect |
| <u>145.2</u> | Application to vary or terminate openness order |
| | <u>ADOPTION ORDERS</u> |
| <u>146.</u> | Orders for adoption |
| <u>147.</u> | Where applicant a minor |
| <u>148.</u> | Where order not to be made |
| <u>149.</u> | Director's statement |
| <u>150.</u> | Place of hearing |
| <u>151.</u> | Rules re applications |
| <u>152.</u> | Power of court |
| <u>153.</u> | Change of name |
| <u>153.1</u> | Varying or terminating openness orders after adoption |
| <u>153.2</u> | Appeal of order to vary or terminate openness order |
| <u>153.3</u> | Application of s. 151 |
| <u>153.4</u> | Child may participate |
| <u>153.5</u> | Legal representation of child |
| | <u>OPENNESS AGREEMENTS</u> |
| <u>153.6</u> | Who may enter into openness agreement |
| | <u>INTERIM ORDERS</u> |
| <u>154.</u> | Interim order |
| <u>155.</u> | Successive adoption orders |
| | <u>APPEALS</u> |
| <u>156.</u> | Appeals |
| | <u>EFFECT OF ADOPTION ORDER</u> |
| <u>157.</u> | Order final |
| <u>158.</u> | Status of adopted child |
| <u>159.</u> | Effect of foreign adoption |
| <u>160.</u> | No order for access by birth parent, etc. |
| | <u>RECORDS, CONFIDENTIALITY AND DISCLOSURE</u> |
| <u>161.</u> | Parent to be informed on request |
| <u>162.</u> | Court papers |
| <u>162.1</u> | Designation of custodians of information |
| <u>162.2</u> | Disclosure to designated custodian |
| <u>162.3</u> | Disclosure to others |
| <u>162.4</u> | Scope of application |
| | <u>CONFIDENTIALITY OF ADOPTION RECORDS</u> |
| <u>165.</u> | Confidentiality of adoption information |
| | <u>OFFENCES</u> |
| <u>175.</u> | No payments for adoption |
| <u>176.</u> | Offence |
| | <u>INJUNCTION</u> |
| <u>177.</u> | Injunction |
| | PART VIII |
| | CONFIDENTIALITY OF AND ACCESS TO RECORDS |
| <u>179.</u> | Exceptions |

| | |
|------------------------------|---|
| <u>183.</u> | <p><u>DISCLOSURE OF RECORDS</u></p> <p>Disclosure of records of mental disorders</p> <p><u>PART IX</u></p> <p>LICENSING</p> |
| <u>192.</u> | <p>Definitions</p> <p><u>WHERE LICENCE REQUIRED</u></p> |
| <u>193.</u> | Licences |
| <u>193.1</u> | Licences, terms and conditions |
| <u>194.</u> | <p><u>POWERS OF PROGRAM SUPERVISOR</u></p> <p>Powers of program supervisor</p> <p><u>REFUSAL AND REVOCATION</u></p> |
| <u>195.</u> | Grounds for refusal |
| <u>196.</u> | Refusal to renew; revocation |
| <u>197.</u> | <u>HEARING BY TRIBUNAL</u> |
| <u>198.</u> | Hearings arising out of s. 195 or 196 |
| <u>199.</u> | Review of terms of licence by Tribunal |
| <u>200.</u> | Continuation of licence |
| <u>201.</u> | Provisional suspension of licence |
| <u>202.</u> | <p><u>APPEAL</u></p> <p>Appeal</p> <p><u>DELIVERY OF LICENCE AND RECORDS</u></p> |
| <u>203.</u> | Records and licence, removal of children |
| <u>204.</u> | <p><u>OCCUPATION BY MINISTER</u></p> <p>Order for Minister's occupation</p> <p><u>INJUNCTIONS</u></p> |
| <u>205.</u> | Injunction |
| <u>206.</u> | <p><u>OFFENCES</u></p> <p>Offence</p> <p><u>CHILD AND FAMILY SERVICES REVIEW BOARD</u></p> |
| <u>207.</u> | Child and Family Services Review Board |
| <u>208.</u> | <p><u>PART X</u></p> <p>INDIAN AND NATIVE CHILD AND FAMILY SERVICES</p> <p>Definition</p> |
| <u>209.</u> | Designation of native communities |
| <u>210.</u> | Agreements with bands and native communities |
| <u>211.</u> | Designation of child and family service authority |
| <u>212.</u> | Subsidy for customary care |
| <u>213.</u> | Consultation with bands and native communities |
| <u>213.1</u> | Consultation in specified cases |
| <u>214.</u> | <p><u>PART XI</u></p> <p>REGULATIONS</p> <p>Regulations: Part I (Flexible Services)</p> |
| <u>215.</u> | Regulations: Part II (Voluntary Access to Services) |
| <u>216.</u> | Regulations: Part III (Child Protection) |
| <u>217.</u> | Regulations: Part IV (Youth Justice) |
| <u>218.</u> | Regulations: Part V (Rights of Children) |
| <u>219.</u> | Regulations: Part VI (Extraordinary Measures) |
| <u>220.</u> | Regulations: Part VII (Adoption) |
| <u>221.</u> | Regulations: Part VIII (Confidentiality of and Access to Records) |
| <u>222.</u> | Regulations: Part IX (Licensing) |
| <u>223.</u> | Regulations: Part X (Indian and Native Child and Family Services) |
| <u>223.1</u> | Regulations: methods of dispute resolution |
| <u>223.2</u> | Regulations: transitional |
| <u>224.</u> | <p><u>PART XII</u></p> <p>MISCELLANEOUS</p> <p>Review of Act</p> |
| <u>225.</u> | Review re disclosure of adoption information |
| <u>226.</u> | Review re: aboriginal issues |

Paramount purpose

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

Other purposes

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

1. To recognize that while parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. To recognize that the least disruptive course of action that is available and is appropriate in a particular case to help a child should be considered.
3. To recognize that children's services should be provided in a manner that,
 - i. respects a child's need for continuity of care and for stable relationships within a family and cultural environment,
 - ii. takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children,
 - iii. provides early assessment, planning and decision-making to achieve permanent plans for children in accordance with their best interests, and
 - iv. includes the participation of a child, his or her parents and relatives and the members of the child's extended family and community, where appropriate.
4. To recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences.
5. To recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family. 1999, c. 2, s. 1; 2006, c. 5, s. 1; 2016, c. 23, s. 38 (1).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 1, section 1 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 1, 37 - 31/03/2000

2006, c. 5, s. 1 - 30/11/2006

2016, c. 23, s. 38 (1) - 01/01/2017

Duties of service providers**French language services**

2. (1) Service providers shall, where appropriate, make services to children and their families available in the French language.

Duties of service providers

- (2) Service providers shall ensure,
 - (a) that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving; and
 - (b) that decisions affecting the interests and rights of children and their parents are made according to clear, consistent criteria and are subject to procedural safeguards. R.S.O. 1990, c. C.11, s. 2.

INTERPRETATION**Definitions**

3. (1) In this Act,

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

“approved agency” means an agency that is approved under subsection 8 (1) of Part I (Flexible Services); (“agence agréée”)

“approved service” means a service provided,

- (a) under subsection 7 (1) of Part I or with the support of a grant or contribution made under subsection 7 (2) of that Part,
- (b) by an approved agency, or
- (c) under the authority of a licence; (“service agréé”)

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

“Board” means the Child and Family Services Review Board continued under Part IX (Licensing); (“Commission”)

“child” means a person under the age of eighteen years; (“enfant”)

“child development service” means a service for a child with a developmental disability or physical disability, for the family of a child with a developmental disability or physical disability, or for the child and the family; (“service de développement de l’enfant”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2008, chapter 21, section 1 by adding the following definition:

“child pornography” means,

- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - (i) that shows a child engaged in, or depicted as engaged in, explicit sexual activity, or
 - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ of a child or the anal region of a child,
- (b) any written material or visual representation that advocates or counsels sexual activity with a child that would be an offence under the *Criminal Code* (Canada),
- (c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada), or
- (d) any audio recording that has as its dominant characteristic, the description, presentation or representation, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada); (“pornographie juvénile”)

See: 2008, c. 21, ss. 1, 6.

“child treatment service” means a service for a child with a mental or psychiatric disorder, for the family of a child with a mental or psychiatric disorder, or for the child and the family; (“service de traitement de l’enfant”)

“child welfare service” means,

- (a) a residential or non-residential service, including a prevention service,
- (b) a service provided under Part III (Child Protection),
- (c) a service provided under Part VII (Adoption), or
- (d) individual or family counselling; (“service de bien-être de l’enfance”)

“community support service” means a support service or prevention service provided in the community for children and their families; (“service communautaire d’appoint”)

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

“developmental disability” means a condition of mental impairment present or occurring in a person’s formative years that is associated with limitations in adaptive behaviour; (“déficience intellectuelle”)

“Director” means a Director appointed under subsection 5 (1) of Part I (Flexible Services); (“directeur”)

“extended family” means persons to whom a child is related, including through a spousal relationship or adoption and, in the case of a child who is an Indian or native person, includes any member of the child’s band or native community; (“famille élargie”)

“federal Act” means the *Youth Criminal Justice Act* (Canada); (“loi fédérale”)

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

(a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and

(b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VII,

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

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

“licence” means a licence issued under Part IX (Licensing), and “licensed” and “licensee” have corresponding meanings; (“permis”, “autorisé en vertu d’un permis”, “titulaire de permis”)

“local director” means a local director appointed under section 16 of Part I (Flexible Services); (“directeur local”)

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

“municipality” does not include a lower-tier municipality that is situated within a regional municipality; (“municipalité”)

“native community” means a community designated by the Minister under section 209 of Part X (Indian and Native Child and Family Services); (“communauté autochtone”)

“native person” means a person who is a member of a native community but is not a member of a band, and “native child” has a corresponding meaning; (“autochtone”, “enfant autochtone”)

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

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

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

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

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

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

“program supervisor” means a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services); (“superviseur de programme”)

“provincial director” means,

(a) a person, the group or class of persons or the body appointed or designated by the Lieutenant Governor in Council or his or her delegate to perform any of the duties or functions of a provincial director under the *Young Offenders Act* (Canada) or under the federal Act, or

(b) a person as appointed under clause 90 (1) (a); (“directeur provincial”)

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

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

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

“service” means,

- (a) a child development service,
- (b) a child treatment service,
- (c) a child welfare service,
- (d) a community support service, or
- (e) a youth justice service; (“service”)

“service provider” means,

- (a) the Minister,
- (b) an approved agency,
- (c) a society,
- (d) a licensee, or
- (e) a person who provides an approved service or provides a service purchased by the Minister or an approved agency, but does not include a foster parent; (“fournisseur de services”)

“society” means an approved agency designated as a children’s aid society under subsection 15 (2) of Part I (Flexible Services); (“société”)

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

“young person” means a person who is or, in the absence of evidence to the contrary, appears to be 12 years of age or older but less than 18 years old and, if the context requires, includes any person who is charged under the federal Act with having committed an offence while he or she was a young person or who is found guilty of an offence under the federal Act; (“adolescent”)

“youth justice service” means a service provided under Part IV (Youth Justice) or under a program established under that Part. (“service de justice pour les adolescents”) R.S.O. 1990, c. C.11, s. 3 (1); 1999, c. 2, s. 2; 1999, c. 12, Sched. G, s. 16 (1); 2001, c. 13, s. 5 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. D, s. 2 (1, 2); 2006, c. 5, s. 2 (1, 2); 2009, c. 2, s. 1; 2009, c. 33, Sched. 7, s. 1 (1); 2016, c. 23, s. 38 (2, 3, 18).

Interpretation, “parent”

- (2) Unless this Act provides otherwise, a reference in this Act to a parent of a child is deemed to be a reference to,
 - (a) the person who has lawful custody of the child; or
 - (b) if more than one person has lawful custody of the child, all of the persons who have lawful custody of the child, excluding any person who is unavailable or unable to act as the context requires. 2016, c. 23, s. 38 (4).

Child’s community

- (3) For the purposes of this Act, the following persons are members of a child’s community:
 - 1. A person who has ethnic, cultural or religious ties in common with the child or with a parent, sibling or relative of the child.
 - 2. A person who has a beneficial and meaningful relationship with the child or with a parent, sibling or relative of the child. 2006, c. 5, s. 2 (3); 2016, c. 23, s. 38 (17).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 2 (1, 2) - 31/03/2000; 1999, c. 2, s. 2 (3) - 20/12/2011; 1999, c. 12, Sched. G, s. 16 (1) - 1/04/2000

2001, c. 13, s. 5 (1-3) - 30/11/2001

2002, c. 17, Sched. F, Table - 1/01/2003

2006, c. 5, s. 2 (1-3) - 30/11/2006; 2006, c. 19, Sched. D, s. 2 (1-2) - 22/06/2006

2008, c. 21, s. 1 - not in force

2009, c. 2, s. 1 - 1/04/2009; 2009, c. 33, Sched. 7, s. 1 (1) - 15/12/2009

2016, c. 23, s. 38 (2-4, 17, 18) - 01/01/2017

CONSENTS AND PARTICIPATION IN AGREEMENTS

Consents and agreements

4. (1) In this section,

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

“nearest relative”, when used in reference to a person who is less than 16 years old, means the person with lawful custody of him or her, and when used in reference to a person who is 16 years old or more, means the person who would be authorized to give or refuse consent to a treatment on his or her behalf under the *Health Care Consent Act, 1996* if he or she were incapable with respect to the treatment under that Act. (“parent le plus proche”) R.S.O. 1990, c. C.11, s. 4 (1); 1996, c. 2, s. 62.

Elements of valid consent or agreement, etc.

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

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

Where person lacks capacity

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

Exception

(4) Subsection (3) does not apply to a consent under section 137 (consents to adoption) of Part VII (Adoption) or to a parent’s consent referred to in clause 37 (2) (1) (child in need of protection) of Part III (Child Protection).

Consent, etc., of minor

(5) A person’s consent or revocation of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is less than eighteen years old. R.S.O. 1990, c. C.11, s. 4 (2-5).

Section Amendments with date in force (d/m/y)

1996, c. 2, s. 62 - 29/03/1996

PART I FLEXIBLE SERVICES

DIRECTORS AND PROGRAM SUPERVISORS

Directors and program supervisors

Appointment of Director

5. (1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations. R.S.O. 1990, c. C.11, s. 5 (1).

Appointment of program supervisor

(2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations. R.S.O. 1990, c. C.11, s. 5 (2).

Limitations, etc., on appointments

(3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject. R.S.O. 1990, c. C.11, s. 5 (3).

Remuneration and expenses

(4) The remuneration and expenses of a person appointed under this section who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of legislative appropriations. R.S.O. 1990, c. C.11, s. 5 (4); 2006, c. 35, Sched. C, s. 14 (1).

Reports and information

- (5) A service provider shall,
- (a) make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
 - (b) make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister. R.S.O. 1990, c. C.11, s. 5 (5).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 14 (1) - 20/08/2007

Powers of program supervisor

6. (1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter premises where an approved service is provided, inspect the facilities, the service provided, the books of account and the records relating to the service, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or knowingly give false information about an approved service to a program supervisor.

Idem

(3) No service provider or person in charge of premises where an approved service is provided shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the approved service that the program supervisor reasonably requires.

Regulations re exercise of power of entry

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations. R.S.O. 1990, c. C.11, s. 6.

APPROVALS AND FUNDING

Provision of services directly or by purchase

- 7.** (1) The Minister may,
- (a) provide services and establish, operate and maintain facilities for the provision of services; and
 - (b) make agreements with persons, municipalities and agencies for the provision of services,

and may make payments for those services and facilities out of legislative appropriations.

Grants and contributions for services, consultation, etc.

(2) The Minister may make grants and contributions, out of legislative appropriations, to any person, organization or municipality for consultation, research and evaluation with respect to services and for the provision of services. R.S.O. 1990, c. C.11, s. 7.

Approval of agencies

8. (1) Where the Minister is satisfied that an agency is, with financial assistance under this Part and the regulations, financially capable of establishing, maintaining and operating a service and that its affairs are carried on under competent management in good faith, the Minister may approve the agency to provide that service.

Funding for establishment of services

(2) Where the Minister intends to approve an agency to provide a service under subsection (1), the Minister may enter into an agreement with the agency for the establishment of the service.

Financial assistance, etc.

(3) Where the Minister approves an agency to provide a service under subsection (1), the Minister may give the agency financial and other assistance, in accordance with the regulations.

Effective date

(4) The Minister's approval under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies. R.S.O. 1990, c. C.11, s. 8.

Approval of premises for provision of services

9. (1) Where the Minister is satisfied that premises are suitable for providing a service, the Minister may approve all or any part of the premises for the provision of the service by an approved agency and may give the agency financial and other assistance in accordance with the regulations, for the maintenance and operation of the premises and the provision of the service.

Approval may relate to all or part of building, etc.

(2) The Minister's approval under subsection (1) may specify a building, a group of buildings, part of a building or a location in a building as the approved premises.

Effective date

(3) The Minister's approval of premises under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies, but it shall not be deemed to take effect on a day before the Minister's approval of the agency concerned becomes effective under section 8. R.S.O. 1990, c. C.11, s. 9.

Terms and conditions and services to adults**Terms and conditions**

10. (1) The Minister may impose terms and conditions on an approval given under subsection 8 (1) or 9 (1) and, upon reasonable written notice to the approved agency, may vary, remove or amend the terms and conditions or impose new terms and conditions.

Duty of Director

(2) A Director shall review any objections from an approved agency which has received notice under subsection (1).

Transfer of assets

(3) An approved agency shall not transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations.

Services to persons over eighteen

(4) The Minister may,

- (a) provide services under clause 7 (1) (a);
- (b) make agreements for the provision of services under clause 7 (1) (b);
- (c) make grants and contributions for the provision of services under subsection 7 (2);
- (d) approve agencies for the provision of services under subsection 8 (1);
- (e) approve premises for the provision of services under subsection 9 (1),

to persons who are not children, and to their families, as if those persons were children. R.S.O. 1990, c. C.11, s. 10.

Co-ordinating or advisory groups

11. The Minister may make agreements with persons, organizations or municipalities for the establishment, support and operation of co-ordinating or advisory groups or committees, may make payments for the purpose out of legislative appropriations and may give other assistance for the purpose. R.S.O. 1990, c. C.11, s. 11.

Security for payment of funds

12. The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, registration of agreement or in such other manner as the Minister determines. R.S.O. 1990, c. C.11, s. 12.

Approved agency

13. (1) An approved agency shall file a certified copy of its by-laws and of any amendment to them with the Minister forthwith after they are made.

Idem

(2) The by-laws of an approved agency shall contain the prescribed provisions.

Band or native community representatives

(3) An approved agency that provides services to Indian or native children and families shall have the prescribed number of band or native community representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

Employee may not sit on board

(4) An employee of an approved agency shall not be a member of the agency's board of directors. R.S.O. 1990, c. C.11, s. 13.

Placements must comply with Act and regulations

14. No approved agency shall place a child in a residential placement except in accordance with this Act and the regulations. R.S.O. 1990, c. C.11, s. 14.

CHILDREN'S AID SOCIETIES

Children's Aid Society

15. (1) In this section,

"prescribed" means prescribed in a regulation made by the Minister under subsection 214 (4) of Part XI (Regulations). R.S.O. 1990, c. C.11, s. 15 (1).

Designation of children's aid society

(2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction. R.S.O. 1990, c. C.11, s. 15 (2).

Functions of society

(3) The functions of a children's aid society are to,

- (a) investigate allegations or evidence that children who are under the age of sixteen years or are in the society's care or under its supervision may be in need of protection;
- (b) protect, where necessary, children who are under the age of sixteen years or are in the society's care or under its supervision;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VII; and
- (g) perform any other duties given to it by this or any other Act. R.S.O. 1990, c. C.11, s. 15 (3).

Prescribed standards, etc.

(4) A society shall,

- (a) provide the prescribed standard of services in its performance of its functions; and
- (b) follow the prescribed procedures and practices. R.S.O. 1990, c. C.11, s. 15 (4).

(5) REPEALED: 2002, c. 18, Sched. D, s. 1.

Protection from personal liability

(6) No action shall be instituted against an officer or employee of a society for an act done in good faith in the execution or intended execution of the person's duty or for an alleged neglect or default in the execution in good faith of the person's duty. R.S.O. 1990, c. C.11, s. 15 (6).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. D, s. 1 - 26/11/2002

Appointment of local director

16. Every society shall appoint a local director with the prescribed qualifications, powers and duties. R.S.O. 1990, c. C.11, s. 16.

Duties of Director with respect to societies

17. (1) A Director,

- (a) shall advise and supervise societies;
- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;
- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of places in which children in the care of societies are placed; and
- (e) shall ensure that societies provide the standard of services and follow the procedures and practices required by subsection 15 (4). R.S.O. 1990, c. C.11, s. 17 (1).

(2) REPEALED: 2006, c. 5, s. 3.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 3 - 30/11/2006

Designation of places of safety

18. For the purposes of Part III, a Director or local director may designate a place as a place of safety and may designate a class of places as places of safety. 2006, c. 5, s. 4.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 3 - 31/03/2000

2006, c. 5, s. 4 - 30/11/2006

Financial provisions

19. (1) REPEALED: 1999, c. 2, s. 4 (1).

Payments by Minister

(2) The Minister shall pay to every society out of legislative appropriations an amount determined in accordance with the regulations. R.S.O. 1990, c. C.11, s. 19 (2).

(3) REPEALED: 1999, c. 2, s. 4 (1).

How society's estimates determined

(4) A society's estimated expenditures shall be determined and shall be approved by the Minister in accordance with the regulations. R.S.O. 1990, c. C.11, s. 19 (4).

(5) REPEALED: 1999, c. 2, s. 4 (1).

Manner of payment

(6) An amount payable to a society under subsection (2), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister. R.S.O. 1990, c. C.11, s. 19 (6); 1999, c. 2, s. 4 (2).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 4 (1, 2) - 31/03/2000

Local board

20. (1) REPEALED: 1999, c. 2, s. 5.

Society deemed to be a local board

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act, 2006* and the *Municipal Conflict of Interest Act*. R.S.O. 1990, c. C.11, s. 20 (2); 2006, c. 2, s. 45.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 5 - 31/03/2000

2006, c. 2, s. 45 - 30/06/2006

Directives to societies

20.1 A Director may issue directives to one or more societies, including directives respecting their provision of services under this Act. 1999, c. 2, s. 6.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 6 - 31/03/2000

Resolution of issues by prescribed method of alternative dispute resolution

20.2 (1) If a child is or may be in need of protection under this Act, a society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving any issue related to the child or a plan for the child's care. 2006, c. 5, s. 5.

Where child is Indian or native person

(2) If the issue referred to in subsection (1) relates to a child who is an Indian or native person, the society shall consult with the child's band or native community to determine whether an alternative dispute resolution process established by that band or native community or another prescribed process will assist in resolving the issue. 2006, c. 5, s. 5.

Children's Lawyer

(3) If a society or a person, including a child, who is receiving child welfare services proposes that a prescribed method of alternative dispute resolution be undertaken to assist in resolving an issue relating to a child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if in the opinion of the Children's Lawyer such legal representation is appropriate. 2006, c. 5, s. 5.

Notice to band, native community

(4) If a society makes or receives a proposal that a prescribed method of alternative dispute resolution be undertaken under subsection (3) in a matter involving a child who is an Indian or native person, the society shall give the child's band or native community notice of the proposal. 2006, c. 5, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 5 - 30/11/2006

AGREEMENTS WITH OTHER GOVERNMENTS

Minister may make agreements with other governments

21. The Minister may, with the approval of the Lieutenant Governor in Council, make agreements on behalf of the Government of Ontario with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services under this Act or the care or protection of children. R.S.O. 1990, c. C.11, s. 21.

REVOCATION AND TAKE-OVER POWERS

Powers of Minister

22. (1) Where the Minister believes on reasonable grounds that,

- (a) an approved agency is not providing services in accordance with this Act or the regulations or in accordance with any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (b) a director, officer or employee of an approved agency has contravened or knowingly permitted any person under his or her control and direction to contravene any provision of this Act or the regulations or any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (c) approval of the agency under subsection 8 (1) or of the premises under subsection 9 (1) would be refused if it were being applied for in the first instance; or
- (d) in the case of a society, the society,
 - (i) is not able to or fails to perform any or all of its functions under section 15,
 - (ii) fails to perform any or all of its functions in any part of its territorial jurisdiction, or

(iii) fails to follow a directive issued under section 20.1,
the Minister may,

- (e) revoke or suspend the approval; or
- (f) in the case of a society,
 - (i) revoke or suspend the designation under subsection 15 (2),
 - (ii) remove any or all of the members of the board of directors and appoint others in their place, or
 - (iii) operate and manage the society in the place of the board of directors. R.S.O. 1990, c. C.11, s. 22 (1); 1999, c. 2, s. 7.

Notice of proposal

(2) Where the Minister proposes to act under clause (1) (e) or (f), the Minister shall serve notice of the proposal and written reasons for it on the approved agency, unless the agency has requested that the Minister so act or has consented to the Minister's proposal.

Request for hearing

(3) A notice under subsection (2) shall inform the agency that it is entitled to a hearing under this section if the agency mails or delivers to the Minister, within sixty days after the notice under subsection (2) is served, a written request for a hearing.

Where agency does not request hearing

(4) Where the agency does not require a hearing under subsection (3), the Minister may carry out the proposal stated in the Minister's notice under subsection (2) without a hearing.

Hearing

- (5) Where the agency requires a hearing under subsection (3),
 - (a) if the Minister proposes to act under clause (1) (e) only, the Minister; and
 - (b) in all other cases, the Lieutenant Governor in Council,

shall appoint one or more persons not employed by the Ministry to hear the matter and recommend whether the Minister should carry out the proposal.

Procedure

- (6) Sections 17, 18, 19 and 20 of the *Statutory Powers Procedure Act* do not apply to a hearing under this section.

Report to Minister

(7) The person or persons appointed under subsection (5) shall hold a hearing and make a report to the Minister setting out,

- (a) recommendations as to the carrying out of the proposal; and
- (b) the findings of fact, any information or knowledge used in making the recommendations and any conclusions of law arrived at that are relevant to the recommendations,

and shall provide a copy of the report to the agency.

Minister's decision

(8) After considering a report made under this section, the Minister may carry out the proposal and shall give notice of the Minister's decision to the agency with reasons.

Provisional suspension

(9) Despite subsection (2), the Minister, by notice to the agency and without a hearing, may provisionally exercise any of the powers set out in clauses (1) (e) and (f) where it is necessary to do so, in the Minister's opinion, to avert an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections (3) to (8) apply with necessary modifications. R.S.O. 1990, c. C.11, s. 22 (2-9).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 7 - 31/03/2000

Minister's order to cease activity

23. (1) Where the Minister is of the opinion, upon reasonable grounds, that an activity carried on, or the manner of carrying on an activity, in the course of the provision of an approved service is causing or is likely to cause harm to a person's health, safety or welfare, the Minister may by order require the service provider to suspend or cease the activity and may take such other action as the Minister deems to be in the best interests of the persons receiving the approved service.

Notice of proposal

(2) Where the Minister proposes to make an order requiring the suspension or cessation of an activity under subsection (1), the Minister shall serve notice of the proposal and written reasons for it on the service provider, and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications.

Where order may be made immediately

(3) Despite subsection (2), the Minister, by notice to the service provider and without a hearing, may require that the service provider immediately suspend or cease the activity where the continuation of the activity is, in the Minister's opinion, an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications. R.S.O. 1990, c. C.11, s. 23.

Minister has powers of board

24. (1) Where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister has all the powers of its board of directors.

Idem

(2) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may,

- (a) carry on the society's business;
- (b) enter into contracts on the society's behalf;
- (c) arrange for bank accounts to be opened in the society's name, and authorize persons to sign cheques and other documents on the society's behalf;
- (d) appoint or dismiss employees of the society; and
- (e) make by-laws. R.S.O. 1990, c. C.11, s. 24 (1, 2).

Occupation and operation of premises

(3) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may,

- (a) despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate, or arrange for the occupation and operation by a person or organization designated by the Minister, of any premises occupied or used by the society for the provision of approved services; or
- (b) apply without notice to the Superior Court of Justice for an order directing the sheriff to assist the Minister as may be necessary in occupying the premises. R.S.O. 1990, c. C.11, s. 24 (3); 1999, c. 2, s. 35.

Maximum period

(4) The Minister shall not occupy and operate premises under subsection (3) for a period exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period from time to time. R.S.O. 1990, c. C.11, s. 24 (4).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

OFFENCES**Offence**

25. A person who knowingly,

- (a) fails to furnish a report required by the Minister under subsection 5 (5);
- (b) contravenes subsection 6 (2) or (3) (obstructing program supervisor, etc.); or

(c) furnishes false information in an application under this Part or in a report or return required under this Part or the regulations,

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention or furnishing by the corporation, is guilty of an offence and is liable upon conviction to a fine of not more than \$2,000. R.S.O. 1990, c. C.11, s. 25.

PART II VOLUNTARY ACCESS TO SERVICES

Definitions

26. In this Part,

“advisory committee” means a Residential Placement Advisory Committee established under subsection 34 (2); (“comité consultatif”)

“institution” means,

- (a) a children’s residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Licensing) with the capacity of providing residential services to ten or more children at a time, or
- (b) premises designated by a Director under subsection 34 (5); (“foyer”)

“record”, when used in reference to a person, has the same meaning as in Part VIII (Confidentiality of and Access to Records); (“dossier”)

“special need” means a need that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability. (“besoin particulier”) R.S.O. 1990, c. C.11, s. 26; 2001, c. 13, s. 5 (4).

Section Amendments with date in force (d/m/y)

2001, c. 13, s. 5 (4) - 30/11/2001

CONSENTS

Consent to service

Consent to service: person over sixteen

27. (1) A service provider may provide a service to a person who is sixteen years of age or older only with the person’s consent, except where the court orders under this Act that the service be provided to the person. R.S.O. 1990, c. C.11, s. 27 (1).

Consent to residential service: child under sixteen

(2) A service provider may provide a residential service to a child who is less than sixteen years of age only with the consent of the child’s parent or, where the child is in a society’s lawful custody, the society’s consent, except where this Act provides otherwise. R.S.O. 1990, c. C.11, s. 27 (2).

Exception

(3) Subsections (1) and (2) do not apply where a service is provided to a child under Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 27 (3); 2006, c. 19, Sched. D, s. 2 (3).

Discharge from residential placement

(4) A child who is placed in a residential placement with the consent referred to in subsection (2) may only be discharged from the placement,

- (a) with the consent that would be required for a new residential placement; or
- (b) where the placement is made under the authority of an agreement made under subsection 29 (1) (temporary care agreements) or subsection 30 (1) or (2) (special needs agreements), in accordance with section 33 (termination by notice). R.S.O. 1990, c. C.11, s. 27 (4).

Transfer to another placement

(5) A child who is placed in a residential placement with the consent referred to in subsection (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given. R.S.O. 1990, c. C.11, s. 27 (5).

Child’s wishes

(6) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's wishes into account, if they can be reasonably ascertained. R.S.O. 1990, c. C.11, s. 27 (6).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (3) - 22/06/2006

Counselling service: child twelve or older

28. A service provider may provide a counselling service to a child who is twelve years of age or older with the child's consent, and no other person's consent is required, but if the child is less than sixteen years of age the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent. R.S.O. 1990, c. C.11, s. 28.

TEMPORARY CARE AGREEMENTS

Temporary care agreement

29. (1) A person who is temporarily unable to care adequately for a child in his or her custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child. R.S.O. 1990, c. C.11, s. 29 (1).

Child's age

- (2) No temporary care agreement shall be made in respect of a child,
 - (a) who is sixteen years of age or older; or
 - (b) who is twelve years of age or older, unless the child is a party to the agreement. R.S.O. 1990, c. C.11, s. 29 (2).

Exception: developmental disability

(3) Clause (2) (b) does not apply where it has been determined on the basis of an assessment, not more than one year before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental disability. 2001, c. 13, s. 5 (5).

Duty of society

- (4) A society shall not make a temporary care agreement unless the society,
 - (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
 - (b) is satisfied that no less disruptive course of action, such as care in the child's own home, is appropriate for the child in the circumstances. R.S.O. 1990, c. C.11, s. 29 (4); 1999, c. 2, s. 8 (1).

Term of agreement limited

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed an aggregate of twelve months. R.S.O. 1990, c. C.11, s. 29 (5).

Time limit

- (6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, for a period exceeding,
 - (a) 12 months, if the child is less than 6 years of age on the day the agreement is entered into or extended; or
 - (b) 24 months, if the child is 6 years of age or older on the day the agreement is entered into or extended. 1999, c. 2, s. 8 (2).

Note: For the purposes of subsection (6), as re-enacted by the Statutes of Ontario, 1999, chapter 2, subsection 8 (2), no period that a child was in a society's care and custody before March 31, 2000 shall be counted. See: 1999, c. 2, s. 37 (1).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, subsection 8 (2), subsection (6) of this section, as it read before March 31, 2000, shall continue to apply with respect to a child who is in the care and custody of a society on March 31, 2000 so long as that child continues to be in the care and custody of a society. See: 1999, c. 2, ss. 37 (2), 38.

Same

(6.1) In calculating the period referred to in subsection (6), time during which a child has been in a society's care and custody,

- (a) as a society ward under paragraph 2 of subsection 57 (1);
 - (b) under a temporary care agreement under subsection 29 (1); or
 - (c) under a temporary order made under clause 51 (2) (d),
- shall be counted. 1999, c. 2, s. 8 (2).

Previous periods to be counted

(6.2) The period referred to in subsection (6) shall include any previous periods that the child was in a society's care and custody as described in subsection (6.1) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody. 1999, c. 2, s. 8 (2).

Note: For the purposes of subsections (6.1) and (6.2), as enacted by the Statutes of Ontario, 1999, chapter 2, subsection 8 (2), no period that a child was in a society's care and custody before March 31, 2000 shall be counted. See: 1999, c. 2, s. 37 (1).

Authority to consent to medical treatment may be transferred

(7) A temporary care agreement may provide that the society is entitled to consent to medical treatment for the child where a parent's consent would otherwise be required. R.S.O. 1990, c. C.11, s. 29 (7).

Contents of temporary care agreement

- (8) A temporary care agreement shall include:
1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
 2. A statement by all the parties to the agreement that the child's placement is voluntary.
 3. A statement, by the person referred to in subsection (1), that he or she is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
 4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.
 5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another named person who is willing to do so.
 6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
 7. Such other provisions as are prescribed. R.S.O. 1990, c. C.11, s. 29 (8).

Designation by advisory committee

(9) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 or designate another person under paragraph 5 of subsection (8), an advisory committee that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care. R.S.O. 1990, c. C.11, s. 29 (9).

Variation of agreement

(10) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it. R.S.O. 1990, c. C.11, s. 29 (10).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 8 (1, 2), 37 - 31/03/2000

2001, c. 13, s. 5 (5) - 30/11/2001

SPECIAL NEEDS AGREEMENTS

Special needs agreements

Special needs agreement with society

30. (1) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and a society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for,

- (a) the society's provision of services to meet the child's special need; and
- (b) the society's supervision or care and custody of the child.

Special needs agreement with Minister

(2) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and the Minister, may make a written agreement for,

- (a) the Minister's provision of services to meet the child's special need; and
- (b) the Minister's supervision or care and custody of the child.

Term to be specified

(3) A special needs agreement shall only be made for a specific period, but may be extended, with a Director's written approval in the case of an agreement with a society, for a further period or periods.

s. 29 (7-10) apply

(4) Where a special needs agreement provides for a child's residential placement, subsections 29 (7), (8), (9) and (10) (authority to consent to medical treatment, contents of agreement, variation) apply with necessary modifications, and subsection 29 (4) (duty of society) applies to the society or the Minister, as the case may be, with necessary modifications. R.S.O. 1990, c. C.11, s. 30.

Sixteen and seventeen year olds**Society agreements with sixteen and seventeen year olds**

31. (1) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the society having jurisdiction where the child resides, may with a Director's written approval make a written agreement for the society's provision of services to meet the child's special need.

Idem: special needs agreement with Minister

(2) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the Minister, may make a written agreement for the Minister's provision of services to meet the person's special need.

Contents of agreements

(3) An agreement made under subsection (1) or (2) shall contain the prescribed provisions.

s. 29 (10) applies

(4) Subsection 29 (10) (variation) applies to an agreement made under subsection (1) or (2). R.S.O. 1990, c. C.11, s. 31.

EXPIRY AND TERMINATION OF AGREEMENTS**Agreement expires at eighteen**

32. No agreement made under section 29, 30 or 31 shall continue beyond the eighteenth birthday of the person who is its subject. R.S.O. 1990, c. C.11, s. 32.

Notice of termination of agreement

33. (1) A party to an agreement made under section 29, 30 or 31 may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

When notice takes effect

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

Return of child, etc., by society

(3) Where notice of a wish to terminate an agreement for care and custody made under subsection 29 (1) or 30 (1) is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or
- (b) where the society is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

Idem: Minister

(4) Where notice of a wish to terminate an agreement for care and custody made under subsection 30 (2) is given by or to the Minister under subsection (1), subsection (3) applies to the Minister, with necessary modifications.

Idem: expiry of agreement

(5) Where a temporary care agreement expires or is about to expire under subsection 29 (6), and where a temporary care agreement or a special needs agreement that provides for care and custody expires or is about to expire according to its own terms and is not extended, the society or the Minister, as the case may be, shall before the agreement expires or as soon as practicable thereafter, but in any event within twenty-one days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or
- (b) where the society or the Minister, as the case may be, is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications. R.S.O. 1990, c. C.11, s. 33.

REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE**Residential placement review**

34. (1) In this section,

“residential placement” does not include,

- (a) a placement made under the *Young Offenders Act* (Canada), under the *Youth Criminal Justice Act* (Canada) or under Part IV (Youth Justice),
- (b) commitment to a secure treatment program under Part VI (Extraordinary Measures), or
- (c) a placement with a person who is neither a service provider nor a foster parent. R.S.O. 1990, c. C.11, s. 34 (1); 2006, c. 19, Sched. D, s. 2 (4).

Residential placement advisory committees

(2) The Minister may establish residential placement advisory committees each consisting of,

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, another person or persons, including a representative of a band or native community, whom the Minister considers appropriate,

and shall specify the territorial jurisdiction of each advisory committee. R.S.O. 1990, c. C.11, s. 34 (2).

Payments, etc., to members

(3) The Minister may pay allowances and reasonable travelling expenses to any or all of the members of an advisory committee, and may authorize an advisory committee to hire support staff. R.S.O. 1990, c. C.11, s. 34 (3).

Duties of committee

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services, to conduct reviews under this section, and to name persons for the purpose of subsection 29 (9) (contact with child under temporary care agreement), and has such further duties as are prescribed. R.S.O. 1990, c. C.11, s. 34 (4).

Designation by Director

(5) A Director may designate a building, group of buildings or part of a building in which residential services can be provided to ten or more children at a time as an institution for the purposes of this section. R.S.O. 1990, c. C.11, s. 34 (5).

Mandatory review by committee

(6) An advisory committee shall review,

- (a) every residential placement in an institution of a child who resides within the advisory committee's jurisdiction, if the placement is intended to last or actually lasts ninety days or more,
 - (i) as soon as possible, but in any event within forty-five days of the day on which the child is placed in the institution,
 - (ii) unless the placement is reviewed under subclause (i), within twelve months of the establishment of the committee or within such longer period as the Minister allows, and
 - (iii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i) or (ii);
- (b) every residential placement of a child twelve years of age or older who objects to the placement and resides within the advisory committee's jurisdiction,
 - (i) within the week immediately following the day that is fourteen days after the child is placed, and
 - (ii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within thirty days of the referral. R.S.O. 1990, c. C.11, s. 34 (6).

Discretionary review

(7) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction. R.S.O. 1990, c. C.11, s. 34 (7).

Review to be informal, etc.

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

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records of the child and of members of the child's family, as defined in Part VIII (Confidentiality of and Access to Records), that are disclosed to the committee in accordance with that Part. R.S.O. 1990, c. C.11, s. 34 (8).

Service providers to assist advisory committee

(9) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review. R.S.O. 1990, c. C.11, s. 34 (9).

What committee shall consider

- (10) In conducting a review, an advisory committee shall,
 - (a) determine whether the child has a special need;
 - (b) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
 - (c) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
 - (d) if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative;
 - (e) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
 - (f) where the child is an Indian or native person, consider the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity. R.S.O. 1990, c. C.11, s. 34 (10).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (4) - 22/06/2006

Recommendations

35. (1) An advisory committee that conducts a review shall advise,

- (a) the service provider;
- (b) any representative of the child;
- (c) the child's parent or, where the child is in a society's lawful custody, the society;
- (d) the child, where it is reasonable to expect him or her to understand; and
- (e) where the child is an Indian or native person, a representative chosen by the child's band or native community,

of its recommendations as soon as the review has been completed, and shall advise the child of his or her rights under section 36 if the child is twelve years of age or older.

Report of review to Minister

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

Recommendation for less restrictive service

(3) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (2) that the less restrictive service be provided to the child.

Additional reports at Minister's request

(4) An advisory committee shall make a report of its activities to the Minister whenever the Minister requests it, in addition to making the reports required by subsection (2). R.S.O. 1990, c. C.11, s. 35.

Review by Child and Family Services Review Board

36. (1) A child who is twelve years of age or older and is in a residential placement to which he or she objects may, if the placement has been reviewed by an advisory committee under section 34 and,

- (a) the child is dissatisfied with the advisory committee's recommendation; or
- (b) the advisory committee's recommendation is not followed,

apply to the Board for a determination of where he or she should remain or be placed.

Duty of Board

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

Idem

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

Parties

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

- (a) the child;
- (b) the child's parent or, where the child is in a society's lawful custody, the society;
- (c) where the child is an Indian or native person, a representative chosen by the child's band or native community; and
- (d) any other persons that the Board specifies.

Time for determination

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

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

Board's recommendation

- (6) After conducting a review under subsection (2), the Board may,
 - (a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
 - (b) order that the child be discharged from the residential placement; or
 - (c) confirm the existing placement. R.S.O. 1990, c. C.11, s. 36.

**PART III
CHILD PROTECTION**

Interpretation

37. (1) In this Part,

“child” does not include a child as defined in subsection 3 (1) who is actually or apparently sixteen years of age or older, unless the child is the subject of an order under this Part; (“enfant”)

“child protection worker” means a Director, a local director or a person authorized by a Director or local director for the purposes of section 40 (commencing child protection proceedings); (“préposé à la protection de l’enfance”)

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

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children’s Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 158 or 159.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child’s support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children’s Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force; (“père ou mère”)

“place of safety” means a foster home, a hospital, a person’s home that satisfies the requirements of subsection (5) or a place or one of a class of places designated as a place of safety by a Director or local director under section 18, but does not include,

- (a) a place of secure custody as defined in Part IV, or
- (b) a place of secure temporary detention as defined in Part IV. (“lieu sûr”) R.S.O. 1990, c. C.11, s. 37 (1); 2006, c. 19, Sched. D, s. 2 (5); 2006, c. 5, s. 6 (1, 2); 2016, c. 23, s. 38 (5).

Child in need of protection

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

- (i) failure to adequately care for, provide for, supervise or protect the child, or
- (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed by the Statutes of Ontario, 2008, chapter 21, section 2 and the following substituted:

- (c) the child has been sexually molested or sexually exploited, including by child pornography, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

See: 2008, c. 21, ss. 2, 6.

- (d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c);
- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;
- (f) the child has suffered emotional harm, demonstrated by serious,
 - (i) anxiety,
 - (ii) depression,
 - (iii) withdrawal,
 - (iv) self-destructive or aggressive behaviour, or
 - (v) delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (f.1) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;
- (i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;
- (k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or
- (l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part. R.S.O. 1990, c. C.11, s. 37 (2); 1999, c. 2, s. 9.

Best interests of child

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child's physical, mental and emotional level of development.
3. The child's cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
6. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community.
7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
9. The child's views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
12. The degree of risk, if any, that justified the finding that the child is in need of protection.
13. Any other relevant circumstance. R.S.O. 1990, c. C.11, s. 37 (3); 2006, c. 5, s. 6 (3); 2016, c. 23, s. 38 (18).

Where child an Indian or native person

(4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity. R.S.O. 1990, c. C.11, s. 37 (4).

Place of safety

(5) For the purposes of the definition of "place of safety" in subsection (1), a person's home is a place of safety for a child if,

- (a) the person is a relative of the child or a member of the child's extended family or community; and
- (b) a society or, in the case of a child who is an Indian or native person, an Indian or native child and family service authority designated under section 211 of Part X has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child. 2006, c. 5, s. 6 (4); 2016, c. 23, s. 38 (17).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 9, section 37 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 9 (1-4), 37 - 31/03/2000

2006, c. 5, s. 6 (1-4) - 30/11/2006; 2006, c. 19, Sched. D, s. 2 (5) - 22/06/2006

2008, c. 21, s. 2 - not in force

2016, c. 23, s. 38 (5, 17, 18) - 01/01/2017

LEGAL REPRESENTATION**Legal representation of child**

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

Court to consider issue

- (2) Where a child does not have legal representation in a proceeding under this Part, the court,
- (a) shall, as soon as practicable after the commencement of the proceeding; and
 - (b) may, at any later stage in the proceeding,

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

Direction for legal representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child. R.S.O. 1990, c. C.11, s. 38 (1-3).

Criteria

- (4) Where,
- (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be made a society or Crown ward under paragraph 2 or 3 of subsection 57 (1);
 - (b) the child is in the society's care and,
 - (i) no parent appears before the court, or
 - (ii) it is alleged that the child is in need of protection within the meaning of clause 37 (2) (a), (c), (f), (f.1) or (h); or
 - (c) the child is not permitted to be present at the hearing,

legal representation shall be deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected. R.S.O. 1990, c. C.11, s. 38 (4); 1999, c. 2, s. 10.

Where parent a minor

(5) Where a child's parent is less than eighteen years of age, the Children's Lawyer shall represent the parent in a proceeding under this Part unless the court orders otherwise. R.S.O. 1990, c. C.11, s. 38 (5); 1994, c. 27, s. 43 (2).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 10, section 38 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 43 (2) - 3/04/1995

1999, c. 2, s. 10, 37 - 31/03/2000

PARTIES AND NOTICE

Parties

39. (1) The following are parties to a proceeding under this Part:

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. Where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Director to be added

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

Right to participate

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

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a solicitor; and

(d) may make submissions to the court,
but shall take no further part in the hearing without leave of the court.

Child twelve or older

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

Child under twelve

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

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

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

Child's participation

(6) A child who is the applicant under subsection 64 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 69 as if he or she were a party.

Dispensing with notice

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person. R.S.O. 1990, c. C.11, s. 39.

COMMENCING CHILD PROTECTION PROCEEDINGS

Warrants, orders, apprehension, etc.

Application

40. (1) A society may apply to the court to determine whether a child is in need of protection. R.S.O. 1990, c. C.11, s. 40 (1).

Warrant to apprehend child

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

- (a) the child is in need of protection; and
- (b) a less restrictive course of action is not available or will not protect the child adequately. R.S.O. 1990, c. C.11, s. 40 (2).

Idem

(3) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (7). R.S.O. 1990, c. C.11, s. 40 (3); 1993, c. 27, Sched.

Order to produce or apprehend child

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

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

the court may order,

- (c) that the person having charge of the child produce him or her before the court at the time and place named in the order for a hearing under subsection 47 (1) to determine whether he or she is in need of protection; or

- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 40 (4); 1993, c. 27, Sched.

Child's name, location not required

(5) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (4), to describe the child by name or to specify the premises where the child is located. R.S.O. 1990, c. C.11, s. 40 (5).

Authority to enter, etc.

(6) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (4) (d) may at any time enter any premises specified in the warrant or order, by force if necessary, and may search for and remove the child. R.S.O. 1990, c. C.11, s. 40 (6).

Apprehension without warrant

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

(a) a child is in need of protection; and

(b) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 47 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 40 (7).

Police assistance

(8) A child protection worker acting under this section may call for the assistance of a peace officer. R.S.O. 1990, c. C.11, s. 40 (8).

Consent to examine child

(9) A child protection worker acting under subsection (7) or under a warrant issued under subsection (2) or an order made under clause (4) (d) may authorize the child's medical examination where a parent's consent would otherwise be required. R.S.O. 1990, c. C.11, s. 40 (9).

Place of open temporary detention

(10) Where a child protection worker who brings a child to a place of safety under this section believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 40 (10); 2006, c. 19, Sched. D, s. 2 (6).

Right of entry, etc.

(11) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (7) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child. R.S.O. 1990, c. C.11, s. 40 (11).

Regulations re power of entry

(12) A child protection worker authorized to enter premises under subsection (6) or (11) shall exercise the power of entry in accordance with the regulations. R.S.O. 1990, c. C.11, s. 40 (12).

Peace officer has powers of child protection worker

(13) Subsections (2), (6), (7), (10), (11) and (12) apply to a peace officer as if the peace officer were a child protection worker. R.S.O. 1990, c. C.11, s. 40 (13).

Protection from personal liability

(14) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty. R.S.O. 1990, c. C.11, s. 40 (14).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

2006, c. 19, Sched. D, s. 2 (6) - 22/06/2006

SPECIAL CASES OF APPREHENSION OF CHILDREN

Apprehension of children in care**Warrant to apprehend child in care**

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

- (a) the child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child. R.S.O. 1990, c. C.11, s. 41 (1).

Idem

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4). R.S.O. 1990, c. C.11, s. 41 (2).

No need to specify premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located. R.S.O. 1990, c. C.11, s. 41 (3).

Apprehension of child in care without warrant

- (4) A peace officer or child protection worker who believes on reasonable and probable grounds that,
 - (a) a child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
 - (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1),

may without a warrant bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 41 (4).

Apprehension of child absent from place of open temporary detention

(5) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Youth Justice) and leaves the place without the consent of,

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant. R.S.O. 1990, c. C.11, s. 41 (5); 2006, c. 19, Sched. D, s. 2 (7).

Idem

- (6) A person who apprehends a child under subsection (5) shall,
 - (a) take the child to a place of safety to be detained until the child can be returned to the place of safety the child left; or
 - (b) return the child or arrange for the child to be returned to the place of safety the child left. R.S.O. 1990, c. C.11, s. 41 (6).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (7) - 22/06/2006

Apprehension of child under twelve

42. (1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,

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

Notice to parent, etc.

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person. R.S.O. 1990, c. C.11, s. 42 (1, 2).

Where child not returned to parent, etc., within twelve hours

(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (7) and not apprehended under subsection (1). R.S.O. 1990, c. C.11, s. 42 (3); 1993, c. 27, Sched.

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Runaways

43. (1) In this section,
"parent" includes,

- (a) an approved agency that has custody of the child,
- (b) a person who has care and control of the child.

Warrant to apprehend runaway child

(2) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a parent of the child that,

- (a) the child is under the age of sixteen years;
- (b) the child has withdrawn from the parent's care and control without the parent's consent; and
- (c) the parent believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.

Idem

(3) A person who apprehends a child under subsection (2) shall return the child to the child's parent as soon as practicable and where it is not possible to return the child to the parent within a reasonable time, take the child to a place of safety.

Notice to parent, etc.

(4) The person in charge of a place of safety to which a child is taken under subsection (3) shall make reasonable efforts to notify the child's parent that the child is in the place of safety so that the child may be returned to the parent.

Where child not returned to parent within twelve hours

(5) Where a child taken to a place of safety under subsection (3) cannot be returned to the child's parent within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (2) and not apprehended under subsection (2).

Where custody enforcement proceedings more appropriate

(6) A justice of the peace shall not issue a warrant under subsection (2) where a child has withdrawn from the care and control of one parent with the consent of another parent under circumstances where a proceeding under section 36 of the *Children's Law Reform Act* would be more appropriate.

No need to specify premises

(7) It is not necessary in a warrant under subsection (2) to specify the premises where the child is located.

Child protection proceedings

(8) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the parent,

- (a) the peace officer or child protection worker may take the child to a place of safety under subsection 40 (7); or
- (b) where the child has been taken to a place of safety under subsection (5), the child shall be dealt with as if the child had been taken there under subsection 40 (7). R.S.O. 1990, c. C.11, s. 43.

POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION

Authority to enter, etc.

44. (1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 41 (1) or 43 (2) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child. R.S.O. 1990, c. C.11, s. 44 (1).

Right of entry, etc.

(2) A person authorized under subsection 41 (4) or (5) or 42 (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child. R.S.O. 1990, c. C.11, s. 44 (2).

Regulations re power of entry

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations. R.S.O. 1990, c. C.11, s. 44 (3).

Police assistance

(4) A child protection worker acting under section 41 or 43 may call for the assistance of a peace officer. R.S.O. 1990, c. C.11, s. 44 (4).

Consent to examine child

(5) A child protection worker who deals with a child under subsection 42 (3) or 43 (5) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would otherwise be required. R.S.O. 1990, c. C.11, s. 44 (5).

Place of open temporary detention

(6) Where a person who brings a child to a place of safety under section 41 or 42 believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 44 (6); 2006, c. 19, Sched. D, s. 2 (8).

Protection from personal liability

(7) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 41, 42 or 43 or for an alleged neglect or default in the execution in good faith of that duty. R.S.O. 1990, c. C.11, s. 44 (7).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (8) - 22/06/2006

HEARINGS AND ORDERS

Rules re hearings

45. (1) In this section,

"media" means the press, radio and television media. R.S.O. 1990, c. C.11, s. 45 (1).

Application

(2) This section applies to hearings held under this Part, except hearings under section 76 (child abuse register). R.S.O. 1990, c. C.11, s. 45 (2).

Hearings separate from criminal proceedings

(3) A hearing shall be held separately from hearings in criminal proceedings. R.S.O. 1990, c. C.11, s. 45 (3).

Hearings private unless court orders otherwise

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

(a) the wishes and interests of the parties; and

(b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding,

orders that the hearing be held in public. R.S.O. 1990, c. C.11, s. 45 (4); 2009, c. 33, Sched. 7, s. 1 (2).

Media representatives

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7). R.S.O. 1990, c. C.11, s. 45 (5).

Idem

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

1. The media representatives in attendance shall choose not more than two persons from among themselves.
2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
3. The court may permit additional media representatives to be present at the hearing. R.S.O. 1990, c. C.11, s. 45 (6).

Order excluding media representatives or prohibiting publication

(7) The court may make an order,

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

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding. R.S.O. 1990, c. C.11, s. 45 (7).

Prohibition: identifying child

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family. R.S.O. 1990, c. C.11, s. 45 (8).

Idem: order re adult

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part. R.S.O. 1990, c. C.11, s. 45 (9).

Transcript

(10) No person except a party or a party's solicitor shall be given a copy of a transcript of the hearing, unless the court orders otherwise. R.S.O. 1990, c. C.11, s. 45 (10).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 11 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2009, c. 33, Sched. 7, s. 1 (2) - 15/12/2009

Time of detention limited

46. (1) As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 40 or subsection 79 (6) or a homemaker remains or is placed on premises under subsection 78 (2),

- (a) the matter shall be brought before a court for a hearing under subsection 47 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order; or
- (c) a temporary care agreement shall be made under subsection 29 (1) of Part II (Voluntary Access to Services).

Idem: place of open temporary detention

(2) Within twenty-four hours after a child is brought to a place of safety that is a place of open temporary detention, or as soon thereafter as is practicable, the matter shall be brought before a court for a hearing and the court shall,

- (a) where it is satisfied that no less restrictive course of action is feasible, order that the child remain in the place of open temporary detention for a period or periods not exceeding an aggregate of thirty days and then be returned to the care and custody of the society;

- (b) order that the child be discharged from the place of open temporary detention and returned to the care and custody of the society; or
- (c) make an order under subsection 51 (2) (temporary care and custody). R.S.O. 1990, c. C.11, s. 46.

Child protection hearing

47. (1) Where an application is made under subsection 40 (1) or a matter is brought before the court to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 57.

Child's name, age, etc.

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

- (a) the child's name and age;
- (b) the religious faith, if any, in which the child is being raised;
- (c) whether the child is an Indian or a native person and, if so, the child's band or native community; and
- (d) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

Where sixteenth birthday intervenes

(3) Despite anything else in this Part, where the child was under the age of sixteen years when the proceeding was commenced or when the child was apprehended, the court may hear and determine the matter and make an order under this Part as if the child were still under the age of sixteen years. R.S.O. 1990, c. C.11, s. 47.

Territorial jurisdiction

48. (1) In this section,

"territorial jurisdiction" means a society's territorial jurisdiction under subsection 15 (2). R.S.O. 1990, c. C.11, s. 48 (1).

Place of hearing

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

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the territorial jurisdiction in which the place from which the child was removed is located;
- (b) where the child is in a society's care under an order for society wardship under section 57 or an order for Crown wardship under section 57 or 65.2, the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under section 57 or 65.2, the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides. R.S.O. 1990, c. C.11, s. 48 (2); 2006, c. 5, s. 7.

Transfer of proceeding

(3) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another territorial jurisdiction, the court may order that the proceeding be transferred to that other territorial jurisdiction and be continued as if it had been commenced there. R.S.O. 1990, c. C.11, s. 48 (3).

Orders affecting society

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction. R.S.O. 1990, c. C.11, s. 48 (4).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 7 (1, 2) - 30/11/2006

Power of court

49. The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*. R.S.O. 1990, c. C.11, s. 49; 1993, c. 27, Sched.

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Evidence

Past conduct toward children

- 50.** (1) Despite anything in the *Evidence Act*, in any proceeding under this Part,
- (a) the court may consider the past conduct of a person toward any child if that person is caring for or has access to or may care for or have access to a child who is the subject of the proceeding; and
 - (b) any oral or written statement or report that the court considers relevant to the proceeding, including a transcript, exhibit or finding or the reasons for a decision in an earlier civil or criminal proceeding, is admissible into evidence. 1999, c. 2, s. 12.

Evidence re disposition not admissible before finding

(2) In a hearing under subsection 47 (1), evidence relating only to the disposition of the matter shall not be admitted before the court has determined that the child is in need of protection. R.S.O. 1990, c. C.11, s. 50 (2).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 12, section 50 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 12, 37 - 31/03/2000

Adjournments

- 51.** (1) The court shall not adjourn a hearing for more than thirty days,
- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
 - (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment. R.S.O. 1990, c. C.11, s. 51 (1).

Custody during adjournment

- (2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,
- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
 - (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;
 - (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or
 - (d) remain or be placed in the care and custody of the society, but not be placed in,
 - (i) a place of secure custody as defined in Part IV (Youth Justice), or
 - (ii) a place of open temporary detention as defined in that Part that has not been designated as a place of safety. R.S.O. 1990, c. C.11, s. 51 (2); 2006, c. 19, Sched. D, s. 2 (9); 2006, c. 5, s. 8 (1, 2).

Criteria

(3) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be protected adequately by an order under clause (2) (a) or (b). 1999, c. 2, s. 13.

Placement with relative, etc.

(3.1) Before making a temporary order for care and custody under clause (2) (d), the court shall consider whether it is in the child's best interests to make an order under clause (2) (c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community. 2006, c. 5, s. 8 (3); 2016, c. 23, s. 38 (17).

Terms and conditions in order

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

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or to purchase any goods or services. 2006, c. 5, s. 8 (3).

Application of s. 62

(4) Where the court makes an order under clause (2) (d), section 62 (parental consents) applies with necessary modifications. R.S.O. 1990, c. C.11, s. 51 (4).

Access

(5) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child on such terms and conditions as the court considers appropriate. R.S.O. 1990, c. C.11, s. 51 (5).

Power to vary

(6) The court may at any time vary or terminate an order made under subsection (2). R.S.O. 1990, c. C.11, s. 51 (6).

Evidence on adjournments

(7) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances. R.S.O. 1990, c. C.11, s. 51 (7).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 13, section 51 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 13, 37 - 31/03/2000

2006, c. 5, s. 8 (1-3) - 30/11/2006; 2006, c. 19, Sched. D, s. 2 (9) - 22/06/2006

2016, c. 23, s. 38 (17) - 01/01/2017

Use of prescribed methods of alternative dispute resolution

51.1 At any time during a proceeding under this Part, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceeding to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding. 2006, c. 5, s. 9.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 9 - 30/11/2006

Delay: court to fix date

52. Where an application is made under subsection 40 (1) or a matter is brought before the court to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court,

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just. R.S.O. 1990, c. C.11, s. 52.

Reasons, etc.

53. (1) Where the court makes an order under this Part, the court shall give,

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
 - (i) a brief statement of the evidence on which the court bases its decision, and

- (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

Idem

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision. R.S.O. 1990, c. C.11, s. 53.

ASSESSMENTS

Order for assessment

54. (1) In the course of a proceeding under this Part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (1.1) and (1.2):

1. The child.
2. A parent of the child.
3. Any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child. 2006, c. 5, s. 10 (1).

Assessor selected by parties

(1.1) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court. 2006, c. 5, s. 10 (1).

Appointment by court

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

1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.
2. The person has consented to perform the assessment. 2006, c. 5, s. 10 (1).

Same

(1.3) If the court is of the opinion that the person selected by the parties under subsection (1.1) does not meet the criteria set out in subsection (1.2), the court shall select and appoint another person who does meet the criteria. 2006, c. 5, s. 10 (1).

Regulations

(1.4) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed. 2006, c. 5, s. 10 (1).

Report

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary. R.S.O. 1990, c. C.11, s. 54 (2).

Copies of report

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

- (a) the person assessed, subject to subsections (4) and (5);
- (b) the child's solicitor or agent of record;
- (c) a parent appearing at the hearing, or the parent's solicitor of record;
- (d) the society caring for or supervising the child;
- (e) a Director, where he or she requests a copy;
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case. R.S.O. 1990, c. C.11, s. 54 (3).

Child under twelve

(4) Where the person assessed is a child less than twelve years of age, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report. R.S.O. 1990, c. C.11, s. 54 (4).

Child twelve or older

(5) Where the person assessed is a child twelve years of age or more, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child. R.S.O. 1990, c. C.11, s. 54 (5).

Conflict

(5.1) Subsections (4) and (5) prevail despite anything in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 78 (1).

Assessment is evidence

(6) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding. R.S.O. 1990, c. C.11, s. 54 (6).

Inference from refusal

(7) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1). R.S.O. 1990, c. C.11, s. 54 (7).

Report inadmissible

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

- (a) a proceeding under this Part, including an appeal under section 69;
 - (b) a proceeding referred to in section 81;
 - (b.1) a proceeding under Part VII respecting an application to make, vary or terminate an openness order; or
 - (c) a proceeding under the *Coroners Act*,
- without the consent of the person or persons assessed. 1999, c. 2, s. 14; 2006, c. 5, s. 10 (2).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 14, section 54 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 14, 37 - 31/03/2000

2004, c. 3, Sched. A, s. 78 (1) - 1/11/2004

2006, c. 5, s. 10 (1, 2) - 28/02/2007

Consent order: special requirements

55. Where a child is brought before the court on consent as described in clause 37 (2) (I), the court shall, before making an order under section 57 or 57.1 that would remove the child from the parent's care and custody,

- (a) ask whether,
 - (i) the society has offered the parent and child services that would enable the child to remain with the parent, and
 - (ii) the parent and, where the child is twelve years of age or older, the child has consulted independent legal counsel in connection with the consent; and
 - (b) be satisfied that,
 - (i) the parent and, where the child is twelve years of age or older, the child understands the nature and consequences of the consent,
 - (ii) every consent is voluntary, and
 - (iii) the parent and, where the child is twelve years of age or older, the child consents to the order being sought.
- R.S.O. 1990, c. C.11, s. 55; 2006, c. 5, s. 11.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 11 - 30/11/2006

Society's plan for child

56. The court shall, before making an order under section 57, 57.1, 65 or 65.2, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
 - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person;
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement; and
- (f) a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity. R.S.O. 1990, c. C.11, s. 56; 2006, c. 5, s. 12.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 12 (1, 2) - 30/11/2006

Order where child in need of protection

57. (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 57.1, in the child's best interests:

Supervision order

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

Society wardship

- 2. That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months.

Crown wardship

- 3. That the child be made a ward of the Crown, until the wardship is terminated under section 65.2 or expires under subsection 71 (1), and be placed in the care of the society.

Consecutive orders of society wardship and supervision

- 4. That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months. R.S.O. 1990, c. C.11, s. 57 (1); 2006, c. 5, s. 13 (1-3).

Court to inquire

(2) In determining which order to make under subsection (1) or section 57.1, the court shall ask the parties what efforts the society or another agency or person has made to assist the child before intervention under this Part. 2006, c. 5, s. 13 (4).

Less disruptive alternatives preferred

(3) The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential services and the assistance referred to in subsection (2), would be inadequate to protect the child. 1999, c. 2, s. 15 (1).

Community placement to be considered

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of him or her immediately before intervention under this Part, the court shall, before making an order for society or Crown wardship under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person. R.S.O. 1990, c. C.11, s. 57 (4); 2016, c. 23, s. 38 (18).

Idem: where child an Indian or a native person

(5) Where the child referred to in subsection (4) is an Indian or a native person, unless there is a substantial reason for placing the child elsewhere, the court shall place the child with,

- (a) a member of the child's extended family;
- (b) a member of the child's band or native community; or
- (c) another Indian or native family. R.S.O. 1990, c. C.11, s. 57 (5).
- (6) REPEALED: 1999, c. 2, s. 15 (2).

Idem

(7) When the court has dispensed with notice to a person under subsection 39 (7), the court shall not make an order for Crown wardship under paragraph 3 of subsection (1), or an order for society wardship under paragraph 2 of subsection (1) for a period exceeding thirty days, until a further hearing under subsection 47 (1) has been held upon notice to that person. R.S.O. 1990, c. C.11, s. 57 (7).

Terms and conditions of supervision order

- (8) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,
 - (a) reasonable terms and conditions relating to the child's care and supervision;
 - (b) reasonable terms and conditions on,
 - (i) the child's parent,
 - (ii) the person who will have care and custody of the child under the order,
 - (iii) the child, and
 - (iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and
 - (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services. 2006, c. 5, s. 13 (5).

Where no court order necessary

(9) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part. R.S.O. 1990, c. C.11, s. 57 (9).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 15, section 57 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 15 (1, 2), 37 - 31/03/2000

2006, c. 5, s. 13 (1-5) - 30/11/2006

2016, c. 23, s. 38 (18) - 01/01/2017

Custody order

57.1 (1) Subject to subsection (6), if a court finds that an order under this section instead of an order under subsection 57 (1) would be in a child's best interests, the court may make an order granting custody of the child to one or more persons, other than a foster parent of the child, with the consent of the person or persons. 2006, c. 5, s. 14.

Deemed to be order under *Children's Law Reform Act*

(2) An order made under subsection (1) and any access order under section 58 that is made at the same time as the order under subsection (1) shall be deemed to be made under section 28 of the *Children's Law Reform Act* and the court,

- (a) may make any order under subsection (1) that the court may make under section 28 of that Act; and
- (b) may give any directions that it may give under section 34 of that Act. 2006, c. 5, s. 14.

Restraining order

(3) When making an order under subsection (1), the court may, without a separate application, make a restraining order in accordance with section 35 of the *Children's Law Reform Act*. 2009, c. 11, s. 3.

Same

(4) An order under subsection (3) is deemed to be a final order made under section 35 of the *Children's Law Reform Act*, and shall be treated for all purposes as if it had been made under that section. 2009, c. 11, s. 3.

Appeal under s. 69

(5) Despite subsections (2) and (4), an order under subsection (1) or (3) and any access order under section 58 that is made at the same time as an order under subsection (1) are orders under this Part for the purposes of appealing from the orders under section 69. 2006, c. 5, s. 14.

Conflict of laws

- (6) No order shall be made under this section if,
 - (a) an order granting custody of the child has been made under the *Divorce Act* (Canada); or
 - (b) in the case of an order that would be made by the Ontario Court of Justice, the order would conflict with an order made by a superior court. 2006, c. 5, s. 14.

Application of s. 57 (3)

- (7) Subsection 57 (3) applies for the purposes of this section. 2006, c. 5, s. 14.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 14 - 30/11/2006

2009, c. 11, s. 3 - 15/10/2009

Effect of custody proceedings

57.2 If, under this Part, a proceeding is commenced or an order for the care, custody or supervision of a child is made, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act. 2006, c. 5, s. 15.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 15 - 30/11/2006

ACCESS

Access order

58. (1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate. R.S.O. 1990, c. C.11, s. 58 (1).

Who may apply

- (2) Where a child is in a society's care and custody or supervision,
 - (a) the child;
 - (b) any other person, including, where the child is an Indian or a native person, a representative chosen by the child's band or native community; or
 - (c) the society,

may apply to the court at any time for an order under subsection (1). R.S.O. 1990, c. C.11, s. 58 (2).

Notice

(3) An applicant referred to in clause (2) (b) shall give notice of the application to the society. R.S.O. 1990, c. C.11, s. 58 (3).

Idem

- (4) A society making or receiving an application under subsection (2) shall give notice of the application to,
- (a) the child, subject to subsections 39 (4) and (5) (notice to child);
 - (b) the child's parent;
 - (c) the person caring for the child at the time of the application; and
 - (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community. R.S.O. 1990, c. C.11, s. 58 (4).

Child over sixteen

(5) No order respecting access to a person sixteen years of age or more shall be made under subsection (1) without the person's consent. R.S.O. 1990, c. C.11, s. 58 (5).

Six-month period

- (6) No application shall be made under subsection (2) by a person other than a society within six months of,
- (a) the making of an order under section 57;
 - (b) the disposition of a previous application by the same person under subsection (2);
 - (c) the disposition of an application under section 64 or 65.1; or
 - (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),
- whichever is later. R.S.O. 1990, c. C.11, s. 58 (6); 2006, c. 5, s. 16.

No application where child placed for adoption

- (7) No person or society shall make an application under subsection (2) where the child,
- (a) is a Crown ward;
 - (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII (Adoption); and
 - (c) still resides in that person's home. R.S.O. 1990, c. C.11, s. 58 (7).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 16 - 30/11/2006

Access: where child removed from person in charge

59. (1) Where an order is made under paragraph 1 or 2 of subsection 57 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with him or her would not be in the child's best interests. R.S.O. 1990, c. C.11, s. 59 (1).

Access after custody order under s. 57.1

(1.1) If a custody order is made under section 57.1 removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact will not be in the child's best interests. 2006, c. 5, s. 17 (1).

Access after supervision order or custody order under s. 65.2 (1)

(1.2) If an order is made for supervision under clause 65.2 (1) (a) or for custody under clause 65.2 (1) (b), the court shall make an order for access by every person who had access before the application for the order was made under section 65.1, unless the court is satisfied that continued contact will not be in the child's best interests. 2006, c. 5, s. 17 (1).

Termination of access to Crown ward

(2) Where the court makes an order that a child be made a ward of the Crown, any order for access made under this Part with respect to the child is terminated. 2006, c. 5, s. 17 (2).

Access: Crown ward

(2.1) A court shall not make or vary an access order made under section 58 with respect to a Crown ward unless the court is satisfied that,

- (a) the relationship between the person and the child is beneficial and meaningful to the child; and
- (b) the ordered access will not impair the child's future opportunities for adoption. 2006, c. 5, s. 17 (2).

Termination of access: Crown ward

- (3) The court shall terminate an access order with respect to a Crown ward if,
 - (a) the order is no longer in the best interests of the child; or
 - (b) the court is no longer satisfied that the requirements set out in clauses (2.1) (a) and (b) are satisfied. 1999, c. 2, s. 16; 2006, c. 5, s. 17 (3).

Society may permit contact or communication

(4) If a society believes that contact or communication between a person and a Crown ward is in the best interests of the Crown ward and no openness order under Part VII or access order is in effect with respect to the person and the Crown ward, the society may permit contact or communication between the person and the Crown ward. 2006, c. 5, s. 17 (4).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 16, section 59 of this Act, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 16, 37 - 31/03/2000

2006, c. 5, s. 17 (1-4) - 30/11/2006

Review of access order made concurrently with custody order

59.1 No order for access under section 58 is subject to review under this Act if it is made at the same time as a custody order under section 57.1, but it may be the subject of an application under section 21 of the *Children's Law Reform Act* and the provisions of that Act apply as if the order had been made under that Act. 2006, c. 5, s. 18.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 18 - 30/11/2006

Restriction on access order

59.2 If a society has applied to a court for an order under this Act respecting access to a child by a parent of the child and the court makes the order, the court shall specify in the order the supervision to which the access is subject if, at the time of making the order, the parent has been charged with or convicted of an offence under the *Criminal Code* (Canada) involving an act of violence against the child or the other parent of the child, unless the court considers it appropriate not to make the access subject to such supervision. 2006, c. 24, s. 1.

Section Amendments with date in force (d/m/y)

2006, c. 24, s. 1 - 19/10/2006

PAYMENT ORDERS

Order for payment by parent

60. (1) Where the court places a child in the care of,

- (a) a society; or
- (b) a person other than the child's parent, subject to a society's supervision,

the court may order a parent or a parent's estate to pay the society a specified amount at specified intervals for each day the child is in the society's care or supervision.

Criteria

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant:

1. The assets and means of the child and of the parent or the parent's estate.
2. The child's capacity to provide for his or her own support.

3. The capacity of the parent or the parent's estate to provide support.
4. The child's and the parent's age and physical and mental health.
5. The child's mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent's estate to provide support for another person.
7. The child's aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public money.

Order ends at eighteen

- (3) No order made under subsection (1) shall extend beyond the day on which the child attains the age of eighteen years.

Power to vary

(4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.

Collection by municipality

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1). R.S.O. 1990, c. C.11, s. 60 (1-5).

Enforcement

(6) An order made against a parent under subsection (1) may be enforced as if it were an order for support made under Part III of the *Family Law Act*. R.S.O. 1990, c. C.11, s. 60 (6); 1993, c. 27, Sched.

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

SOCIETY AND CROWN WARDSHIP

Placement of wards

61. (1) This section applies where a child is made a society ward under paragraph 2 of subsection 57 (1) or a Crown ward under paragraph 3 of subsection 57 (1) or under subsection 65.2 (1). 2006, c. 5, s. 19 (1).

Placement

- (2) The society having care of a child shall choose a residential placement for the child that,
 - (a) represents the least restrictive alternative for the child;
 - (b) where possible, respects the religious faith, if any, in which the child is being raised;
 - (c) where possible, respects the child's linguistic and cultural heritage;
 - (d) where the child is an Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible; and
 - (e) takes into account the child's wishes, if they can be reasonably ascertained, and the wishes of any parent who is entitled to access to the child. R.S.O. 1990, c. C.11, s. 61 (2).

Education

(3) The society having care of a child shall ensure that the child receives an education that corresponds to his or her aptitudes and abilities. R.S.O. 1990, c. C.11, s. 61 (3).

Placement outside or removal from Ontario

(4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal. R.S.O. 1990, c. C.11, s. 61 (4).

Rights of child, parent and foster parent

- (5) The society having care of a child shall ensure that,
 - (a) the child is afforded all the rights referred to in Part V (Rights of Children); and

- (b) the wishes of any parent who is entitled to access to the child and, where the child is a Crown ward, of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child. R.S.O. 1990, c. C.11, s. 61 (5).

Change of placement

(6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so. R.S.O. 1990, c. C.11, s. 61 (6).

Notice of proposed removal

(7) If a child is a Crown ward and has lived continuously with a foster parent for two years and a society proposes to remove the child from the foster parent under subsection (6), the society shall,

- (a) give the foster parent at least 10 days notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (7.1); and
- (b) if the child is an Indian or native person,
 - (i) give at least 10 days notice in writing of the proposed removal to a representative chosen by the child's band or native community, and
 - (ii) after the notice is given, consult with representatives chosen by the band or community relating to the plan for the care of the child. 2006, c. 5, s. 19 (2).

Application for review

(7.1) A foster parent who receives a notice under clause (7) (a) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the proposed removal. 2006, c. 5, s. 19 (2).

Board hearing

(8) Upon receipt of an application by a foster parent for a review of a proposed removal, the Board shall hold a hearing under this section. 2006, c. 5, s. 19 (2).

Where child is Indian or native person

(8.1) Upon receipt of an application for review of a proposed removal of a child who is an Indian or native person, the Board shall give a representative chosen by the child's band or native community notice of receipt of the application and of the date of the hearing. 2006, c. 5, s. 19 (2).

Practices and procedures

(8.2) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed. 2006, c. 5, s. 19 (2).

Composition of Board

(8.3) At a hearing under this section, the Board shall be composed of members with the prescribed qualifications and prescribed experience. 2006, c. 5, s. 19 (2).

Parties

(8.4) The following persons are parties to a hearing under this section:

1. The applicant.
2. The society.
3. If the child is an Indian or a native person, a representative chosen by the child's band or native community.
4. Any person that the Board adds under subsection (8.5). 2006, c. 5, s. 19 (2).

Additional parties

(8.5) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review. 2006, c. 5, s. 19 (2).

Board decision

(8.6) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm the proposal to remove the child or direct the society not to carry out the proposed removal, and shall give written reasons for its decision. 2006, c. 5, s. 19 (2).

No removal before decision

- (8.7) Subject to subsection (9), the society shall not carry out the proposed removal of the child unless,
- (a) the time for applying for a review of the proposed removal under subsection (7.1) has expired and an application is not made; or
 - (b) if an application for a review of the proposed removal is made under subsection (7.1), the Board has confirmed the proposed removal under subsection (8.6). 2006, c. 5, s. 19 (2).

Where child at risk

(9) A society may remove the child from the foster home before the expiry of the time for applying for a review under subsection (7.1) or at any time after the application for a review is made if, in the opinion of a local director, there would be a risk that the child is likely to suffer harm during the time necessary for a review by the Board. 2006, c. 5, s. 19 (3).

Review of certain placements

(10) Sections 34, 35 and 36 (review by Residential Placement Advisory Committee, further review by Children's Services Review Board) of Part II (Voluntary Access to Services) apply to a residential placement made by a society. R.S.O. 1990, c. C.11, s. 61 (10).

Transitional

(11) This section as it read on the day before this subsection came into force continues to apply in respect of proposed removals and requests for review under section 68 if the notice of the proposed removal of the child was given by the society on or before that day. 2006, c. 5, s. 19 (4).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 17 - 31/03/2000

2006, c. 5, s. 19 (1-4) - 30/11/2006

Society wards – medical treatment and marriage**Society ward: consent to medical treatment**

62. (1) Where a child is made a society ward under paragraph 2 of subsection 57 (1), the society may consent to and authorize medical treatment for the child where a parent's consent would otherwise be required, unless the court orders that the parent shall retain any right that he or she may have to give or refuse consent to medical treatment for the child.

Idem

(2) The court shall not make an order under subsection (1) where failure to consent to necessary medical treatment was a ground for finding that the child was in need of protection.

Court order

(3) Where a parent referred to in an order made under subsection (1) refuses or is unavailable or unable to consent to medical treatment for the child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to consent to the treatment.

Consent to child's marriage

(4) Where a child is made a society ward under paragraph 2 of subsection 57 (1), the child's parent retains any right that he or she may have under the *Marriage Act* to give or refuse consent to the child's marriage. R.S.O. 1990, c. C.11, s. 62.

Custodianship of wards**Crown custodian of Crown wards**

63. (1) Where a child is made a Crown ward under paragraph 3 of subsection 57 (1) or under subsection 65.2 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child. R.S.O. 1990, c. C.11, s. 63 (1); 2006, c. 5, s. 20.

Society custodian of society wards

(2) Where a child is made a society ward under paragraph 2 of subsection 57 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control. R.S.O. 1990, c. C.11, s. 63 (2).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 20 - 30/11/2006

Society's obligation to a Crown ward

63.1 Where a child is made a Crown ward, the society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

1. An adoption.
2. A custody order under subsection 65.2 (1).
3. In the case of a child who is an Indian or native person, a plan for customary care as defined in Part X. 2006, c. 5, s. 21.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 21 - 30/11/2006

REVIEW**Status review**

64. (1) This section applies where a child is the subject of an order under subsection 57 (1) for society supervision or society wardship. 2006, c. 5, s. 22.

Society to seek status review

- (2) The society having care, custody or supervision of a child,
 - (a) may apply to the court at any time for a review of the child's status;
 - (b) shall apply to the court for a review of the child's status before the order expires, unless the expiry is by reason of subsection 71 (1); and
 - (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child from the care of a person with whom the child was placed under an order for society supervision. 2006, c. 5, s. 22.

Application of cl. (2) (a) and (c)

(3) If a child is the subject of an order for society supervision, clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides. 2006, c. 5, s. 22.

Others may seek status review

- (4) An application for review of a child's status may be made on notice to the society by,
 - (a) the child, if the child is at least 12 years of age;
 - (b) a parent of the child;
 - (c) the person with whom the child was placed under an order for society supervision; or
 - (d) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 22.

Notice

(5) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

- (a) the child, except as otherwise provided under subsection 39 (4) or (5);
- (b) the child's parent;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) any foster parent who has cared for the child continuously during the six months immediately before the application; and

- (e) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 22.

Six-month period

- (6) No application shall be made under subsection (4) within six months after the latest of,
- (a) the day the original order was made under subsection 57 (1);
 - (b) the day the last application by a person under subsection (4) was disposed of; or
 - (c) the day any appeal from an order referred to in clause (a) or the disposition referred to in clause (b) was finally disposed of or abandoned. 2006, c. 5, s. 22.

Exception

(7) Subsection (6) does not apply if the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out. 2006, c. 5, s. 22.

Interim care and custody

(8) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody. 2006, c. 5, s. 22.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 18 - 31/03/2000

2006, c. 5, s. 22 - 30/11/2006

Court may vary, etc.

65. (1) Where an application for review of a child's status is made under section 64, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 57 (1), including a term or condition or a provision for access that is part of the order;
 - (b) order that the original order terminate on a specified future date;
 - (c) make a further order or orders under section 57; or
 - (d) make an order under section 57.1. R.S.O. 1990, c. C.11, s. 65 (1); 2006, c. 5, s. 23 (1).
- (2) REPEALED: 2006, c. 5, s. 23 (2).
- (3) REPEALED: 1999, c. 2, s. 19.

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, section 19, subsection (3) of this section, as it read before March 31, 2000, continues to apply with respect to any proceeding under Part III, including a status review proceeding, that was commenced before March 31, 2000. See: 1999, c. 2, ss. 37 (5), 38.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 19, 37 - 31/03/2000

2006, c. 5, s. 23 (1, 2) - 30/11/2006

Status review, Crown ward and former Crown wards

65.1 (1) This section applies where a child is a Crown ward or is the subject of an order for society supervision under clause 65.2 (1) (a) or a custody order under clause 65.2 (1) (b). 2006, c. 5, s. 24.

Society to seek status review

- (2) The society that has or had care, custody or supervision of the child,
- (a) may apply to the court at any time, subject to subsection (9), for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires if the order is for society supervision, unless the expiry is by reason of subsection 71 (1); and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child,

- (i) from the care of a person with whom the child was placed under an order for society supervision described in clause 65.2 (1) (a), or
- (ii) from the custody of a person who had custody of the child under a custody order described in clause 65.2 (1) (b). 2006, c. 5, s. 24.

Application of cl. (2) (a) and (c)

- (3) Clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district,
 - (a) in which the parent or other person with whom the child is placed resides, if the child is the subject of an order for society supervision under clause 65.2 (1) (a); or
 - (b) in which the person who has custody resides, if the child is the subject of a custody order under clause 65.2 (1) (b). 2006, c. 5, s. 24.

Others may seek status review

- (4) An application for review of a child's status under this section may be made on notice to the society by,
 - (a) the child, if the child is at least 12 years of age;
 - (b) a parent of the child;
 - (c) the person with whom the child was placed under an order for society supervision described in 65.2 (1) (a);
 - (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 65.2 (1) (b);
 - (e) a foster parent, if the child has lived continuously with the foster parent for at least two years immediately before the application; or
 - (f) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 24.

When leave to apply required

(5) Despite clause (4) (b), a parent of a child shall not make an application under subsection (4) without leave of the court if the child has, immediately before the application, received continuous care for at least two years from the same foster parent or from the same person under a custody order. 2006, c. 5, s. 24.

Notice

- (6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,
 - (a) the child, except as otherwise provided under subsection 39 (4) or (5);
 - (b) the child's parent, if the child is under 16 years of age;
 - (c) the person with whom the child was placed, if the child is subject to an order for society supervision described in clause 65.2 (1) (a);
 - (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 65.2 (1) (b);
 - (e) any foster parent who has cared for the child continuously during the six months immediately before the application; and
 - (f) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 24.

Six-month period

- (7) No application shall be made under subsection (4) within six months after the latest of,
 - (a) the day the order was made under subsection 57 (1) or 65.2 (1), whichever is applicable;
 - (b) the day the last application by a person under subsection (4) was disposed of; or
 - (c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned. 2006, c. 5, s. 24.

Exception

(8) Subsection (7) does not apply if,

(a) the child is the subject of,

- (i) an order for society supervision described in clause 65.2 (1) (a),
- (ii) an order for custody described in clause 65.2 (1) (b), or
- (iii) an order for Crown wardship under subsection 57 (1) or clause 65.2 (1) (c) and an order for access under section 58; and

(b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out. 2006, c. 5, s. 24.

No review if child placed for adoption

(9) No person or society shall make an application under this section with respect to a Crown ward who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VII, if the Crown ward still resides in the person's home. 2006, c. 5, s. 24.

Interim care and custody

(10) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody. 2006, c. 5, s. 24.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 24 - 30/11/2006

Court order

65.2 (1) If an application for review of a child's status is made under section 65.1, the court may, in the child's best interests,

- (a) order that the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months;
- (b) order that custody be granted to one or more persons, including a foster parent, with the consent of the person or persons;
- (c) order that the child be made a ward of the Crown until wardship is terminated under this section or expires under subsection 71 (1); or
- (d) terminate or vary any order made under section 57 or this section. 2006, c. 5, s. 24.

Variation, etc.

(2) When making an order under subsection (1), the court may, subject to section 59, vary or terminate an order for access or make a further order under section 58. 2006, c. 5, s. 24.

Same

(3) Any previous order for Crown wardship is terminated if an order described in clause (1) (a) or (b) is made in respect of a child. 2006, c. 5, s. 24.

Terms and conditions of supervision order

- (4) If the court makes a supervision order described in clause (1) (a), the court may impose,
 - (a) reasonable terms and conditions relating to the child's care and supervision;
 - (b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
 - (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services. 2006, c. 5, s. 24.

Access

(5) Section 59 applies with necessary modifications if the court makes an order described in clause (1) (a), (b) or (c). 2006, c. 5, s. 24.

Custody proceeding

(6) Where an order is made under this section or a proceeding is commenced under this Part, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act. 2006, c. 5, s. 24.

Rights and responsibilities

(7) A person to whom custody of a child is granted by an order under this section has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests of the child. 2006, c. 5, s. 24.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 24 - 30/11/2006

Director's annual review of Crown wards

66. (1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child,

- (a) who is a Crown ward;
- (b) who was a Crown ward throughout the immediately preceding twenty-four months; and
- (c) whose status has not been reviewed under this section or under section 65.2 during that time. R.S.O. 1990, c. C.11, s. 66 (1); 2006, c. 5, s. 25 (1).

Idem

(2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 65 (1) or give any other direction that, in the Director's opinion, is in the child's best interests. R.S.O. 1990, c. C.11, s. 66 (2); 2006, c. 5, s. 25 (2).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 25 (1, 2) - 30/11/2006

Investigation by judge

67. (1) The Minister may appoint a judge of the Court of Ontario to investigate a matter relating to a child in a society's care or the proper administration of this Part, and a judge who is appointed shall conduct the investigation and make a written report to the Minister. R.S.O. 1990, c. C.11, s. 67 (1); 1999, c. 2, s. 20.

Application of *Public Inquiries Act*, 2009

(2) Section 33 of the *Public Inquiries Act*, 2009 applies to an investigation by a judge under subsection (1). 2009, c. 33, Sched. 6, s. 45.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 20 - 31/03/2000

2009, c. 33, Sched. 6, s. 45 - 1/06/2011

Complaint to society

68. (1) A person may make a complaint to a society relating to a service sought or received by that person from the society in accordance with the regulations. 2006, c. 5, s. 26.

Complaint review procedure

(2) Where a society receives a complaint under subsection (1), it shall deal with the complaint in accordance with the complaint review procedure established by regulation, subject to subsection 68.1 (2). 2006, c. 5, s. 26.

Available to public

(3) A society shall make information relating to the complaint review procedure available to any person upon request. 2006, c. 5, s. 26.

Society's decision

(4) Subject to subsection (5), the decision of a society made upon completion of the complaint review procedure is final. 2006, c. 5, s. 26.

Application for review by Board

(5) If a complaint relates to one of the following matters, the complainant may apply to the Board in accordance with the regulations for a review of the decision made by the society upon completion of the complaint review procedure:

1. An alleged inaccuracy in the society's files or records regarding the complainant.
2. A matter described in subsection 68.1 (4).
3. Any other prescribed matter. 2006, c. 5, s. 26.

Review by Board

(6) Upon receipt of an application under subsection (5), the Board shall give the society notice of the application and conduct a review of the society's decision. 2006, c. 5, s. 26.

Composition of Board

(7) The Board shall be composed of members with the prescribed qualifications and prescribed experience. 2006, c. 5, s. 26.

Hearing optional

(8) The Board may hold a hearing and, if a hearing is held, the Board shall comply with the prescribed practices and procedures. 2006, c. 5, s. 26.

Non-application

(9) The *Statutory Powers Procedure Act* does not apply to a hearing under this section. 2006, c. 5, s. 26.

Board decision

- (10) Upon completing its review of a decision by a society in relation to a complaint, the Board may,
- (a) in the case of a review of a matter described in paragraph 1 of subsection (5), order that a notice of disagreement be added to the complainant's file;
 - (b) in the case of a matter described in subsection 68.1 (4), make any order described in subsection 68.1 (7), as appropriate;
 - (c) redirect the matter to the society for further review;
 - (d) confirm the society's decision; or
 - (e) make such other order as may be prescribed. 2006, c. 5, s. 26.

Notice of disagreement

(11) A notice of disagreement referred to in clause (10) (a) shall be in the prescribed form if the regulations so provide. 2006, c. 5, s. 26.

No review if matter within purview of court

- (12) A society shall not conduct a review of a complaint under this section if the subject of the complaint,
- (a) is an issue that has been decided by the court or is before the court; or
 - (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*. 2006, c. 5, s. 26.

Transitional

(13) This section as it read immediately before the day this subsection came into force continues to apply in respect of complaints made to a society before that day and of any reviews requested of the Director before that day. 2006, c. 5, s. 26.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 26 - 30/11/2006

Complaint to Board

68.1 (1) If a complaint in respect of a service sought or received from a society relates to a matter described in subsection (4), the person who sought or received the service may,

- (a) decide not to make the complaint to the society under section 68 and make the complaint directly to the Board under this section; or

- (b) where the person first makes the complaint to the society under section 68, submit the complaint to the Board before the society's complaint review procedure is completed. 2006, c. 5, s. 26.

Notice to society

(2) If a person submits a complaint to the Board under clause (1) (b) after having brought the complaint to the society under section 68, the Board shall give the society notice of that fact and the society may terminate or stay its review, as it considers appropriate. 2006, c. 5, s. 26.

Complaint to Board

- (3) A complaint to the Board under this section shall be made in accordance with the regulations. 2006, c. 5, s. 26.

Matters for Board review

- (4) The following matters may be reviewed by the Board under this section:
1. Allegations that the society has refused to proceed with a complaint made by the complainant under subsection 68 (1) as required under subsection 68 (2).
 2. Allegations that the society has failed to respond to the complainant's complaint within the timeframe required by regulation.
 3. Allegations that the society has failed to comply with the complaint review procedure or with any other procedural requirements under this Act relating to the review of complaints.
 4. Allegations that the society has failed to comply with clause 2 (2) (a).
 5. Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainant's interests.
 6. Such other matters as may be prescribed. 2006, c. 5, s. 26.

Review by Board

- (5) Upon receipt of a complaint under this section, the Board shall conduct a review of the matter. 2006, c. 5, s. 26.

Application

(6) Subsections 68 (7), (8) and (9) apply with necessary modification to a review of a complaint made under this section. 2006, c. 5, s. 26.

Board decision

- (7) After reviewing the complaint, the Board may,
- (a) order the society to proceed with the complaint made by the complainant in accordance with the complaint review procedure established by regulation;
 - (b) order the society to provide a response to the complainant within a period specified by the Board;
 - (c) order the society to comply with the complaint review procedure established by regulation or with any other requirements under this Act;
 - (d) order the society to provide written reasons for a decision to a complainant;
 - (e) dismiss the complaint; or
 - (f) make such other order as may be prescribed. 2006, c. 5, s. 26.

No review if matter within purview of court

- (8) The Board shall not conduct a review of a complaint under this section if the subject of the complaint,
- (a) is an issue that has been decided by the court or is before the court; or
 - (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*. 2006, c. 5, s. 26.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 26 - 30/11/2006

APPEALS

Appeal

- 69.** (1) An appeal from a court's order under this Part may be made to the Superior Court of Justice by,
- (a) the child, if the child is entitled to participate in the proceeding under subsection 39 (6) (child's participation);
 - (b) any parent of the child;
 - (c) the person who had charge of the child immediately before intervention under this Part;
 - (d) a Director or local director; or
 - (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community.
- R.S.O. 1990, c. C.11, s. 69 (1); 1999, c. 2, s. 35.

Exception

- (2) Subsection (1) does not apply to an order for an assessment under section 54. R.S.O. 1990, c. C.11, s. 69 (2).

Care and custody pending appeal

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the ten days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's custody at the time the decision is made, the child shall remain in the care and custody of the society until,

- (a) the ten-day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier. R.S.O. 1990, c. C.11, s. 69 (3).

Temporary order

(4) The Superior Court of Justice may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, except an order placing the child in a place of secure custody as defined in Part IV (Youth Justice) or a place of secure temporary detention as defined in that Part that has not been designated as a place of safety, and the court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order. R.S.O. 1990, c. C.11, s. 69 (4); 1999, c. 2, s. 35; 2006, c. 19, Sched. D, s. 2 (10).

No extension where child placed for adoption

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VII (Adoption). R.S.O. 1990, c. C.11, s. 69 (5).

Further evidence

- (6) The court may receive further evidence relating to events after the appealed decision. R.S.O. 1990, c. C.11, s. 69 (6).

Place of hearing

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made. R.S.O. 1990, c. C.11, s. 69 (7).

s. 45 applies

(8) Section 45 (hearings private, etc.) applies with necessary modifications to an appeal under this section. R.S.O. 1990, c. C.11, s. 69 (8).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

2006, c. 19, Sched. D, s. 2 (10) - 22/06/2006

EXPIRY OF ORDERS

Time limit

70. (1) Subject to subsections (3) and (4), the court shall not make an order for society wardship under this Part that results in a child being a society ward for a period exceeding,

- (a) 12 months, if the child is less than 6 years of age on the day the court makes an order for society wardship; or
- (b) 24 months, if the child is 6 years of age or older on the day the court makes an order for society wardship.

Note: For the purposes of subsection (1), as re-enacted by the Statutes of Ontario, 1999, chapter 2, subsection 21 (1), no period that a child was in a society's care and custody before March 31, 2000 shall be counted. See: 1999, c. 2, s. 37 (3).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, subsection 21 (1), subsection (1) of this section, as it read before March 31, 2000, shall continue to apply with respect to a child who is in the care and custody of a society on March 31, 2000 so long as that child continues to be in the care and custody of a society. See: 1999, c. 2, ss. 37 (4), 38.

Same

(2) In calculating the period referred to in subsection (1), time during which a child has been in a society's care and custody under,

- (a) an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement); or
- (b) a temporary order made under clause 51 (2) (d),

shall be counted.

Note: For the purposes of subsection (2), as re-enacted by the Statutes of Ontario, 1999, chapter 2, subsection 21 (1), no period that a child was in a society's care and custody before March 31, 2000 shall be counted. See: 1999, c. 2, s. 37 (3).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, subsection 21 (1), subsection (2) of this section, as it read before March 31, 2000, shall continue to apply with respect to a child who is in the care and custody of a society on March 31, 2000 so long as that child continues to be in the care and custody of a society. See: 1999, c. 2, ss. 37 (4), 38.

Previous periods to be counted

(2.1) The period referred to in subsection (1) shall include any previous periods that the child was in a society's care and custody as a society ward or as described in subsection (2) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody. 1999, c. 2, s. 21 (1).

Note: For the purposes of subsection (2.1), as enacted by the Statutes of Ontario, 1999, chapter 2, subsection 21 (1), no period that a child was in a society's care and custody before March 31, 2000 shall be counted. See: 1999, c. 2, s. 37 (3).

Idem

- (3) Where the period referred to in subsection (1) or (4) expires and,
 - (a) an appeal of an order made under subsection 57 (1) has been commenced and is not yet finally disposed of; or
 - (b) the court has adjourned a hearing under section 65 (status review),

the period shall be deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 65, as the case may be. R.S.O. 1990, c. C.11, s. 70 (3); 1999, c. 2, s. 21 (2).

Note: Despite the proclamation of the Statutes of Ontario, 1999, chapter 2, subsection 21 (2), subsection (3) of this section, as it read before March 31, 2000, shall continue to apply with respect to a child who is in the care and custody of a society on March 31, 2000 so long as that child continues to be in the care and custody of a society. See: 1999, c. 2, ss. 37 (4), 38.

Six-month extension

(4) Subject to paragraphs 2 and 4 of subsection 57 (1), the court may by order extend the period permitted under subsection (1) by a period not to exceed six months if it is in the child's best interests to do so. 1999, c. 2, s. 21 (3).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 21 (1-3), 37 - 31/03/2000

Expiry of orders

71. (1) An order under this Part expires when the child who is the subject of the order,

- (a) attains the age of eighteen years; or
- (b) marries,

whichever comes first. R.S.O. 1990, c. C.11, s. 71 (1).

(2) REPEALED: 2006, c. 5, s. 27.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 27 - 30/11/2006

EXTENDED CARE

Extended care

71.1 (1) A society may provide care and maintenance to a person in accordance with the regulations if,

- (a) a custody order under subsection 65.2 (1) or an order for Crown wardship was made in relation to that person as a child; and
- (b) the order expires under section 71. 2006, c. 5, s. 28.

Same, Indian and native person

(2) A society or agency may provide care and maintenance in accordance with the regulations to a person who is an Indian or native person who is 18 years of age or more if,

- (a) immediately before the person's 18th birthday, he or she was being cared for under customary care as defined in section 208; and
- (b) the person who was caring for the child was receiving a subsidy from the society or agency under section 212. 2006, c. 5, s. 28.

Same, prescribed support services

(3) A society or agency may provide care and maintenance in accordance with the regulations to a person who is 18 years of age or more if, when the person was 16 or 17 years of age, he or she was eligible for support services prescribed by the regulations, whether or not he or she was receiving such support services. 2011, c. 12, s. 1.

Resuming receipt

(4) Subject to the terms and conditions in this section, a person who chooses to stop receiving care and maintenance under this section may choose to resume receiving it. 2011, c. 12, s. 1.

Same

(5) Subsection (4) applies where the person has chosen to stop receiving care and maintenance on one occasion or, at the discretion of the society or agency providing the care and maintenance, on more than one occasion. 2011, c. 12, s. 1.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 28 - 30/11/2006

2011, c. 12, s. 1 - 1/09/2011

DUTY TO REPORT

Duty to report child in need of protection

72. (1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (1) and the following substituted:

3. The child has been sexually molested or sexually exploited, including by child pornography, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.

See: 2008, c. 21, ss. 3 (1), 6.

4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.
5. The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behaviour, or
 - v. delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is less than 12 years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment.
13. The child is less than 12 years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately. 1999, c. 2, s. 22 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 72 is amended by the Statutes of Ontario, 2008, chapter 21, subsection 3 (2) by adding the following subsections:

Reporting child pornography

(1.1) In addition to the duty to report under subsection (1), any person who reasonably believes that a representation or material is, or might be, child pornography shall promptly report the information to an organization, agency or person designated by a regulation made under clause 216 (c.3). 2008, c. 21, s. 3 (2).

Seeking out child pornography not required or authorized

(1.2) Nothing in this section requires or authorizes a person to seek out child pornography. 2008, c. 21, s. 3 (2).

Protection of informant

(1.3) No action lies against a person for providing information in good faith in compliance with subsection (1.1). 2008, c. 21, s. 3 (2).

Identity of informant

(1.4) Except as required or permitted in the course of a judicial proceeding, in the context of the provision of child welfare services, otherwise by law or with the written consent of an informant, no person shall disclose,

- (a) the identity of an informant under subsection (1) or (1.1),
 - (i) to the family of the child reported to be in need of protection, or
 - (ii) to the person who is believed to have caused the child to be in need of protection; or
- (b) the identity of an informant under subsection (1.1) to the person who possessed or accessed the representation or material that is or might be child pornography. 2008, c. 21, s. 3 (2).

Retaliation against informant prohibited

(1.5) No person shall dismiss, suspend, demote, discipline, harass, interfere with or otherwise disadvantage an informant under this section. 2008, c. 21, s. 3 (2).

See: 2008, c. 21, ss. 3 (2), 6.

Ongoing duty to report

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if he or she has made previous reports with respect to the same child. 1999, c. 2, s. 22 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (3) and the following substituted:

Ongoing duty to report

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) or to believe that a representation or material is, or might be, child pornography under subsection (1.1) shall make a further report under subsection (1) or (1.1) even if he or she has made previous reports with respect to the same child. 2008, c. 21, s. 3 (3).

See: 2008, c. 21, ss. 3 (3), 6.

Person must report directly

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on his or her behalf. 1999, c. 2, s. 22 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (3) and the following substituted:

Person to report directly

(3) A person who has a duty to report under subsection (1) or (2) shall make the report directly to the society, a person who has a duty to report under subsection (1.1) shall make the report directly to any organization, agency or person designated by regulation to receive such reports, and such persons shall not rely on any other person to report on their behalf. 2008, c. 21, s. 3 (3).

See: 2008, c. 21, ss. 3 (3), 6.

Offence

- (4) A person referred to in subsection (5) is guilty of an offence if,
 - (a) he or she contravenes subsection (1) or (2) by not reporting a suspicion; and
 - (b) the information on which it was based was obtained in the course of his or her professional or official duties. 1999, c. 2, s. 22 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 72 is amended by the Statutes of Ontario, 2008, chapter 21, subsection 3 (4) by adding the following subsections:

Same

(4.1) A person is guilty of an offence if the person fails to report information as required under subsection (1.1). 2008, c. 21, s. 3 (4).

Same

(4.2) A person is guilty of an offence if the person,

- (a) discloses the identity of an informant in contravention of subsection (1.4); or
- (b) dismisses, suspends, demotes, disciplines, harasses, interferes with or otherwise disadvantages an informant in contravention of subsection (1.5). 2008, c. 21, s. 3 (4).

See: 2008, c. 21, ss. 3 (4), 6.

Same

(5) Subsection (4) applies to every person who performs professional or official duties with respect to children including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;
- (b.1) a religious official, including a priest, a rabbi and a member of the clergy;
- (b.2) a mediator and an arbitrator;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider. 1999, c. 2, s. 22 (3); 2006, c. 1, s. 2; 2010, c. 10, s. 23; 2014, c. 11, Sched. 6, s. 2 (1).

Same

(6) In clause (5) (b),

“youth and recreation worker” does not include a volunteer. 1999, c. 2, s. 22 (3).

Same

(6.1) A director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence under subsection (4) by an employee of the corporation is guilty of an offence. 1999, c. 2, s. 22 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6.1) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (5) and the following substituted:

Same

(6.1) A director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence under subsection (4) or (4.1) by an employee of the corporation is guilty of an offence. 2008, c. 21, s. 3 (5).

See: 2008, c. 21, ss. 3 (5), 6.

Same

(6.2) A person convicted of an offence under subsection (4) or (6.1) is liable to a fine of not more than \$1,000. 1999, c. 2, s. 22 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6.2) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (6) and the following substituted:

Penalty

(6.2) A person convicted of an offence under subsection (4), (4.1), (4.2) or (6.1) is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both. 2008, c. 21, s. 3 (6).

See: 2008, c. 21, ss. 3 (6), 6.

Section overrides privilege

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion. R.S.O. 1990, c. C.11, s. 72 (7); 1999, c. 2, s. 22 (4).

Exception: solicitor client privilege

(8) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. R.S.O. 1990, c. C.11, s. 72 (8).

Conflict

(9) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 78 (2).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 22 (1-4) - 31/03/2000

2004, c. 3, Sched. A, s. 78 (2) - 1/11/2004

2006, c. 1, s. 2 - 23/02/2006

2008, c. 21, s. 3 (1-6) - not in force

2010, c. 10, s. 23 - 3/06/2010

2014, c. 11, Sched. 6, s. 2 (1) - 31/08/2015

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2008, chapter 21, section 4 by adding the following section:

Action by organization receiving report of child pornography

72.0.1 (1) An organization, agency or person that obtains information on child pornography under subsection 72 (1.1) shall review the report and, if it reasonably believes that the representation or material is or might be child pornography, it shall report the matter to a society or a law enforcement agency, or to both as necessary. 2008, c. 21, s. 4.

Annual report

(2) The organization, agency or person shall prepare and submit to the Minister an annual report with respect to its activities and actions relating to information it obtains on child pornography, and the Minister shall submit the report to the Lieutenant Governor in Council and then table the report in the Assembly if it is in session or, if not, at the next session. 2008, c. 21, s. 4.

See: 2008, c. 21, ss. 4, 6.

Section Amendments with date in force (d/m/y)

2008, c. 21, s. 4 - not in force

Duty of society

72.1 (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director. 1999, c. 2, s. 23 (1).

Definition

(2) In this section and sections 73 and 75,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f), (f.1) or (h). 1999, c. 2, s. 23 (1).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 23 (1) - 31/03/2000; 1999, c. 2, s. 23 (2) - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

Duty to report child's death

72.2 A person or society that obtains information that a child has died shall report the information to a coroner if,

- (a) a court made an order under this Act denying access to the child by a parent of the child or making the access subject to supervision;
- (b) on the application of a society, a court varied the order to grant the access or to make it no longer subject to supervision; and
- (c) the child subsequently died as a result of a criminal act committed by a parent or family member who had custody or charge of the child at the time of the act. 2006, c. 24, s. 1.

Section Amendments with date in force (d/m/y)

2006, c. 24, s. 1 - 19/10/2006

REVIEW TEAMS

Review team

73. (1) In this section,

“review team” means a team established by a society under subsection (2).

Same

(2) Every society shall establish a review team that includes,

- (a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and
- (b) at least one legally qualified medical practitioner.

Chair

(3) The members of a review team shall choose a chair from among themselves.

Duty of team

(4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chair, shall,

- (a) review the case; and
- (b) recommend to the society how the child may be protected.

Disclosure to team permitted

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

Subsection overrides privilege

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

Where child not to be returned without review or hearing

(7) Where a society with a review team has information that a child placed in its care under subsection 51 (2) (temporary care and custody) or subsection 57 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,

- (a) the society has,
 - (i) referred the case to its review team, and
 - (ii) obtained and considered the review team’s recommendations; or
- (b) the court has terminated the order placing the child in the society’s care. R.S.O. 1990, c. C.11, s. 73.

COURT-ORDERED ACCESS TO RECORDS

Record

74. (1) In this section and sections 74.1 and 74.2,

“record” means recorded information, regardless of physical form or characteristics; (“dossier”)

“record of personal health information” has the same meaning as in the *Mental Health Act*. (“dossier de renseignements personnels sur la santé”) 1999, c. 2, s. 24 (1); 2004, c. 3, Sched. A, s. 78 (3).

Motion or application, production of record

(2) A Director or a society may at any time make a motion or an application for an order under subsection (3) or (3.1) for the production of a record or part of a record. 1999, c. 2, s. 24 (1).

Order

(3) Where the court is satisfied that a record or part of a record that is the subject of a motion referred to in subsection (2) contains information that may be relevant to a proceeding under this Part and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court. 1999, c. 2, s. 24 (1).

Same

(3.1) Where the court is satisfied that a record or part of a record that is the subject of an application referred to in subsection (2) may be relevant to assessing compliance with one of the following and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court:

1. An order under clause 51 (2) (b) or (c) that is subject to supervision.
2. An order under clause 51 (2) (c) or (d) with respect to access.
3. A supervision order under section 57.
4. An access order under section 58.
5. An order with respect to access or supervision on an application under section 64 or 65.1.
- 5.1 A custody order under section 65.2.
6. A restraining order under section 80. 1999, c. 2, s. 24 (1); 2006, c. 5, s. 29.

Court may examine record

(4) In considering whether to make an order under subsection (3) or (3.1), the court may examine the record. R.S.O. 1990, c. C.11, s. 74 (4); 1999, c. 2, s. 24 (2).

Information confidential

(5) No person who obtains information by means of an order made under subsection (3) or (3.1) shall disclose the information except,

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part. R.S.O. 1990, c. C.11, s. 74 (5); 1999, c. 2, s. 24 (3).

Conflict

(5.1) Subsection (5) prevails despite anything in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 78 (4).

Application: solicitor client privilege excepted

(6) Subject to subsection (7), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. R.S.O. 1990, c. C.11, s. 74 (6).

Matters to be considered by court

(7) Where a motion or an application under subsection (2) concerns a record of personal health information, subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act* applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 35 (7) of that Act; and
- (b) the need to protect the child. 1999, c. 2, s. 24 (4); 2004, c. 3, Sched. A, s. 78 (5).

Same

(8) Where a motion or an application under subsection (2) concerns a record that is a record of a mental disorder within the meaning of section 183, that section applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 183 (6); and
- (b) the need to protect the child. 1999, c. 2, s. 24 (4).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 24 (1-4) - 31/03/2000

2004, c. 3, Sched. A, s. 78 (3-5) - 1/11/2004

2006, c. 5, s. 29 - 30/11/2006

Warrant for access to record

74.1 (1) The court or a justice of the peace may issue a warrant for access to a record or a specified part of it if the court or justice of the peace is satisfied on the basis of information on oath from a Director or a person designated by a society that there are reasonable grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection. 1999, c. 2, s. 25.

Authority conferred by warrant

- (2) The warrant authorizes the Director or the person designated by the society to,
- (a) inspect the record specified in the warrant during normal business hours or during the hours specified in the warrant;
 - (b) make copies from the record in any manner that does not damage the record; and
 - (c) remove the record for the purpose of making copies. 1999, c. 2, s. 25.

Return of record

- (3) A person who removes a record under clause (2) (c) shall promptly return it after copying it. 1999, c. 2, s. 25.

Admissibility of copies

(4) A copy of a record that is the subject of a warrant under this section and that is certified as being a true copy of the original by the person who made the copy is admissible in evidence to the same extent as and has the same evidentiary value as the record. 1999, c. 2, s. 25.

Duration of warrant

- (5) The warrant is valid for seven days. 1999, c. 2, s. 25.

Execution

(6) The Director or the person designated by the society may call on a peace officer for assistance in executing the warrant. 1999, c. 2, s. 25.

Solicitor-client privilege

(7) This section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. 1999, c. 2, s. 25.

Matters to be considered

(8) If a warrant issued under this section concerns a record of personal health information and the warrant is challenged under subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act*, equal consideration shall be given to,

- (a) the matters set out in subsection 35 (7) of that Act; and
- (b) the need to protect the child. 1999, c. 2, s. 25; 2004, c. 3, Sched. A, s. 78 (6).

Same

(9) If a warrant issued under this section concerns a record of a mental disorder within the meaning of section 183 and the warrant is challenged under section 183, equal consideration shall be given to,

- (a) the matters set out in subsection 183 (6); and
- (b) the need to protect the child. 1999, c. 2, s. 25.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 25 - 31/03/2000

2004, c. 3, Sched. A, s. 78 (6) - 1/11/2004

Telewarrant

74.2 (1) Where a Director or a person designated by a society believes that there are reasonable grounds for the issuance of a warrant under section 74.1 and that it would be impracticable to appear personally before the court or a justice of the peace to make application for a warrant in accordance with section 74.1, the Director or person designated by the society may

submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the Chief Justice of the Ontario Court of Justice.

Same

- (2) The information shall,
 - (a) include a statement of the grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection; and
 - (b) set out the circumstances that make it impracticable for the Director or person designated by the society to appear personally before a court or justice of the peace.

Warrant to be issued

- (3) The justice may issue a warrant for access to the record or the specified part of it if the justice is satisfied that the application discloses,
 - (a) reasonable grounds to believe that the record or the part of a record is relevant to investigate an allegation that a child is or may be in need of protection; and
 - (b) reasonable grounds to dispense with personal appearance for the purpose of an application under section 74.1.

Validity of warrant

- (4) A warrant issued under this section is not subject to challenge by reason only that there were not reasonable grounds to dispense with personal appearance for the purpose of an application under section 74.1.

Application of provisions

- (5) Subsections 74.1 (2) to (9) apply with necessary modifications with respect to a warrant issued under this section.

Definition

- (6) In this section,
 - “justice” means justice of the peace, a judge of the Ontario Court of Justice or a judge of the Family Court of the Superior Court of Justice. 1999, c. 2, s. 26.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 26 - 31/03/2000

CHILD ABUSE REGISTER

Register

- 75.** (1) In this section and in section 76,
 - “Director” means the person appointed under subsection (2); (“directeur”)
 - “register” means the register maintained under subsection (5); (“registre”)
 - “registered person” means a person identified in the register, but does not include,
 - (a) a person who reports to a society under subsection 72 (2) or (3) and is not the subject of the report, or
 - (b) the child who is the subject of a report. (“personne inscrite”) R.S.O. 1990, c. C. 11, s. 75 (1).

Director

- (2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section. R.S.O. 1990, c. C. 11, s. 75 (2).

Duty of society

- (3) A society that receives a report under section 72 that a child, including a child in the society’s care, is or may be suffering or may have suffered abuse shall forthwith verify the reported information, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall forthwith report it to the Director in the prescribed form. R.S.O. 1990, c. C. 11, s. 75 (3); 2009, c. 33, Sched. 7, s. 1 (3).

Protection from liability

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty. R.S.O. 1990, c. C. 11, s. 75 (4).

Child abuse register

(5) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 72 (2) or (3) and is not the subject of the report. R.S.O. 1990, c. C. 11, s. 75 (5).

Register confidential

(6) Despite any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information maintained in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes. R.S.O. 1990, c. C. 11, s. 75 (6).

Coroner's inquest, etc.

(7) A person who is,

(a) a coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*; or

(b) the Children's Lawyer or the Children's Lawyer's authorized agent,

may inspect, remove and disclose information in the register in accordance with his or her authority. R.S.O. 1990, c. C. 11, s. 75 (7); 1994, c. 27, s. 43 (2).

Minister or Director may permit access to register

(8) The Minister or the Director may permit,

(a) a person who is employed by,

(i) the Ministry,

(ii) a society, or

(iii) a recognized child protection agency outside Ontario; or

(b) a person who is providing or proposes to provide counselling or treatment to a registered person,

to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose. R.S.O. 1990, c. C.11, s. 75 (8).

Director may disclose information

(9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8). R.S.O. 1990, c. C.11, s. 75 (9).

Research

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

(a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or

(b) communicate any information that may have the effect of identifying a person named in the register. R.S.O. 1990, c. C.11, s. 75 (10).

Registered person

(11) A child, a registered person or the child's or registered person's solicitor or agent may inspect only the information in the register that refers to the child or registered person. R.S.O. 1990, c. C.11, s. 75 (11).

Physician

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director. R.S.O. 1990, c. C.11, s. 75 (12).

Amendment of register

- (13) The Director or an employee of the Ministry acting under the Director's authority,
 - (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
 - (b) may amend the register to correct an error. R.S.O. 1990, c. C.11, s. 75 (13).

Register inadmissible: exceptions

- (14) The register shall not be admitted into evidence in a proceeding except,
 - (a) to prove compliance or non-compliance with this section;
 - (b) in a hearing or appeal under section 76;
 - (c) in a proceeding under the *Coroners Act*; or
 - (d) in a proceeding referred to in section 81 (recovery on child's behalf). R.S.O. 1990, c. C.11, s. 75 (14).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 43 (2) - 3/04/1995

1999, c. 2, s. 27 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2009, c. 33, Sched. 7, s. 1 (3) - 15/12/2009

Hearing re registered person

76. (1) In this section,

“hearing” means a hearing held under clause (4) (b). R.S.O. 1990, c. C.11, s. 76 (1).

Notice to registered person

(2) Where an entry is made in the register, the Director shall forthwith give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register. R.S.O. 1990, c. C.11, s. 76 (2).

Request to amend register

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register. R.S.O. 1990, c. C.11, s. 76 (3).

Director's response

- (4) On receiving a request under subsection (3), the Director may,
 - (a) grant the request; or
 - (b) hold a hearing, on ten days written notice to the parties, to determine whether to grant or refuse the request. R.S.O. 1990, c. C.11, s. 76 (4).

Delegation

(5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8). R.S.O. 1990, c. C.11, s. 76 (5).

Procedure

(6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures. R.S.O. 1990, c. C.11, s. 76 (6).

Hearing

- (7) The parties to a hearing are,
 - (a) the registered person;

- (b) the society that verified the information referring to or identifying the registered person; and
- (c) any other person specified by the Director. R.S.O. 1990, c. C.11, s. 76 (7).

Director's decision

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision. R.S.O. 1990, c. C.11, s. 76 (8).

Appeal to Divisional Court

- (9) A party to a hearing may appeal the Director's decision to the Divisional Court. R.S.O. 1990, c. C.11, s. 76 (9).

Hearing private

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend. R.S.O. 1990, c. C.11, s. 76 (10).

Publication

(11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society. R.S.O. 1990, c. C.11, s. 76 (11).

Record inadmissible: exception

(12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 85 (1) (d) (confidentiality of register) or clause 85 (1) (e) (amendment of society's records). R.S.O. 1990, c. C.11, s. 76 (12).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 28 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

POWERS OF DIRECTOR

Director's power to transfer

- 77.** (1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,
- (a) be transferred to the care or supervision of another society; or
 - (b) be transferred from one placement to another placement designated by the Director.

Criteria

- (2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,
 - (a) the length of time the child has spent in the existing placement;
 - (b) the views of the foster parents; and
 - (c) the views and preferences of the child, where they are reasonably ascertainable. R.S.O. 1990, c. C.11, s. 77.

HOMEMAKERS

Homemaker

- 78.** (1) In this section,

“homemaker” means a person who is approved by a Director or local director for the purposes of this section.

Homemaker may remain on premises

- (2) Where it appears to a person entering premises under section 40 or 44 that,
 - (a) a child who in the person's opinion is unable to care for himself or herself has been left on the premises without competent care or supervision; and
 - (b) no person having charge of the child is available or able to consent to the placement of a homemaker on the premises,
 the person may, instead of taking the child to a place of safety,
 - (c) remain on the premises; or

- (d) arrange with a society for the placement of a homemaker on the premises.

Homemaker's authority

(3) A homemaker who remains or is placed on premises under subsection (2) may enter and live there, carry on normal housekeeping activities that are reasonably necessary for the care of any child on the premises and exercise reasonable control and discipline over any such child.

Protection from personal liability

- (4) No action shall be instituted against a homemaker who remains or is placed on premises under subsection (2) for,

- (a) entering and living on the premises;
- (b) anything done or omitted in connection with normal housekeeping activities on the premises;
- (c) providing goods and services reasonably necessary for the care of any child on the premises; or
- (d) the exercise of reasonable control and discipline over any child on the premises,

so long as the homemaker acts in good faith with reasonable care in the circumstances.

Notice to person having charge of child

(5) Where a homemaker remains or is placed on premises under subsection (2), the society shall forthwith notify or make reasonable efforts to notify the person last having charge of the child that a homemaker has been placed on the premises.

Court order, etc.

- (6) Where a child with whom a homemaker has been placed under subsection (2),

- (a) is found not to be in need of protection, the homemaker shall leave the premises; or
- (b) is found to be in need of protection, the court may authorize the homemaker to remain on the premises until,
 - (i) a specified day not more than thirty days from the date of the order, or
 - (ii) a person who is entitled to custody of the child returns to care for the child,

whichever is sooner.

Extension

- (7) Where no person returns to care for the child before the day specified in an order under clause (6) (b), the court may,

- (a) extend the order; or
- (b) hold a further hearing under section 47 and make an order under section 57. R.S.O. 1990, c. C.11, s. 78.

OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S BEHALF

Abuse, failure to provide for reasonable care, etc.

Definition

79. (1) In this section,

“abuse” means a state or condition of being physically harmed, sexually molested or sexually exploited.

Child abuse

- (2) No person having charge of a child shall,

- (a) inflict abuse on the child; or
- (b) by failing to care and provide for or supervise and protect the child adequately,
 - (i) permit the child to suffer abuse, or
 - (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

Leaving child unattended

(3) No person having charge of a child less than sixteen years of age shall leave the child without making provision for his or her supervision and care that is reasonable in the circumstances.

Reverse onus

(4) Where a person is charged with contravening subsection (3) and the child is less than ten years of age, the onus of establishing that the person made provision for the child's supervision and care that was reasonable in the circumstances rests with the person.

Allowing child to loiter, etc.

(5) No parent of a child less than sixteen years of age shall permit the child to,

- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
- (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual eighteen years of age or older to accompany the child.

Police may take child home or to place of safety

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 42 (1).

Child protection hearing

(7) The court may, in connection with a case arising under subsection (2), (3) or (5), proceed under this Part as if an application had been made under subsection 40 (1) (child protection proceeding) in respect of the child. R.S.O. 1990, c. C.11, s. 79.

Restraining order

80. (1) Instead of making an order under subsection 57 (1) or section 65.2 or in addition to making a temporary order under subsection 51 (2) or an order under subsection 57 (1) or section 65.2, the court may make one or more of the following orders in the child's best interests:

- 1. An order restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.
- 2. An order restraining or prohibiting a person's contact with the person who has lawful custody of the child following a temporary order under subsection 51 (2) or an order under subsection 57 (1) or clause 65.2 (1) (a) or (b). 2006, c. 5, s. 30 (1).

Idem: notice

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order. R.S.O. 1990, c. C.11, s. 80 (2).

Duration of the order

(3) An order made under subsection (1) shall continue in force for such period as the court considers in the best interests of the child and,

- (a) if the order is made in addition to a temporary order under subsection 51 (2) or an order made under subsection 57 (1) or clause 65.2 (1) (a), (b) or (c), the order may provide that it continues in force, unless it is varied, extended or terminated by the court, as long as the temporary order under subsection 51 (2) or the order under subsection 57 (1) or clause 65.2 (1) (a), (b) or (c), as the case may be, remains in force; or
- (b) if the order is made instead of an order under subsection 57 (1) or clause 65.2 (1) (a), (b) or (c) or if the order is made in addition to an order under clause 65.2 (1) (d), the order may provide that it continues in force until it is varied or terminated by the court. 2006, c. 5, s. 30 (2).

Extension, variation and termination

(4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,

- (a) the person who is the subject of the order;
- (b) the child;
- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or

- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community. R.S.O. 1990, c. C.11, s. 80 (4).

Idem

- (5) Where an application is made under subsection (4), the court may, in the child's best interests,
- (a) extend the order for such period as the court considers to be in the best interests of the child, in the case of an order described in clause (3) (a); or
- (b) vary or terminate the order. R.S.O. 1990, c. C.11, s. 80 (5); 2006, c. 5, s. 30 (3).

Child in society's care not to be returned while order in force

- (6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,
- (a) the person named in the order; or
- (b) a person who may permit that person to have access to the child. R.S.O. 1990, c. C.11, s. 80 (6).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 30 (1-3) - 30/11/2006

Recovery because of abuse

- 81.** (1) In this section,

"to suffer abuse", when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f), (f.1) or (h). R.S.O. 1990, c. C.11, s. 81 (1); 1999, c. 2, s. 29.

Recovery on child's behalf

(2) When the Children's Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Children's Lawyer may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation. R.S.O. 1990, c. C.11, s. 81 (2); 1994, c. 27, s. 43 (2).

Idem: society

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications. R.S.O. 1990, c. C.11, s. 81 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 43 (2) - 3/04/1995

1999, c. 2, s. 29 - 31/03/2000

Prohibition

82. No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except,

- (a) in accordance with this Part; or
- (b) under an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services). R.S.O. 1990, c. C.11, s. 82.

Offence

83. If a child is the subject of an order for society wardship under subsection 57 (1) or an order for society supervision or Crown wardship under that subsection or subsection 65.2 (1), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;
- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a). R.S.O. 1990, c. C.11, s. 83; 2006, c. 5, s. 31.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 31 - 30/11/2006

Offence

84. No person shall,

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 40, 41, 42, 43 or 44. R.S.O. 1990, c. C.11, s. 84.

Offences

85. (1) A person who contravenes,

- (a) an order for access made under subsection 58 (1);
- (b) REPEALED: 1999, c. 2, s. 30 (1).
- (c) subsection 74 (5) (disclosure of information obtained by court order);
- (d) subsection 75 (6) or (10) (confidentiality of child abuse register);
- (e) an order made under subsection 76 (8) (amendment of society's records);
- (f) subsection 79 (3) or (5) (leaving child unattended, etc.);
- (g) a restraining order made under subsection 80 (1);
- (h) section 82 (unauthorized placement);
- (i) any provision of section 83 (interference with child, etc.); or
- (j) clause 84 (a) or (b),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1990, c. C.11, s. 85 (1); 1999, c. 2, s. 30 (1, 4).

Idem

(2) A person who contravenes subsection 79 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1990, c. C.11, s. 85 (2).

Idem

(3) A person who contravenes subsection 45 (8) or 76 (11) (publication of identifying information) or an order prohibiting publication made under clause 45 (7) (c) or subsection 45 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both. R.S.O. 1990, c. C.11, s. 85 (3).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 30 (1, 4) - 31/03/2000; 1999, c. 2, s. 30 (2, 3, 5) - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

CHILD'S RELIGIOUS FAITH**How child's religious faith determined**

86. (1) For the purposes of this section, a child shall be deemed to have the religious faith agreed upon by the child's parent, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may decide what the child's religious faith is, if any, on the basis of the child's circumstances.

Child's wishes to be consulted

(2) The court shall consider the child's views and wishes, if they can be reasonably ascertained, in determining what the child's religious faith is, if any.

Religious faith of child

(3) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of his or her own religious faith, if any.

Where only one society

(4) Subsection (3) does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society.

Director's discretion re foster placement

(5) Where a society,

(a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsection (3); and

(b) would be able to place the child in a suitable foster home but for the operation of subsection (3),

the society may apply to a Director who may order that subsection (3) does not apply to the child in respect of the placement. R.S.O. 1990, c. C.11, s. 86.

INJUNCTIONS**Injunction**

87. (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening section 83, on the society's application. R.S.O. 1990, c. C.11, s. 87 (1); 1999, c. 2, s. 35.

Variation, etc.

(2) The court may vary or terminate an order made under subsection (1), on any person's application. R.S.O. 1990, c. C.11, s. 87 (2).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

**PART IV
YOUTH JUSTICE****Definitions**

88. In this Part,

"bailiff" means a bailiff appointed under clause 90 (1) (c); ("huissier")

"Board" means the Custody Review Board established under subsection 96 (1); ("Commission")

"probation officer" means,

(a) a person appointed or designated by the Lieutenant Governor in Council or his or her delegate to perform any of the duties or functions of a youth worker under the *Young Offenders Act* (Canada) or under the federal Act, or

(b) a probation officer appointed under clause 90 (1) (b); ("agent de probation")

"services and programs" means services and programs provided pursuant to the *Young Offenders Act* (Canada), the federal Act or the *Provincial Offences Act* and other related services and programs; ("services et programmes") 2006, c. 19, Sched. D, s. 2 (12); 2009, c. 2, s. 2.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (11, 12) - 22/06/2006

2009, c. 2, s. 2 - 1/04/2009

PROGRAMS AND OFFICERS**Services and programs**

89. (1) The Minister may,

- (a) establish, operate and maintain services and programs; and
- (b) make agreements with persons for the provision of services and programs,

for or on behalf of young persons for the purposes of the *Young Offenders Act* (Canada), the federal Act and the *Provincial Offences Act*, and may make payments for those services and programs out of legislative appropriations. R.S.O. 1990, c. C.11, s. 89 (1); 2006, c. 19, Sched. D, s. 2 (13).

Secure and open temporary detention programs

- (2) The Minister may establish,
 - (a) secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
 - (b) open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons,

in places of temporary detention. R.S.O. 1990, c. C.11, s. 89 (2).

Secure custody programs

- (3) The Minister may establish secure custody programs in places of secure custody. 2006, c. 19, Sched. D, s. 2 (14).

Open custody programs

- (4) The Minister may establish open custody programs in places of open custody. R.S.O. 1990, c. C.11, s. 89 (4).

Where locking up permitted

(5) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons. R.S.O. 1990, c. C.11, s. 89 (5).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (13, 14) - 22/06/2006

Appointments by Minister

- 90.** (1) The Minister may appoint any person or class of persons as,
- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
 - (i) under the federal Act,
 - (ii) under the *Young Offenders Act* (Canada), and
 - (iii) under this Act and the regulations;
 - (b) a probation officer, to perform any or all of the duties and functions,
 - (i) of a youth worker under the federal Act and under the *Young Offenders Act* (Canada),
 - (ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and
 - (iii) of a probation officer under this Act and the regulations; and
 - (c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations. R.S.O. 1990, c. C.11, s. 90 (1); 2006, c. 19, Sched. D, s. 2 (15, 16); 2009, c. 2, s. 3 (1-3).

Limitations, etc., on appointments

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject. R.S.O. 1990, c. C.11, s. 90 (2).

Probation officer and bailiff have powers of peace officer

(3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer. R.S.O. 1990, c. C.11, s. 90 (3).

Designation of peace officers

- (3.1) The Minister may designate in writing,
 - (a) a person who is an employee in the Ministry or is employed in a place of open custody, of secure custody or of temporary detention to be a peace officer while performing the person's duties and functions; or

- (b) a class of persons, from among the persons described in clause (a), to be peace officers while performing their duties and functions,

and may set out in the designation any conditions or limitations to which it is subject. 2009, c. 2, s. 3 (4).

Remuneration and expenses

(4) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of legislative appropriations. R.S.O. 1990, c. C.11, s. 90 (4); 2006, c. 35, Sched. C, s. 14 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (15, 16) - 22/06/2006; 2006, c. 35, Sched. C, s. 14 (2) - 20/08/2007

2009, c. 2, s. 3 (1-4) - 1/04/2009

91. REPEALED: 2009, c. 2, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (17) - 22/06/2006

2009, c. 2, s. 4 - 1/04/2009

Reports and information

92. A person in charge of a service or program provided under subsection 89 (1), a person in charge of a place of temporary detention, open custody or secure custody, a bailiff and a probation officer,

- (a) shall make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) shall make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister. R.S.O. 1990, c. C.11, s. 92.

TEMPORARY DETENTION

Open and secure detention

Open detention unless provincial director determines otherwise

93. (1) A young person who is detained under the federal Act or the *Young Offenders Act* (Canada) in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention. R.S.O. 1990, c. C.11, s. 93 (1); 2006, c. 19, Sched. D, s. 2 (18).

Where secure detention available

(2) A provincial director may detain a young person in a place of secure temporary detention if the provincial director is satisfied that it is necessary on one of the following grounds:

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
 - i. the offence includes causing or attempting to cause serious bodily harm to another person,
 - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Young Offenders Act* (Canada) or escaped or attempted to escape from lawful detention, or
 - iii. the young person has, within the 12 months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).
3. The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,
 - i. to ensure the young person's attendance at court,

- ii. for the protection and safety of the public, or
- iii. for the safety or security within a place of temporary detention. 2009, c. 2, s. 5 (1).

Idem

(3) Despite subsection (1), a young person who is apprehended because he or she has left or has not returned to a place of secure custody may be detained in a place of secure temporary detention until he or she is returned to the first-named place of custody. R.S.O. 1990, c. C.11, s. 93 (3); 2006, c. 19, Sched. D, s. 2 (20).

Idem

(4) Despite subsection (1), a young person who is detained under the federal Act or under the *Young Offenders Act* (Canada) in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding twenty-four hours while a provincial director makes a determination in respect of the young person under subsection (2). R.S.O. 1990, c. C.11, s. 93 (4); 2006, c. 19, Sched. D, s. 2 (21).

Review by youth justice court

(5) A young person who is being detained in a place of secure temporary detention and who is brought before a youth justice court for a review of an order for detention made under the federal Act or the *Criminal Code* (Canada) may request that the youth justice court review the level of his or her detention. 2009, c. 2, s. 5 (2).

Same

(6) The youth justice court conducting a review of an order for detention may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention. 2009, c. 2, s. 5 (2).

Application for return to secure temporary detention

(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) on the basis that,

- (a) the provincial director is satisfied that because of a material change in the circumstances; or
- (b) on any other grounds that the provincial director considers appropriate,

it is necessary that the young person be returned to a place of secure temporary detention. 2009, c. 2, s. 5 (2).

Same

(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention. 2009, c. 2, s. 5 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (18-22) - 22/06/2006

2009, c. 2, s. 5 (1, 2) - 1/04/2009

CUSTODY**Detention under *Provincial Offences Act*****Pre-trial detention**

94. (1) Where a young person is ordered to be detained in custody under subsection 150 (4) (order for detention) or 151 (2) (further orders) of the *Provincial Offences Act*, the young person shall be detained in a place of temporary detention. 2009, c. 33, Sched. 7, s. 1 (4).

Open custody for provincial offences

- (2) Where a young person is sentenced to a term of imprisonment under the *Provincial Offences Act*,
- (a) the term of imprisonment shall be served in a place of open custody, subject to subsections (3) and (4);
- (b) section 91 of the federal Act applies with necessary modifications; and
- (c) sections 28 (remission) and 28.1 (determinations of remission) and Part III (Ontario Parole and Earned Release Board) of the *Ministry of Correctional Services Act* apply with necessary modifications. 2009, c. 33, Sched. 7, s. 1 (4).

Transfer to place of secure custody

(3) Where a young person is placed in open custody under clause (2) (a), the provincial director may transfer the young person to a place of secure custody if, in the opinion of the provincial director, the transfer is necessary for the safety of the young person or the safety of others in the place of open custody. 2009, c. 33, Sched. 7, s. 1 (4).

Concurrent terms

(4) Where a young person is committed to secure custody under the *Young Offenders Act* (Canada) or under the federal Act and is sentenced concurrently to a term of imprisonment under the *Provincial Offences Act*, the term of imprisonment under the *Provincial Offences Act* shall be served in the same place as the disposition under the *Young Offenders Act* (Canada) or the sentence under the federal Act. 2009, c. 33, Sched. 7, s. 1 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (23) - 22/06/2006

2009, c. 33, Sched. 7, s. 1 (4) - 15/12/2009

Young persons in open custody

95. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 103 of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 91 (reintegration leave) of the federal Act apply with necessary modifications. R.S.O. 1990, c. C.11, s. 95; 2006, c. 19, Sched. D, s. 2 (24).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (24) - 22/06/2006

CUSTODY REVIEW BOARD

Custody Review Board

96. (1) The Custody Review Board is continued under the name Custody Review Board in English and Commission de révision des placements sous garde in French and shall have the powers and duties given to it by this Part and the regulations. R.S.O. 1990, c. C.11, s. 96 (1).

Members

(2) The Board shall be composed of the prescribed number of members who shall be appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. C.11, s. 96 (2).

Chair and vice-chairs

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs. R.S.O. 1990, c. C.11, s. 96 (3).

- (4) REPEALED: 2006, c. 34, s. 28 (1).

Quorum

- (5) The prescribed number of members of the Board are a quorum. R.S.O. 1990, c. C.11, s. 96 (5).

Remuneration

(6) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board. R.S.O. 1990, c. C.11, s. 96 (6); 2009, c. 33, Sched. 7, s. 1 (5).

Duties of Board

(7) The Board shall conduct reviews under section 97 and perform such other duties as are assigned to it by the regulations. R.S.O. 1990, c. C.11, s. 96 (7).

Section Amendments with date in force (d/m/y)

2006, c. 34, s. 28 (1) - 20/12/2006

2009, c. 33, Sched. 7, s. 1 (5) - 15/12/2009

Application to Board

97. (1) A young person may apply to the Board for a review of,

- (a) REPEALED: 2006, c. 19, Sched. D, s. 2 (25).
- (b) the particular place where the young person is held or to which the young person has been transferred;
- (c) a provincial director's refusal to authorize the young person's temporary release under section 35 of the *Young Offenders Act* (Canada) or reintegration leave under section 91 of the federal Act; or
- (d) the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the *Young Offenders Act* (Canada) in accordance with section 88 of the federal Act,

within thirty days of the decision, placement or transfer, as the case may be. R.S.O. 1990, c. C.11, s. 97 (1); 2006, c. 19, Sched. D, s. 2 (25-27).

Duty of Board

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing. R.S.O. 1990, c. C.11, s. 97 (2).

Idem

(3) The Board shall advise the young person whether it intends to hold a hearing or not within ten days of receiving the young person's application. R.S.O. 1990, c. C.11, s. 97 (3).

Procedure

(4) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2). R.S.O. 1990, c. C.11, s. 97 (4).

Idem

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

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination. R.S.O. 1990, c. C.11, s. 97 (5).

Board's recommendations

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

- (a) recommend to the provincial director,
 - (i) where the Board is of the opinion that the place where the young person is held or to which he or she has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,
 - (ii) that the young person's temporary release be authorized under section 35 of the *Young Offenders Act* (Canada) or the young person's reintegration leave be authorized under section 91 of the federal Act, or
 - (iii) where the young person has been transferred as described in clause (1) (d), that the young person be returned to a place of open custody; or
- (b) confirm the decision, placement or transfer. R.S.O. 1990, c. C.11, s. 97 (6); 1993, c. 27, Sched.; 2006, c. 19, Sched. D, s. 2 (28).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

2006, c. 19, Sched. D, s. 2 (25-28) - 22/06/2006

APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION

Apprehension

Apprehension of young person absent from place of temporary detention

98. (1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the *Young Offenders Act* (Canada) or the federal Act or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge

and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention. R.S.O. 1990, c. C.11, s. 98 (1); 2006, c. 19, Sched. D, s. 2 (29).

Idem: place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 95,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of reintegration leave under clause 95 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention. R.S.O. 1990, c. C.11, s. 98 (2); 2006, c. 19, Sched. D, s. 2 (30).

Young person to be returned within forty-eight hours

(3) A young person who is apprehended under this section shall be returned to the place from which he or she is absent within forty-eight hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 93 (2). R.S.O. 1990, c. C.11, s. 98 (3).

Warrant to apprehend young person

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of reintegration leave under clause 95 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person. R.S.O. 1990, c. C.11, s. 98 (4); 2006, c. 19, Sched. D, s. 2 (31).

Authority to enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person. R.S.O. 1990, c. C.11, s. 98 (5).

Regulations re exercise of power of entry

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations. R.S.O. 1990, c. C.11, s. 98 (6).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (29-31) - 22/06/2006

INSPECTIONS AND INVESTIGATIONS

Inspections and investigations

98.1 (1) The Minister may designate any person to conduct such inspections or investigations as the Minister may require in connection with the administration of this Part. 2009, c. 33, Sched. 7, s. 1 (6).

Dismissal for cause for obstruction, etc., of inspection

(2) Any person employed in the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment. 2009, c. 2, s. 6.

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 6 - 1/04/2009; 2009, c. 33, Sched. 7, s. 1 (6) - 15/12/2009

PART V RIGHTS OF CHILDREN

Definition

99. In this Part,

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

- (a) a child who is in the care of a foster parent, and
- (b) a young person who is,
 - (i) detained in a place of temporary detention under the federal Act,
 - (ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the federal Act or otherwise, or
 - (iii) held in a place of open custody under section 95 of Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 99; 2006, c. 19, Sched. D, s. 2 (32); 2009, c. 2, s. 7.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (32) - 22/06/2006

2009, c. 2, s. 7 - 1/04/2009

LOCKING UP

Locking up restricted

100. (1) No service provider shall detain a child or permit a child to be detained in locked premises in the course of the provision of a service to the child, except as Part IV (Youth Justice) and Part VI (Extraordinary Measures) authorize. R.S.O. 1990, c. C.11, s. 100 (1); 2006, c. 19, Sched. D, s. 2 (33).

Application of subs. (1)

- (2) Subsection (1) does not prohibit the routine locking of premises for security at night. R.S.O. 1990, c. C.11, s. 100 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (33) - 22/06/2006

CORPORAL PUNISHMENT

No corporal punishment

101. No service provider or foster parent shall inflict corporal punishment on a child or permit corporal punishment to be inflicted on a child in the course of the provision of a service to the child. R.S.O. 1990, c. C.11, s. 101.

102. REPEALED: 2007, c. 9, s. 25 (1).

Section Amendments with date in force (d/m/y)

2007, c. 9, s. 25 (1) - 5/10/2007

RIGHTS OF CHILDREN IN CARE

Rights of communication, etc.

103. (1) A child in care has a right,

- (a) to speak in private with, visit and receive visits from members of his or her family regularly, subject to subsection (2);
- (b) to speak in private with and receive visits from,
 - (i) the child’s solicitor,
 - (ii) another person representing the child, including the Provincial Advocate for Children and Youth,
 - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman’s staff, and
 - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and

- (c) to send and receive written communications that are not read, examined or censored by another person, subject to subsections (3) and (4). R.S.O. 1990, c. C.11, s. 103 (1); 2007, c. 9, s. 25 (2); 2009, c. 2, s. 8 (1).

When child a Crown ward

(2) A child in care who is a Crown ward is not entitled as of right to speak with, visit or receive visits from a member of his or her family, except under an order for access made under Part III or an openness order or openness agreement made under Part VII. 2006, c. 5, s. 32.

Opening, etc., of written communications to child

- (3) Subject to subsection (4), written communications to a child in care,
- (a) may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;
 - (b) subject to clause (c), may be examined or read by the service provider or a member of the service provider's staff in the child's presence, where the service provider believes on reasonable grounds that the contents of the written communication may cause the child physical or emotional harm;
 - (c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor; and
 - (d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child. 2009, c. 2, s. 8 (2).

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

(4) Written communications to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody,

- (a) may be opened by the service provider or a member of the service provider's staff in the young person's presence and may be inspected for articles prohibited by the service provider;
- (b) may be examined or read by the service provider or a member of the service provider's staff and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications may,
 - (i) be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody, or
 - (ii) contain communications that are prohibited under the federal act or by court order;
- (c) shall not be examined or read under clause (b) if it is to or from the young person's solicitor; and
- (d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is to or from a person described in subclause (1) (b) (ii), (iii) or (iv). 2009, c. 2, s. 8 (3).

Definition

(5) In this section,

“written communications” includes mail and electronic communication in any form. 2009, c. 2, s. 8 (3).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 32 - 30/11/2006

2007, c. 9, s. 25 (2) - 5/10/2007

2009, c. 2, s. 8 (1-3) - 1/04/2009

Limitations on rights

Conditions and limitations on visitors

103.1 (1) A service provider may impose such conditions and limitations upon persons who are visiting a young person in a place of temporary detention, of open custody or of secure custody as are necessary to ensure the safety of staff or young persons in the facility. 2009, c. 2, s. 9.

Suspending visits in emergencies

(2) Where a service provider has reasonable grounds to believe there are emergency circumstances within a facility that is a place of temporary detention, of open custody or of secure custody or within the community that may pose a risk to staff or young persons in the facility, the service provider may suspend visits until there are reasonable grounds to believe the emergency has been resolved and there is no longer a risk to staff or young persons in the facility. 2009, c. 2, s. 9.

Limited exception

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

unless the provincial director determines that suspension is necessary to ensure public safety or the safety of staff or young persons in the facility. 2009, c. 2, s. 9.

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 9 - 1/04/2009

Personal liberties

104. A child in care has a right,

- (a) to have reasonable privacy and possession of his or her own personal property; and
 - (b) to receive the religious instruction and participate in the religious activities of his or her choice, subject to section 106.
- R.S.O. 1990, c. C.11, s. 104.

Plan of care

105. (1) A child in care has a right to a plan of care designed to meet the child's particular needs, which shall be prepared within thirty days of the child's admission to the residential placement.

Rights to care

- (2) A child in care has a right,
- (a) to participate in the development of the child's individual plan of care and in any changes made to it;
 - (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
 - (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
 - (d) to receive medical and dental care, subject to section 106, at regular intervals and whenever required, in a community setting whenever possible;
 - (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; and
 - (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible. R.S.O. 1990, c. C.11, s. 105.

Parental consent, etc.

106. Subject to subsection 51 (4) and sections 62 and 63 (temporary order, society and Crown wards) of Part III (Child Protection), the parent of a child in care retains any right that he or she may have,

- (a) to direct the child's education and religious upbringing; and
- (b) to give or refuse consent to medical treatment for the child. R.S.O. 1990, c. C.11, s. 106.

Right to be heard

107. A child in care has a right to be consulted and to express his or her views, to the extent that is practical given the child's level of understanding, whenever significant decisions concerning the child are made, including decisions with respect to medical treatment, education or training or work programs and religion and decisions with respect to the child's discharge from the placement or transfer to another residential placement. R.S.O. 1990, c. C.11, s. 107; 2009, c. 2, s. 10.

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 10 - 1/04/2009

Right to be informed

108. A child in care has a right to be informed, in a language suitable for the child's level of understanding, of,

- (a) the child's rights under this Part;
- (b) the internal complaints procedure established under subsection 109 (1) and the further review available under section 110;
- (c) the existence of the office of the Provincial Advocate for Children and Youth;
- (d) the review procedures available for children twelve years of age or older under sections 34, 35 and 36 of Part II (Voluntary Access to Services);
- (e) the review procedures available under section 97 of Part IV (Youth Justice), in the case of a young person described in clause (b) of the definition of "child in care" in section 99;
- (f) the child's responsibilities while in the placement; and
- (g) the rules governing day-to-day operation of the residential service, including disciplinary procedures,

upon admission to the residential placement, to the extent that is practical given the child's level of understanding. R.S.O. 1990, c. C.11, s. 108; 2006, c. 19, Sched. D, s. 2 (34); 2007, c. 9, s. 25 (3); 2009, c. 33, Sched. 7, s. 1 (7).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (34) - 22/06/2006

2007, c. 9, s. 25 (3) - 5/10/2007

2009, c. 33, Sched. 7, s. 1 (7) - 15/12/2009

COMPLAINT AND REVIEW PROCEDURES

Internal complaints procedure

109. (1) A service provider who provides residential services to children or places children in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding alleged violations of the rights under this Part of children in care.

Idem

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

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint. R.S.O. 1990, c. C.11, s. 109.

Further review

110. (1) Where a person referred to in subsection 109 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

Idem

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing.

Procedure

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

Powers of appointed person

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services).

Review and report within thirty days

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

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister. R.S.O. 1990, c. C.11, s. 110.

Minister to advise persons affected of any decision

111. (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 110 (5), the Minister shall advise the person who made the complaint and the service provider of the decision.

Remedies preserved

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available. R.S.O. 1990, c. C.11, s. 111.

PART VI EXTRAORDINARY MEASURES

Definitions

112. In this Part,

“administrator” means the person in charge of a secure treatment program; (“administrateur”)

“intrusive procedure” means,

- (a) a mechanical means of controlling behaviour,
- (b) an aversive stimulation technique, or
- (c) any other procedure that is prescribed as an intrusive procedure; (“technique d’ingérence”)

“mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person's capacity to make reasoned judgments; (“trouble mental”)

“psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug; (“psychotrope”)

“review team” means an interdisciplinary review team established under subsection 129 (1); (“groupe d’étude”)

“secure isolation room” means a locked room approved under subsection 126 (1) for use for the secure isolation of children; (“pièce d’isolement sous clef”)

“secure treatment program” means a program established or approved by the Minister under subsection 113 (1). (“programme de traitement en milieu fermé”) R.S.O. 1990, c. C.11, s. 112.

SECURE TREATMENT PROGRAMS

Minister may establish or approve programs

113. (1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.

Terms and conditions

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

Admission of children

(3) No child shall be admitted to a secure treatment program except by a court order under section 117 (commitment to secure treatment program) or under section 124 (emergency admission).

Locking up permitted

- (4) The premises of a secure treatment program may be locked for the detention of children. R.S.O. 1990, c. C.11, s. 113.

COMMITMENT TO SECURE TREATMENT**Application for order for child's commitment**

114. (1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

1. Where the child is less than sixteen years of age,
 - i. the child's parent,
 - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
 - iii. a society that has custody of the child under an order made under Part III (Child Protection).
2. Where the child is sixteen years of age or more,
 - i. the child,
 - ii. the child's parent, if the child consents to the application,
 - iii. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or
 - iv. a physician.

Time for hearing

(2) Where an application is made under subsection (1), the court shall deal with the matter within ten days of the making of an order under subsection (6) (legal representation) or, where no such order is made, within ten days of the making of the application.

Adjournments

(3) The court may adjourn the hearing of an application but shall not adjourn it for more than thirty days unless the applicant and the child consent to the longer adjournment.

Interim order

(4) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 117 (1) (a) to (f) and, where the child is less than twelve years old, the Minister consents to the child's admission.

Evidence on adjournments

(5) For the purpose of subsection (4), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Legal representation of child

(6) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

Hearing private

(7) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Child entitled to be present

- (8) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,
- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
 - (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing in his or her absence.

Court may require child's presence

(9) The court may require a child who has consented to the holding of the hearing in his or her absence under clause (8) (b) to be present at all or part of the hearing. R.S.O. 1990, c. C.11, s. 114.

Oral evidence

115. (1) Where an application is made under subsection 114 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 117 (1) without the hearing of oral evidence, and the consent is filed with the court.

Court may hear oral evidence despite consent

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

Time limitation

(3) A child's consent under subsection (1) is not effective for more than the period referred to in subsection 118 (1) (period of commitment). R.S.O. 1990, c. C.11, s. 115.

Assessment

116. (1) The court may, at any time after an application is made under subsection 114 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment.

Report

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

Who may not perform assessment

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates.

Copies of report

(4) The court shall provide a copy of the report to,

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child's solicitor;
- (d) a parent appearing at the hearing;
- (e) a society that has custody of the child under an order made under Part III (Child Protection);
- (f) the administrator of the secure treatment program; and
- (g) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Idem

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings.

Court may withhold report from child

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm. R.S.O. 1990, c. C.11, s. 116.

Commitment to secure treatment: criteria

117. (1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the forty-five days immediately preceding,
 - (i) the application under subsection 114 (1),

- (ii) the child's detention or custody under the *Young Offenders Act* (Canada), under the *Youth Criminal Justice Act* (Canada) or under the *Provincial Offences Act*, or
- (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient, caused or attempted to cause serious bodily harm to himself, herself or another person;
- (c) the child has,
 - (i) within the twelve months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person, or
 - (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;
- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances. R.S.O. 1990, c. C.11, s. 117 (1); 2006, c. 19, Sched. D, s. 2 (35).

Where child under twelve

(2) Where the child is less than twelve years old, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment. R.S.O. 1990, c. C.11, s. 117 (2).

Additional requirement where applicant is physician

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met. R.S.O. 1990, c. C.11, s. 117 (3).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (35) - 22/06/2006

Period of commitment

118. (1) The court shall specify in an order under subsection 117 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Where society is applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than sixty days, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1). R.S.O. 1990, c. C.11, s. 118 (1, 2).

How time calculated

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 117 (commitment) or pending an application under section 120 (extension) shall be counted. R.S.O. 1990, c. C.11, s. 118 (3); 1993, c. 27, Sched.

Where order expires after eighteenth birthday

(4) A person who is the subject of an order made under subsection 117 (1) or 120 (5) may be kept in the secure treatment program after attaining the age of eighteen years, until the order expires. R.S.O. 1990, c. C.11, s. 118 (4).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Reasons, plans, etc.

119. (1) Where the court makes an order under subsection 117 (1) or 120 (5), the court shall give,

- (a) reasons for its decision;
- (b) a statement of the plan, if any, for the child's care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

Plan for care on release

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order, the administrator shall, within ninety days of the date of the order, prepare such a plan and file it with the court. R.S.O. 1990, c. C.11, s. 119.

EXTENSION OF PERIOD OF COMMITMENT

Extension

120. (1) Where a child is the subject of an order made under subsection 117 (1) (commitment) or subsection (5),

- (a) a person referred to in subsection 114 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program. R.S.O. 1990, c. C.11, s. 120 (1); 1993, c. 27, Sched.

Idem

(2) Where a person is kept in the secure treatment program under subsection 118 (4) after attaining the age of eighteen years,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

Child may be kept in program while application pending

(3) Where an application is made under subsection (1) or (2), the child may be kept in the secure treatment program until the application is disposed of. R.S.O. 1990, c. C.11, s. 120 (2, 3).

ss. 114 (3), (6-9), 115, 116 apply

(4) Subsections 114 (3), (6), (7), (8) and (9) (hearing) and sections 115 (child's waiver) and 116 (assessment) apply with necessary modifications to an application made under subsection (1) or (2). R.S.O. 1990, c. C.11, s. 120 (4); 1993, c. 27, Sched.

Criteria for extension

(5) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 117 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

Period of extension

(6) The court shall specify in an order under subsection (5) the period not exceeding 180 days for which the child shall be committed to the secure treatment program. R.S.O. 1990, c. C.11, s. 120 (5, 6).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

RELEASE BY ADMINISTRATOR

Release

Unconditional release by administrator

- 121.** (1) The administrator may release a child from a secure treatment program unconditionally where the administrator,
- (a) has given the person with lawful custody of the child reasonable notice of the intention to release him or her; and
 - (b) is satisfied that,
 - (i) the child no longer requires the secure treatment program, and
 - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

Conditional release

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

Administrator may release despite court order

(3) Subsections (1) and (2) apply despite an order made under subsection 117 (1) (commitment) or 120 (5) (extension). R.S.O. 1990, c. C.11, s. 121.

REVIEW OF COMMITMENT

Review of commitment

122. (1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 117 (1) (commitment) or 120 (5) (extension):

1. The child, where the child is twelve years of age or more.
2. The child's parent.
3. The society having care, custody or supervision of the child. R.S.O. 1990, c. C.11, s. 122 (1).

ss. 114 (3), (6-9), 115, 116 apply

(2) Subsections 114 (3), (6), (7), (8) and (9) (hearing) and sections 115 (child's waiver) and 116 (assessment) apply with necessary modifications to an application made under subsection (1). R.S.O. 1990, c. C.11, s. 122 (2); 1993, c. 27, Sched.

Termination of order

- (3) The court shall make an order terminating a child's commitment unless the court is satisfied that,
- (a) the child has a mental disorder;
 - (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
 - (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
 - (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 117 (1) or 120 (5), or other appropriate treatment.

Idem

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program. R.S.O. 1990, c. C.11, s. 122 (3, 4).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

ss. 120 (3-6), 121, 122 apply

123. Subsections 120 (3), (4), (5) and (6) and sections 121 and 122 apply with necessary modifications to a person who is eighteen years of age or older and committed to a secure treatment program as if the person were a child. R.S.O. 1990, c. C.11, s. 123.

EMERGENCY ADMISSION

Emergency admission

124. (1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

1. Where the child is less than sixteen years of age,
 - i. the child's parent,
 - ii. a person who is caring for the child with a parent's consent,
 - iii. a child protection worker who has apprehended the child under section 40 of Part III (Child Protection), or
 - iv. a society that has custody of the child under an order made under Part III.
2. Where the child is sixteen years of age or more,
 - i. the child,
 - ii. the child's parent, if the child consents to the application,
 - iii. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or
 - iv. a physician. R.S.O. 1990, c. C.11, s. 124 (1).

Criteria for admission

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) for a period not to exceed thirty days where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances. R.S.O. 1990, c. C.11, s. 124 (2).

Admission on consent

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

- (a) the other criteria set out in subsection (2) are met;
- (b) the child, after obtaining legal advice, consents to his or her admission; and
- (c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission. R.S.O. 1990, c. C.11, s. 124 (3).

Where child under twelve

(4) Where the child is less than twelve years old, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission. R.S.O. 1990, c. C.11, s. 124 (4).

Additional requirement where applicant is physician

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met. R.S.O. 1990, c. C.11, s. 124 (5).

Notices required

(6) The administrator shall ensure that within twenty-four hours after a child is admitted to a secure treatment program under subsection (2),

- (a) the child is given written notice of his or her right to a review under subsection (9); and
- (b) the Provincial Advocate for Children and Youth and the Children's Lawyer are given notice of the admission. R.S.O. 1990, c. C.11, s. 124 (6); 1994, c. 27, s. 43 (2); 2007, c. 9, s. 25 (4).

Mandatory advice

(7) The Provincial Advocate for Children and Youth shall ensure that forthwith after the notice is received a person who is not employed by the secure treatment facility explains to the child his or her right to a review in language suitable for the child's level of understanding. R.S.O. 1990, c. C.11, s. 124 (7); 2007, c. 9, s. 25 (5).

Children's Lawyer to ensure child represented

(8) The Children's Lawyer shall represent the child at the earliest possible opportunity and in any event within five days after receiving a notice under subsection (6) unless the Children's Lawyer is satisfied that another person will provide legal representation for the child within that time. R.S.O. 1990, c. C.11, s. 124 (8); 1994, c. 27, s. 43 (2).

Application for review

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program. R.S.O. 1990, c. C.11, s. 124 (9).

Child may be kept in program while application pending

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of. R.S.O. 1990, c. C.11, s. 124 (10).

Procedure

(11) Subsections 114 (7), (8) and (9) (hearing) and section 115 (waive oral evidence) apply with necessary modifications to an application made under subsection (9). R.S.O. 1990, c. C.11, s. 124 (11); 1993, c. 27, Sched.

Time for review

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application. R.S.O. 1990, c. C.11, s. 124 (12).

Order

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses 124 (2) (a) to (e). R.S.O. 1990, c. C.11, s. 124 (13).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

1994, c. 27, s. 43 (2) - 3/04/1995

2007, c. 9, s. 25 (4, 5) - 5/10/2007

POLICE ASSISTANCE

Powers of peace officers, period of commitment

Police may take child for secure treatment

125. (1) A peace officer may take a child to a place where there is a secure treatment program,

- (a) for emergency admission, at the request of an applicant referred to in subsection 124 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 117.

Apprehension of child who leaves

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Period of commitment

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment. R.S.O. 1990, c. C.11, s. 125.

SECURE ISOLATION

Director's approval

126. (1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where an approved service or a service purchased by an approved agency is provided, for use for the secure isolation of children or young persons, on such terms and conditions as the Director determines. R.S.O. 1990, c. C.11, s. 126 (1); 2009, c. 2, s. 11.

Withdrawal of approval

(2) Where a Director is of the opinion that a secure isolation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons. R.S.O. 1990, c. C.11, s. 126 (2).

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 11 - 1/04/2009

Secure isolation

127. (1) No service provider or foster parent shall isolate in a locked place a child or young person who is in his or her care or permit the child or young person to be isolated in a locked place, except in accordance with this section and the regulations. 2009, c. 2, s. 12 (1).

Secure treatment, secure custody and secure temporary detention

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 127 (2); 2006, c. 19, Sched. D, s. 2 (36).

Criteria for use of secure isolation

(3) A child or young person may be placed in a secure isolation room where,

(a) in the service provider's opinion,

(i) the child's or young person's conduct indicates that he or she is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and

(ii) no less restrictive method of restraining the child or young person is practicable; and

(b) where the child is less than 12 years of age, a Director gives permission for the child to be placed in a secure isolation room because of exceptional circumstances. 2009, c. 2, s. 12 (2).

One-hour limit

(4) A child or young person who is placed in a secure isolation room shall be released within one hour unless the person in charge of the premises approves the child's or young person's longer isolation in writing and records the reasons for not restraining the child or young person by a less restrictive method. 2009, c. 2, s. 12 (2).

Continuous observation of child

(5) Subject to subsection (9), the service provider shall ensure that a child or young person who is placed in a secure isolation room is continuously observed by a responsible person. 2009, c. 2, s. 12 (2).

Review

(6) Where a child or young person is kept in a secure isolation room for more than one hour, the person in charge of the premises shall review the child's or young person's isolation at prescribed intervals. 2009, c. 2, s. 12 (2).

Release

(7) A child or young person who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child or young person is not likely to cause serious property damage or serious bodily harm in the immediate future. 2009, c. 2, s. 12 (2).

Maximum periods

(8) Subject to subsection (9), in no event shall a child or young person be kept in a secure isolation room for a period or periods that exceed an aggregate of eight hours in a given 24-hour period or an aggregate of 24 hours in a given week. 2009, c. 2, s. 12 (2).

Exception

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is aged 16 years or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the prescribed standards and procedures in respect of such young persons who are held in such places. 2009, c. 2, s. 12 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 2 (36) - 22/06/2006

2009, c. 2, s. 12 (1, 2) - 1/04/2009

Review of use of secure isolation

128. (1) A person in charge of premises containing a secure isolation room shall review,

- (a) the need for the secure isolation room; and
- (b) the prescribed matters,

every three months or, in the case of secure custody or secure temporary detention, every six months from the date on which the secure isolation room is approved under subsection 126 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed. R.S.O. 1990, c. C.11, s. 128; 2009, c. 2, s. 13 (1).

(2) REPEALED: 2009, c. 33, Sched. 7, s. 1 (8).

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 13 (1, 2) - 1/04/2009; 2009, c. 33, Sched. 7, s. 1 (8) - 15/12/2009

REVIEW TEAMS

Review team

129. (1) A service provider who is approved under subsection 130 (1) shall establish an interdisciplinary review team with the duty of reviewing and approving or refusing the proposed use of intrusive procedures.

Idem

- (2) A review team shall consist of,
 - (a) persons employed by the service provider; and
 - (b) one person who is not employed by the service provider and is approved by the Minister,

and may also include a legally qualified medical practitioner.

Panel

- (3) Any three members of a review team may review and approve or refuse the proposed use of an intrusive procedure.

Report to service provider

(4) A review team shall make a report to the service provider concerning every review conducted under subsection (3) and subsection 133 (1) (review of certain recommended procedures).

Report to Minister

(5) A review team shall make reports of its activities to the Minister at the prescribed intervals. R.S.O. 1990, c. C.11, s. 129.

130. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 130 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

131. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 131 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2006, c. 19, Sched. D, s. 2 (37) - no effect - see R.S.O. 1990, c. C.11, s. 131.

PSYCHOTROPIC DRUGS**Consents required for use of psychotropic drug**

132. (1) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care without,

- (a) if the child is sixteen years of age or more, the child's consent; or
- (b) if the child is less than sixteen years of age, the consent of the child's parent or, where the child is in a society's lawful custody, the society's consent. R.S.O. 1990, c. C.11, s. 132 (1).

Idem

- (2) A consent referred to in subsection (1) shall identify the psychotropic drug clearly and shall specify,
 - (a) what condition the psychotropic drug is intended to alleviate;
 - (b) the range of intended dosages;
 - (c) the risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
 - (d) the frequency with which and the period of time during which the psychotropic drug is to be administered. R.S.O. 1990, c. C.11, s. 132 (2).

Child's views and preferences

(3) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care who is less than sixteen years of age or lacks capacity within the meaning of section 4 without first considering the child's views and preferences, where they can be reasonably ascertained, except under subsection (4). R.S.O. 1990, c. C.11, s. 132 (3).

(4), (5) REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

(6) SPENT: R.S.O. 1990, c. C.11, s. 132 (6).

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 132 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

ADDITIONAL DUTY OF REVIEW TEAMS**Review of certain recommended procedures**

133. (1) Where it is recommended that a child in the care of or regularly receiving services from a service provider who has established a review team undergo,

- (a) non-therapeutic medical or chemical experimentation;
- (b) psychosurgery;
- (c) non-therapeutic sterilization; or
- (d) electro-convulsive therapy,

three members of the review team shall review the matter and advise the child's parent or, where the child is in a society's lawful custody, the society, and the service provider of the review team's opinion as to the appropriateness of the recommendation.

Panel to include medical practitioner

(2) One of the members of the review team acting under subsection (1) shall be a legally qualified medical practitioner.

Prohibition

(3) No procedure referred to in subsection (1) shall be carried out in premises where an approved service or a service purchased by an approved agency is provided. R.S.O. 1990, c. C.11, s. 133.

PROFESSIONAL ADVISORY BOARD

Professional Advisory Board

134. (1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who,

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;
- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed by the Ministry.

Chair

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chair.

Duties of Board

(3) The Professional Advisory Board shall, at the Minister's request,

- (a) advise the Minister on,
 - (i) prescribing procedures as intrusive procedures, and
 - (ii) making, amending, suspending and revoking approvals under section 130;
- (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- (c) review the practices and procedures of service providers with respect to,
 - (i) secure isolation,
 - (ii) intrusive procedures, and
 - (iii) psychotropic drugs,
 and make recommendations to the Minister. R.S.O. 1990, c. C.11, s. 134.

Request for review

135. Any person may request that the Minister refer the matter of the use of secure isolation or an intrusive procedure in respect of a child, or the administration of a psychotropic drug to a child, to the Professional Advisory Board for investigation and review. R.S.O. 1990, c. C.11, s. 135.

**PART VII
ADOPTION**

Interpretation

136. (1) In this Part,

"birth parent" means a person who satisfies the prescribed criteria; ("père ou mère de sang")

"birth relative" means,

- (a) in respect of a child who has not been adopted, a relative of the child, and
- (b) in respect of a child who has been adopted, a person who would have been a relative of the child if the child had not been adopted; ("parent de sang")

“birth sibling” means, in respect of a person, a child of the same birth parent as the person, and includes a child adopted by the birth parent and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family; (“frère ou soeur de sang”)

“licensee” means the holder of a licence issued under Part IX (Licensing) to place children for adoption; (“titulaire de permis”)

“openness agreement” means an agreement referred to in section 153.6; (“accord de communication”)

“openness order” means an order made by a court in accordance with this Act for the purposes of facilitating communication or maintaining a relationship between the child and,

- (a) a birth parent, birth sibling or birth relative of the child,
- (b) a person with whom the child has a significant relationship or emotional tie, including a foster parent of the child or a member of the child’s extended family or community, or
- (c) if the child is an Indian or native person, a member of the child’s band or native community who may not have had a significant relationship or emotional tie with the child in the past but will help the child recognize the importance of his or her Indian or native culture and preserve his or her heritage, traditions and cultural identity; (“ordonnance de communication”)

“spouse” has the same meaning as in Parts I and II of the *Human Rights Code*. (“conjoint”) R.S.O. 1990, c. C.11, s. 136 (1); 2006, c. 5, s. 33; 2016, c. 23, s. 38 (6-9).

Best interests of child

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

1. The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child’s physical, mental and emotional level of development.
3. The child’s cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family.
6. The child’s relationships by birth or through an adoption order.
7. The importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity.
8. The child’s views and wishes, if they can be reasonably ascertained.
9. The effects on the child of delay in the disposition of the case.
10. Any other relevant circumstance. R.S.O. 1990, c. C.11, s. 136 (2); 2016, c. 23, s. 38 (10).

Where child an Indian or native person

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child’s cultural identity. R.S.O. 1990, c. C.11, s. 136 (3).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 33 (1, 2) - 30/11/2006

2016, c. 23, s. 38 (6-10) - 01/01/2017

CONSENT TO ADOPTION

Consents

137. (1) In this section,

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

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children’s Law Reform Act*.

2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 158 or 159.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child's support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force. 2016, c. 23, s. 38 (11).

Consent of parent, etc.

- (2) An order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, shall not be made without,
- (a) the written consent of every parent; or
 - (b) where the child has been made a Crown ward under Part III (Child Protection), the written consent of a Director. R.S.O. 1990, c. C.11, s. 137 (2).

Idem

- (3) A consent under clause (2) (a) shall not be given before the child is seven days old. R.S.O. 1990, c. C.11, s. 137 (3).

Idem

- (4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until,
- (a) the society or licensee has advised the parent of his or her right,
 - (i) to withdraw the consent under subsection (8), and
 - (ii) to be informed, on his or her request, whether an adoption order has been made in respect of the child;
 - (a.1) the society or licensee has advised the parent of such other matters as may be prescribed; and
 - (b) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent. R.S.O. 1990, c. C.11, s. 137 (4); 2005, c. 25, s. 14.

Custody of child

- (5) Where,
- (a) a child is being placed for adoption by a society or licensee;
 - (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
 - (c) the twenty-one day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 139 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 146. R.S.O. 1990, c. C.11, s. 137 (5).

Consent of person to be adopted

- (6) An order for the adoption of a person who is seven years of age or more shall not be made without the person's written consent. R.S.O. 1990, c. C.11, s. 137 (6).

Idem

(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent. R.S.O. 1990, c. C.11, s. 137 (7).

Withdrawal of consent

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within twenty-one days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn. R.S.O. 1990, c. C.11, s. 137 (8).

Dispensing with person's consent

(9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,

- (a) obtaining the consent would cause the person emotional harm; or
- (b) the person is not able to consent because of a developmental disability. R.S.O. 1990, c. C.11, s. 137 (9); 2001, c. 13, s. 5 (6).

Consent of applicant's spouse

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse. R.S.O. 1990, c. C.11, s. 137 (10).

Consents by minors: role of Children's Lawyer

(11) Where a person who gives a consent under clause (2) (a) is less than eighteen years of age, the consent is not valid unless the Children's Lawyer is satisfied that the consent is fully informed and reflects the person's true wishes. R.S.O. 1990, c. C.11, s. 137 (11); 1994, c. 27, s. 43 (2).

Affidavits of execution

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section. R.S.O. 1990, c. C.11, s. 137 (12).

Form of foreign consents

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given. R.S.O. 1990, c. C.11, s. 137 (13).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 43 (2) - 3/04/1995

2001, c. 13, s. 5 (6) - 30/11/2001

2005, c. 25, s. 14 - 24/04/2006

2016, c. 23, s. 38 (11) - 01/01/2017

Dispensing with consent

138. The court may dispense with a consent required under section 137 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and
- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made. R.S.O. 1990, c. C.11, s. 138.

Late withdrawal of consent

139. (1) The court may permit a person who gave a consent to the adoption of a child under section 137 to withdraw the consent after the twenty-one day period referred to in subsection 137 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn.

Exception: child placed for adoption

(2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care. R.S.O. 1990, c. C.11, s. 139.

PLACEMENT FOR ADOPTION

140. REPEALED: 2006, c. 5, s. 34.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 34 - 30/11/2006

Only societies and licensees may place children, etc.

141. (1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Only societies, etc., may bring children into Ontario

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

Licensee to notify Director of placement

(3) No licensee except a licensee exempted under subsection (5) shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption,

without first notifying a Director of the proposed placement.

Director's approval required

(4) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (5), without first receiving a Director's approval of the placement under clause 142 (2) (a).

Designation of licensee

(5) A Director may designate a licensee that is an agency as exempt from the requirements of subsections (3) and (4).

Placements to be registered

(6) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within thirty days of placing the child.

Idem: Director

(7) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (6) shall forthwith register the placement in the prescribed manner.

Exception: family adoptions

(8) Subsections (1), (2), (3), (4), (6) and (7) do not apply to,

- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent; or
- (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent. R.S.O. 1990, c. C.11, s. 141; 2016, c. 23, s. 38 (18).

Section Amendments with date in force (d/m/y)

2016, c. 23, s. 38 (18) - 01/01/2017

Limitation on placement by society

141.1 A society shall not place a Crown ward for adoption until,

- (a) the time for commencing an appeal of the order for Crown wardship under subsection 57 (1) or 65.2 (1) has expired; or
- (b) any appeal of the order for Crown wardship has been finally disposed of or abandoned. 2011, c. 12, s. 2.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 35 - 30/11/2006

2011, c. 12, s. 2 - 1/09/2011

Adoption planning

141.1.1 (1) Nothing in this Act prohibits a society from planning for the adoption of a Crown ward in respect of whom there is an access order in effect under Part III (Child Protection). 2011, c. 12, s. 3.

Openness

(2) Where a society begins planning for the adoption of a child who is a Crown ward, the society shall consider the benefits of an openness order or openness agreement in respect of the child. 2011, c. 12, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 12, s. 3 - 1/09/2011

Where child an Indian or native person

141.2 (1) If a society intends to begin planning for the adoption of a child who is an Indian or native person, the society shall give written notice of its intention to a representative chosen by the child's band or native community. 2006, c. 5, s. 35.

Care plan proposed by band or native community

(2) Where a representative chosen by a band or native community receives notice that a society intends to begin planning for the adoption of a child who is an Indian or native person, the band or native community may, within 60 days of receiving the notice,

- (a) prepare its own plan for the care of the child; and
- (b) submit its plan to the society. 2006, c. 5, s. 35.

Condition for placement

- (3) A society shall not place a child who is an Indian or native person with another person for adoption until,
 - (a) at least 60 days after notice is given to a representative chosen by the band or native community have elapsed; or
 - (b) if a band or native community has submitted a plan for the care of the child, the society has considered the plan. 2006, c. 5, s. 35.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 35 - 30/11/2006

Adoption homestudy

142. (1) A licensee who notifies a Director of a proposed placement under subsection 141 (3) shall at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed, prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Director's approval

- (2) A Director who receives a report under subsection (1) shall consider it and, as soon as possible,
 - (a) approve the proposed placement; or
 - (b) refuse to approve the placement and give notice of the refusal to the licensee and the person with whom placement is proposed. R.S.O. 1990, c. C.11, s. 142 (1, 2).

Right to hearing

(3) Where a Director gives notice under clause (2) (b), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board.

Application of other sections

(3.1) Sections 197, 199, 201 and 202 of Part IX (Licensing) apply to the hearing with necessary modifications and for that purpose references to the Tribunal shall be deemed to be references to the Board.

Extension of time

(3.2) If the Board is satisfied that there are reasonable grounds for the licensee or the person with whom placement is proposed to apply for an extension of the time fixed for requiring the hearing and for the Board to grant relief, it may,

- (a) extend the time either before or after the expiration of the time; and
- (b) give the directions that it considers proper as a result of extending the time.

Recording of evidence

(3.3) The evidence taken before the Board at the hearing shall be recorded. 1999, c. 12, Sched. G, s. 16 (2).

Placement outside Canada

(4) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

Terms and conditions

(5) A Director may approve a proposed placement under clause (2) (a) subject to any terms and conditions that the Director considers appropriate, including supervision of the placement by,

- (a) a specified society, licensee or person; or
- (b) in the case of a placement outside Ontario, a specified child protection agency recognized in the jurisdiction of the placement. R.S.O. 1990, c. C.11, s. 142 (4, 5).

Right to hearing

(6) Where a Director imposes a term or condition on an approval under subsection (5), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board.

Application of other sections

(7) Sections 198, 199, 201 and 202 of Part IX (Licensing) apply to the hearing with necessary modifications and for that purpose references to the Tribunal shall be deemed to be references to the Board. 1999, c. 12, Sched. G, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (2, 3) - 1/04/2000

Access orders terminate

143. (1) When a child is placed for adoption by a society or licensee, every order respecting access to the child is terminated, including an access order made under Part III (Child Protection) in respect of a Crown ward. 2011, c. 12, s. 4.

No interference, etc., with child in placement

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or
- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed. R.S.O. 1990, c. C.11, s. 143 (2).

Section Amendments with date in force (d/m/y)

2011, c. 12, s. 4 - 1/09/2011

DECISION TO REFUSE TO PLACE CHILD OR TO REMOVE CHILD AFTER PLACEMENT

Decision of society or licensee

144. (1) This section applies if,

- (a) a society decides to refuse an application to adopt a particular child made by a foster parent, or other person; or
- (b) a society or licensee decides to remove a child who has been placed with a person for adoption. 2006, c. 5, s. 36.

Notice of decision

(2) The society or licensee who makes a decision referred to in subsection (1) shall,

- (a) give at least 10 days notice in writing of the decision to the person who applied to adopt the child or with whom the child had been placed for adoption;
- (b) include in the notice under clause (a) notice of the person's right to apply for a review of the decision under subsection (3); and
- (c) if the child is an Indian or native person,
 - (i) give at least 10 days notice in writing of the decision to a representative chosen by the child's band or native community, and

- (ii) after the notice is given, consult with the band or community representatives relating to the planning for the care of the child. 2006, c. 5, s. 36.

Application for review

(3) A person who receives notice of a decision under subsection (2) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the decision subject to subsection (4). 2006, c. 5, s. 36.

Where no review

(4) If a society receives an application to adopt a child and, at the time of the application, the child had been placed for adoption with another person, the applicant is not entitled to a review of the society's decision to refuse the application. 2006, c. 5, s. 36.

Board hearing

(5) Upon receipt of an application under subsection (3) for a review of a decision, the Board shall hold a hearing under this section. 2006, c. 5, s. 36.

Where child is Indian or native person

(6) Upon receipt of an application for review of a decision relating to a child who is an Indian or native person, the Board shall give a representative chosen by the child's band or native community notice of the application and of the date of the hearing. 2006, c. 5, s. 36.

Practices and procedures

(7) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed. 2006, c. 5, s. 36.

Composition of Board

(8) At a hearing under subsection (5), the Board shall be composed of members with the prescribed qualifications and prescribed experience. 2006, c. 5, s. 36.

Parties

- (9) The following persons are parties to a hearing under this section:
 1. The applicant.
 2. The society.
 3. If the child is an Indian or a native person, a representative chosen by the child's band or native community.
 4. Any person that the Board adds under subsection (10). 2006, c. 5, s. 36.

Additional parties

(10) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review. 2006, c. 5, s. 36.

Board decision

(11) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm or rescind the decision under review and shall give written reasons for its decision. 2006, c. 5, s. 36.

Subsequent placement

(12) After a society or licensee has made a decision referred to in subsection (1) in relation to a child, the society shall not place the child for adoption with a person other than the person who has a right to apply for a review under subsection (3) unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision. 2006, c. 5, s. 36.

No removal before Board decision

(13) Subject to subsection (14), if a society or licensee has decided to remove a child from the care of a person with whom the child was placed for adoption, the society or licensee, as the case may be, shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision. 2006, c. 5, s. 36.

Where child at risk

(14) A society or licensee may carry out a decision to remove a child from the care of a person with whom the child was placed for adoption before the expiry of the time for applying for a review under subsection (3) or at any time after the application for a review is made if, in the opinion of a Director or local director, there would be a risk that the child is likely to suffer harm during the time necessary for a review by the Board. 2006, c. 5, s. 36.

Transitional

(15) This section as it read immediately before the day this subsection came into force continues to apply where a request to adopt a child or a decision to remove a child was made before that day. 2006, c. 5, s. 36.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 36 - 30/11/2006

Notice to Director

145. (1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director. R.S.O. 1990, c. C.11, s. 145 (1).

Idem

(2) Where no order for a child's adoption has been made and a year has expired since,

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 137 (2) (a); or
- (b) the most recent review under subsection (3),

whichever is later, the society or licensee shall notify a Director, unless the child is a Crown ward. R.S.O. 1990, c. C.11, s. 145 (2).

Director to review

(3) A Director who receives a notice under subsection (1) or (2) shall conduct a review in accordance with the regulations. 2006, c. 5, s. 37.

(4) REPEALED: 2006, c. 5, s. 37.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 37 - 30/11/2006

OPENNESS ORDERS

No access order in effect

Application for openness order

145.1 (1) If a child who is a Crown ward is the subject of a plan for adoption, and no access order is in effect under Part III, the society having care and custody of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 146. 2006, c. 5, s. 38.

Notice of application

(2) A society making an application under this section shall give notice of the application to,

- (a) the child, except as otherwise provided under subsection 39 (4) or (5);
- (b) every person who will be permitted to communicate with or have a relationship with the child if the order is made;
- (c) any person with whom the society has placed or plans to place the child for adoption; and
- (d) any society that will supervise or participate in the arrangement under the openness order. 2006, c. 5, s. 38.

Openness order

- (3) The court may make an openness order under this section in respect of a child if the court is satisfied that,
- (a) the openness order is in the best interests of the child;
 - (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
 - (c) the following entities and persons have consented to the order:
 - (i) the society,
 - (ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,
 - (iii) the person with whom the society has placed or plans to place the child for adoption, and
 - (iv) the child if he or she is 12 years of age or older. 2006, c. 5, s. 38.

Termination of openness order if Crown wardship terminates

(4) Any openness order made under this section in respect of a child terminates if the child ceases to be a Crown ward by reason of an order made under subsection 65.2 (1). 2006, c. 5, s. 38; 2011, c. 12, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 38 - 30/11/2006

2011, c. 12, s. 5 - 1/09/2011

Access order in effect

Notice of intent to place for adoption

145.1.1 (1) This section applies where,

- (a) a society intends to place a child who is a Crown ward for adoption; and
- (b) an order under Part III (Child Protection) has been made respecting a person's access to the child or the child's access to another person. 2011, c. 12, s. 6.

Notice

- (2) In the circumstances described in subsection (1), the society shall give notice to the following persons:
- 1. The person who has been granted an access order.
 - 2. The person with respect to whom an access order has been granted. 2011, c. 12, s. 6.

Right to apply for openness order

- (3) The society shall include in the notice the following information:
- 1. Notice that the society intends to place the child for adoption.
 - 2. Notice that the access order terminates upon placement for adoption.
 - 3. In the case of notice to a person described in paragraph 1 of subsection (2), the fact that the person has a right to apply for an openness order within 30 days after notice is received.
 - 4. In the case of notice to a person described in paragraph 2 of subsection (2), the fact that the person described in paragraph 1 of subsection (2) has the right to apply for an openness order within 30 days after notice is received. 2011, c. 12, s. 6.

Method of giving notice

- (4) Notice may be given by any of the following methods:
- 1. Leaving a copy,
 - i. with the person,
 - ii. if the person appears to be mentally incapable in respect of an issue in the notice, with the person and with the guardian of the person's property or, if none, with the Public Guardian and Trustee, or
 - iii. if the person is a child, with the child and with the child's lawyer, if any.
 - 2. Leaving a copy with a lawyer who accepts the notice in writing on a copy of the document. 2011, c. 12, s. 6.

Alternate method

(5) On application without notice by a society, the court may order that notice under subsection (2) be given by another method chosen by the court if the society,

- (a) provides detailed evidence showing,
 - (i) what steps have been taken to locate the person to whom the notice is to be given, and
 - (ii) if the person has been located, what steps have been taken to give the notice to the person; and
- (b) shows that the method of giving notice could reasonably be expected to bring the notice to the person's attention. 2011, c. 12, s. 6.

Notice not required

(6) On application without notice by a society, the court may order that the society is not required to give notice under subsection (2) if,

- (a) reasonable efforts to locate the person to whom the notice is to be given have not been or would not be successful; and
- (b) there is no method of giving notice that could reasonably be expected to bring the notice to the person's attention. 2011, c. 12, s. 6.

Section Amendments with date in force (d/m/y)

2011, c. 12, s. 6 - 1/09/2011

Access order in effect**Application for openness order**

145.1.2 (1) A person described in paragraph 1 of subsection 145.1.1 (2) may, within 30 days after notice is received, apply to the court for an openness order. 2011, c. 12, s. 6.

Notice of application

- (2) A person making an application for an openness order under this section shall give notice of the application to,
 - (a) the society having care and custody of the child;
 - (b) the child, except as otherwise provided under subsection 39 (4) or (5); and
 - (c) if the child is bringing the application, the person who will be permitted to communicate with or have a relationship with the child if the order is made. 2011, c. 12, s. 6.

Condition on placement

(3) A society shall not place a child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section. 2011, c. 12, s. 6.

Information before placement

(4) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:

1. The fact that such an application has been made.
2. The relationship of the applicant to the child.
3. The details of the openness arrangement requested. 2011, c. 12, s. 6.

Outcome of application

(5) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, after an adoption order is made, the adoptive parent of the outcome of the application. 2011, c. 12, s. 6.

Openness order

- (6) The court may make an openness order under this section in respect of a child if it is satisfied that,
 - (a) the openness order is in the best interests of the child;

- (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
- (c) the child has consented to the order, if he or she is 12 years of age or older. 2011, c. 12, s. 6.

Same

(7) In deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption or, after the adoption order is made, the adoptive parent to comply with the arrangement under the openness order. 2011, c. 12, s. 6.

Consent of society required

(8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society. 2011, c. 12, s. 6.

Termination of openness order if Crown wardship terminates

(9) Any openness order made under this section in respect of a child terminates if the child ceases to be a Crown ward by reason of an order made under subsection 65.2 (1). 2011, c. 12, s. 6.

Temporary orders

(10) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests. 2011, c. 12, s. 6.

Section Amendments with date in force (d/m/y)

2011, c. 12, s. 6 - 1/09/2011

Application to vary or terminate openness order

145.2 (1) A society or a person with whom a child has been placed for adoption may apply to the court for an order to vary or terminate an openness order made under section 145.1 or 145.1.2. 2006, c. 5, s. 38; 2011, c. 12, s. 7 (1).

Time for making application

(2) An application under this section shall not be made after an order for the adoption of the child is made under section 146. 2006, c. 5, s. 38.

Notice of application

- (3) A society or person making an application under this section shall give notice of the application to,
 - (a) the child, except as otherwise provided under subsection 39 (4) or (5);
 - (b) every person who is permitted to communicate with or have a relationship with the child under the openness order;
 - (c) any person with whom the society has placed or plans to place the child for adoption, if the application under this section is made by the society; and
 - (d) any society that supervises or participates in the arrangement under the openness order that is the subject of the application. 2006, c. 5, s. 38.

Order to vary openness order

- (4) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
 - (a) a material change in circumstances has occurred;
 - (b) the proposed order is in the child's best interests; and
 - (c) the proposed order would continue a relationship that is beneficial and meaningful to the child. 2006, c. 5, s. 38.

Order to terminate openness order

- (5) The court shall not terminate an openness order under this section unless the court is satisfied that,
 - (a) a material change in circumstances has occurred;
 - (b) termination of the order is in the child's best interests; and
 - (c) the relationship that is the subject of the order is no longer beneficial and meaningful to the child. 2006, c. 5, s. 38; 2011, c. 12, s. 7 (2).

Consent of society required

(6) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society. 2006, c. 5, s. 38; 2011, c. 12, s. 7 (3).

Alternative dispute resolution

(7) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding. 2006, c. 5, s. 38.

Temporary orders

(8) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests. 2011, c. 12, s. 7 (4).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 38 - 30/11/2006

2011, c. 12, s. 7 (1-4) - 1/09/2011

ADOPTION ORDERS

Orders for adoption

Adoption of child

146. (1) The court may make an order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee; or
- (b) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed. R.S.O. 1990, c. C.11, s. 146 (1).

Family adoption

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent. R.S.O. 1990, c. C.11, s. 146 (2); 2016, c. 23, s. 38 (17).

Adoption of adult, etc.

(3) The court may make an order for the adoption of,

- (a) a person eighteen years of age or more; or
- (b) a child who is sixteen years of age or more and has withdrawn from parental control,

on another person's application. R.S.O. 1990, c. C.11, s. 146 (3).

Who may apply

(4) An application under this section may only be made,

- (a) by one individual; or
- (b) jointly, by two individuals who are spouses of one another.
- (c) REPEALED: 2005, c. 5, s. 7 (1).

R.S.O. 1990, c. C.11, s. 146 (4); 1999, c. 6, s. 6; 2005, c. 5, s. 7 (1).

Residency requirement

(5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario. R.S.O. 1990, c. C.11, s. 146 (5).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 6 - 1/03/2000

2005, c. 5, s. 7 (1) - 9/03/2005

2016, c. 23, s. 38 (17) - 01/01/2017

Where applicant a minor

147. The court shall not make an order under section 146 on the application of a person who is less than eighteen years of age unless the court is satisfied that special circumstances justify making the order. R.S.O. 1990, c. C.11, s. 147.

Where order not to be made

148. Where the court has made an order,

- (a) dispensing with a consent under section 138; or
- (b) refusing to permit the late withdrawal of a consent under subsection 139 (1),

the court shall not make an order under section 146 until,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned,

whichever is later. R.S.O. 1990, c. C.11, s. 148.

Director's statement

149. (1) Where an application is made for an order for the adoption of a child under subsection 146 (1), a Director shall, before the hearing, file a written statement with the court indicating,

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 146 (1) (b), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) in the case of an application under clause 146 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 146 (1) (b), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order,

and referring to any additional circumstances that the Director wishes to bring to the court's attention. R.S.O. 1990, c. C.11, s. 149 (1); 1993, c. 27, Sched.

Local director may make statement

(2) Where a child was placed by a society and has resided with the applicant for at least six months, the statement under subsection (1) may be made and filed by the local director.

Amendment of statement, etc.

(3) The Director or local director, as the case may be, may amend the statement referred to in subsection (1) at any time and may attend at the hearing and make submissions.

Where recommendation negative

(4) Where the statement under subsection (1) indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least thirty days before the hearing.

Report of child's adjustment

(5) The statement under subsection (1) shall be based on a report of the child's adjustment in the applicant's home, prepared by,

- (a) the society that placed the child or has jurisdiction where the child is placed; or
- (b) a person approved by the Director or local director.

Family adoptions: court may require statement

(6) Where an application is made for an order for the adoption of a child under subsection 146 (2), the court may order that subsections (1), (3), (4) and (5) shall apply to the application. R.S.O. 1990, c. C.11, s. 149 (2-6).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Place of hearing

150. (1) An application for an adoption order shall be heard and dealt with in the county or district in which,

- (a) the applicant; or
- (b) the person to be adopted,

resides at the time the application is filed.

Transfer of proceeding

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there. R.S.O. 1990, c. C.11, s. 150.

Rules re applications**Hearing in private**

151. (1) An application for an adoption order shall be heard and dealt with in the absence of the public. R.S.O. 1990, c. C.11, s. 151 (1).

Court files private

(2) No person shall have access to the court file concerning an application for an adoption order, except,

- (a) the court and authorized court employees;
- (b) the parties and the persons representing them under the authority of the *Law Society Act*; and
- (c) a Director and a local director. R.S.O. 1990, c. C.11, s. 151 (2); 2006, c. 21, Sched. C, s. 100 (1).

Stale applications

(3) Where an application for an adoption order is not heard within twelve months of the day on which the applicant signed it,

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application. R.S.O. 1990, c. C.11, s. 151 (3).

No right to notice

- (4) No person,
- (a) who has given a consent under clause 137 (2) (a) and has not withdrawn it;
- (b) whose consent has been dispensed with under section 138; or
- (c) who is a parent of a Crown ward who is placed for adoption,

is entitled to receive notice of an application under section 146. R.S.O. 1990, c. C.11, s. 151 (4).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 100 (1) - 1/05/2007

Power of court

152. (1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*. R.S.O. 1990, c. C.11, s. 152 (1); 1993, c. 27, Sched.

Duty of court

(2) The court shall not make an order for the adoption of a child under subsection 146 (1) or (2) unless the court is satisfied that,

- (a) every person who has given a consent under section 137 understands the nature and effect of the adoption order; and
- (b) every applicant understands and appreciates the special role of an adoptive parent.

Participation of child

(3) Where an application is made for an order for the adoption of a child under subsection 146 (1) or (2), the court shall,

(a) inquire into the child's capacity to understand and appreciate the nature of the application; and

(b) consider the child's views and wishes, if they can be reasonably ascertained,

and where it is practical to do so shall hear the child.

Participation of adult, etc.

(4) Where an application is made for an order for the adoption of a person under subsection 146 (3), the court shall consider the person's views and wishes and, on request, hear the person. R.S.O. 1990, c. C.11, s. 152 (2-4).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Change of name

153. (1) Subject to subsection (1.1), when the court makes an order under section 146, the court may, at the request of the applicant or applicants,

(a) change the person's surname to any surname that the person could have been given if he or she had been born in Ontario to the applicant or applicants at the time of the order;

(b) change the person's forename;

(c) change the person's surname as described in clause (a) and change the person's forename;

(d) change the person's single name to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name;

(e) change the person's single name to a name with at least one forename and a surname as described in clause (a); or

(f) change the person's forename and surname to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name. 2016, c. 5, Sched. 33, s. 7.

Same

(1.1) A court shall not make a change described in subsection (1) unless,

(a) doing so is in the best interests of the child, if the person adopted is a child; and

(b) the person adopted consents, if the person is 12 years of age or more. 2016, c. 5, Sched. 33, s. 7.

When child's consent not required

(2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 137 (9). R.S.O. 1990, c. C.11, s. 153 (2).

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 33, s. 7 - 01/01/2017

Varying or terminating openness orders after adoption

153.1 (1) Any of the following persons may apply to the court to vary or terminate an openness order made under section 145.1 or 145.1.2 after an order for adoption has been made under section 146:

1. An adoptive parent.

2. A person who is permitted to communicate or have a relationship with a child under the order.

3. Any society that supervises or participates in the arrangement under the openness order that is the subject of the application. 2006, c. 5, s. 39; 2011, c. 12, s. 8 (1).

Leave

(2) Despite paragraph 2 of subsection (1), a person who is permitted to communicate or have a relationship with a child under an openness order shall not make an application under subsection (1) without leave of the court. 2006, c. 5, s. 39.

Jurisdiction

- (3) An application under subsection (1) shall be made in the county or district,
 - (a) in which the child resides, if the child resides in Ontario; or
 - (b) in which the adoption order for the child was made if the child does not reside in Ontario, unless the court is satisfied that the preponderance of convenience favours having the matter dealt with by the court in another county or district. 2006, c. 5, s. 39.

Notice

(4) A person making an application under subsection (1) shall give notice of the application to every other person who could have made an application under that subsection with respect to the order. 2006, c. 5, s. 39.

Child 12 or older

(5) A child 12 years of age or more who is the subject of an application under this section is entitled to receive notice of the application and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive notice of the application and not be permitted to be present at the hearing. 2006, c. 5, s. 39.

Child under 12

(6) A child less than 12 years of age who is the subject of an application under this section is not entitled to receive notice of the application or to be present at the hearing unless,

- (a) the court is satisfied that the child is capable of understanding the hearing and will not suffer emotional harm by being present at the hearing; and
- (b) the court orders that the child receive notice of the application and be permitted to be present at the hearing. 2006, c. 5, s. 39.

Order to vary openness order

- (7) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
 - (a) a material change in circumstances has occurred;
 - (b) the proposed order is in the child's best interests; and
 - (c) the proposed order would continue a relationship that is beneficial and meaningful to the child. 2006, c. 5, s. 39.

Order to terminate openness order

- (8) The court shall not terminate an openness order under this section unless the court is satisfied that,
 - (a) a material change in circumstances has occurred;
 - (b) termination of the order is in the child's best interests; and
 - (c) the relationship that is the subject of the order is no longer beneficial and meaningful to the child. 2006, c. 5, s. 39; 2011, c. 12, s. 8 (2).

Consent of society required

(9) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society. 2006, c. 5, s. 39; 2011, c. 12, s. 8 (3).

Alternative dispute resolution

(10) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to a matter relevant to the proceeding. 2006, c. 5, s. 39.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 39 - 30/11/2006

2011, c. 12, s. 8 (1-3) - 1/09/2011

Appeal of order to vary or terminate openness order

- 153.2** (1) An appeal from a court's order under section 145.2 or 153.1 may be made to the Superior Court of Justice by,
 - (a) the child if the child had legal representation in a proceeding under section 145.2 or 153.1; or

- (b) any person who was entitled to notice of the application to vary or terminate the openness order that is the subject of the appeal. 2006, c. 5, s. 39.

Temporary order

(2) Pending final disposition of the appeal, the Superior Court of Justice may on any party's motion make a temporary order in the child's best interests that varies or suspends an openness order. 2006, c. 5, s. 39.

No time extension

- (3) No extension of the time for an appeal shall be granted. 2006, c. 5, s. 39.

Further evidence

- (4) The court may receive further evidence relating to events after the appealed decision. 2006, c. 5, s. 39.

Place of hearing

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made. 2006, c. 5, s. 39.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 39 - 30/11/2006

Application of s. 151

153.3 Subsections 151 (1) and (2) apply with necessary modifications to proceedings under sections 145.1, 145.1.2, 145.2, 153.1 and 153.2. 2006, c. 5, s. 39; 2011, c. 12, s. 9.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 39 - 30/11/2006

2011, c. 12, s. 9 - 1/09/2011

Child may participate

153.4 A child who receives notice of a proceeding under section 145.1, 145.1.2, 145.2, 153.1 or 153.2 is entitled to participate in the proceeding as if he or she were a party. 2006, c. 5, s. 39; 2011, c. 12, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 39 - 30/11/2006

2011, c. 12, s. 10 - 1/09/2011

Legal representation of child

153.5 (1) A child may have legal representation at any stage in a proceeding under section 145.1, 145.1.2, 145.2 or 153.1 and subsection 38 (2) applies with necessary modifications to such a proceeding. 2006, c. 5, s. 39; 2011, c. 12, s. 11.

Children's Lawyer

(2) Where the court determines that legal representation is desirable, the court may, with the consent of the Children's Lawyer, authorize the Children's Lawyer to represent the child. 2006, c. 5, s. 39.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 39 - 30/11/2006

2011, c. 12, s. 11 - 1/09/2011

OPENNESS AGREEMENTS

Who may enter into openness agreement

153.6 (1) For the purposes of facilitating communication or maintaining relationships, an openness agreement may be made by an adoptive parent of a child or by a person with whom a society or licensee has placed or plans to place a child for adoption and any of the following persons:

1. A birth parent, birth relative or birth sibling of the child.
2. A foster parent of the child or another person who cared for the child or in whose custody the child was placed at any time.

3. A member of the child's extended family or community with whom the child has a significant relationship or emotional tie.
4. An adoptive parent of a birth sibling of the child or a person with whom a society or licensee has placed or plans to place a birth sibling of the child for adoption.
5. If the child is an Indian or native person, a member of the child's band or native community who may not have had a significant relationship or emotional tie with the child in the past but will help the child recognize the importance of his or her Indian or native culture and preserve his or her heritage, traditions and cultural identity. 2006, c. 5, s. 40; 2016, c. 23, s. 38 (12, 13).

When agreement may be made

- (2) An openness agreement may be made at any time before or after an adoption order is made. 2006, c. 5, s. 40.

Agreement may include dispute resolution process

- (3) An openness agreement may include a process to resolve disputes arising under the agreement or with respect to matters associated with it. 2006, c. 5, s. 40.

Views and wishes of child

- (4) Where the views and wishes of the child can be reasonably ascertained, they shall be considered before an openness agreement is made. 2006, c. 5, s. 40.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 40 - 30/11/2006

2016, c. 23, s. 38 (12, 13) - 01/01/2017

INTERIM ORDERS

Interim order

154. (1) Where an application is made for an order for the adoption of a child under subsection 146 (1) or (2), the court, after considering the statement made under subsection 149 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

Terms and conditions

- (2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,
 - (a) the child's maintenance and education;
 - (b) supervision of the child; and
 - (c) any other matter the court considers advisable in the child's best interests.

Not an adoption order

- (3) An order under subsection (1) is not an adoption order.

Consents required

- (4) Sections 137 and 138 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

Departure from Ontario

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 146 (1) or (2) where the statement made under subsection 149 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order. R.S.O. 1990, c. C.11, s. 154.

Successive adoption orders

155. An adoption order under subsection 146 (1) or (2) or an interim custody order under subsection 154 (1) may be made in respect of a person who is the subject of an earlier adoption order. R.S.O. 1990, c. C.11, s. 155.

APPEALS

Appeals

Appeal: adoption order

156. (1) An appeal from a court's order under section 146 may be made to the Superior Court of Justice by,

- (a) the applicant for the adoption order; and
- (b) the Director or local director who made the statement under subsection 149 (1). R.S.O. 1990, c. C.11, s. 156 (1); 1999, c. 2, s. 35.

Idem: dispensing with consent

(2) An appeal from a court's order under section 138 dispensing with a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1); and
- (b) the person whose consent was dispensed with. R.S.O. 1990, c. C.11, s. 156 (2); 1999, c. 2, s. 35.

Idem: late withdrawal of consent

(3) An appeal from a court's order under subsection 139 (1) permitting the late withdrawal of a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1); and
- (b) the person who gave the consent. R.S.O. 1990, c. C.11, s. 156 (3); 1999, c. 2, s. 35.

No extension of time for appeal

- (4) No extension of the time for an appeal shall be granted.

Place of hearing

- (5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Hearing in private

- (6) An appeal under this section shall be heard in the absence of the public. R.S.O. 1990, c. C.11, s. 156 (4-6).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

EFFECT OF ADOPTION ORDER**Order final**

157. (1) An adoption order under section 146 is final and irrevocable, subject only to section 156 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review. R.S.O. 1990, c. C.11, s. 157.

Validity of adoption order not affected by openness order or agreement

(2) Compliance or non-compliance with the terms of an openness order or openness agreement relating to a child does not affect the validity of an order made under section 146 for the adoption of the child. 2006, c. 5, s. 41.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 41 - 30/11/2006

Status of adopted child

158. (1) In this section,

“adopted child” means a person who was adopted in Ontario. R.S.O. 1990, c. C.11, s. 158 (1).

Same

- (2) For all purposes of law, as of the date of the making of an adoption order,
 - (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and
 - (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent. R.S.O. 1990, c. C.11, s. 158 (2); 2006, c. 5, s. 42.

How relationships determined

(3) The relationship to one another of all persons, including the adopted child, the adoptive parent, the kindred of the adoptive parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2). R.S.O. 1990, c. C.11, s. 158 (3).

Reference in will or other document

(4) In any will or other document made at any time before or after the 1st day of November, 1985, and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed. R.S.O. 1990, c. C.11, s. 158 (4).

Application of section

(5) This section applies and shall be deemed always to have applied with respect to any adoption made under any Act heretofore in force, but not so as to affect,

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and
- (b) any interest in property or right that has indefeasibly vested before the 1st day of November, 1985. R.S.O. 1990, c. C.11, s. 158 (5); 2009, c. 33, Sched. 7, s. 1 (9).

Exception

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections. R.S.O. 1990, c. C.11, s. 158 (6).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 42 - 30/11/2006

2009, c. 33, Sched. 7, s. 1 (9) - 15/12/2009

Effect of foreign adoption

159. An adoption effected according to the law of another jurisdiction, before or after the 1st day of November, 1985, has the same effect in Ontario as an adoption under this Part. R.S.O. 1990, c. C.11, s. 159.

No order for access by birth parent, etc.

160. (1) Where an order for the adoption of a child has been made under this Part, no court shall make an order under this Part for access to the child by,

- (a) a birth parent; or
 - (b) a member of a birth parent's family. R.S.O. 1990, c. C.11, s. 160 (1); 2016, c. 23, s. 38 (14).
- (2) REPEALED: 2016, c. 23, s. 38 (15).

Section Amendments with date in force (d/m/y)

2016, c. 23, s. 38 (14, 15) - 01/01/2017

RECORDS, CONFIDENTIALITY AND DISCLOSURE**Parent to be informed on request**

161. At the request of a person whose consent to an adoption was required under clause 137 (2) (a) or a predecessor of that provision and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption. R.S.O. 1990, c. C.11, s. 161.

Court papers

162. (1) In this section,

“court” includes the Superior Court of Justice. R.S.O. 1990, c. C.11, s. 162 (1); 1999, c. 2, s. 35.

Requirement to seal documents

(2) Subject to subsections (3) and 162.2 (2), the documents used on an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the court office by the appropriate court officer, and shall not be opened for inspection except by court order. 2005, c. 25, s. 15 (1, 2).

Transmission of order

(3) Within thirty days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall transmit,

- (a) the original order to the adoptive parent;
- (b) REPEALED: 2005, c. 25, s. 15 (3).
- (c) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;
- (d) if the adopted child is an Indian, one certified copy to the Registrar under the *Indian Act* (Canada);
- (e) one certified copy to such other persons as may be prescribed. R.S.O. 1990, c. C.11, s. 162 (3); 2005, c. 25, s. 15 (3, 4).

Other court files

(4) Unless the court orders otherwise, only the court may examine identifying information that comes from the records of any of the following persons that is contained in any court file respecting the judicial review of a decision made by any of them:

- 1. A designated custodian under section 162.1.
- 2. A person who, by virtue of a regulation made under clause 220 (1) (c.5), reviews or hears appeals of decisions concerning the disclosure of information under section 162.2 or 162.3.
- 3. A person referred to in subsection 162.2 (1) or 162.3 (1). 2005, c. 25, s. 15 (5).

Same

(5) No person shall, without the court's permission, disclose identifying information described in subsection (4) that the person obtained from the court file. 2005, c. 25, s. 15 (5).

Definition

(6) In subsections (4) and (5),

“identifying information” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates. 2005, c. 25, s. 15 (5).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

2005, c. 25, s. 15 (1-5) - 17/09/2007

Designation of custodians of information

162.1 (1) The Lieutenant Governor in Council may, by regulation, designate one or more persons to act as custodians of information that relates to adoptions and may impose such conditions and restrictions with respect to the designation as the Lieutenant Governor in Council considers appropriate. 2005, c. 25, s. 16.

Powers and duties

(2) A designated custodian may exercise such powers and shall perform such duties as may be prescribed with respect to the information provided to the custodian under this Act. 2005, c. 25, s. 16.

Same, disclosure of information

(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed. 2005, c. 25, s. 16.

(4) REPEALED: 2008, c. 5, s. 12.

Agreements

(5) The Minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians. 2005, c. 25, s. 16.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 16 - 17/09/2007

2008, c. 5, s. 12 - 15/05/2008

Disclosure to designated custodian

162.2 (1) The Minister, the Registrar General under the *Vital Statistics Act*, a society, a licensee and such other persons as may be prescribed shall give a designated custodian under section 162.1 such information that relates to adoptions as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

Same, adoption orders

(2) A court shall give a designated custodian a certified copy of an adoption order made under this Part together with such other documents as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 16 - 17/09/2007

Disclosure to others

By the Minister

162.3 (1) The Minister shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

By a society

(2) A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

By a licensee

(3) A licensee shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

By a custodian

(4) A designated custodian under section 162.1 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed. 2005, c. 25, s. 16.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 16 - 17/09/2007

Scope of application

162.4 Sections 162.2 and 162.3 apply with respect to information that relates to an adoption regardless of when the adoption order was made. 2005, c. 25, s. 16.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 16 - 17/09/2007

163. (1) REPEALED: 2005, c. 25, s. 17 (1).

(2) REPEALED: 2005, c. 25, s. 17 (6).

(3) REPEALED: 2005, c. 25, s. 17 (7).

(4) REPEALED: 2005, c. 25, s. 17 (8).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 17 (3, 4, 8) - 3/01/2006; 2005, c. 25, s. 17 (5) - 18/08/2007; 2005, c. 25, s. 17 (1, 2, 6, 7) - 17/09/2007

164. REPEALED: 2005, c. 25, s. 18.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 18 - 17/09/2007

CONFIDENTIALITY OF ADOPTION RECORDS

Confidentiality of adoption information

165. (1) Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the Ministry, a society, a licensee or a designated custodian under section 162.1 and no person shall permit it to be inspected, removed, altered or disclosed unless the inspection, removal, alteration or disclosure is,

- (a) necessary for the maintenance or updating of the information by the Ministry, society, licensee or designated custodian or their staff; or
- (b) authorized under this Act. 2008, c. 5, s. 13.

Application

- (2) This section applies regardless of when the adoption order was made. 2005, c. 25, s. 19.
- (3), (4) REPEALED: 2005, c. 25, s. 19.

Privacy

(5) The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption. R.S.O. 1990, c. C.11, s. 165 (5).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 19 - 17/09/2007

2008, c. 5, s. 13 - 14/05/2008

- 166.** (1)-(3) REPEALED: 2005, c. 25, s. 20 (1).
- (4) REPEALED: 2005, c. 25, s. 20 (2).
- (5) REPEALED: 2005, c. 25, s. 20 (5).
- (6) REPEALED: 2005, c. 25, s. 20 (6).
- (7) REPEALED: 2005, c. 25, s. 20 (8).
- (8) REPEALED: 2005, c. 25, s. 20 (10).
- (9) REPEALED: 2005, c. 25, s. 20 (11).
- (10) REPEALED: 2005, c. 25, s. 20 (13).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 20 (6, 7) - 3/01/2006; 2005, c. 25, s. 20 (1-5, 8-13) - 17/09/2007

- 167.** (1) REPEALED: 2005, c. 25, s. 21 (1).
- (2), (3) REPEALED: 2005, c. 25, s. 21 (2).
- (4) REPEALED: 2005, c. 25, s. 21 (4).
- (5) REPEALED: 2005, c. 25, s. 21 (6).
- (6) REPEALED: 2005, c. 25, s. 21 (7).
- (7) REPEALED: 2005, c. 25, s. 21 (8).
- (8) REPEALED: 2005, c. 25, s. 21 (9).
- (9) REPEALED: 2005, c. 25, s. 21 (12).
- (10) REPEALED: 2005, c. 25, s. 21 (13).
- (11) REPEALED: 2005, c. 25, s. 21 (15).
- (12) REPEALED: 2005, c. 25, s. 21 (16).
- (13) REPEALED: 2005, c. 25, s. 21 (17).
- (14) REPEALED: 2005, c. 25, s. 21 (18).
- (15) REPEALED: 2005, c. 25, s. 21 (20).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. E, s. 1 (3, 4) - 22/12/1999

2005, c. 25, s. 21 (5, 10, 11, 14, 17) - 3/01/2006; 2005, c. 25, s. 21 (2, 3) - 24/04/2006; 2005, c. 25, s. 21 (1, 4, 6-9, 12, 13, 15, 16, 18-20) - 17/09/2007

168. REPEALED: 2005, c. 25, s. 22.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 22 - 17/09/2007

168.1 REPEALED: 2005, c. 25, s. 23 (2).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 23 (1) - 3/01/2006; 2005, c. 25, s. 23 (2) - 17/09/2007

169. (1), (2) REPEALED: 2005, c. 25, s. 24 (1).

(3) REPEALED: 2005, c. 25, s. 24 (3).

(4) REPEALED: 2005, c. 25, s. 24 (4).

(5) REPEALED: 2005, c. 25, s. 24 (6).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 24 (1, 2) - 3/01/2006; 2005, c. 25, s. 24 (3-6) - 18/08/2007

170. (1) REPEALED: 2005, c. 25, s. 25 (1).

(2) REPEALED: 2005, c. 25, s. 25 (2).

(3) REPEALED: 2005, c. 25, s. 25 (4).

(4) REPEALED: 2005, c. 25, s. 25 (5).

(5) REPEALED: 2005, c. 25, s. 25 (7).

(6) REPEALED: 2005, c. 25, s. 25 (8).

(7) REPEALED: 2005, c. 25, s. 25 (9).

(8) REPEALED: 2005, c. 25, s. 25 (11).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 25 (5, 6) - 3/01/2006; 2005, c. 25, s. 25 (1-4, 7-11) - 17/09/2007

171. REPEALED: 2005, c. 25, s. 26.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 26 - 17/09/2007

172. REPEALED: 2005, c. 25, s. 27.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 27 - 17/09/2007

2006, c. 21, Sched. C, s. 100 (2); 2006, c. 21, Sched. C, s. 101 (3) - 1/05/2007

173. REPEALED: 2005, c. 25, s. 28.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 28 - 17/09/2007

174. REPEALED: 2005, c. 25, s. 29.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 29 - 17/09/2007

OFFENCES

No payments for adoption

175. No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 137 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and
- (f) a subsidy paid by an approved agency or by the Minister to an adoptive parent or to a person with whom a child is placed for adoption. R.S.O. 1990, c. C.11, s. 175.

Offence

176. (1) A person who contravenes subsection 141 (1), (2) or (3) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(2) A person who contravenes subsection 141 (4) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 143 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(4) A person who contravenes section 175 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three years, or to both.

Limitation period

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed. R.S.O. 1990, c. C.11, s. 176.

176.1**Section Amendments with date in force (d/m/y)**

2005, c. 25, s. 30 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2015

INJUNCTION

Injunction

177. (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening subsection 143 (2), on the society's or licensee's application. R.S.O. 1990, c. C.11, s. 177 (1); 1999, c. 2, s. 35.

Variation, etc.

(2) The Court may vary or terminate an order made under subsection (1), on any person's application. R.S.O. 1990, c. C.11, s. 177 (2).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

**PART VIII
CONFIDENTIALITY OF AND ACCESS TO RECORDS**

178. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 178 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2005, c. 5, s. 7 (2) - 9/03/2005

Exceptions

179. (1), (2) REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Exception re adoption-related information

(2.1) This Part does not apply to information given to a designated custodian under section 162.2 or to another person under section 162.3. 2005, c. 25, s. 31 (2).

(3) SPENT: R.S.O. 1990, c. C.11, s. 179 (3).

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 179 (1, 2) - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

1999, c. 2, s. 31 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2004, c. 3, Sched. A, s. 78 (7) - 1/11/2004

2005, c. 25, s. 31 (1, 2) - 17/09/2007

DISCLOSURE OF RECORDS

180. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 180 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2006, c. 19, Sched. D, s. 2 (38) - no effect - see R.S.O. 1990, c. C.11, s. 180

181., 182. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 181, 182 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

Disclosure of records of mental disorders

183. (1) In this section,

“record of a mental disorder” means a record or a part of a record made about a person concerning a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person’s capacity to make reasoned judgments. R.S.O. 1990, c. C.11, s. 183 (1).

Disclosure pursuant to summons

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a summons, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act unless a physician states in writing that he or she believes that to do so,

(a) is likely to result in harm to the treatment or recovery of the person to whom the record relates; or

- (b) is likely to result in,
 - (i) injury to the mental condition of another person, or
 - (ii) bodily harm to another person. R.S.O. 1990, c. C.11, s. 183 (2).

Hearing to be held

(3) The court before which a matter described in subsection (2) is in issue on motion or, where a disclosure, transmittal or examination is not required by a court, the Divisional Court on motion shall determine whether the record referred to in the physician's statement should be disclosed, transmitted or examined. R.S.O. 1990, c. C.11, s. 183 (3).

Idem

(4) A motion under subsection (3) shall be on notice to the physician and shall be held in the absence of the public. R.S.O. 1990, c. C.11, s. 183 (4).

Consideration of court

(5) In a motion under subsection (3), the court shall consider whether or not the disclosure, transmittal or examination of the record referred to in the physician's statement is likely to have a result described in clause (2) (a) or (b) and for the purpose the court may examine the record. R.S.O. 1990, c. C.11, s. 183 (5).

Order of court

(6) The court shall not order that the record referred to in the physician's statement be disclosed, transmitted or examined if the court is satisfied that a result described in clause (2) (a) or (b) is likely unless satisfied that to do so is essential in the interests of justice. R.S.O. 1990, c. C.11, s. 183 (6).

Conflict

(6.1) Subsections (2) to (6) prevail despite anything in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 78 (8).

Return of record to service provider

(7) Where a record of a mental disorder is required under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted shall return the record to the service provider forthwith after the determination of the matter in issue in respect of which the record was required. R.S.O. 1990, c. C.11, s. 183 (7).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 78 (8) - 1/11/2004

184.-191. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. C.11, s. 184-191 - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

PART IX LICENSING

Definitions

192. In this Part,
“children's residence” means,

- (a) a parent model residence where five or more children not of common parentage, or
- (b) a staff model residence where three or more children not of common parentage,
live and receive residential care, and includes a foster home or other home or institution that is supervised or operated by a society or a place of temporary detention or a place of secure or of open custody, but does not include,
- (c) a house licensed under the *Private Hospitals Act*,
- (d) a child care centre as defined in the *Child Care and Early Years Act, 2014*,
- (e) a recreational camp under the *Health Protection and Promotion Act*,

- (f) a home for special care under the *Homes for Special Care Act*,
- (g) a school or private school as defined in the *Education Act*,
- (h) a hostel intended for short term accommodation,
- (i) a hospital that receives financial aid from the Government of Ontario, or
- (j) a group home or similar facility that receives financial assistance from the Minister of Correctional Services but receives no financial assistance from the Minister under this Act; (“foyer pour enfants”)

“non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

- (a) to which Part III of the *Corporations Act* applies, or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act”. See: 2010, c. 15, ss. 217, 249.

- (b) that is incorporated by or under a general or special Act of the Parliament of Canada; (“agence sans but lucratif”)

“parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis; (“foyer de type familial”)

“staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty. (“foyer avec rotation de personnel”) R.S.O. 1990, c. C.11, s. 192; 2009, c. 2, s. 14; 2014, c. 11, Sched. 6, s. 2 (2).

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 14 - 1/04/2009

2010, c. 15, s. 217 - not in force

2014, c. 11, Sched. 6, s. 2 (2) - 31/08/2015

WHERE LICENCE REQUIRED

Licences

Licence required to operate children’s residence, etc.

193. (1) No person shall,

- (a) establish, operate or maintain a children’s residence; or
- (b) provide, directly or indirectly, residential care for three or more children not of common parentage in places that are not children’s residences,

except under the authority of a licence issued by a Director under this Part.

Idem: placement for adoption

(2) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director under this Part.

Issuing licence

(3) Subject to section 195, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any terms and conditions imposed by the Director.

Idem

(4) Despite subsection (3),

- (a) a licence shall not be issued to a partnership or association of persons; and
- (b) a licence to place a child for adoption shall only be issued to an individual or a non-profit agency.

Renewal of licence

(5) Subject to section 196, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any terms and conditions imposed by the Director.

Provisional licence or renewal

(6) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

Not transferable

(7) A licence is not transferable.

Placements must be in accord with Act and regulations

(8) No licensee shall place a child in a residential placement except in accordance with this Act and the regulations. R.S.O. 1990, c. C.11, s. 193.

Licences, terms and conditions

193.1 During the course of a licence, a Director may impose terms and conditions on the licence or amend the terms and conditions on the licence. 2009, c. 33, Sched. 7, s. 1 (10).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 7, s. 1 (10) - 15/12/2009

POWERS OF PROGRAM SUPERVISOR

Powers of program supervisor

194. (1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter,

- (a) the premises of a licensee;
- (b) a children's residence; or
- (c) a place where a child receives residential care,

and may inspect the facilities, the services provided, the books of account and the records relating to the services, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or knowingly give false information about the premises or services to a program supervisor.

Idem

(3) No licensee or person in charge of premises referred to in clause (1) (a), (b) or (c) shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the premises or services that the program supervisor reasonably requires.

Regulations re exercise of power of entry

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations. R.S.O. 1990, c. C.11, s. 194.

REFUSAL AND REVOCATION

Grounds for refusal

195. A Director may refuse to issue a licence where, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to carry on the activity for which the licence is required in a responsible manner in accordance with this Act and the regulations;
- (b) the past conduct of the applicant or an employee of the applicant or, where the applicant is a corporation, of an officer or director of the corporation, affords reasonable grounds for belief that the activity for which the licence is required will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) the premises in which the applicant proposes to establish, operate and maintain a children's residence or to provide residential care, as the case may be, do not comply with the requirements of this Part and the regulations. R.S.O. 1990, c. C.11, s. 195.

Refusal to renew; revocation

196. A Director may refuse to renew or may revoke a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under his or her control or direction or associated with him or her to contravene,
 - (i) this Act or the regulations,
 - (ii) another Act, or the regulations made under another Act, that applies to the activity for which the licence is required, or
 - (iii) a term or condition of the licence;
- (b) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part and the regulations;
- (c) the activity for which the licence is required is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (d) a person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations, or by another Act or the regulations made under another Act that applies to the activity for which the licence is required; or
- (e) a change has occurred in the employees, officers or directors of the applicant that would, if the applicant were applying for the licence in the first instance, afford grounds under clause 195 (b) for refusing to issue the licence. R.S.O. 1990, c. C.11, s. 196.

HEARING BY TRIBUNAL**Hearings arising out of s. 195 or 196****Notice of proposal**

197. (1) Where a Director proposes to refuse to issue a licence under section 195 or to refuse to renew or to revoke a licence under section 196, the Director shall cause notice of the proposal, together with written reasons, to be served on the applicant or licensee, who may require a hearing. R.S.O. 1990, c. C.11, s. 197 (1).

Request for hearing

(2) A notice under subsection (1) shall inform the applicant or licensee that the applicant or licensee is entitled to a hearing by the Tribunal if he, she or it mails or delivers to the Director and to the Tribunal, within ten days after the notice under subsection (1) is served, a written request for a hearing. R.S.O. 1990, c. C.11, s. 197 (2); 1999, c. 12, Sched. G, s. 16 (4).

Note: Despite the amendment made by the Statutes of Ontario, 1999, chapter 12, Schedule G, subsection 16 (4), members of the Child and Family Services Review Board immediately before April 1, 2000 shall be members of the Licence Appeal Tribunal for the purpose of performing the duties of the Tribunal with respect to proceedings before the Board that were commenced before April 1, 2000. See: 1999, c. 12, Sched. G, s. 16 (5).

Powers of Director where no hearing required

(3) Where an applicant or licensee does not require a hearing under subsection (2), the Director may carry out the proposal. R.S.O. 1990, c. C.11, s. 197 (3).

Powers of Tribunal where hearing required

(4) Where an applicant or licensee requires a hearing under subsection (2), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) order the Director to carry out the proposal; or
- (b) order the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations,

and the Tribunal may substitute its opinion for that of the Director. R.S.O. 1990, c. C.11, s. 197 (4); 1999, c. 12, Sched. G, s. 16 (4).

Note: Despite the amendment made by the Statutes of Ontario, 1999, chapter 12, Schedule G, subsection 16 (4), members of the Child and Family Services Review Board immediately before April 1, 2000 shall be members of the Licence Appeal Tribunal for the purpose of performing the duties of the Tribunal with respect to proceedings before the Board that were commenced before April 1, 2000. See: 1999, c. 12, Sched. G, s. 16 (5).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (4, 5) - 1/04/2000

Review of terms of licence by Tribunal

198. (1) A licensee who is dissatisfied with the terms and conditions prescribed by a Director under subsection 193 (3), (5) or (6) or section 193.1 is entitled to a hearing by the Tribunal if the licensee mails or delivers to the Director and to the Tribunal, within fifteen days after receiving the licence, a written request for a hearing. R.S.O. 1990, c. C.11, s. 198 (1); 1999, c. 12, Sched. G, s. 16 (4); 2009, c. 33, Sched. 7, s. 1 (11).

Note: Despite the amendment made by the Statutes of Ontario, 1999, chapter 12, Schedule G, subsection 16 (4), members of the Child and Family Services Review Board immediately before April 1, 2000 shall be members of the Licence Appeal Tribunal for the purpose of performing the duties of the Tribunal with respect to proceedings before the Board that were commenced before April 1, 2000. See: 1999, c. 12, Sched. G, s. 16 (5).

Powers of Tribunal

(2) Where a licensee requires a hearing under subsection (1), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the terms and conditions;
- (b) strike out any or all of the terms and conditions; or
- (c) impose such other terms and conditions as the Tribunal considers appropriate. R.S.O. 1990, c. C.11, s. 198 (2); 1999, c. 12, Sched. G, s. 16 (4).

Note: Despite the amendment made by the Statutes of Ontario, 1999, chapter 12, Schedule G, subsection 16 (4), members of the Child and Family Services Review Board immediately before April 1, 2000 shall be members of the Licence Appeal Tribunal for the purpose of performing the duties of the Tribunal with respect to proceedings before the Board that were commenced before April 1, 2000. See: 1999, c. 12, Sched. G, s. 16 (5).

Receipt of licence

(3) For the purposes of subsection (1), a licensee shall be deemed to receive the licence on the tenth day after the day of its mailing, unless the licensee establishes that he, she or it did not receive it or did not, through absence, accident, illness or another cause beyond the licensee's control, acting in good faith, receive the licence until a later date. R.S.O. 1990, c. C.11, s. 198 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (4, 5) - 1/04/2000

2009, c. 33, Sched. 7, s. 1 (11) - 15/12/2009

Continuation of licence

199. (1) REPEALED: 1999, c. 12, Sched. G, s. 16 (6).

Continuation of licence pending renewal

(2) Subject to section 200, where a licensee has applied for renewal of the licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its decision. R.S.O. 1990, c. C.11, s. 199 (2); 1999, c. 12, Sched. G, s. 16 (7).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (6, 7) - 1/04/2000

Provisional suspension of licence

200. (1) A Director may, by causing notice to be served on a licensee, provisionally and without a hearing suspend the licence where, in the Director's opinion, the manner in which the children's residence is operated, residential care is provided or children are placed for adoption, as the case may be, is an immediate threat to the health, safety or welfare of the children.

Contents of notice

(2) A notice served under subsection (1) shall contain a statement of the grounds for suspending the licence.

When suspension takes effect

(3) A provisional suspension takes effect on the date that the licensee receives the notice.

s. 197 (2-4) apply

(4) Where a notice is served under subsection (1), subsections 197 (2), (3) and (4) apply with necessary modifications. R.S.O. 1990, c. C.11, s. 200.

Rules re proceedings

Parties

201. (1) The Director, the applicant or licensee who requires the hearing and any other persons that the Tribunal specifies are parties to a proceeding under this Part. R.S.O. 1990, c. C.11, s. 201 (1); 1999, c. 12, Sched. G, s. 16 (7).

Members with prior involvement

(2) A member of the Tribunal who has taken part before a hearing in any investigation or consideration of its subject matter, including a review under section 188 of Part VIII (Confidentiality of and Access to Records) that relates to the applicant or licensee, shall not take part in the hearing. R.S.O. 1990, c. C.11, s. 201 (2); 1999, c. 12, Sched. G, s. 16 (7).

Discussion of subject matter of hearing

(3) A member of the Tribunal who takes part in a hearing shall not communicate with any person, except another member, a solicitor who is not the solicitor of any party, or an employee of the Tribunal, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate. R.S.O. 1990, c. C.11, s. 201 (3); 1999, c. 12, Sched. G, s. 16 (7).

When Tribunal seeks independent legal advice

(4) The Tribunal may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond. R.S.O. 1990, c. C.11, s. 201 (4); 1999, c. 12, Sched. G, s. 16 (7).

Examination of documentary evidence

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing. R.S.O. 1990, c. C.11, s. 201 (5).

(6) REPEALED: 1999, c. 12, Sched. G, s. 16 (8).

Only members at hearing to participate in decision, etc.

(7) No member of the Tribunal shall participate in a decision of the Tribunal under this Part unless he or she was present throughout the hearing and heard the evidence and argument of the parties and, unless the parties consent, the Tribunal shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision. R.S.O. 1990, c. C.11, s. 201 (7); 1999, c. 12, Sched. G, s. 16 (9).

Final decision of Tribunal within ninety days

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Tribunal shall make a final decision and notify the parties of it within ninety days from the day the Tribunal receives the applicant's or licensee's request for a hearing under subsection 197 (2) or 198 (1). R.S.O. 1990, c. C.11, s. 201 (8); 1999, c. 12, Sched. G, s. 16 (9).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (7-9) - 1/04/2000

APPEAL

Appeal

202. (1) An appeal lies to the Divisional Court from the Tribunal's decision under this Part. R.S.O. 1990, c. C.11, s. 202 (1); 1999, c. 12, Sched. G, s. 16 (10).

Record to be filed in the court

(2) Where notice of an appeal is served under this section, the Tribunal shall forthwith file with the court the record of the proceeding in which the decision appealed from was made. R.S.O. 1990, c. C.11, s. 202 (2); 1999, c. 12, Sched. G, s. 16 (11).

Minister entitled to be heard

(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section. R.S.O. 1990, c. C.11, s. 202 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. G, s. 16 (10, 11) - 1/04/2000

DELIVERY OF LICENCE AND RECORDS**Records and licence, removal of children****Records and licence to be handed over to Minister**

203. (1) A licensee whose licence is revoked or who ceases to carry on the activity for which the licence is required shall deliver up to the Minister the licence and all the records in the licensee's possession or control that relate to the children to whom services were being provided.

Removal of children

(2) Where a licence to operate a children's residence or to provide residential care is suspended or revoked, the parent of every child in the children's residence or other place where residential care is provided shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child. R.S.O. 1990, c. C.11, s. 203.

OCCUPATION BY MINISTER**Order for Minister's occupation**

204. (1) The Minister may, where a Director's proposal to revoke or not to renew a licence under subsection 197 (1) or notice of provisional suspension under subsection 198 (1) has been served on a licensee who operates a children's residence or provides residential care and the matter has not yet been finally disposed of, apply without notice to the Superior Court of Justice for an order,

- (a) authorizing the Minister to occupy and operate the children's residence or the premises where the residential care is provided, pending the outcome of the proceeding until alternative accommodation may be found for the children who are being cared for; and
- (b) directing the sheriff to assist the Minister as may be necessary in occupying the premises. R.S.O. 1990, c. C.11, s. 204 (2); 1999, c. 2, s. 35.

Where court may make order

(2) The court may make an order referred to in subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

Interim management

(3) Where an order has been made under subsection (2), the Minister may, despite sections 25 and 39 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months. R.S.O. 1990, c. C.11, s. 204 (2, 3).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

INJUNCTIONS**Injunction**

205. (1) A Director may apply to the Superior Court of Justice for an order enjoining any person from,

- (a) contravening subsection 193 (1) (licence requirement); or
- (b) carrying on an activity for which a licence is required while the licence is provisionally suspended under section 200. R.S.O. 1990, c. C.11, s. 205 (1); 1999, c. 2, s. 35.

Idem

(2) Any person may apply to the court for an order varying or discharging an order made under subsection (1). R.S.O. 1990, c. C.11, s. 205 (2).

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 35 - 31/03/2000

OFFENCES

Offence

206. (1) Every person who,

- (a) contravenes subsection 193 (1);
- (b) contravenes a term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or other place where residential care is provided under the authority of a licence;
- (c) causes a child to be cared for in a children's residence operated by a person who is not licensed under this Part, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care under this Part; or
- (d) is a child's parent or a person under a legal duty to provide for the child and permits the child to be cared for in a children's residence or other place referred to in clause (c),

and every director, officer or employee of a corporation who authorizes, permits or concurs in such an act by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day on which the offence continues or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Every person who,

- (a) knowingly contravenes subsection 194 (2) or (3) (obstructing program supervisor, etc.);
- (b) knowingly furnishes false information in an application under this Part or in a statement, report or return required to be furnished under this Part or the regulations; or
- (c) fails to comply with an order or direction made by a court under this Part,

and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention, furnishing or failure by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. C.11, s. 206.

CHILD AND FAMILY SERVICES REVIEW BOARD

Child and Family Services Review Board

207. (1) The Child and Family Services Review Board is continued under the name Child and Family Services Review Board in English and Commission de révision des services à l'enfance et à la famille in French. R.S.O. 1990, c. C.11, s. 207 (1).

Idem

(2) The Board is composed of the prescribed number of members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations. R.S.O. 1990, c. C.11, s. 207 (2).

Chair and vice-chairs

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs. R.S.O. 1990, c. C.11, s. 207 (3).

(4) REPEALED: 2006, c. 34, s. 28 (2).

Quorum

(5) The prescribed number of members of the Board are a quorum. R.S.O. 1990, c. C.11, s. 207 (5).

Remuneration

(6) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board. R.S.O. 1990, c. C.11, s. 207 (6); 2009, c. 33, Sched. 7, s. 1 (12).

Section Amendments with date in force (d/m/y)

2006, c. 34, s. 28 (2) - 20/12/2006

2009, c. 33, Sched. 7, s. 1 (12) - 15/12/2009

**PART X
INDIAN AND NATIVE CHILD AND FAMILY SERVICES**

Definition

208. In this Part,

“customary care” means the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community. R.S.O. 1990, c. C.11, s. 208.

Designation of native communities

209. The Minister may designate a community, with the consent of its representatives, as a native community for the purposes of this Act. R.S.O. 1990, c. C.11, s. 209.

Agreements with bands and native communities

210. The Minister may make agreements with bands and native communities, and any other parties whom the bands or native communities choose to involve, for the provision of services. R.S.O. 1990, c. C.11, s. 210.

Designation of child and family service authority

211. (1) A band or native community may designate a body as an Indian or native child and family service authority.

Agreements, etc.

- (2) Where a band or native community has designated an Indian or native child and family service authority, the Minister,
 - (a) shall, at the band’s or native community’s request, enter into negotiations for the provision of services by the child and family service authority;
 - (b) may enter into agreements with the child and family service authority and, if the band or native community agrees, any other person, for the provision of services; and
 - (c) may designate the child and family service authority, with its consent and if it is an approved agency, as a society under subsection 15 (2) of Part I (Flexible Services). R.S.O. 1990, c. C.11, s. 211.

Subsidy for customary care

212. Where a band or native community declares that an Indian or native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child. R.S.O. 1990, c. C.11, s. 212.

Consultation with bands and native communities

213. A society or agency that provides services or exercises powers under this Act with respect to Indian or native children shall regularly consult with their bands or native communities about the provision of the services or the exercise of the powers and about matters affecting the children, including,

- (a) the apprehension of children and the placement of children in residential care;
- (b) the placement of homemakers and the provision of other family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part III (Child Protection);
- (e) temporary care and special needs agreements under Part II (Voluntary Access to Services);
- (f) adoption placements;
- (g) the establishment of emergency houses; and
- (h) any other matter that is prescribed. R.S.O. 1990, c. C.11, s. 213.

Consultation in specified cases

213.1 A society or agency that proposes to provide a prescribed service to a child who is an Indian or native person or to exercise a prescribed power under this Act in relation to such a child shall consult with a representative chosen by the child’s band or native community in accordance with the regulations. 2006, c. 5, s. 43.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 43 - 30/11/2006

**PART XI
REGULATIONS**

Regulations: Part I (Flexible Services)

214. (1) The Lieutenant Governor in Council may make regulations for the purposes of Part I,

1. prescribing additional powers and duties of Directors and program supervisors;
2. prescribing reports to be made and information to be furnished under subsection 5 (5), their form and the intervals at which they are to be made or furnished;
3. governing the exercise of the power of entry set out in subsection 6 (1);
4. governing the management and operation of approved agencies or any class of them;
5. governing the provision of approved services or any class of them;
6. exempting designated approved agencies or approved services or any class of them from any provision of this Act or the regulations for a specified period or periods;
- 6.1 respecting the composition of boards of approved agencies or classes of approved agencies, requiring board members to undertake training programs and prescribing those programs;
7. governing the accommodation, facilities and equipment to be provided,
 - i. in buildings in which approved services are provided, and
 - ii. in the course of the provision of approved services;
8. further defining “service”, “child development service”, “child treatment service”, “child welfare service”, “community support service” and “youth justice service”;
9. defining “prevention service”;
10. governing the establishment, management, operation, location, construction, alteration and renovation of buildings, or any class of them, in which approved services are provided;
11. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where approved services are provided;
12. prescribing the qualifications, powers and duties of persons employed in providing approved services or any class of approved services;
- 12.1 prescribing classes of persons employed or to be employed in providing approved services or any class of approved services who must undertake training, prescribing that training and prescribing the circumstances under which that training must be undertaken;
13. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
14. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services or any class of them are provided;
15. governing applications by agencies for approval under subsections 8 (1) and 9 (1) and establishing criteria for approval;
16. governing applications by approved agencies for payments under this Part, prescribing the method, time, manner, terms and conditions of payments and providing for the suspension and withholding of payments and for the making of deductions from payments;
17. prescribing the manner of computing the amount of financial assistance for the purposes of sections 8 and 9, prescribing classes of payments for the purposes of those sections and determining the amounts of payments;
18. governing the transfer and assignment of the assets of approved agencies acquired with financial assistance from the Province of Ontario, or of any class of such assets, for the purposes of subsection 10 (3), and prescribing classes of such assets;
19. requiring approved agencies to provide the prescribed information to the prescribed persons, and prescribing the information and the persons;

20. prescribing the accounts and records to be kept by approved agencies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;
21. requiring service providers, or any class of service providers, to keep records, and prescribing the form and content of those records;
22. providing for the recovery, by an approved agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
23. providing for the recovery of payments made to approved agencies under this Part and the regulations;
24. prescribing provisions to be included in the by-laws of approved agencies, or any class of them, for the purpose of subsection 13 (2);
25. prescribing the number of band or native community representatives on the boards of directors of agencies or any class of them, the manner of their appointment and their terms, for the purpose of subsection 13 (3);
26. prescribing forms and providing for their use;
27. prescribing fees or classes of fees that may be charged for services and the terms and conditions under which a fee may be charged;
28. REPEALED: 1999, c. 2, s. 32 (2).
29. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
30. prescribing a system for determining,
 - i. the amounts of payments under subsection 19 (2) (payments by Minister), and
 - ii. a society's estimated expenditures;
31. REPEALED: 1999, c. 2, s. 32 (3).
32. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Licensing), where residential care is provided to children. R.S.O. 1990, c. C.11, s. 214 (1); 1999, c. 2, s. 32 (1-3); 2006, c. 19, Sched. D, s. 2 (39).

Same

(2) A regulation made under paragraph 6.1, 12.1, 18, 24 or 25 of subsection (1) (boards of approved agencies, training of persons providing approved services, transfer of assets, prescribed provisions in agency by-laws, band or native community representatives) may be general or specific in its application. 1999, c. 2, s. 32 (4).

Same

(3) A regulation made under paragraph 17 or 30 of subsection (1) (financial assistance for the purposes of sections 8 and 9, amounts of payments to societies) is, if it so provides, effective with reference to a period before it is filed. 1999, c. 2, s. 32 (4).

Idem

- (4) The Minister shall prescribe,
 - (a) standards of services; and
 - (b) procedures and practices to be followed by societies,

for the purposes of subsection 15 (4). R.S.O. 1990, c. C.11, s. 214 (4).

Standards of service, etc.

- (5) In regulations made under subsection (4), the Minister,
 - (a) may exempt one or more societies from anything that is prescribed under that subsection;
 - (b) may prescribe standards of services that only apply to one or more societies provided for in the regulations;
 - (c) may prescribe procedures and practices that are only required to be followed by one or more societies provided for in the regulations. 2006, c. 5, s. 44.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 32 (1-4) - 31/03/2000

2006, c. 5, s. 44 - 30/11/2006; 2006, c. 19, Sched. D, s. 2 (39) - 22/06/2006

Regulations: Part II (Voluntary Access to Services)

215. The Lieutenant Governor in Council may make regulations for the purposes of Part II,

- (a) defining “counselling”;
- (b) prescribing provisions to be contained in agreements made under section 29 (temporary care agreements) and sections 30 and 31 (special needs agreements);
- (c) requiring that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents;
- (d) prescribing practices, procedures and further duties for advisory committees;
- (e) further defining “special need” and “developmental disability”. R.S.O. 1990, c. C.11, s. 215; 2001, c. 13, s. 5 (7).

Section Amendments with date in force (d/m/y)

2001, c. 13, s. 5 (7) - 30/11/2001

Regulations: Part III (Child Protection)

216. (1) The Lieutenant Governor in Council may make regulations for the purposes of Part III,

- (a) governing the exercise of the powers of entry set out in subsections 40 (6) and (11) and section 44;
- (a.1) respecting the procedures to be followed by a society for the purposes of subsection 37 (5);
- (b) assigning to a Director any powers, duties or obligations of the Crown with respect to Crown wards;
- (b.1) governing when an assessment may be ordered under section 54, the scope of an assessment, and the form of an assessment report;
- (b.2) respecting applications for a review by the Board under subsection 61 (7.1);
- (b.3) prescribing additional practices and procedures for the purposes of subsection 61 (8.2);
- (b.4) prescribing the qualifications or experience a member of the Board is required to have in order to conduct reviews under subsection 61 (8), 68 (6) or 68.1 (5);
- (b.5) respecting the making of complaints to a society under subsection 68 (1) or to the Board under subsection 68.1 (1);
- (b.6) governing the complaint review procedure that societies are required to follow when dealing with a complaint under subsection 68 (1);
- (b.7) prescribing matters for the purposes of paragraph 3 of subsection 68 (5) and paragraph 6 of subsection 68.1 (4);
- (b.8) prescribing additional orders that may be made by the Board for the purposes of clauses 68 (10) (e) and 68.1 (7) (f);
- (b.9) prescribing practices and procedures for the purposes of hearings conducted by the Board under subsection 68 (8) or during a review of a complaint under section 68.1;
- (c) REPEALED: 2011, c. 12, s. 12 (1).
- (c.1) respecting the format of warrants under sections 74.1 and 74.2 and the procedures to be followed in applying for, issuing, receiving and filing warrants of different formats;
- (c.2) prescribing manners of applying for a warrant under section 74.2, including a manner other than submitting an information on oath, setting out the circumstances under which those manners may be used and providing for any additional requirements that must be met if those manners are used;

Note: On a day to be named by proclamation of the Lieutenant Governor, section 216 is amended by the Statutes of Ontario, 2008, chapter 21, section 5 by adding the following clause:

- (c.3) designating one or more organizations, agencies or persons for the purpose of receiving reports of child pornography under subsection 72 (1.1);

See: 2008, c. 21, ss. 5, 6.

- (d) prescribing the form in which reports are to be made under subsection 75 (3);
- (e) respecting the manner in which the register referred to in subsection 75 (5) is to be kept;
- (f) requiring the removal of a name from the register referred to in subsection 75 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;
- (g) prescribing practices and procedures for hearings held under clause 76 (4) (b) (amendment of register);
- (h) prescribing forms and providing for their use. R.S.O. 1990, c. C.11, s. 216 (1); 1993, c. 27, Sched.; 1999, c. 2, s. 33 (1); 2006, c. 5, s. 45; 2011, c. 12, s. 12 (1).

Same

- (2) The Minister may make regulations,
 - (a) prescribing the care and maintenance that may be provided to persons under section 71.1, and the terms and conditions on which the care and maintenance may be provided;
 - (b) prescribing support services for the purposes of subsection 71.1 (3). 2011, c. 12, s. 12 (2).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

1999, c. 2, s. 33 (1) - 31/03/2000; 1999, c. 2, s. 33 (2) - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2006, c. 5, s. 45 - 30/11/2006

2008, c. 21, s. 5 - not in force

2011, c. 12, s. 12 (1, 2) - 1/09/2011

Regulations: Part IV (Youth Justice)

- 217.** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,
- (a) governing the establishment, operation, maintenance, management and use of places of temporary detention, open custody and secure custody and other services and programs provided under subsection 89 (1);
 - (b) governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises or class of premises established, operated, maintained or designated for the purposes of the federal Act or for providing services or programs under subsection 89 (1);
 - (c) prescribing additional duties and functions of,
 - (i) probation officers, and
 - (ii) provincial directors;
 - (d) prescribing the duties and functions of bailiffs;
 - (e) prescribing the qualifications of probation officers;
 - (f) prescribing additional duties and functions of persons in charge of places of temporary detention, open custody and secure custody;
 - (g) prescribing reports to be made and information to be furnished under section 92, their form and the intervals at which they are to be made or furnished;
 - (h) governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, open custody or secure custody or any class of them or in a service or program provided under subsection 89 (1);
 - (i) prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, open custody or secure custody or any class of them or premises in which a service or program is provided under subsection 89 (1);
 - (j) prescribing classes of payment by way of provincial aid for the establishment, operation or maintenance of places of temporary detention, open custody or secure custody, the methods of determining the payments, the manner and time of making them, the terms and conditions of such payments and the circumstances under which such payments may be suspended or withheld or deductions may be made from them;

- (k) prescribing the number of members of the Board and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;
- (m) governing the exercise of the power of entry given under subsection 98 (5);
- (n) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part IV. R.S.O. 1990, c. C.11, s. 217 (1); 2006, c. 34, s. 28 (3).

Idem

(2) A regulation made under clause (1) (j) (classes of payment by way of provincial aid) is, if it so provides, effective with reference to a period before it is filed. R.S.O. 1990, c. C.11, s. 217 (2).

Section Amendments with date in force (d/m/y)

2006, c. 34, s. 28 (3) - 20/12/2006

Regulations: Part V (Rights of Children)

218. The Lieutenant Governor in Council may make regulations for the purposes of Part V,

- (a) governing internal complaints procedures to be established under section 109;
- (b) establishing procedures for reviews under section 110.
- (c) REPEALED: 2007, c. 9, s. 25 (6).

R.S.O. 1990, c. C.11, s. 218; 2007, c. 9, s. 25 (6).

Section Amendments with date in force (d/m/y)

2007, c. 9, s. 25 (6) - 5/10/2007

Regulations: Part VI (Extraordinary Measures)

219. The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

- (a) prescribing procedures for the admission of persons to and their discharge from secure treatment programs;
- (b) prescribing standards for secure treatment programs;
- (c) prescribing standards for secure isolation rooms;
- (d) prescribing procedures to be followed when a child is placed in or released from a secure isolation room;
- (e) prescribing the frequency of reviews under subsection 127 (6);
- (e.1) governing standards and procedures with which a service provider must comply under subsection 127 (9);
- (f) prescribing matters to be reviewed and prescribing additional reports under section 128;
- (g) prescribing procedures as intrusive procedures;
- (h) prescribing the intervals at which reports are to be made by review teams under subsection 129 (5);
- (i) prescribing drugs, combinations of drugs or classes of drugs as psychotropic drugs;
- (j) prescribing forms and requiring their use. R.S.O. 1990, c. C.11, s. 219; 2009, c. 2, s. 15.

Section Amendments with date in force (d/m/y)

2009, c. 2, s. 15 - 1/04/2009

Regulations: Part VII (Adoption)

220. (1) The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

- (a) prescribing the form of an affidavit of execution for the purposes of subsection 137 (12);
- (a.1) prescribing matters for the purposes of clause 137 (4) (a.1);
- (a.2) prescribing criteria for the purposes of the definition of “birth parent” in subsection 136 (1);

Note: Clause 220 (1) (a.2) was enacted as clause 220 (1) (a.1) in source law, Statutes of Ontario, 2006, chapter 5, section 46. The clause is renumbered in this consolidation to distinguish it from existing clause 220 (1) (a.1), enacted by Statutes of Ontario 2005, chapter 25, subsection 32 (1).

- (b) prescribing the manner in which placements are to be registered under subsection 141 (6);
- (b.1) governing applications for review under subsection 144 (3);
- (b.2) prescribing additional practices and procedures for the purposes of subsection 144 (7);
- (b.3) prescribing the qualifications or experience a member of the Board is required to have in order to conduct reviews under subsection 144 (8);
- (b.4) governing procedures to be followed by a Director in making a review under subsection 145 (3), what types of decisions and directions the Director is authorized to make after conducting a review, and any consequences following as a result of a decision or direction;
- (c) prescribing special circumstances for the purposes of subsection 142 (4) (placement outside Canada);
- (c.1) prescribing persons for the purposes of clause 162 (3) (e);
- (c.2) prescribing the powers and duties of a designated custodian under section 162.1 and governing the fees that the designated custodian may charge in connection with the exercise of its powers and the performance of its duties;
- (c.3) governing the disclosure of information under section 162.2 to a designated custodian;
- (c.4) governing the disclosure of information under section 162.3 by the Minister, a society, a licensee or a designated custodian;
- (c.5) establishing and governing a mechanism for the review or appeal of a decision made by the Minister, a society, a licensee or a designated custodian concerning the disclosure of information under section 162.2 or 162.3;
- (c.6) governing the fees that a society, licensee or designated custodian may charge for the disclosure of information under section 162.2 or 162.3;
- (c.7) defining “openness” for the purposes of,
 - (i) openness orders under Part VII,
 - (ii) openness agreements under section 153.6;
- (c.8) governing openness orders under Part VII;

Note: Clauses 220 (1) (c.7) and (c.8) were enacted as clauses 220 (1) (c.1) and (c.2) in source law, Statutes of Ontario, 2006, chapter 5, section 46. The clauses are renumbered in this consolidation to distinguish them from existing clauses 220 (1) (c.1) and (c.2), enacted by Statutes of Ontario 2005, chapter 25, subsection 32 (2).

- (d) prescribing forms and providing for their use;
- (e) REPEALED: 2005, c. 25, ss. 32 (3).
- (f) REPEALED: 2005, c. 25, ss. 32 (4).
- (f.1) REPEALED: 2005, c. 25, ss. 32 (6).
- (g) REPEALED: 2005, c. 25, s. 32 (7).
- (h) REPEALED: 2005, c. 25, ss. 32 (8).
- (i) REPEALED: 2005, c. 25, ss. 32 (9).
- (j) prescribing expenses that may be charged under clause 175 (d), classes of such expenses and the terms and conditions under which such expenses or classes of expenses may be charged. R.S.O. 1990, c. C.11, s. 220 (1); 1993, c. 27, Sched; 2005, c. 25, s. 32 (1-9); 2006, c. 5, s. 46; 2016, c. 23, s. 38 (16).

Classes

(2) A regulation under clauses (1) (c.2) to (c.6) may establish different standards and requirements with respect to different classes of persons. 2005, c. 25, s. 32 (10).

Transitional matters

(3) The Lieutenant Governor in Council may make regulations providing for transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable in connection with the enactment of sections 162.1 to 162.4 by the *Adoption Information Disclosure Act, 2005* and the amendment or repeal, as the case may be, of sections 162 to 174 by that Act. 2005, c. 25, s. 32 (10).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

2005, c. 25, s. 32 (5, 7, 10) - 3/01/2006; 2005, c. 25, s. 32 (1) - 24/04/2006; 2005, c. 25, s. 32 (2-4, 6, 8, 9) - 17/09/2007

2006, c. 5, s. 46 - 30/11/2006

2016, c. 23, s. 38 (16) - 01/01/2017

Regulations: Part VIII (Confidentiality of and Access to Records)

221. The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

- (a) prescribing the manner in which a Director's approval is to be obtained under subsection 182 (2) (disclosure for research);
- (b) prescribing review procedures for the Board under subsection 188 (3);
- (c) prescribing provisions for the purposes of subsection 191 (2) (service providers' codes of procedure);
- (d) prescribing retention, storage and destruction schedules for the purposes of subsection 191 (3). R.S.O. 1990, c. C.11, s. 221.

Regulations: Part IX (Licensing)

222. The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

- (a) governing the establishment, management, operation and use of children's residences, and other premises where residential care is provided under the authority of a licence;
- (b) defining "common parentage" for the purposes of the definition of "children's residence" in section 192 and clause 193 (1) (b);
- (c) governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
- (d) governing the exercise of the power of entry set out in subsection 194 (1);
- (e) governing the establishment of and the accommodation, facilities, equipment and services to be provided in,
 - (i) children's residences, and
 - (ii) other premises where residential care is provided under the authority of a licence,
 or any class of them;
- (f) exempting from any or all provisions of Part IX or the regulations, either indefinitely or for any time that may be provided for in the regulations,
 - (i) a children's residence or a prescribed class of children's residences,
 - (ii) premises or a prescribed class of premises where residential care is provided under the authority of a licence,
 - (iii) a person or class of persons who place children for adoption,
 - (iv) a person or class of persons who provide residential care under the authority of a licence;
- (g) prescribing the accounts and records to be kept by licensees;
- (h) prescribing the qualifications, powers and duties of persons supervising children in,
 - (i) children's residences, or
 - (ii) other premises where residential care is provided under the authority of a licence,
 or any class of them;
- (i) governing procedures for the admission to and discharge of children from,
 - (i) children's residences, or
 - (ii) other premises where residential care is provided under the authority of a licence,
 or any class of them;

- (j) requiring the operators of children's residences or persons who provide residential care or place children for adoption under the authority of a licence to provide the prescribed information and to make the prescribed returns and reports, and prescribing the information, returns and reports;
- (k) prescribing the number of members of the Board and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;
- (m) governing the placement of children for adoption;
- (n) prescribing rules and standards governing the placement of children by licensees for adoption;
- (o) providing for the inspection of the records of persons licensed to place children for adoption;
- (p) governing the qualifications of persons or classes of persons employed by persons licensed to place children for adoption;
- (q) requiring persons licensed to place children for adoption to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds;
- (r) prescribing forms and providing for their use. R.S.O. 1990, c. C.11, s. 222; 2006, c. 5, s. 47; 2006, c. 34, s. 28 (4).

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 47 - 30/11/2006; 2006, c. 34, s. 28 (4) - 20/12/2006

Regulations: Part X (Indian and Native Child and Family Services)

223. The Lieutenant Governor in Council may make regulations for the purposes of Part X,

- (a) exempting an Indian or native child and family service authority, a band or native community or specified persons or classes of persons, including persons caring for children under customary care, from any provision of this Act or the regulations;
- (b) prescribing matters requiring consultation between societies or agencies and bands or native communities for the purposes of clause 213 (h);
- (c) governing consultations with bands and native communities under sections 213 and 213.1 and prescribing the procedures and practices to be followed by societies and agencies and the duties of societies and agencies during the consultations;
- (d) prescribing services and powers for the purposes of section 213.1. R.S.O. 1990, c. C.11, s. 223; 2006, c. 5, s. 48.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 48 - 30/11/2006

Regulations: methods of dispute resolution

223.1 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing methods of alternative dispute resolution for the purposes of this Act, defining methods of alternative dispute resolution, and governing procedures for and the use of prescribed methods of alternative dispute resolution;
- (b) respecting qualifications of persons providing a prescribed alternative dispute resolution service;
- (c) respecting the confidentiality of and access to records and information related to alternative dispute resolution. 2006, c. 5, s. 49.

Same

(2) A regulation made under subsection (1) may prescribe different methods of alternative dispute resolution, different definitions of methods of alternative dispute resolution and different procedures for prescribed methods of alternative dispute resolution for the purposes of different provisions of this Act. 2006, c. 5, s. 49.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 49 - 30/11/2006

Regulations: transitional

223.2 The Lieutenant Governor in Council may make regulations governing transitional issues that may arise due to the enactment of the *Child and Family Services Statute Law Amendment Act, 2006* and facilitating the implementation of provisions that are enacted or re-enacted by that Act, and without restricting the generality of the preceding, may make regulations,

- (a) respecting alternative dispute resolution and legal representation for children for the purposes of section 20.2 if a form of alternative dispute resolution commenced before that section came into force;
- (b) respecting circumstances in which subsections 51 (3.1) and (3.2) do not apply in respect of the placement of a child;
- (c) respecting types of terms and conditions that may be imposed for the purposes of sections 51, 57 and 65.2 and persons or classes of persons subject to terms and conditions under those sections;
- (d) respecting assessments for the purposes of section 54 that were made or commenced before this section came into force;
- (e) respecting orders that may be made under section 57, 57.1 or 65.2;
- (f) respecting circumstances in which sections 57.2 and 59.1 will not apply;
- (g) respecting circumstances in which section 59 as it read before subsection 59 (2.1) came into force will apply;
- (h) respecting applications under sections 64 and 65.1;
- (i) respecting the provision of care and maintenance under subsection 71 (2);
- (j) respecting reviews by a Director under section 145. 2006. c. 5, s. 49.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 49 - 30/11/2006

**PART XII
MISCELLANEOUS**

Review of Act

224. (1) The Minister shall periodically conduct a review of this Act or those provisions of it specified by the Minister.

Beginning of review

(2) The Minister shall inform the public when a review under this section begins and what provisions of this Act are included in the review.

Written report

(3) The Minister shall prepare a written report respecting the review and shall make that report available to the public.

Period for review

(4) The first review shall be completed and the report made available to the public within five years after the day this section comes into force.

Same

(5) Each subsequent review shall be completed and the report made available to the public within five years after the day the report on the previous review has been made available to the public. 1999, c. 2, s. 34.

Section Amendments with date in force (d/m/y)

1999, c. 2, s. 34 - 31/03/2000

Review re disclosure of adoption information

225. The Lieutenant Governor in Council shall ensure that a review of the operation of sections 161 to 165 and section 176.1 is conducted within five years after section 4 of the *Access to Adoption Records Act (Vital Statistics Statute Law Amendment)*, 2008 comes into force. 2008, c. 5, s. 14.

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 33 - 17/09/2007

2008, c. 5, s. 14 - 14/05/2008

Review re: aboriginal issues

226. Every review of this Act shall include a review of provisions imposing obligations on societies when providing services to a person who is an Indian or native person or in respect of children who are Indian or native persons, with a view to ensuring compliance by societies with those provisions. 2006, c. 5, s. 50.

Section Amendments with date in force (d/m/y)

2006, c. 5, s. 50 - 30/11/2006

Français



[Back to top](#)



The Children's Aid Society
OF HAMILTON

Serving Hamilton's children
and families since 1894

(<http://www.hamiltoncas.com/en/>)

Contact (<http://www.hamiltoncas.com/en/contact/index/>) | Français (<http://www.hamiltoncas.com/index.php?ACT=25&lang=fr>) | A A A A | 
(<https://www.facebook.com/The-Childrens-Aid-Society-of-Hamilton-483458158505587>)  (<https://twitter.com/CASofHamilton>)

Concerned about a child? Call 905-522-1121 (tel:905-522-1121) or 905-522-8053 (tel:905-522-8053) for after hours.

For assistance in French call 1-855-550-3571 (tel:1-855-550-3571)

Search

THIS IS EXHIBIT " 13 " 165
referred to in the Affidavit of
France Baars

Sworn before me this 10th
day of April A.D. 20 17


A Commissioner in and for the Province of Alberta

*Marty Moore
Barrister and Solicitor*

About Us

The Children's Aid Society (CAS) of Hamilton was established in 1894 as a not-for-profit charitable organization focusing on the well-being and protection of children. The Society is mandated under The Child and Family Services Act of Ontario and, as such, is required by law to protect children from physical, sexual and emotional abuse, and harm. It is funded by the Ontario government, through the Ministry of Children & Youth Services and is one of 46 children's aid societies across Ontario.

Protecting children from potential harm is our priority. We attempt to do this by working together with parents, extended family, community professionals, and other members of the community to reduce harmful circumstances and address areas of concern. In a large number of situations, the Society provides services and supports to children and families in their own homes. Child Protection Workers will consult and plan with other professionals who know the child, such as teachers, doctors, public health nurses, and other community partners to address immediate issues and establish a plan for future service, as well as help families build a network of support to aid in their ability to provide appropriate care.

Depending on the risk, it may be determined that it is not in the child's best interest to remain in his/her home for a short or extended period of time. In this situation, the Society works with the family to determine if a suitable kin home can be offered to the child through extended family, family friends, neighbours, or community members. If an alternative kin caregiver cannot be found, the Society will provide a nurturing and safe home environment, most often in the form of a foster home. In situations where children are placed with kin, or brought into CAS care, Child Protection Workers will continue to work with parents to address issues of concern and plan for the child's return or develop an alternative plan of care.

In some cases, children need to be placed permanently away from home, and whenever possible, CAS will arrange adoptions for these children.

| Resources | Type | Download |
|---|---|---|
| FAQ: How old does a child have to be in order to spend a few hours after school on their own? |  | (http://www.hamiltoncas.com/images/uploads/publications/QandA_How_old_to_stay_alone_%28March_2016%29.pdf) |

Resources

- About Us (<http://www.hamiltoncas.com/en/about/us/>)
- Mission, Vision, & Values (<http://www.hamiltoncas.com/en/about/mission-vision-values/>)
- Services & Programs (<http://www.hamiltoncas.com/en/about/services-programs/>)
- Publications (<http://www.hamiltoncas.com/en/about/publications/>)
- Speakers' Bureau (<http://www.hamiltoncas.com/en/about/speakers-bureau/>)
- Diversity and Inclusion (<http://www.hamiltoncas.com/en/about/diversity-and-inclusion/>)
- Accessibility (<http://www.hamiltoncas.com/en/about/accessibility/>)
- Business Practices (<http://www.hamiltoncas.com/en/about/procurement-and-expense-policy/>)
- Performance Indicators (<http://www.hamiltoncas.com/en/about/performance-indicators/>)

Adoption

Make a difference in a child's life.
(<http://www.hamiltoncas.com/en/adoption/>) »

Foster Care

Foster a child, change a life.
(<http://www.hamiltoncas.com/en/fostering/>) »

Volunteer

Contribute to the well-being of children & families in our community.
(<http://www.hamiltoncas.com/en/volunteers/>) »

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- 16** Children's Aid Society of Hamilton needs foster families
JAN More info here... [Read More \(http://www.hamiltonnews.com/community-story/7065355-children-s-aid-society-of-hamilton-needs-foster-families/\)](http://www.hamiltonnews.com/community-story/7065355-children-s-aid-society-of-hamilton-needs-foster-families/)
- 09** Ontario introduces 'historic' changes to child protection laws
DEC More info here... [Read More \(https://www.thestar.com/news/gta/2016/12/08/ontario-introduces-historic-changes-to-child-protection-laws.html\)](https://www.thestar.com/news/gta/2016/12/08/ontario-introduces-historic-changes-to-child-protection-laws.html)
- 05** Hamilton public board's young parent program on the chopping block
DEC More info here... [Read More \(http://www.thespec.com/news-story/7002190-hamilton-public-board-s-young-parent-program-on-the-chopping-block/\)](http://www.thespec.com/news-story/7002190-hamilton-public-board-s-young-parent-program-on-the-chopping-block/)

Testimonial

"These children are right here in our backyard. What would happen to them if we didn't have foster parents? They have bruises that will last a lifetime, but if you can heal the wounds just a little - if you can give a child a hug or a little extra love - then you can make a difference for the rest of their life."

Foster/Adoptive Mom | Hamilton CAS

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<http://www.homesforkids.com>) (<http://www.oacas.org>)



Ontario Association of
Children's Aid Societies
Ensemble d'associations d'aide à l'enfance





Children's Aid Society of Hamilton needs foster families

COMMUNITY Jan 13, 2017 Stoney Creek News

The Children's Aid Society of Hamilton continues to experience a high need for foster families to provide temporary care for an estimated 530 children up to age 18, who, for various reasons, are not able to live with their families.

Applications are invited from couples and individuals, including LGBTQ and people from all cultural and ethnic backgrounds, in the Greater Hamilton Area. Foster parents may choose the gender and age range of the child they care for. Foster parents receive training and financial support.

Homes for Kids will hold a Foster Parent Recruitment Night on Wednesday, Jan. 25, from 7-9:15 p.m., at The Children's Aid Society of Hamilton, 26 Arrowsmith Rd.

For information, contact Rachel at 905-546-KIDS (5437), email rthrelkeld@hamiltoncas.com or visit homesforkids.com.

Story continues below ▼



SHARE THE ROAD

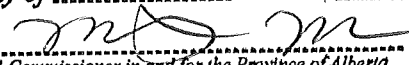
Respect the Rules

To Learn More About
Cycling Safety

[Click Here](#)





THIS IS EXHIBIT " C " referred to in the Affidavit of Frances Baars
Sworn before me this April 10th day of April A.D. 20 17

A Commissioner in and for the Province of Alberta
Marty Moore
Barrister and Solicitor



The Children's Aid Society
OF HAMILTON

168

Dominic Verticchio, Executive Director

December 11, 2015

Mr. & Mrs. D. Baars
2295 Hwy 5
TROY ON L0R 2B0

REGISTERED MAIL

Dear Mr. & Mrs. Baars,

Enclosed is a copy of your SAFE Homestudy Report.

After reviewing this document, please detach and sign the back page, adding any comments you wish to make, and return to my attention in the enclosed self-addressed stamped envelope.

If you have any questions or comments regarding your homestudy, please feel free to contact me.

Sincerely,

Susan Ross
Homestudy Worker

SR/ml
Encl

THIS IS EXHIBIT " D "
referred to in the Affidavit of
France Baars
Sworn before me this 10th
day of April A.D. 20 17

A Commissioner in and for the Province of Alberta
Marty Moore
Barrister + solicitor

Serving Hamilton's children and families since 1894.

Please insert agency/private practitioner logo/letterhead here.

SAFE HOME STUDY

| | | |
|--|---|--------------------------------------|
| Home study was completed by: | Susan Ross Children's Aid Society of Hamilton 26 Arrowsmith Road Hamilton, Ontario, L8E 4H8 Cell Phone: Email: sross@hamiltoncas.com | |
| Applicant 1: Frances Ann Baars | Applicant 2: Derek Henry Baars | |
| Address: 2295 Hwy 5 | | |
| City: Troy | Province: Ontario | Postal Code: |
| Directions to home: Refer to mapquest | | |
| App. #1: Phone: 519-647-0769 | Cell Phone: 519-802-5603 | Email: francesbaars@gmail.com |
| App. #2: Phone: | Cell Phone: | Email: derekbaars@gmail.com |

APPLICATION

| | |
|--|--|
| Home study application received on: May 29/15 | Home study completed on: November 25/15 |
| <input checked="" type="checkbox"/> Future Placement The Applicants have applied for Foster Care placement of a male or female child between the ages of 0 and 5 years. | |
| <input type="checkbox"/> Child Specific Placement The Applicants have applied to become Select One for Name(s), birthdate(s) | |
| <input type="checkbox"/> International Adoption The Applicants have applied for International Adoption of Select One from country of origin between the ages of Age and Age. | |

MINISTRY REVIEW ACKNOWLEDGEMENT

For international adoption, this document is Part One (1) of an adoption home study. It has been prepared by an adoption practitioner approved by a director of the Ministry of Children and Youth Services of the province of Ontario to conduct home- studies for adoption. Part Two (2) consists of a Letter of Approval to the foreign authority, which is issued upon review of Part One (1) by the Ontario Ministry of Children and Youth Services. For purposes of international adoption, this document is not valid unless Part Two (2) is attached.

DATES OF CONTACT

| Date | Persons Interviewed | Location |
|---------------|-------------------------|------------------|
| June 25/15 | Derek and Frances Baars | Applicant's home |
| July 30/15 | Derek and Frances Baars | Applicant's home |
| August 7/15 | Derek Baars | Applicant's home |
| August 7/15 | Derek Baars | Applicant's home |
| November 5/15 | Derek and Frances Baars | Applicant's home |

APPLICANT INFORMATION

| Frances Ann Baars | Derek Henry Baars |
|---|--|
| Maiden Name (if applicable): Marskamp | Maiden Name (if applicable): |
| Previous Names: | Name on Birth Certificate: |
| Nickname or Alias: | Nickname or Alias: |
| Date of Birth: January 21/86 | Date of Birth: June 2/80 |
| Birthplace: Brantford | Birthplace: Chilliwack, BC |
| Gender: Female | Gender: Male |
| Religion: Protestant (Free Reformed) | Religion: Protestant (Free Reformed) |
| Education: ECE | Education: Master of Divinity |
| Language(s): English, some Dutch | Language(s): English |
| Occupation: Homemaker, part time house cleaner | Occupation: Travelling preacher |
| Employer: Donald Plumbstead | Employer: Free Reformed Churches of North America |
| Racial Origin: Caucasian | Racial Origin: Caucasian |
| Ethnic Origin: Dutch Canadian | Ethnic Origin: Dutch Canadian |
| Native Band Name/No: | Native Band Name/No: |
| Status: No | Status: No |
| Canadian Citizenship: N/A | Canadian Citizenship: N/A |
| Landed Immigration Status: date | Landed Immigration Status: date |

MARITAL/DOMESTIC PARTNER INFORMATION

| | |
|---|--|
| Date of Current Marriage or Domestic partnership: April 9/10 | |
| | |
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| | |

SONS AND DAUGHTERS OF APPLICANT(S)

| Name | DOB/Gender | Location |
|------|------------|----------|
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OTHER MINORS OR ADULTS RESIDING IN THE HOME

Include any adult or minor other than sons or daughters of the Applicants who currently resides or intermittently resides in the home.

| Name | Age | Relationship | Current Situation |
|------|-----|--------------|-------------------|
|------|-----|--------------|-------------------|

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OTHER MINORS OR ADULTS FREQUENTLY IN THE HOME

List all minors other than minor sons or daughters of the Applicants who do not reside but are frequently in the home on a regular basis. List all adults other than adult sons or daughters of the Applicants who do not reside but are frequently in the home and would have access to be alone with children placed in the home.

| Name | Age | Relationship | Current Situation |
|------|-----|--------------|-------------------|
| | | | |
| | | | |
| | | | |

EXTENDED FAMILY MEMBERS: FRANCES ANN BAARS

Include Applicant's parents, step parents, siblings and other prominent extended family members (living or deceased)

| Name | Relationship | Location and Living Situation |
|--------------------------|--------------|---|
| Alicia Koekoek | Sister | Married with 5 children, lives in <i>Calton</i> |
| Albert Marskamp | Brother | Married with 5 children, lives in Troy |
| Sharon Kroesbergen | Sister | Married, lives in St. George |
| John Marskamp | Brother | Married, lives in Brantford |
| Henry Marskamp | Brother | Lives with parents in St. George |
| Harmen Marskamp | Brother | Lives with parents in St. George |
| Sharon and Bert Marshamp | Parents | Live in St. George |

EXTENDED FAMILY MEMBERS: DEREK HENRY BAARS

Include Applicant's parents, step parents, siblings and other prominent extended family members (living or deceased)

| Name | Relationship | Location and Living Situation |
|---------------------|--------------|---|
| Jocelyn Kloote | Sister | Married, lives on a dairy farm in Rosedale, BC - 4 children |
| Gary Baars | Brother | Lives in Abbotsford, BC - married - 1 child |
| Tara Irwin | Sister | Married, Lives in Lethbridge, BC - 2 children |
| Hank and Judy Baars | Parents | Live in Rosedale, BC |
| | | |
| | | |
| | | |

REFERENCES

Reference #1 Sharon Marskamp received on: September 9/15

Reference #2 Jennifer Kroesbergen received on: September 14/15

Reference #3 Jared and Kristin Wilbrink received on: September 11/15

Reference #4 Judy Baars received on: September 17/15

Reference #5 Casey Gulliker received on: September 24/15

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CRIMINAL RECORDS CHECK AND PRIOR CONTACT CHECK

| | | |
|--|--|---|
| Indicate the name of the Police Service checked. Findings will be elaborated on in the Psychosocial Evaluation History section of this report. | | |
| Frances Ann Baars | Hamilton Police Services | August 1/15 No record |
| | RCMP Finger Print Clearing Certificate (if applicable): | NA |
| | Child Welfare Records Checks Brant FACS London CAS | September 9/15 September 10/15 |
| | Foreign Police Clearance (if applicable) | NA |
| Derek Henry Baars | Hamilton Police Services | August 1/15 No record |
| | RCMP Finger Print Clearing Certificate (if applicable): | NA |
| | Child Welfare Records Checks Niagara FACS London CAS Michigan Department of Health and Human Services Brant FACS Chilliwack CAS | September 30/15 No record September 10/15 No record September 15/15 No record September 9/15 No record November 25/15 |
| | Foreign Police Clearance (if applicable) | NA |
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MEDICAL REPORTS

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|---|
| <p>Medical Report form from Frances Baars received on: November 5/15</p> <p>Dr. Bernadette McNeil has been Frances' doctor for 17 years. She examined Frances on August 13/15. She found Frances to be in excellent health. Frances has no physical or mental illnesses. She takes no medication. Frances has been examined for infertility but no results were found. The doctor wrote that Frances is an "excellent candidate" to foster.</p> |
| <p>Medical Report form from Derek Baars received on: November 5/15</p> <p>Dr. Bernadette McNeil has been Derek's doctor for 3 years. She examined him on August 13/15. She found Derek to be in excellent health. She noted that he is blind. Derek has no physical or mental illnesses. He has no communicable diseases. The doctor wrote that he will be an 'excellent foster parent'.</p> |
| |
| |

MOTIVATION

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Frances advised that she would like to foster as she enjoys working with young children. She desires to make a difference in a child/children's life/lives and to help them reach their full potential by providing love and support.

Derek advised that there are children who need care that their parents are unable to give them in their home. He feels that he has the skills and desires to provide this care and nurturance and as much stability as possible. Though there will be difficulties he cannot yet foresee he believes there will be fulfillment as well.

Derek and Frances advise that they have never participated in a homestudy previously.

PROFILE: FRANCES ANN BAARS

Frances presents as soft spoken, friendly and kind. She is 5'5" tall and weighs 131 pounds. She has blue eyes and brown hair. Frances advised that the things that are important in her life are her faith and her family and friends. She enjoys being with children, reading, cooking and doing puzzles. She is a 'crafty' person and enjoys making things such as greeting cards and selling them for charity. She would love to write a children's book in the future.

PROFILE: DEREK HENRY BAARS

Derek presents as friendly, thoughtful and intelligent. He is 5'8.5 tall and weighs 198 pounds. He has dark hair and has prosthetic blue eyes.

Derek enjoys music and can play the piano and organ as well as the accordion. He enjoys reading, listening to sports, usually while on the treadmill. He also likes to build things with lego while listening to music. He feels that his relationship with God is the most important thing in his life followed by his relationship with Frances. He values loyalty, honesty and being respected. He feels it is important to keep your word and to live within your means and be thankful for what you have. He would like to have greater financial stability through finding a full time job, preferably one where he could work from home.

FAMILY LIFESTYLE

At this time Derek is a travelling pastor. This means that he works at home most of the time preparing his sermons. Then he will travel to whichever church has him preaching that Sunday. This could be anywhere from 10 kilometres away to flying to the USA. Frances will drive him if it is near (up to 6 hours) or will take him to and pick him up from the airport. Derek's job is somewhat sporadic and unpredictable. Currently, Derek rises at 4 am (sleep is sometimes an issue for people who are blind). He will catch up on the news and have some coffee. Frances rises at 7am and they will have breakfast. Derek will work on his sermons and exercise on the treadmill during the day. At the moment Frances works Mon/Wed/Fri from 9am to 1pm cleaning usually, but that is flexible. She also volunteers at a nearby thrift shop and babysits for friends when asked. On the weekends they do whatever they feel like doing but also attend church on Sundays and it mostly an all day event. A foster child would need to attend with them. They also say prayers at mealtime.

When the Baar's begin fostering full time Frances will stay home full time to be the primary caregiver with Derek as a support. They have thought about who they can trust and rely on for infrequent babysitting of a foster child and have chosen their sister in law Jenne. They trust her and feel she is a good parent.

Frances does most of the chores in the home since she works part time and it is simpler for her to do them. They do not have many household rules as it is just the two of them. They will expect a child to help out according to their age and developmental level, for example a 3 year old could help tidy toys.

The Baars are Protestant (Free Reformed) and their beliefs are a major part of their lives. They do not celebrate holidays such as Christmas or Easter as others do. They understand that most of Canadian society does celebrate these so the child will not be isolated from that. They do not endorse Santa Claus or the Easter Bunny as they do not wish to lie to children. They are willing to give the children chocolate at Easter if the parents wish that they do so. They would also assist a child making Christmas gifts for their loved ones and would purchase gifts for them.

However, they will be told who is giving the gifts. Frances' family does celebrate Christmas with gifts but usually closer to New Years and the children would be involved in that. They celebrate Canadian holidays such as Thanksgiving; but not Halloween.

HOME AND COMMUNITY

Type of residence (House, Apartment, Condo, etc.): House
Square footage: 1800
Bedrooms: 2
Bathrooms: 1
Length of time in current residence: 2 months

The Baar's have recently moved to a rented house. The house has the kitchen, living room/play, bath room and laundry room area on the first floor. The second floor has the 2 bedrooms and office. There is a crawl space under the house for storage. The house is on Hwy 5 in Troy. It is a rural setting on a farm. The landlord farms the land and rents out the house. They are directly across the road from a café and pottery store (Don Zver). There is a fenced in park right next to the café within easy walking distance. All other amenities need to be driven to. The yard has a fenced play area made of snow fencing. A child would never be left to play outside alone. There are no water features and no weapons.
 The foster child(ren) will be in a bedroom on the second floor across from the master bedroom.
 The Baars do not own any pets.

LEGAL/FINANCIAL RIGHTS AND RESPONSIBILITIES

The Applicants have been provided with information concerning the different roles, responsibilities, legal and financial rights and benefits of kin, customary care, foster parents and adoptive parents.

The Applicants have been informed of the appropriate authority to which complaints related to the home study process can be addressed, i.e. the Children's Aid Society.

The Applicants have also been advised of their duty of honest disclosure and candor along with their ongoing duty of disclosure of new events or information which may require an updated or amended home study.

PSYCHOSOCIAL EVALUATION REPORT

HISTORY: FRANCES ANN BAARS**HISTORICAL INFORMATION**

Frances was born in Brantford and raised in St. George, Ontario. There were seven children in her family. Her father was a carpenter by trade and her mother stayed home to raise the children, though she later drove a school bus. Having such a lot of siblings there was always someone to play with and Frances has fond memories of her childhood. There were also family trips camping. However, she contracted Lyme disease at the age of 6 and had to spend time at home recovering. She has occasional flare ups which consist mainly of sore joints. Through her teens she had some other health issues. She was allergic to various medications, had pneumonia and suffered from severe menstrual cramps. Frances was raised in a Christian home and therefore, attended Rehoboth Christian school from grades kindergarten through grade 12. Frances did very well in school; often winning awards for high marks. After graduating she attended Conestoga College for ECE for 2 years. After that she was a nanny for 4 years and now does part time cleaning.

Frances had no important romantic relationships prior to meeting Derek. Frances advised that she was never concerned about getting married and did not really date or pursue marriage. She was surprised when the pastor of their church approached her about meeting Derek. However, she agreed to connect with him on line and then in person.

EVALUATION

Frances was raised in a loving, supportive home. Her childhood was stable and consistent and she described it as fun, wonderful, exciting and enjoyable. Her parent's had a loving, close and committed relationship. Frances also had a good relationship with both of her parents. Her parent's modes of discipline were varied; time outs, lectures, sent to room, removal of privileges and logical consequences. Her father was a little more lenient and would also reason with her. Frances was spanked occasionally but did not feel that it constituted physical abuse. Her father only did it half heartedly and her mother had a weak wrist. She felt that they were fair and consistent with discipline. All of Frances' physical and emotional needs were met. She was never physically or sexually abused or neglected as a child. The one negative thing about her childhood that distressed her at the time was missing school due to her health. She also could not participate in phys-ed and after school sports due to this. However, she learned to become interested in crafts instead.

Frances has no criminal history, no mental health diagnoses and no history of harming a child. She has never used illicit drugs and does not drink alcohol. She has sometimes used pain medication and sleeping pills related to flare ups with Lyme disease. She has had no issues with employment. She has not always worked full time but has been satisfied with her employment. Frances had no romantic relationships prior to meeting Derek.

PERSONAL CHARACTERISTICS: FRANCES ANN BAARS**EVALUATION**

Frances presents as friendly, kind and calm. She is open in her communications and easily understood. She is a good listener and takes her time to respond. She admits that she can tend to be introverted but it seems if she is comfortable with a person this is not an issue. She knows the importance of catering her language to the listener. She also caters her affection to whoever she is with knowing that not everyone likes the same type of affection. She is careful not to be insensitive to others as she knows that she can easily be upset by insensitivity to her feelings. Frances knows that other people have different beliefs and ways of life from her and is fine with this. She respects and values human life in all of its aspects. Her judgment appears sound and she appears to be capable of sizing up a situation and behaving in an appropriate manner. Frances advised that two of her strengths is organizing and prioritizing. She is a hard worker, conscientious and takes her commitments seriously. If she gives her word she feels it is important to follow through. Though Frances feels she is adaptable she struggles to go out of her comfort zone. She is aware that this is a challenge for her and tries to do new things. She is not easily stressed but if she is it is short lived. She may read if feeling stressed as this takes her to a different place entirely where she will not worry. Frances deals with things as they come. She finds that her skill in prioritizing can help in

stressful situations and she can break things down into manageable components. She also has very good organizational skills and is practical. This helps with not letting things get out of control in the first place. Frances is usually in an upbeat, positive frame of mind. She rarely feels anger at someone and feels that it is important to understand the other person's perspective before rushing to judgment. She feels that she has good impulse control. She does not react aggressively or thoughtlessly towards others.

HISTORY: DEREK HENRY BAARS

HISTORICAL INFORMATION

Derek was born and raised in Chilliwack, British Columbia. He has been blind from birth, having been born with no eyes. He is one of four children. His mother was a homemaker when the children were young but later was a teacher. His father worked in the maintenance department for the public schools. He was raised as a Christian (Free Reform) and this was an important part of family life. Derek was mainstreamed at school and attended Timothy Christian School from kindergarten through grade 12. He had an EA to assist him and he did well. Derek did not play any organized sports but used to enjoy running along with sides of the country roads for exercise. He also did some fundraising for the local music academy in grades 11 and 12. He found he was lonely sometimes as he did not have any close friends; though he was close to his cousin. After high school Derek attended the University of Fraser Valley. He got a Bachelor of Arts with a major in history and a minor in philosophy and political science. He also took some criminology courses. Following graduation in 2002 he moved to Grand Rapids, Michigan to attend seminary there. He became eligible to for the call to be a pastor in 2009.

Derek advised that he has had no important romantic relationships prior to meeting Frances. He and Frances met in 2007 when they were introduced. Apparently there were people in the church who suggested that they would be a good match for one another. The pastor approached Frances to see if she would be open to meeting Derek. They emailed back and forth for a while and Derek met her family in June 2009 and he asked her father for permission to marry Frances. They were engaged in August 2009 and married in April 2010.

EVALUATION

Derek advised that he had a good childhood in that it was stable, secure and carefree. His parents were loving, supportive, affectionate and loving towards him and his siblings. Derek also felt very supported as school by his EA, Connie. He feels that with his parent's and her support he did not look upon his blindness as a barrier or a reason for low self esteem. His relationship with his siblings was also good; but with the usual sibling squabbles. His parents were Christian and as such were helpful and welcoming towards others. His parents were fair in their discipline, except on one occasion that Derek felt they used excessive physical discipline. However, he does not feel traumatized by this. Derek advised that he did not experience any trauma or sexual abuse growing up. However, there were times of isolation when he had few friends. Due to his blindness he was not able to participate in some of the activities of the other children. This made him feel sad and lonely. However, he does not feel that this affects him today except to be compassionate towards those who are isolated.

Derek has no criminal history, psychiatric diagnoses or history of illicit drug use. He had no important relationships prior to meeting Frances. Employment has been somewhat of an issue for Derek but not for lack of working hard and trying to secure a position. He continues to pursue full time employment.

PERSONAL CHARACTERISTICS: DEREK HENRY BAARS

EVALUATION

Derek presents as a very thoughtful communicator. He is very open to waiting patiently for others to finish speaking before responding and then chooses his words carefully. He appears very open to learning from others and in adapting his methods if there are better ones. He likes to be proactive with problem solving and anticipate an issue before it becomes a problem. He will reach out to others who are knowledgeable on whatever subject it is if need be. He is friends with a group of men who meet regularly for breakfast and finds support in this group. They talk things over and offer advice to one another. He is open to all cultures and beliefs. When he was in seminary school there were many people from different countries and cultures such as Syria, Philippines and Asia.

They all had the same theological base, however, Derek is respectful of others beliefs that may be different from his. He advised that he feels it is not his job to change others. Derek advised that he copes well with day to day stress well. At this time in his life his biggest stress is not having fulltime employment. He would like to have a parish of his own. He must be content at this time with doing single services here and there. This does not give much satisfaction when the hosting church pays so little for his work. He will put in 15-20 hours per sermon plus travel time and may only be remunerated at \$130. He feels that this does not reflect the effort he has put in. However, he continues to put in the hard work and is persistent. Derek appears to have good judgment and is appropriate in his behaviour and responses to others. Derek has no issues with impulse control although did say he had some temper issues as a teen out of frustration. He finds he does not get angry over small things. He only feels anger over injustices in the world, for those he knows and does not know personally. He is strongly pro life and finds abortion to be unjust. However, he does not dwell on these things and tend to have an upbeat, positive attitude. He likes to show affection through touch and through words. Derek is in good physical health and keeps himself active with his treadmill. He attends doctor's appointments as necessary.

MARITAL/DOMESTIC PARTNER RELATIONSHIP

EVALUATION

Derek and Frances present as having a loving, stable relationship. They both care about what is in the best interests of the other. They have their strong Christian faith in common and believe that marriage is important and worthwhile. They have a traditional Christian marriage with the husband as the leader. However, they qualify this by advising that though Derek leads, he serves Frances as well, following the teachings of their faith. Derek does not dominate and they make all of their decisions together. They listen to one another's point of view but will agree to disagree if necessary. Frances advised that she just wants to have her opinion heard. They appear very respectful of each another and make time for one another. They enjoy each others company and like to talk with one another before bed to see how each other's day went. They have faced some major disappointments together and this appears to have strengthened their marriage. They are both satisfied with their physical relationship.

S/DAUGHTERS/ OTHERS RESIDING OR FREQUENTLY IN THE HOME

MINOR SON(S) OR DAUGHTER(S)

NA

EVALUATION

NA

OTHER MINORS LIVING OR FREQUENTLY IN THE HOME

NA

EVALUATION

NA

ADULT SON(S) OR DAUGHTER(S)

NA

EVALUATION

NA

OTHER ADULTS LIVING OR FREQUENTLY IN THE HOME

NA

EVALUATION

NA

EXTENDED FAMILY RELATIONSHIPS: FRANCES ANN BAARS**EVALUATION**

Frances is very close to her family. They speak on the phone frequently and get together when they can and on special occasions such as Thanksgiving. She and her sisters also get together to do canning on a yearly basis. They really enjoy getting together to do this and Frances looks forward to it. Her mother's family also gets together twice a year with siblings, children and grandchildren. Frances' father's family is in the Netherlands but they stay in touch through social media and visits where possible. Derek likes Frances' family and they all get along well.

EXTENDED FAMILY RELATIONSHIPS: DEREK HENRY BAARS**EVALUATION**

Derek does not see his family much due to distance and the busyness of everyone's lives. However, they do get along well and try to get together for family events, about once a year. He speaks with his parents several times a month. Derek has told them about their application to foster and they are all in support of it. His youngest brother and wife have adopted and so they are positive about the prospect. Frances gets along well with Derek's family also.

PHYSICAL/SOCIAL ENVIRONMENT**EVALUATION**

Finances: At this time the Baar's annual income is around \$37,470 (2014). This income is from Derek's work as a travelling pastor and Frances' work as a cleaner part time. Per month that is about \$2,700 net. Their bills, including rent, food utilities, transportation and miscellaneous add up to about \$2,245 per month. This leaves them with \$455 left over. At this time they have \$76, 196 in assets (automobiles, savings and cash on hand). The Baar's are very careful with their money and live within their means. Currently, Derek is a travelling pastor who is hoping to get a parish of his own. Therefore, his wages may fluctuate somewhat from year to year depending on how many sermons he does. They rent as it is difficult to purchase a house when they do not know where they will eventually settle. The accomodation and safety was done on November 5/15. There were only a couple of areas that needed to be addressed and they were done so.

GENERAL PARENTING**EVALUATION**

Derek and Frances do not have children of their own and therefore have no direct experience as parents. However, Frances has worked as a nanny (including overnights and weekends) for some years and continues to regularly babysit children. There is one family whom she babysits for regularly and the children are foster children of Brant FACS. Frances also has ECE training. Frances feels very comfortable with children and enjoys teaching and interacting with them. She has a strong belief in reading to a child and has many children's books. They also know the value of teaching life skills and would involve a child in cooking, cleaning etc. dependent upon age. They are excited to take a child outdoors to explore as well. The Baar's do not own a television and feel they can use other modes of entertainment to keep the children stimulated. They would use dvds/online videos from time to time as a treat and on sick days. Frances feels comfortable that she would be able to identify when a child is having developmental delays. She also has training regarding dyslexia and has tutored children with dyslexia as well as a child with autism. This experience has helped her to be sensitive to non verbal cues. They feel it is important to learn and build on a child's strengths. Frances feels that you would have to be aware of how a different environment may cause a disruption for a child and perhaps they may regress so this would need to be taken into account when assessing this. Frances genuinely enjoys doing 'kid' activities and would be good at providing a stimulating atmosphere for a child. They hope to have other children over (friends and relatives children) to encourage socialization and sharing. She would not just be going through the motions. She advised that they would try to assist a child with homework wherever possible and show interest in the child's activities. They both understand the need to be consistent with discipline. What type of discipline they use would depend on the child. Frances noted that when she was a nanny she would usually use the same discipline that the parents used to be consistent. However, she knows that may not be advisable with foster children. If the children were older and capable of understanding they would give the child time to calm down and think about what went wrong. They would then talk about how things could go differently next time. They also feel it is important to set out the rules, praise positive behaviour, use time outs and removal of privileges if necessary. They understand the agency's policy of non physical discipline and agree to abide by it. They are both uncomfortable with it at any rate. They are both aware of the need to provide appropriate clothing, food and shelter as well as medical treatment for a child. In discussing supervision they advised that it depends on the age and developmental level of the child. Since they would be fostering young children they would never leave them alone in the home or outside alone to play in the fenced in area.

SPECIALIZED PARENTING**EVALUATION**

The Baar's both appear to have insight into the needs of children who have been placed in care. They have not parented children who have been neglected or abused but Frances has babysat some children who have been neglected (Brant CAS foster children). They both understand the need for stability for children and how coming into foster care and moving placements causes emotional problems for children. They expect that a child may not be happy to be placed in their care and will feel attachments to their natural family and wish to see them. They will do whatever is helpful to assist a child with visits. They are comfortable having contact with the natural family should it pose not risk to them. They understand the need to be positive about the natural family and encourage visits. France and Derek understand the need for structure for a child and the benefits of this. They feel it is important to have structured time as well as unstructured time for a child. They would to want have a child feel that they are a vital, needed part of their family while they are with them. They would not expect the child to automatically blend into their way of living and understand that transitions take time. They advised that they will be respectful of the child's culture and do what they can to educate a child about it. They admitted they were somewhat surprised about this as they did not realize it was such an important part of fostering, but are perfectly willing to do so. The only thing they feel they can not do is something that would go against their own beliefs.

FAMILY PREPARATION AND TRAINING ACTIVITIES

Based on your findings derived from the family's participation in the PRIDE Pre-service training program evaluate the family's ability to meet the six PRIDE competency categories listed below.

1. Protecting and nurturing children and youth:
2. Meeting developmental needs and addressing developmental delays
3. Supporting relationships between children, youth and their families
4. Connecting children and youth to safe, nurturing relationships intended to last a lifetime
5. Participating as a member of a child or youth's professional team
6. Positively reinforcing a child or youth's heritage and cultural identity

****Please refer to attached report****

Also reference any additional readings, seminars, workshops, etc. that the applicants may have completed to prepare to become a foster, kin, customary care or adoptive family.

ADOPTION ISSUES**EVALUATION**

The Baar's have been examine for infertility and have been found to be infertile though no cause is known. They have experienced the grief that this brings. They do not blame one another and now feel "at peace" with their family size. At this time the Baar's do not plan to adopt. However, they have not ruled this out completely. Should a foster child leave their home for an adoptive placement the Baar's are very capable of sending that child off to their new home in a positive and healthy way.

PSYCHOSOCIAL EVALUATION CONCLUSIONS

Both Derek and Frances were raised in loving, supportive homes and realize the valuable gift they were given in this. They hope to care for children in the same way that they were loved and supported. They both present as insightful into children's needs and understand that the needs will be higher for children in care.

Frances particularly understands how the foster system can work. She had some experience with foster children through babysitting for Brant foster children. She experienced the loss when they suddenly left the foster home to go to kin and family. She missed the children and sought support from the foster mother and Derek. They are aware that the CAS can be bureaucratic and will do their best to work within the system.

Though Derek and Frances have never parented together Frances has been a nanny and babysits frequently, including over nights. They both enjoy caring for children and see the value in doing so.

The Baar's appear to be dedicated to their marriage. They are respectful of each other's roles and appear to enjoy one another's company. They are supportive of one another and also have the support of family and friends nearby.

The Baar's home is neat, clean and welcoming. They are aware of the dangers of the road out front and have put an extra lock on the door out of reach of children. They are safety conscious

Both Derek and Frances appear to have gentle, patient natures. They are cooperative and helpful. They are both positive thinkers and look on the bright side of things despite disappointments they have had.

PLACEMENT CONSIDERATIONS

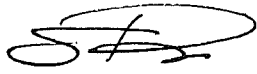
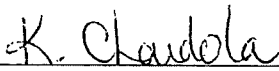
UNMATCHED FAMILY PLACEMENT CONSIDERATIONS

The Baar's would like to foster one or two children between the ages of 0-5 of either sex. They are comfortable with behaviours such as damaging property, putting self at risk, threatening to injure themselves, stealing, disruptive in school, soiling, bedwetting, hygiene issues, tantrums, lying, swearing, sexually provocative behaviour, inappropriate masturbation, sleep issues, difficulty relating to peers and or adults, eating issues. They are less comfortable with a suicidal child, one who runs away from home or school, is hostile or defiant, sets fires or engages in sex play with younger peers. They would also prefer not to have a child who throws things due to Derek's inability to see a projectile hurled his way. They would accept a child with a communicable disease

RECOMMENDATION

It is recommended that **Frances Ann Baars** and **Derek Henry Baars** be **approved** for Foster Care .

[--For International adoption include the age, health status, gender (if applicable) and country of origin of the child recommended--].

| | |
|---|---|
|  |  |
| Susan Ross, B.S.W. | Karen Chardola |
| Homestudy Worker | Supervisor |
| Date: <u>Dec 11/15.</u> | Date: <u>Dec 11/15</u> |



The Children's Aid Society
OF HAMILTON

182

Dominic Verticchio, Executive Director

December 31, 2015

Mr. & Mrs. D. Baars
2295 Hwy 5 West
TROY ON L0R 2B0

Dear Mr. & Mrs. Baars,

Your homestudy has been approved and I am pleased to welcome you as foster parents for this agency. You are joining a group of dedicated men and women who provide foster care to children in our community. As foster parents, your home is designated a "Place of Safety" as defined in the Child and Family Services Act, Part III, Section 37(1).

Please find enclosed your ID cards. As foster parents, you are automatically enrolled as members of the Children's Aid Society of Hamilton. This membership entitles you to vote at the Annual General Meeting for the election of Board Members and, as well, receive the agency's newsletter and other mailings.

Your names will also be forwarded to the President of the Foster Parent Association and you will be contacted by a member of the Association regarding their role with the agency.

Your Placement Support Worker is Tracey Lindsay, and she is available at Ext. 6246.

We look forward to our ongoing partnership with you on behalf of the children and their families in our community.

Sincerely,

Karen Chardola
Supervisor
Placement/Resources Unit

/ml
Encl.

THIS IS EXHIBIT " E "
referred to in the Affidavit of
Frances Baars
Sworn before me this 10th
day of April A.D. 20 17

A Commissioner in and for the Province of Alberta
Michele Moore, Notary Public

Serving Hamilton's children and families since 1894.



The Children's Aid Society OF HAMILTON

FOSTER PARENT(S) - SOCIETY SERVICE AGREEMENT

This Agreement, effective 17th day of December, 20 15.

BETWEEN

The Children's Aid Society of Hamilton

(Hereinafter called the "Society")

AND

(Hereinafter called the "Foster Parent(s)")

Both parties to this Agreement recognize the legal mandate and obligation of the *Children's Aid Society of Hamilton* and agree that both will co-operate pursuant to the terms of this Agreement in the best interests of the child's care and future.

"Every licensee that intends to place a child in foster care shall enter into a written service agreement with the Foster Parent(s) before placing a child with the Foster Parent(s)".

¹R.R.O. 1990, Reg. 70, S.120

¹ R.R.O.

Refers to Revised Regulation of Ontario, Child & Family Services Act of 1990.

THE SOCIETY SPECIFICALLY AGREES AS FOLLOWS:

A. *Placement & Care Responsibilities*

1. To involve the foster family in the decision to place a particular child in their home and to make every attempt to offer for placement a child whose needs they can reasonably meet.
²F.C.L. 0203-09
- 2i. Arrange for a person known to the child to accompany the child to the foster home on the date of actual placement. (The Society may approve an adult other than one known to the child to accompany the child in special circumstances).
R.R.O. 1990, Reg. 70, s.114(a)
- ii. Ensure that the Foster Parent(s) receive in writing, the health, medical and dental data necessary for the care of the child, including specification of medical disorders, handicaps, allergies and limitations on activity.
R.R.O. 1990, Reg. 70, s.114(b)
- iii. Provide information to Foster Parent(s) regarding the nature and circumstances of previous abuse experienced by the child.
³F.C.L. T&C 24 0202-08
3. To involve the Foster Parent(s) in the development of a 30 day Plan of Care for each child placed in the foster home and to review and if necessary, amend the foster care plan - a) at 90 days and at least every 180 days; b) where there is a placement change.
R.R.O. 1990, Reg. 70, s.115
- 4i. To assign a Placement/Resource Worker to supervise and support every foster family approved for placement. The Placement/Resource Worker will make quarterly home visits as per Reg.70.5.116.
R.R.O. 1990, Reg. 70, s.121, F.C.L. 0207-03

² F.C.L.
Refers to Foster Care Licensing Agreement.

³ F.C.L. T&C
Refers to Foster Care Licensing Agreement, Term and Condition.

- 4ii. To provide, through the child's assigned Worker, counselling and guidance to the foster child and Foster Parent(s) consistent with the needs of the situation. The child's Worker is to visit the foster home within seven (7) days of a child being placed, within thirty (30) days of placement and every 45 days thereafter. Additional visits will be made as needed.
R.R.O. 1990, Reg. 70, s.121(2)a
5. To respond to inquiries from Foster Parent(s) within twenty-four (24) hours. To be available for consultation to the foster family, either through a worker, supervisor or night duty services and to co-ordinate a referral for additional support including crisis intervention should the need arise in the foster home.
F.C.L. 0302-17
6. To respond to every complaint against a foster family concerning the care of their foster child within twenty-four (24) hours of receiving a complaint and begin an investigation within five (5) working days, if warranted. To report the result to the Foster Parent(s) within five (5) working days of concluding the investigation. The results of the investigation shall be recorded in the foster family's file.
F.C.L. T&C 34 0207-09
7. To guide and regulate the contacts between the child and his/her natural family where necessary.
F.C.L. 0302-19
8. To regard the care of the child as the joint responsibility of the Foster Parent(s) and the Society, and to create the climate of honesty and trust in which the Foster Parent(s) will feel free to share.
F.C.L. 0203-02
9. In co-operation with the Foster Parent(s) and child, and the natural parents where appropriate, to set realistic goals during the placement of the child for his/her educational, social and emotional development and to work together to achieve these goals.
F.C.L. 0302-02
10. To involve the foster family in an annual review of the ongoing use of their home and to involve their participation in a written mutual evaluation, which includes interviewing all persons in the household over the age of six (6).
F.C.L. 0207-11

11. To review the Foster Care Service Agreement at least annually or at the request of the Foster Parent(s) and update by the parties from time to time as is necessary to give proper effect to the Agreement.

R.R.O. 1990, Reg. 70, s.120(3) & F.C.L. 0207-11

B. *Financial Obligations*

- 1i. To obtain medical and dental care for the child and ensure that prompt and appropriate medical and dental care is available to meet the health needs of the child.

F.C.L. 0302-03

- ii. To provide immediate consultations of Society staff in emergencies.
2. To provide funds that will ensure that each child has a supply of clothing suitable to the child's age, size and activities and personal spending in accordance with Society policy.
3. To provide the current per diem rate according to the rate according to the rate established by the Society and approved by the Ministry of Children and Youth Services and consideration of supplementary rates if the child's needs so warrant.
4. To reimburse the Foster Parent(s) for any approved purchases or other authorized expenses including mileage as designated in Reimbursable Expenditures that are agreed to and approved by the worker.
5. Payments to Foster Parents will be processed on the third and fifteenth working day of each month for direct deposit into the foster parent's bank account. The payment will be available in the account on the 6th working day from the third day of the month. This is to accommodate processing time required by the bank.
 - The first regular payment will include eligible per diem payments, spending and allowances for the immediately preceding month, and all requests for reimbursements authorized and ready for payment at that time.
 - The second regular payment will include all requests for reimbursements, received by the 10th working day of the month, that have been approved for payment.

C. *Support and Training*

1. To provide professional consultation for the foster child should that be required.
2. To approve and arrange emergency and planned relief services.
F.C.L. 0302-11
3. To keep Foster Parent(s) informed of current child welfare legislation, standards of care and significant procedural changes.
4. To facilitate and implement, in co-operation with the Foster Parent(s), opportunity for continuing education, special training and development.
F.C.L. 0302-11
5. To support and encourage the goals of the Foster Parent Association and to work co-operatively with their representatives to facilitate and implement programs for continuing education and development.

D. *Supervision, Home Education and Termination*

1. Supervision with respect to a child will be provided through consultation with the child's Worker. General supervision and consultation with respect to fostering issues will be provided through the assigned Placement/Resource Worker.
2. Foster Parent(s) have a right to express complaints or grievances regarding services provided to themselves or to children in their care. Such complaints will be dealt with through the Society Internal Review Procedures. Foster Parent(s) should direct their complaints to the relevant worker or supervisor, depending on the nature of the complaint.
3. Termination of fostering can be initiated by Foster Parent(s) at any time. However, if the child is in placement, it is necessary to give appropriate advance notice unless the reason for termination is of an emergency nature.
4. Following a complete evaluation, the Society may terminate a foster arrangement where there is a finding that the level of foster care is unsatisfactory and does not meet the required standards. For example, in situations of excessive use of alcohol or drugs, or in cases of physical or sexual abuse, the closing of the home may be immediate. THE FOSTER PARENT(S) SPECIFICALLY AGREE AS FOLLOWS:

1. To embrace the concept and philosophy of shared responsibility with the Society for the care of the child, but to accept the authority of the Society as ultimate decision-maker as guardian designate of the foster child.
2. In co-operation with the Society to provide for the child's physical, social, emotional and educational needs and carry out recommended treatment.
3. To carry out, in co-operation with the Society, recommendations for the child's medical and dental care.

F.C.L. T&C 2 0203-03

4. To meet basic food and nutrition needs of children and youth by providing meals in accordance with Canada's Food Guide, providing children with the opportunity to develop life skills associated with meal planning and preparation, and accommodating special dietary requirements including religious, medical and lifestyle diets (eg. Vegetarian).
5. To respect the confidential nature of the information revealed about the child's background, sharing with others what is relevant, only with the approval of the Society worker and in accordance with the regulations that are set out. To sign the Oath of Office and Confidentiality.
6. To seek assistance and consultation from the Society when concerns first arise about the child's progress and adjustment in the home and continue ongoing dialogue as to the care and management of the child.
7. To report immediately to the Society any serious occurrences involving a foster child. Such occurrences include death of the child, serious illness, hospitalization, abuse of the child, absence from home, alcohol or drug abuse, fire or accident in the home, apprehension by police and charges under the Young Offender's Act.

F.C.L. T&C 14 0203-14

8. To share with the Society any changes occurring in the foster home which might affect the foster child. Such changes would include serious illness, marital problems and additions to the household in the form of relative or roomers, if only on a temporary basis. To call on Society resources or seek a referral when difficulties arise in their own family as a result of the placement. OTHER CIRCUMSTANCES REQUIRING NOTIFICATION WOULD INCLUDE CRIMINAL INVOLVEMENT/CHARGES WITH RESPECT TO ANY MEMBER OF THE FAMILY EITHER RESIDING IN OR FREQUENTING THE HOME. To call on Society resources or seek a referral when difficulties arise in their own family as a result of the placement.

9. To accept and observe the Society's policy on discipline and specifically to refrain from the use of physical discipline of the foster child and deprivation of the child's basic needs of balanced diet, shelter and emotional care. THIS APPLIES TO THE FOSTER PARENTS APPROACH TO PARENTING THEIR OWN CHILDREN AND/OR CHILDREN WHO MAY BE IN THEIR CARE AS RELATIVES/KIN. THE USE OF CORPORAL PUNISHMENT, PHYSICAL DISCIPLINE OR ANY OF THE OTHER IDENTIFIED UNACCEPTABLE PRACTICES WITH ANY CHILD UNDER THE CARE OF A FOSTER PARENT IS NOT CONDONED.

F.C.L. 0203-07

10. To be respectful of the diverse cultural and religious needs of children and youth, recognizing that children have the right to receive spiritual/religious instruction of their choice and that their participation in any religious program is voluntary.
11. To provide the Society with updated police checks and medicals every five (5) years.
12. To show respect for the child's emotional ties with the birth parent and in co-operation with the worker, to assist the child in dealing productively with the birth parent. This might include Foster Parent(s) communication with the parent, participation in an arrangement of visits and assistance in transportation for visits. Visits may take place at the foster home with the agreement of the Foster Parent(s).

F.C.L. T&C 1 0203-02

13. To be willing to assist the foster child through such difficult processes as involvements with the education system, mental health practitioners, court and police involvement.
14. At the discretion of the worker, to maintain a log to monitor behavioural patterns in the foster home, and other significant events pertaining to the placement and to attend Court proceedings, if called.
15. To make themselves and the child available to the Society for prearranged visits and/or interviews, and to share with the worker details of the child's significant relationships.
16. To observe and respect the "Rights of Children in Care" as indicated in Ministry Standards and Society Policy.
17. To develop, with the involvement of the child (if appropriate) and the child's Worker, a *Life Book* for the child.
18. To recognize the responsibility for continuing education in their role as Foster Parent(s) and to make every effort to attend such programs as they are developed and presented.

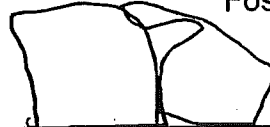
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Date

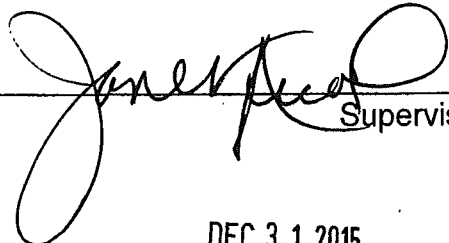
Dec 17, 2015
Date


Placement/Resource Worker

FOSTER PARENTS RECEIVED COPY ON

7 Baars
Foster Parent


Foster Parent


Supervisor

DEC 31 2015



The Children's Aid Society OF HAMILTON

March 16, 2016

Mr. & Mrs. D. Baars
2295 Hwy 5
TROY ON L0R 2B0

Dear Mr. & Mrs. Baars:

I am writing to confirm the closure of your home to fostering services with the Children's Aid Society of Hamilton. The Oath of Confidentiality remains valid however, the Service Agreement is terminated.

During the placement of the two girls placed in your home, ages 5 and 3, it became apparent that working with the agency was going to be a challenge. As discussed in PRIDE training and outlined in the service agreement, it is a requirement that foster parents "be respectful of the diverse cultural and religious needs of children and youth." This is a competency area in the annual review process as well.

It became evident during this placement that you were not in agreement with supporting the parent's wishes for the children's care. These children were placed in care under a Temporary Care Agreement where the goal is to reunite the children to their biological family. The parent's cultural and religious beliefs are to be supported by the child care team and this was the direction provided with respect to the care of these children. We were not able to come to a resolution that supported the children's needs.

This necessitated a move for these young children. The messages given to the girls regarding the reason for the move was also concerning. At the time of the move, it was clear that the girls had been involved in conversation by yourselves in a manner that was not age appropriate or sensitive to their needs and age and stage of development.

The principles of foster care are grounded in a partnership between foster parents, the agency and the biological family. This requires an ongoing partnership including flexibility and compromise and a focus on the child's needs first and foremost. It is this agency's position that this requirement could not be met for these children, nor for any future placements moving forward.

Sincerely,

Tracey Lindsay

Tracey Lindsay
Placement Resources Worker
ext. 6246

TL/ml

K. Chardola

Karen Chardola
Supervisor
Resource, Placement & Support
ext. 6189

THIS IS EXHIBIT "F"
Dominic Verticchio, Executive Director
referred to in the Affidavit of

France Baars

Sworn before me this 10th

day of April A.D. 20 17

Marty Moore
A Commissioner in and for the Province of Ontario
Barrister and Solicitor

Serving Hamilton's children and families since 1894.

THIS IS EXHIBIT " 6 "
referred to in the Affidavit of
Frances Beers
Sworn before me this 10th
day of April A.D. 20 17

192

April 13, 2016

Dear Ms. Lindsay and Ms. Chardola,

Mary Moore
A Commissioner in and for the Province of Alberta
Barrister & Solicitor

We are writing in response to the letter we received from you regarding the closure of our home to fostering services with the Children's Aid Society of Hamilton. We ask that this letter please be included in our file so those who access our file in the future can also read this letter.

During PRIDE, we did discuss and agree to "be respectful of the diverse cultural and religious needs of children and youth" in our care, but it was also explained to us that we would not be expected to do anything that contradicted our personal and family beliefs. We discussed things such as the fact that we don't celebrate Halloween, and were told that in those situations the children's worker would pick up the children to take them trick-or-treating to ensure the parent's wishes in those areas was met.

In the letter we received from you it states that we "were not in agreement with supporting the parent's wishes for the children's care." In response to that, I would like to make clear that we did everything the parent asked us to in the communication book, regardless of cost or inconvenience to ourselves. Mom asked us to bath them every other evening, so we did. Mom asked us to oil their hair daily, so we bought oil, only to be told she did not like the smell and wanted us to use olive oil. We bought olive oil, but she still did not like it, so she told us the brand she wanted, which we bought. We also purchased the particular body lotion she wanted for the girls. One evening they came home and Mom had sent a note requesting that we take the one girl to the doctor for her cold, and we immediately bundled her back up and brought her to the walk-in. All that to say, we did, as much as we were able, support the parent's wishes.

In February you contacted us regarding how we were planning to celebrate Easter with the children. Though we don't normally celebrate Easter, we agreed to give the children chocolate, hide candies, and get them Easter outfits. We also made clear that though we would not lie to the children by telling them that the Easter Bunny is real, neither would we say he was not real in order to respect the parent's wishes. When this was not thought to be enough, we agreed that if CAS so desired, we were willing to have them placed in a relief home for Easter weekend to allow them to celebrate according to CAS's wishes. Ultimately, we were told that if we would not tell our foster daughters that the Easter Bunny was real, our home would be closed, which, as you know, happened, since we have a strong 'no lying' policy in our home which we would not break.

When in phone conversation with Ms. Lindsay, she brought up Christmas. We gave the children gifts and they joined our extended family dinner, but we did not say Santa was real or was not real. It was at the point of the phone call in February that we learned that the girls' mother had

wanted a picture of them with Santa. Though doing so would have contradicted our Christian beliefs, we would not have stood in the way had the children's worker taken them to get the pictures taken.

When we were told the girls would be removed from our home and our home closed, we requested that our home might remain open for infants, since they would not care about Santa or the Easter Bunny. Additionally, we expressed willingness to provide foster care for Christian families who did not want their children involved in those cultural practices, but Ms. Lindsay refused all our desires and proceeded to close our home.

We were told on a Thursday afternoon that the children would be leaving our home the next morning, and we requested a transition period for the children, which was denied. The only information we were given, which we needed to specifically ask for, was that the sisters would be staying together. We could not answer their questions about where they were going or who their new foster parents would be. When they asked us why they had to leave, we explained that it was not our desire to see them go and that we loved having them in our home, but that CAS had told us that we had to tell them something that was not true, and they knew there was no lying permitted in our home. I should explain, that one of the girls in our home came with a strong tendency to twist the truth or lie outright, which is why we so often emphasized that we would not lie to them, and they were not permitted to lie to us. Truth telling was a lesson we often focused on, which is why we used that to explain their move. Having told CAS we would not tell them the Easter Bunny was not real, we could not bring Easter into the reason why they had to move.

Also, when speaking on the phone with Ms. Lindsay regarding our Christian faith and how that impacted our lives and the lives of children in our home, several times she brought up her fears of how we would respond were a homosexual couple to adopt children in our care. We explained that the plan for the girls in our care was to return to their biological family, not adoption, and that were we to receive children in our home who went on to be adopted by a homosexual couple, we would respect those parents as human beings worthy of dignity and respect, but she stressed she did not think we would treat such adoptive parents well when they were in our home. She made it clear that she did not want our home to remain open, since she did not want to get to that bridge and then need to decide how to cross it.

We agree that the principles of foster care are grounded in a partnership between us, the agency, and the biological parents, and we did all we were able to meet the requirements of all parties without breaking God's law. Our desire was, and remains, that the girls would do well and flourish in our home, and now in their new home. We love them, and they will always have a special place in our hearts. We do not wish to uproot them again, and have therefore not pursued

trying to get them back, but would have greatly preferred that a way had been found to keep our home open for children in need of love, stability, and safety.

Sincerely,

Derek Baars

Frances Baars

THIS IS EXHIBIT " H "
referred to in the Affidavit of

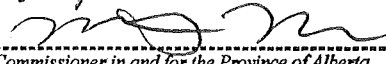
195

Children's Aid Society

Hamilton County, Ontario

Legal department

Attention Julie:

Frances Baars
Sworn before me this 10th
day of April A.D. 2017

A Commissioner in and for the Province of Alberta
Marty Moore
Barrister + Solicitor

Derek Baars, born June 2, 1980, and Frances Baars, born January 21, 1986, hereby request our file, including a copy of the communication book for our time as foster parents for CAS Hamilton in the years 2015 and 2016. We also request every document related to our assessment and any and all records written, electronic, and voicemails of the discussion of our conduct as foster parents and the closure of our home by any staff employed by CAS Hamilton County. We make this request at the suggestion of the Justice Center for Constitutional Freedoms. If legal action follows, they will represent us.

Our phone number is 587-230-1890.

Our mailing address is:

6420 4 St. NE.

Unit #1

Calgary, Alberta, Canada

T2K 5M8

Sincerely,

Derek and Frances Baars

January 9, 2017

Derek and Frances Baars
6420 4 St. NE.
Unit 1
Calgary, AB

January 27, 2016

Attention Legal Department

Children's Aid Society

THIS IS EXHIBIT " I "
referred to in the Affidavit of
Frances Baars
Sworn before me this 10th
day of April A.D. 20 17
[Signature]
A Commissioner in and for the Province of Alberta
Mark Moore
Barrister + Solicitor

To whom it may concern:

When Derek Baars spoke to Julie Joel about receiving a copy of our file from the Children's Aid Society, she asked him to fax a request and the reason we were requesting the file to the legal department. She promised that consent-to-release-information forms would be sent by mail to our home. Instead, we received a phone call in response to our faxed request telling us that the file belongs to the agency and would not be released to us. We ask that you respond in writing to inform us of the reason why this file was not sent to us as Julie Joel promised it would be.

Sincerely,

Derek and Frances Baars



The Children's Aid Society¹⁹⁷ OF HAMILTON

Dominic Verticchio, Executive Director

January 31, 2017

Derek and Frances Baars
6420 4 St. NE., Unit 1
Calgary, AB
T2K 5M8

Dear Mr. and Mrs. Baars,

Re: Disclosure

Further to your correspondence dated January 27, 2017, please be advised that upon receipt of your letter dated January 9, 2017, I referred your disclosure request to our Senior Counsel, James Wood. Mr. Wood has informed me that he gave you reasons for our position however if you have further inquiries respecting your disclosure request, please contact Mr. Wood at ext. 6421.

Yours truly,

Julie Joel
Legal Office Manager

THIS IS EXHIBIT " J "
referred to in the Affidavit of
France Baars
Sworn before me this 10th
day of April A.D. 20 17

A Commissioner in and for the Province of Alberta
Marty Moore
Barrister + Solicitor

Serving Hamilton's children and families since 1894

FRANCES BAARS AND DEREK BAARS

-and-

THE CHILDREN'S AID SOCIETY OF HAMILTON

Applicants

Respondent

Court file no. 17/61225

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Hamilton

APPLICANTS' APPLICATION RECORD

Justice Centre for Constitutional Freedoms

#253, 7620 Elbow Dr. SW

Calgary, AB T2V 1K2

Marty Moore

Phone: (587) 998-1806

Fax: (587) 747-5310

Email: mmoore@jccf.ca

Law Society of Alberta #18786

Lawyers for the Applicants