



Province of Alberta

# **CHILD, YOUTH AND FAMILY ENHANCEMENT ACT**

Revised Statutes of Alberta 2000  
Chapter C-12

Current as of January 1, 2021

Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2020 c35 s10 amends s109(1)(b).

### Regulations

The following is a list of the regulations made under the *Child, Youth and Family Enhancement Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Child, Youth and Family Enhancement Act</b>		
Adoption .....	187/2004 .....	68/2008, 117/2008, 251/2009, 164/2010, 31/2012, 192/2013, 85/2017, 121/2018, 33/2019, 241/2020, 242/2020

Child, Youth and Family Enhancement .....	160/2004 .....	218/2004, 163/2006, 35/2007, 68/2008, 277/2009, 31/2012, 194/2012, 192/2013, 147/2014, 85/2017, 121/2018, 31/2019, 81/2019, 8/2020, 167/2020, 299/2020 6/2021
Court Rules and Forms.....	39/2002 .....	145/2004, 68/2008, 276/2009, 164/2010, 227/2011, 31/2012, 187/2013, 207/2014, 85/2016, 79/2017, 88/2018, 207/2018, 15/2021
Expert Review Panel Repeal .....	208/2018	
Publication Ban (Court Applications and Orders).....	207/2014 .....	85/2016
Residential Facilities Licensing.....	161/2004 .....	252/2009, 192/2013, 85/2017, 121/2018, 32/2019, 166/2020, 7/2021
Resource Rebate.....	47/2006 .....	13/2016



# **CHILD, YOUTH AND FAMILY ENHANCEMENT ACT**

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

**Interpretation****1(1)** In this Act,

- (a) repealed 2018 c24 s2;
- (a.1) “adoption order” means an order made under section 70;
- (a.2) “adoption services” means any service provided under Part 2;
- (a.3) “Appeal Panel” means an Appeal Panel established under Part 4;
- (a.4) “band” means band within the meaning of the *Indian Act* (Canada);
- (b) “biological father” means the man
  - (i) who is married to the biological mother at the time of the birth of the child,
  - (ii) acknowledged by the biological mother as the biological father of the child,
  - (iii) declared by a court to be the biological father of the child, or
  - (iv) who satisfies a director that he is the biological father of the child;
- (c) “biological mother” means the woman who gave birth to the child;
- (d) “child” means a person under the age of 18 years and includes a youth unless specifically stated otherwise;

- (e) repealed 2013 cB-7.5 s9;
- (f) “Child and Youth Advocate” means the person appointed as the Child and Youth Advocate under section 2 of the *Child and Youth Advocate Act*;
- (g) “council of the band” means council of the band within the meaning of the *Indian Act* (Canada);
- (h) “Court” means the Provincial Court;
- (h.1) “custodian” means a custodian as defined in the *Health Information Act*;
- (i) “custody agreement” means an agreement entered into under section 9 or 57.2(2);
- (j) “director” means a person designated by the Minister as a director for the purposes of this Act and the *Protection of Sexually Exploited Children Act* and without limiting the generality of the foregoing includes a person designated as a director in accordance with an agreement under section 122(2) of this Act;
- (j.1) “family enhancement agreement” means an agreement entered into under section 8 or 57.2(1);
- (j.2) “family enhancement services” means any service provided under a family enhancement agreement and care provided under section 7;
- (j.3) “First Nation Individual” means an Indian as defined in the *Indian Act* (Canada);
- (k) “foster parent” means a person approved as a foster parent by a director;
- (l) “guardian” means
  - (i) a person who is or is appointed a guardian of the child under Part 2 of the *Family Law Act*, or
  - (ii) a person who is a guardian of the child under an agreement or order made pursuant to this Act;
- (l.1) “health information” means health information as defined in the *Health Information Act*;
- (m) repealed 2018 c24 s2;

- (m.01) “Indigenous” includes First Nations, Metis and Inuit;
- (m.1) “intervention services” means any services, including protective services, provided to a child or family under this Act except for services provided under Part 2 or Part 3;
- (m.2) “marital status” includes, on and after the coming into force of the *Adult Interdependent Relationships Act*, an adult interdependent partner as defined in that Act;
- (n) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (o) “peace officer” means a member of a municipal police service, a member of the Royal Canadian Mounted Police, or a peace officer appointed under the *Peace Officer Act* for the purposes of this Act;
- (p) “permanent guardianship agreement” means an agreement entered into under section 11;
- (q) “permanent guardianship order” means a permanent guardianship order made under section 34;
- (q.01) “personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act*;
- (q.02) “police officer” means a police officer as defined in the *Police Act*;
- (q.1) repealed 2008 c31 s2;
- (r) “private guardianship order” means a private guardianship order made under section 56;
- (s) “protective services” means any service provided to a child who either
  - (i) is in the custody of a director, or
  - (ii) is the subject of a supervision order, temporary guardianship order or permanent guardianship agreement or order;
- (s.1) “public body” means a public body as defined in the *Freedom of Information and Protection of Privacy Act*;

- (t) “qualified person” means a qualified person as prescribed in the regulations;
  - (t.1) “reserve” means reserve within the meaning of the *Indian Act* (Canada);
  - (u) “secure services certificate” means a secure services certificate issued under section 43.1;
  - (v) “secure services facility” means a facility designated by the Minister, by regulation, as a secure services facility;
  - (w) “secure services order” means a secure services order made under Part 1, Division 4;
  - (x) repealed 2003 c16 s3;
  - (x.1) repealed 2008 c31 s2;
  - (y) “supervision order” means a supervision order made under section 28 and includes a renewal order;
  - (z), (aa) repealed 2003 c16 s3;
  - (bb) “temporary guardianship order” means a temporary guardianship order made under section 31 and includes a renewal order;
  - (cc) “youth” means a child who is 16 years of age or older.
- (2)** For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the safety, security or development of the child is endangered because of any of the following:
- (a) the child has been abandoned or lost;
  - (b) the guardian of the child is dead and the child has no other guardian;
  - (c) the child is neglected by the guardian;
  - (d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
  - (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;

- (f) the child has been emotionally injured by the guardian of the child;
- (g) the guardian of the child is unable or unwilling to protect the child from emotional injury;
- (h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment.
- (i) repealed 2003 c16 s3.

**(2.1)** For the purposes of subsection (2)(c), a child is neglected if the guardian

- (a) is unable or unwilling to provide the child with the necessities of life,
- (b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child, or
- (c) is unable or unwilling to provide the child with adequate care or supervision.

**(3)** For the purposes of this Act,

- (a) a child is emotionally injured
  - (i) if there is impairment of the child's mental or emotional functioning or development, and
  - (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of
    - (A) rejection,
    - (A.1) emotional, social, cognitive or physiological neglect,
    - (B) deprivation of affection or cognitive stimulation,
    - (C) exposure to family violence or severe domestic disharmony,
    - (D) inappropriate criticism, threats, humiliation, accusations or expectations of or toward the child,

- (E) the mental or emotional condition of the guardian of the child or of anyone living in the same residence as the child;
  - (F) chronic alcohol or drug abuse by the guardian or by anyone living in the same residence as the child;
- (b) a child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;
- (c) a child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behaviour including prostitution related activities.
- (4)** Subject to this Act, a person who is a guardian of a child under an agreement or order made under this Act is a guardian under the *Family Law Act*.
- (5)** For the purposes of this Act, a child is in the custody of a director if
- (a) the child has been apprehended under section 19 and has not been returned to the custody of the child's guardian,
  - (b) the child is the subject of a custody order under section 21.1(2)(a) or an interim order for custody under section 21.1 or 26, or
  - (c) the child is the subject of a custody agreement.
- (6)** For the purposes of this Act, subject to the regulations, an adult maintains or maintained their usual residence in Alberta if the adult has continuously resided in Alberta for at least 6 months or continuously resided in Alberta for at least 6 months immediately preceding the time the adult applied for an adoption order or placement, as the case may be.

RSA 2000 cC-12 s1;2002 c8 s21;2002 c9 s2;2003 cF-4.5 s113;  
2003 c16 s3;2004 c16 s2;2006 cP-3.5 s34;2007 c8 s12;  
2008 c31 s2;2011 cC-11.5 s26;2013 cB-7.5 s9;  
2018 c24 ss2,32;2019 c10 s2;2020 c39 s3



**Guiding principles**

**1.1** This Act must be interpreted and administered in accordance with the following principles:

- (a) the best interests, safety and well-being of children are paramount;
- (b) the well-being of families and communities is crucial to the well-being of children;
- (c) children benefit from
  - (i) lasting relationships with people with whom they have connections, including family, friends, caregivers and other significant individuals,
  - (ii) connections with their culture and cultural communities and opportunities to form those connections, and
  - (iii) permanent, formalized ties with people who care about them;
- (d) Indigenous people should be involved with respect to the planning and provision of services to and decisions respecting Indigenous families and their children.

2018 c24 s3

**Matters to be considered**

**2(1)** If a child is in need of intervention, a court, an Appeal Panel and all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child and must consider the following as well as any other relevant matter:

- (a) the child's family has the primary responsibility for the safety and well-being of the child and the family's well-being should be supported and preserved;
- (b) if the child is capable of forming an opinion, the child's opinion should be taken into account;
- (c) in the case of an Indigenous child, the importance of respecting, supporting and preserving the child's Indigenous identity, culture, heritage, spirituality, language and traditions;
- (d) the benefits to the child of lasting relationships with the people with whom the child is connected, including family, friends, caregivers and other significant individuals;

- (e) the benefits to the child of connections with the child's culture and cultural communities and opportunities to form those connections;
- (f) the child's race, spiritual beliefs, colour, gender, gender identity, gender expression, age, ancestry, place of origin, family status, sexual orientation and any disability the child may have;
- (g) the importance of stability, permanence and continuity of care and relationships to the child's long-term safety and well-being;
- (h) any decision concerning the removal of the child from the child's family should take into account the risk to the safety, security or development of the child if the child remains with the family, is removed from the family or is returned to the family;
- (i) subject to clause (h), if the child has been exposed to family violence within the child's family, intervention services should be provided to the family in a manner that supports family members and prevents the need to remove the child from the custody of an abused family member;
- (j) any decision concerning the placement of the child outside the child's family must include a plan to address the child's need for permanent, formalized ties to people who care about the child and must take into account
  - (i) the benefits to the child of a placement within the child's extended family, or with persons who have a significant relationship with the child,
  - (ii) the benefits to the child of a placement within or as close as possible to the child's home community,
  - (iii) in the case of an Indigenous child, the benefits to the child of a placement where the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved,
  - (iv) the benefits to the child of a placement where the child's familial, cultural, social, linguistic and spiritual heritage are valued as central to the child's safety, security and development, and

- (v) the mental, emotional, spiritual and physical needs of the child and the child's mental, emotional and physical stage of development;
  - (k) in the case of a child who has a disability, planning for the care of the child should address the need for resources and supports adequate to the unique needs of the child;
  - (l) in the case of a youth who is being provided with care under this Act, the plan for the care of the youth should address the youth's need for preparation for the transition to independence and adulthood;
  - (m) there should be no unreasonable delay in making or implementing a decision respecting the child.
- (2) Nothing in subsection (1) shall be interpreted as derogating from the obligation to report a child in need under section 4.

RSA 2000 cC-12 s2;2003 c16 s4;2018 c24 s4

### **Procedural rights**

**2.1** A director, when it is appropriate, must inform a child of the child's procedural rights under this Act.

2003 c16 s5

**3** Repealed 2011 cC-11.5 s26.

### **Alternative dispute resolution**

**3.1(1)** Subject to the regulations, a child, the guardian of a child or a person who in the opinion of a director has a significant connection to a child may, with the agreement of the director, enter into alternative dispute resolution, as defined in the regulations, with the director with respect to any decision made by the director with respect to the child.

(2) All information provided orally during alternative dispute resolution is confidential and is the privileged information of the person providing it, and all documents and records created as a result of alternative dispute resolution are confidential and are privileged documents and records of the person creating them.

(3) No person shall disclose or be compelled to disclose the documents, records or information described in subsection (2) except

- (a) with the consent of all who participated in the alternative dispute resolution,

- (b) if disclosure is necessary to make or to carry out an agreement under this Act,
  - (c) if disclosure is pursuant to an order of the Court granted with the consent of all the parties to the Court application,
  - (d) to the extent that the disclosure is necessary to protect the safety, security or development of the child, or
  - (e) for the purposes of disclosure required by section 4.
- (4) If there is a conflict or inconsistency between subsection (2) or (3) and the *Freedom of Information and Protection of Privacy Act*, subsection (2) or (3) prevails despite that Act.
- (5) No action may be brought against a person who conducts alternative dispute resolution under this section for any act done or omitted to be done with respect to the alternative dispute resolution unless it is proved that the person acted maliciously and without reasonable and probable cause.

2003 c16 s7;2004 c16 s4;2018 c24 s32

## **Part 1 Intervention Services**

### **Division 1 Preliminary Matters**

#### **Reporting child in need**

- 4(1)** Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to
- (a) a director, or
  - (b) a police officer.
- (1.1)** A referral received pursuant to section 35 of the *Youth Criminal Justice Act* (Canada) is deemed to be a report made under subsection (1).
- (1.2)** A police officer who receives a report pursuant to subsection (1)(b) shall report the matter to a director as soon as practicable.
- (2)** Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.
- (3)** This section does not apply to information that is privileged as a result of a solicitor-client relationship.

(4) No action lies against a person reporting pursuant to this section, including a person who reports information referred to in subsection (3), unless the reporting is done maliciously or without reasonable and probable grounds for the belief.

(5) Notwithstanding and in addition to any other penalty provided by this Act, if a director has reasonable and probable grounds to believe that a person has not complied with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the director shall advise the appropriate governing body of that profession or occupation of the failure to comply.

(6) Any person who fails to comply with subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months, or to both a fine and imprisonment.

RSA 2000 cC-12 s4;2003 c16 s9;2019 c10 s3

#### **Peace officer**

**5** If a peace officer, on reasonable and probable grounds, believes that a child committed an offence under an Act of the Parliament of Canada while the child was under the age of 12 years, the peace officer may report the matter to a director.

1984 cC-8.1 s4

#### **Investigation and response**

**6(1)** If a director receives information in the form of

- (a) a request for intervention services,
- (b) a report under section 4 or 5, or
- (c) any other allegation or evidence that a child may be in need of intervention,

the director must investigate the child's need for intervention unless the director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds.

(2) During an investigation, a director may convey a child to any place in order to complete the investigation if in the opinion of the director it is necessary.

(3) If, after an investigation referred to in subsection (1), the director is of the opinion that the child is in need of intervention,

- (a) the director must,

- (i) if the director is satisfied that it is consistent with the child's need for intervention, provide family enhancement services to the child or to the child's family in accordance with this Act, or
- (ii) if the director is not satisfied that the child's need for intervention can be met under subclause (i), take whatever action under this Act that the director considers appropriate, including the provision of protective services in accordance with this Act,

and

- (b) the director may, if the director is satisfied that it is consistent with the child's need for intervention, convey the child to the person who has custody of the child or to a person who is temporarily caring for the child.

**(4)** If family enhancement services are provided to the child or to the child's family, the person or a member of the organization providing those services must report to the director any matter respecting the child that may require further investigation by the director.

RSA 2000 cC-12 s6;2003 c16 s10;2008 c31 s4

### **Emergency care**

**7(1)** If a director is satisfied that without the provision of emergency care a child may be in need of intervention because the guardian of the child cannot be located after a reasonable search or has died or become incapacitated, the director may appoint a person to care for the child until the guardian can be located or other satisfactory arrangements can be made for the care of the child, and the director may convey the child for the purpose of placing the child in the care of that person.

**(2)** The person appointed under subsection (1) may care for the child in the residence in which the child was found and for that purpose may

- (a) enter the residence,
- (b) live in the residence,
- (c) carry on normal housekeeping activities in the residence that are necessary for the care of the child, and
- (d) exercise reasonable control over all children residing in the residence.

(3) The person appointed under subsection (1) may care for the child in the person's own residence for not more than 10 days.

(4) When a person is appointed under subsection (1), no liability attaches to that person in the course of carrying out that person's duties under subsection (2) or to a director assisting that person in carrying out those duties by reason only of the entry into and occupation of the residence without the consent of the owner or occupier.

RSA 2000 cC-12 s7;2003 c16 s11;2008 c31 s5

## Division 2 Agreements

### Family enhancement agreement

**8(1)** A director may enter into an agreement with the guardian of a child or with another person who, with the express or implied consent of the guardian or pursuant to a Court order or an agreement, has custody of the child with respect to the provision of services to the family or the child if, in the opinion of the director,

- (a) the child is in need of intervention, and
- (b) as a result of the provision of the services, the child's safety, security or development will be adequately protected if the child remains with the child's guardian or the person who has custody of the child, as the case may be.

(2) Repealed 2003 c16 s13.

RSA 2000 cC-12 s8;2003 c16 s13;2018 c24 s32;2020 c23 s2

### Custody agreement

**9** Subject to section 33, a director may enter into an agreement for terms of not more than 6 months each with the guardian of a child under which custody of the child is given to the director if, in the opinion of the director,

- (a) the child is in need of intervention, and
- (b) the safety, security or development of the child cannot be adequately protected if the child remains with the child's guardian.

RSA 2000 cC-12 s9;2003 c16 s14;2018 c24 s32;2020 c23 s2

### Terms of custody agreement

**10** A custody agreement between a guardian and a director shall include terms prescribing

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

- (b) the visits or other access to be provided between the child and the child's guardian or any other person, and
- (c) the extent of the delegation of the authority of the guardian to the director.
- (d) repealed 2003 c16 s15.

RSA 2000 cC-12 s10;2003 c16 s15

**Permanent guardianship agreement**

**11(1)** If a child has been in the actual custody of at least one of the child's guardians for a cumulative period of less than 6 months, all the guardians of the child and a director may enter into a permanent guardianship agreement in the prescribed form under which the director will assume the guardianship of the child.

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

- (a) the guardianship of any person who was a guardian of the child at the time the agreement was entered into is terminated,
- (b) the agreement is binding on any parent who at the time the agreement was entered into was not a guardian of the child, whether or not that parent had notice of the agreement,
- (c) the director is the sole guardian of the child for all purposes, and
- (d) the agreement may be terminated only pursuant to section 12, 13, 35 or 40(2).

1984 cC-8.1 s10;1985 c16 s4;1988 c15 ss8,45

**Termination of permanent guardianship agreement**

**12(1)** A guardian who has entered into a permanent guardianship agreement under section 11 may, within 10 days after the date of the agreement, request the director in writing to terminate the agreement and return the child who is the subject of the agreement to that guardian.

**(2)** Subject to subsection (3), a director who receives a request from a guardian under subsection (1) shall notify any other guardian who was a party to the permanent guardianship agreement of the request and shall place the child in the custody of the guardian who makes the request under subsection (1) within 48 hours after receiving the request or within any other period agreed to by the director and the guardian who makes the request.



- (3) A permanent guardianship agreement terminates on the expiration of the 48 hours or any other period agreed to under subsection (2).
- (4) A director who has reasonable and probable grounds to believe that the termination of a permanent guardianship agreement under this section would render the child who is the subject of the permanent guardianship agreement in need of intervention may
- (a) enter into an agreement under section 8 or 9, or
  - (b) apply to the Court in the prescribed form for an order under Division 3.

RSA 2000 cC-12 s12;2003 c16 s16

**Application for order to terminate agreement**

- 13(1)** A person claiming to be a parent of a child who is the subject of a permanent guardianship agreement under section 11 may, within 10 days after the date of the agreement, apply to the Court in the prescribed form for an order terminating the agreement.
- (2) An applicant under subsection (1) shall give not less than one day's notice of the nature, time and place of the hearing of the application to
- (a) a director, and
  - (b) a person who was a guardian of the child immediately before the permanent guardianship agreement was entered into.
- (3) Section 23(5) and (6) apply to an application under this section.
- (4) The Court may adjourn the hearing of an application under this section for not more than 15 days or for a longer period agreed to by the parties to the application.
- (5) If the Court is satisfied that the applicant is a parent of the child, the Court may terminate the permanent guardianship agreement and do any one or more of the following:
- (a) declare the applicant to be a parent of the child;
  - (b) appoint the applicant as a guardian of the child if the Court is satisfied that
    - (i) the applicant is capable of assuming and willing to assume the responsibilities of guardianship of the child, and

- (ii) it is in the best interests of the child that the applicant be appointed a guardian;
- (c) direct that the child be placed in the custody of any guardian of the child if the Court is satisfied that
  - (i) the guardian is capable of assuming and willing to assume the custody of the child, and
  - (ii) it is in the best interests of the child that the guardian assume the custody of the child.
- (6)** If the Court makes an order under subsection (5),
  - (a) the guardianship of any person who was a guardian of the child before the permanent guardianship agreement was entered into is revived,
  - (b) the guardianship of the child by the director is terminated, and
  - (c) if a person is appointed as a guardian under subsection (5)(b), that person is an equal guardian of the child with any other guardian of the child.
- (7)** If the Court makes an order under subsection (5)(b), it may make a further order terminating the guardianship of any other guardian of the child if
  - (a) the Court is satisfied that the other guardian of the child consents to the termination, or
  - (b) the Court considers it necessary or desirable to do so.
- (8)** An order made under this section does not come into effect until the applicant serves the director with a copy of the order.

1988 c15 s9

**Access agreements**

- 14(1)** A director may enter into an agreement with
- (a) a guardian of a child who is the subject of a temporary guardianship order, or
  - (b) any person who has a significant relationship with a child who is the subject of a temporary guardianship order.
- (2)** The agreement may include the following:

- (a) the visits or other access to be provided between the child and the guardian or any other person with whom the child has a significant relationship;
  - (b) the conditions, if any, under which the director will consult with the guardians on matters affecting the child;
  - (c) repealed 2003 c16 s17;
  - (d) any other matter relating to the guardianship of the child.
- (3)** No agreement under subsection (1)(b) relating to a child who is 12 years of age or older shall be made without the consent of the child.

RSA 2000 cC-12 s14;2003 c16 s17;2020 c23 s2

#### **Minor parent**

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

1984 cC-8.1 s13

### **Division 3 Court Orders**

#### **Supervision order application**

**16(1)** A director may apply to the Court in the prescribed form for an order under section 28 authorizing the director to provide supervision of the child and the persons with whom the child resides if, in the opinion of the director,

- (a) the child is in need of intervention,
- (b) supervision of the child and the persons with whom the child resides is necessary to ensure that the safety, security or development of the child is protected, and
- (c) there are reasonable and probable grounds to believe that the child's safety, security or development will be adequately protected as a result of the supervision.

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

RSA 2000 cC-12 s16;2003 c16 s115;2018 c24 s32

#### **Temporary guardianship application**

**17** A director may apply in the prescribed form to the Court for a temporary guardianship order under section 31 in respect of a child if, in the opinion of the director,

- (a) the child is in need of intervention, and
- (b) the safety, security or development of the child cannot be adequately protected if the child remains with the child's guardian,

but it can be anticipated that within a reasonable time the child may be returned to the custody of the child's guardian or, if the child is 16 years of age or older, the child will be able to live independently.

RSA 2000 cC-12 s17;2003 c16 s115;2018 c24 s32

#### **Permanent guardianship application**

**18(1)** A director may make an application in the prescribed form to the Court for a permanent guardianship order under section 34 in respect of a child if, in the opinion of the director,

- (a) the child is in need of intervention or is the subject of a temporary guardianship order,
- (b) the safety, security or development of the child cannot adequately be protected if the child remains with or is returned to a guardian other than the director, and
- (c) it cannot reasonably be anticipated that the child could or should be returned to the custody of the child's guardian within a reasonable period of time.

**(2)** Repealed 2003 c16 s19.

RSA 2000 cC-12 s18;2003 c16 s115;2018 c24 s32

#### **Apprehension order**

**19(1)** If a director has reasonable and probable grounds to believe that a child is in need of intervention, the director may make an ex parte application to a judge of the Court, or if no judge is reasonably available, to a justice of the peace, for an order

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

**(2)** If

- (a) a child who is in the custody of a director under Division 2 or this Division has left or been removed from the custody of the director without the consent of the director, and

- (b) the director has reasonable and probable grounds to believe that the child may be found in a place or premises,

the director may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace, for an order under subsection (3).

**(3)** A judge of the Court or a justice of the peace, if satisfied on reasonable and probable grounds that the child may be found in the place or premises, may make an order authorizing the director or any person named in the order and any peace officer called on for assistance, to enter, by force if necessary, the place or premises specified in the order and to search for and remove the child for the purpose of returning the child to the custody of the director.

**(4)** If a director has reasonable and probable grounds to believe that a child referred to in subsection (2) may be found in a place or premises and that the life or health of the child would be seriously and imminently endangered as a result of the time required to obtain an order under subsection (3) or (5), the director may, without an order and by force if necessary, enter that place or those premises for the purposes specified in subsection (3).

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

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

**(7)** For the purposes of subsection (6), an oath may be administered by telephone or other means of telecommunication.

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

- (a) a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice of the peace;
- (b) the identity of the child, if known;

- (c) with respect to an application under subsection (1), a statement setting out the director's grounds for believing that the child is in need of intervention;
- (d) with respect to an application under subsection (2), a statement setting out the authority under which the director has custody of the child and the director's grounds for believing that the child may be found in the place or premises;
- (e) a statement of the director's grounds for believing that the child will be found in the place or premises to be searched;
- (f) a statement as to any prior application for an order under this section in respect of the same child of which the director has knowledge.

**(9)** A judge of the Court or a justice of the peace referred to in subsection (5) who is satisfied that an application made by telephone or other means of telecommunication

- (a) conforms to the requirements of subsection (8), and
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1) or (2)

may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (1) or (2).

**(10)** If a judge of the Court or a justice of the peace makes an order under subsection (9),

- (a) the judge or justice shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,
- (b) the director, on the direction of the judge or justice, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge or justice making the order and the time, date and place at which it was made, and
- (c) the judge or justice shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.

**(11)** An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to

dispense with personal appearance for the purpose of making an application under subsection (1).

**(12)** Notwithstanding subsection (1), a director or peace officer may apprehend a child without an order if the director or peace officer has reasonable and probable grounds to believe that the child's life or health is seriously and imminently endangered because

- (a) the child has been abandoned or lost or has no guardian,
- (b) the child has left the custody of the child's guardian without the consent of the guardian and, as a result, the guardian is unable to provide the child with the necessities of life, or
- (c) the child has been or there is substantial risk that the child will be physically injured or sexually abused.

**(13)** A person who is authorized to apprehend a child under subsection (12) and who has reasonable and probable grounds to believe that the child may be found in a place or premises may, without an order and by force if necessary, enter that place or those premises and search for the child.

**(14)** Notwithstanding subsection (1), a director or peace officer may apprehend a child without an order if the director or peace officer has reasonable and probable grounds to believe that the child has left or been removed from the custody of the child's guardian without the consent of the guardian.

RSA 2000 cC-12 s19;2002 c9 s3;2003 c16 s20;2008 c31 s6

### **Apprehension in another province**

**19.1** If a child who is ordinarily resident in Alberta is apprehended in another province under the authority of that province's child welfare legislation and placed in the custody of a director by that province's child welfare authorities, the child is deemed to be apprehended under section 19 effective on the day the child is so placed.

2002 c9 s4

### **Notice of apprehension**

**20(1)** If a child has been apprehended, the director shall notify the guardian of the child forthwith

- (a) that the child has been apprehended,
- (b) of the intention, if any, of the director to confine the child pursuant to section 43.1(1), and

- (c) of the intention, if any, of the director to apply for an order pursuant to section 43.1(3).
- (2) Notice under subsection (1) may be by any method and may be oral or in writing.
- (3) Notice under subsection (1) shall include a statement of the reasons for the apprehension and the telephone number of the nearest office of the Legal Aid Society of Alberta.
- (4) The validity of proceedings under this Act is not affected if the director is unable, after reasonable effort, to give notice in accordance with this section.

RSA 2000 cC-12 s20;2003 c16 s21

**Court application after apprehension**

**21(1)** If a child is apprehended under section 19 and is not, within 2 days after being apprehended, returned to the custody of the child's guardian or, in the case of a child who is ordinarily resident in another province, placed in the custody of the child welfare authorities of that other province, the director shall apply to the Court in the prescribed form for

- (a) a supervision order,
  - (b) a temporary or permanent guardianship order,
  - (c) an order returning the child to the custody of the child's guardian, or
  - (d) in the case of a child who is ordinarily resident in another province, an order placing the child in the custody of the child welfare authorities of that other province.
- (2) Repealed RSA 2000 c26(Supp) s11.
- (3) An application under subsection (1) shall be heard not more than 10 days after the child is apprehended.
- (3.1)** Despite section 23(4), notice of an application under subsection (1) shall be served at least 2 days before the date fixed for the hearing.
- (4) If
- (a) a child is returned to the custody of the child's guardian or placed in the custody of the child welfare authorities of the province in which the child is ordinarily resident, or



- (b) a family enhancement agreement or custody agreement is entered into in respect of the child,

before the expiration of the period referred to in subsection (3), the application under subsection (1) may be withdrawn at the time and place scheduled for the hearing of the application.

**(5) to (10)** Repealed 2003 c16 s22.

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

- (a) if it is not satisfied that the child is in need of intervention, order the director to return the child to the custody of the child's guardian, or
- (b) if it is satisfied that the child is in need of intervention, make any order with respect to the child that it may make under this Division.

RSA 2000 cC-12 s21;RSA 2000 c26(Supp) s11;  
2002 c9 s5;2003 c16 ss22,115;2005 c28 s2

#### **Initial custody**

**21.1(1)** If a director makes an application to the Court under section 21(1)(b) for a temporary guardianship order or permanent guardianship order, the director must also apply for an order for custody of the child until the application for a temporary guardianship order or for a permanent guardianship order is withdrawn or disposed of.

**(2)** On hearing a custody application under subsection (1), the Court must

- (a) order the child into the custody of a director, or
- (b) order that the child be returned to the custody of the child's guardian

until the director's application for a temporary guardianship order or a permanent guardianship order is withdrawn or disposed of.

**(3)** If an order is made under subsection (2)(a), the Court may

- (a) include terms for access to be provided between the child and the guardian or any other person with whom the child has a significant relationship, and
- (b) require an assessment of the child and of the child's guardian and any other person who may be given custody of the child when the application for a temporary guardianship order is disposed of.

- (4) Despite section 26, an application under subsection (1)
- (a) is summary in nature, and
  - (b) may be adjourned for a period of no more than 14 days at a time unless the parties agree to a longer adjournment; however, the total adjournment period under this clause shall not exceed 42 days.
- (5) If the Court adjourns a hearing under subsection (4), it must make an interim order providing for the custody of the child, and the order may include terms respecting access to the child.
- (5.1) The Court may hear an application for an adjournment under subsection (4) by videoconference if the Court is satisfied that it is proper to do so.
- (6) Repealed 2008 c31 s7.

2003 c16 s23;2004 c16 s5;2008 c31 s7;2014 c13 s16

#### **Custody on apprehension**

**22** If a child has been apprehended, a director has exclusive custody of the child and is responsible for the child's care, maintenance and well-being until the director has returned the child to the custody of the child's guardian or an application under section 21 has been disposed of.

RSA 2000 cC-12 s22;2002 c9 s6;2003 c16 s24

#### **Health care on apprehension**

**22.1(1)** If the guardian of a child who has been apprehended is unable or unavailable to consent to the provision of essential medical, surgical, dental or other remedial treatment for the child that is recommended by a physician or dentist, a director may authorize the provision of any recommended treatment for the child.

(2) If the guardian of a child who has been apprehended refuses to consent to essential medical, surgical, dental or other remedial treatment for the child that is recommended by a physician or dentist, the director must apply to the Court for an order authorizing the treatment.

(3) Despite section 23(4), notice of the date, time and place at which an application under subsection (2) is to be heard must be served not less than one day before the date fixed for the hearing.

(4) A director may make an application by telephone or other means of telecommunication to a judge of the Court in accordance with section 19(5) to (10), in which case section 19(11) applies to the order.

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

(6) If the Court authorizes treatment under this section, the authorization extends to the conclusion of the course of treatment unless the Court orders otherwise, even if a director ceases to have custody or guardianship of the child.

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

2003 c16 s25

#### **Health care under guardianship**

**22.2(1)** If a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order refuses to consent to essential medical, surgical, dental or other remedial treatment that is recommended by a physician or dentist, the director must apply to the Court for an order authorizing the treatment.

(2) Despite section 23(4), notice of the date, time and place at which an application under subsection (1) is to be heard must be served not less than one day before the date fixed for the hearing.

(3) If the Court authorizes treatment under this section, the authorization extends to the conclusion of the course of treatment unless the Court orders otherwise, even if a director ceases to have guardianship of the child.

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

2003 c16 s25

#### **Notice of application**

**23(1)** Notice of the nature, date, time and place of every hearing under this Division shall be served by the applicant on

- (a) all the guardians of the child,
- (b) a director, if the applicant is not a director,
- (c) the child, if the child is 12 years of age or older,
- (d) a foster parent of the child, if the child was in the continuous care of that foster parent for more than 6 months immediately preceding the application, and

- (e) any other person in whose care the child was when the child was apprehended, if the child was in the continuous care of that person for more than 6 months immediately preceding the application.
- (2) Notice under subsection (1) shall be served personally on
- (a) all the guardians of the child, and
  - (b) the child, if the child is 12 years of age or older.
- (3) Notice under subsection (1) may be served by mail on
- (a) a director,
  - (b) a foster parent, and
  - (c) a person in whose care the child was when the child was apprehended.
- (4) Notice under subsection (1) shall be served at least 5 days before the date fixed for the hearing.
- (5) If the Court is satisfied that it is proper to do so, the Court, on the ex parte application of the applicant at any time before the time fixed for the hearing, may do any of the following:
- (a) authorize service ex juris, service by registered mail or any other form of substitutional service;
  - (b) if an order is made under clause (a), extend or reduce the time within which service may be effected;
  - (c) if an order is made under clause (a), extend the time within which a hearing shall be held;
  - (d) authorize service on a guardian appointed under the *Adult Guardianship and Trusteeship Act* in respect of the guardian of a child instead of on the guardian of the child;
  - (e) authorize the giving of a shorter period of notice;
  - (f) dispense with service on any person other than the director.
- (6) Whether or not authorization has been given under subsection (5), the Court may do any of the following at the time of the hearing:
- (a) approve service made in a form it considers adequate in the circumstances;

- (b) approve a shortened period as sufficient notice;
- (c) dispense with service on any person other than the director.  
RSA 2000 cC-12 s23;2003 c16 s26;2008 cA-4.2 s122

**Exclusion from hearing**

**24(1)** Subject to subsection (2), if the Court is satisfied that

- (a) the evidence or information presented to the Court may be seriously injurious or seriously prejudicial to the child who is the subject of a hearing under this Division or to a child who is a witness at a hearing under this Division, or
- (b) it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom,

the Court may exclude any person including a guardian of the child or the child from all or part of the proceedings if the Court considers that person's presence to be unnecessary to the conduct of the proceedings.

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

**(3)** At the outset of a hearing under this Division, the Court shall inform the parties of their right to make an application under subsection (1) to exclude persons.

RSA 2000 cC-12 s24;2003 c16 ss26.1,115;  
2004 c16 s6

**25** Repealed 2003 c16 s27.

**Adjournments**

**26(1)** The Court may adjourn a hearing under this Division for a period of not more than 42 days or for any longer period that the Court, in its discretion, directs.

**(2)** If the Court adjourns a hearing, the Court must make an interim order in respect of the child who is the subject of the hearing providing for the custody of or access to the child during the adjournment.

**(3)** This section does not apply to the adjournment of a hearing under section 21.1.

RSA 2000 cC-12 s26;2003 c16 ss28,115;2008 c31 s8

**General powers of Court**

**27** After a hearing under this Division, the Court may make any order it has jurisdiction to make under this Division or Division 4 if it is satisfied as to the appropriateness of that order notwithstanding that it is not the order applied for.

RSA 2000 cC-12 s27;2003 c16 s29

**Supervision order**

**28(1)** The Court may make a supervision order for a period of not more than 6 months if it is satisfied that

- (a) a child is in need of intervention, and
- (b) mandatory supervision of the child and a person residing with the child and the compliance by that person with the terms of the order are necessary to adequately protect the safety, security or development of the child.

**(2)** The Court shall consider the recommendations of the director with respect to the terms of the supervision before making an order under this section.

**(3)** A supervision order shall

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

RSA 2000 cC-12 s28;2003 c16 ss30,115;2018 c24 s32

**Breach of supervision order**

**29(1)** If, on an application by a director in the prescribed form, the Court is satisfied that a guardian or other person residing with a child has failed to comply with a term of a supervision order, the Court may, without hearing any further evidence as to the child's need for intervention,

- (a) renew, vary or extend the supervision order, or
- (b) make a temporary guardianship order or a permanent guardianship order in respect of the child.

(2) Section 23 applies to the service of notice of the time and place of the hearing of an application under subsection (1).

RSA 2000 cC-12 s29;2003 c16 s31

### **Restraining order**

**30(1)** If a child has been apprehended under section 19 or is the subject of a supervision order or a temporary or permanent guardianship order and a director has reasonable and probable grounds to believe that a person has physically or emotionally injured or sexually abused the child, or is likely to physically or emotionally injure or sexually abuse the child or has encouraged or is likely to encourage the child to engage in prostitution, the director may apply to the Court of Queen's Bench for either or both of the following orders:

- (a) an order restraining that person from residing with the child;
- (b) an order restraining that person from contacting the child or associating in any way with the child.

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

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

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

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

RSA 2000 cC-12 s30;2009 c53 s35

### **Temporary guardianship order**

**31(1)** The Court may make an order appointing a director as a guardian of a child if it is satisfied that

- (a) the child is in need of intervention, and
- (b) the safety, security or development of the child may not be adequately protected if the child remains with the child's guardian,

but it can be anticipated that within a reasonable time the child may be returned to the custody of the child's guardian or, if the child is 16 years of age or older, the child will be able to live independently.

(2) If the Court makes an order under subsection (1), the director becomes a joint guardian with any other guardian of the child and, subject to any order under subsection (4), may exercise all of the authority of a guardian of the child to the exclusion of any other guardian except with respect to a proceeding under Part 2, Division 1.

(3) Repealed 2003 c16 s32.

(4) On making a temporary guardianship order or at any time during its term, the Court, on the application of a director, a guardian of the child, the child if the child is 12 years of age or older or any other person with whom the child has a significant relationship, may, on being satisfied that the matter cannot be resolved by agreement or the terms of an agreement have not been complied with, and on considering the recommendations of the director, make an order prescribing

- (a) the access to be provided between the child and a guardian or any other person with whom the child has a significant relationship,
- (b) the conditions under which the director must consult with the guardian on matters affecting the child,
- (c) if recommended by a director, participation by the child or the guardian or both in treatment or remedial programs, and
- (d) any other terms that the Court considers necessary.

(5) No order under subsection (4)(a) providing for access between a child who is 12 years of age or older and a person with whom the child has a significant relationship shall be made without the consent of the child.

(6) An order under this section may provide that a guardian, other than the director, or any person who will have custody of the child shall, prior to the expiration of the temporary guardianship order, submit to an assessment in order to assist the director or the Court, as the case may be, to determine the fitness of the guardian or other person to assume the custody of the child when the order expires or is terminated.

(7) The Court shall consider the recommendations of the director in respect of an assessment before making an order under subsection (6).

RSA 2000 cC-12 s31;2003 c16 s32;2004 c16 s7;2018 c24 s32

**31.1 and 31.2** Repealed 2003 c16 s33.



**Review of supervision or temporary guardianship order**

**32(1)** If a child is the subject of a supervision order or a temporary guardianship order and the appeal period with respect to the order has expired,

- (a) a director, at any time during the term of the order, or
- (b) a guardian of the child or the child if the child is 12 years of age or older, once during the term of the order,

may apply to the Court in the prescribed form for an order renewing, varying or terminating the original order or for a new order under section 28, 31 or 34.

**(2)** On reviewing an order under this section, the Court may consider any matter it thinks is relevant, and shall consider the following:

- (a) whether the circumstances that caused the child to be in need of intervention have changed;
- (b) the intervention services that have been provided to the child or the family of the child;
- (c) repealed 2008 c31 s9;
- (d) whether a guardian, other than the director, has complied with the order.

**(3)** Unless it is satisfied that it would be in the best interests of the child to order otherwise, the Court shall, despite section 33, extend the period of the original order pending the disposition of the application under this section.

RSA 2000 cC-12 s32;2003 c16 s34;2008 c31 s9

**Total cumulative time in the care of a director**

**33(1)** For the purposes of this section, a child is in the care of a director when the child is the subject of one or more of the following:

- (a) a custody agreement under section 9 or 57.2(2);
- (b) a custody order under section 21.1(2)(a);
- (c) a temporary guardianship order under subsection (3) or section 29(1)(b) or 31;
- (d) an extension of a temporary guardianship order under section 32(3);

- (e) an interim order granting custody to a director under section 26(2).
- (2)** The total cumulative time during which a child is in the care of a director shall not exceed
- (a) 9 months if the child is under the age of 6 years, or
  - (b) 12 months if the child is 6 years of age or older, or if the child attains the age of 6 years while in the care of a director.
- (3)** If the total cumulative time during which a child is in the care of a director reaches the maximum set out in subsection (2) in respect of that child, the Court may, notwithstanding subsection (2), make one temporary guardianship order for one period of not more than 6 months if the Court is satisfied that
- (a) there are good and sufficient reasons to do so, and
  - (b) it can be anticipated that the child may be returned to the custody of the child's guardian within the period of the order.
- (4)** The following shall not be included in a calculation under subsection (2):
- (a) if a period of at least 5 years passes during which a child is not in the care of a director or the subject of a permanent guardianship agreement or order, any time the child was in the care of a director that preceded that period;
  - (b) if a child is the subject of an adoption order or a private guardianship order, any time the child was in the care of the director that preceded the date that order was made.
- (5)** Despite subsection (2), if the Court adjourns a hearing of an application for permanent guardianship, the Court shall make an interim order granting custody of the child to a director pending the disposition of the application unless it is satisfied that it would be in the best interests of the child to order otherwise.
- (6)** An order under subsection (5) may provide for access to the child.

RSA 2000 cC-12 s33;2003 cF-5.3 s12; 2003 c16 s35;  
2004 c16 s8;2005 c28 s2;2008 c31 s10;2009 c48 s2

**Permanent guardianship order**

**34(1)** The Court, on application pursuant to this Division by a director, may make a permanent guardianship order appointing the director as guardian of the child if it is satisfied that

- (a) the child is in need of intervention or is the subject of a temporary guardianship order,
- (b) the safety, security or development of the child cannot adequately be protected if the child remains with or is returned to the child's guardian, and
- (c) it cannot be anticipated that the child could or should be returned to the custody of the child's guardian within a reasonable time.

**(2), (3)** Repealed 2003 c16 s36.

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

**(5)** A director shall, on request, send the Public Trustee a copy of the permanent guardianship order.

**(6), (7)** Repealed 2003 c16 s36.

**(8)** On making a permanent guardianship order or at any time during its term, the Court, on the application of a director, a former guardian of the child, the child if the child is 12 years of age or older or any other person with whom the child has a significant relationship, may make an order prescribing the access to be provided between the child and the former guardian or that other person.

**(9)** No order under subsection (8) relating to a child who is 12 years of age or older shall be made without the consent of the child.

**(10)** A director may enter into an agreement with

- (a) a former guardian of a child who is the subject of a permanent guardianship order, or
- (b) any person who has a significant relationship with a child who is the subject of a permanent guardianship order

providing for visits or other access to be provided between the child and the former guardian or other person.

(11) No agreement under subsection (10)(b) relating to a child who is 12 years of age or older shall be made without the consent of the child.

(12) The Court shall not make an order under subsection (8) unless it is satisfied that the access provided by the order will not interfere with the adoption of the child.

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

(14) On hearing an application under subsection (13), the Court may continue, vary or terminate the original order.

RSA 2000 cC-12 s34;2003 c16 ss36,115;2018 c24 s32;2020 c23 s2

#### **Report on guardianship**

**34.1** A director must, with respect to each child who is the subject of a permanent guardianship agreement or order for one year or more, report to the Minister in the manner required by the regulations regarding the plan for a permanent placement for that child.

2003 c16 s37

#### **Termination of permanent guardianship agreement or order**

**35(1)** If a child is the subject of a permanent guardianship agreement or order, the director, if the director is satisfied that the child should be returned to the guardianship of the person who was the guardian of the child before the agreement or order was made, may apply to the Court for an order terminating the permanent guardianship agreement or order.

(1.1) If a permanent guardianship agreement or order is terminated pursuant to subsection (1), the person, other than a director, who was the guardian immediately before the permanent guardianship agreement or order was made is the guardian of the child unless the Court orders otherwise.

(2) Repealed 2003 c16 s39.

RSA 2000 cC-12 s35;2003 c16 s38

#### **Application by former guardian**

**35.1(1)** If a child is the subject of a permanent guardianship order, a person who was the child's guardian immediately before the permanent guardianship order was made may apply to the Court for an order terminating the permanent guardianship order if, at the time the application is made,

- (a) the child has not been adopted,
  - (b) more than one year has elapsed since the period for appealing the permanent guardianship order expired or, if the permanent guardianship order was appealed, since the appeal was disposed of, and
  - (c) more than 2 years has elapsed since the last application brought by the applicant under this section, if any, was disposed of.
- (2) On hearing an application under subsection (1), the Court may
- (a) terminate the permanent guardianship order and appoint the applicant as a guardian of the child if the Court is satisfied that
    - (i) the applicant is capable of assuming and willing to assume the responsibilities of guardianship of the child, and
    - (ii) it is in the best interests of the child that the applicant be appointed a guardian,
  - (b) make a supervision order in conjunction with an order described in clause (a), or
  - (c) dismiss the application.

2013 cC-12.5 s9(24)

**36 and 37** Repealed 2003 c16 s39.

#### **Parents' marriage**

**38** If a child is the subject of a permanent guardianship order and subsequently the biological mother and biological father of that child marry each other, the biological father of the child is deemed to have been given or served with all notices required to be given to or served on a guardian of the child before the date of the marriage.

RSA 2000 cC-12 s38;2010 c16 s1(42)

#### **Right to custody**

**39** A supervision order and the right of a director to the custody of a child when the child is in the custody of a director or the child is the subject of a temporary or permanent guardianship order or a permanent guardianship agreement takes precedence over the rights given by any order not made under this Act respecting custody, access, contact, parenting time or the child's place of residence, whether that order

- (a) was granted to a person who is a party to the proceedings under this Act or not, or
- (b) was granted before or after
  - (i) the child came into the custody of a director,
  - (ii) the making of the supervision order or the temporary or permanent guardianship order, or
  - (iii) the execution of the permanent guardianship agreement.

RSA 2000 cC-12 s39;2003 c16 s39.1;2004 c16 s9

#### **Duration of order**

**40(1)** A temporary guardianship order remains in effect until

- (a) the order expires or is terminated by a court,
- (a.1) a private guardianship order is made in respect of the child,
- (b) the child attains the age of 18 years, or
- (c) the child marries,

whichever occurs first.

**(2)** A permanent guardianship agreement or order remains in effect until

- (a) the agreement or order is terminated by a court,
- (b) a private guardianship order is made in respect of the child,
- (c) an adoption order is made in respect of the child,
- (d) the child attains the age of 18 years, or
- (e) the child marries,

whichever occurs first.

RSA 2000 cC-12 s40;2003 c16 s40

**41** Repealed 2003 c16 s41.

#### **Death of child**

**42(1)** When a child who is the subject of a permanent guardianship agreement or order dies, the director may

- (a) consent to an autopsy of the body of the child, and

- (b) arrange for the burial or other disposition of the body of the child.

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

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

1984 cC-8.1 s40;1988 c15 s45

#### **Division 4 Secure Services**

**43** Repealed 2003 c16 s43.

##### **Secure services certificate**

**43.1(1)** Subject to subsection (2), if a child

- (a) other than a youth who is the subject of a custody agreement under section 57.2(2), is in the custody of a director,
- (b) is the subject of a supervision order, temporary guardianship order or permanent guardianship agreement or order, or
- (c) is the subject of a family enhancement agreement under section 8,

and a director has reasonable and probable grounds to believe that

- (d) the child is in a condition presenting an immediate danger to the child or others,
- (e) it is necessary to confine the child in order to stabilize and assess the child, and
- (f) less intrusive measures are not adequate to sufficiently reduce the danger,

the director may issue a secure services certificate in the prescribed form, and on issuing it the director may convey the child, and may detain the child while the child is being conveyed, to a secure services facility and may confine the child in a secure services facility.

**(2)** A director may not issue a secure services certificate respecting a child who is the subject of a supervision order, a custody agreement under section 9 or a family enhancement agreement under section 8 without the written consent of the guardian.

**(3)** If a director confines a child pursuant to subsection (1),

- (a) the director must appear before the Court within 3 days after the confinement to show cause why the certificate was issued, and
- (b) the director may also apply in the prescribed form for a secure services order in respect of the child for a further period of not more than 7 days if it is necessary
  - (i) to stabilize the child, or
  - (ii) to assess the child and prepare a plan for services.

**(3.1)** The Court may hear a show cause or application for a secure services order under subsection (3) by videoconference if the Court is satisfied that it is proper to do so.

**(3.2)** If in the opinion of the director it would be impracticable to appear personally before a judge or justice of the peace

- (a) to show cause in accordance with subsection (3)(a), or
- (b) to apply for an order in accordance with subsection (3)(b),

the director may show cause or make the application to a judge of the Court by telephone or other means of telecommunication in accordance with section 43.2.

**(4)** If a director confines a child pursuant to subsection (1), the director must serve on the child and on the guardian, if the guardian consented to the issuing of the secure services certificate, not more than one day after the certificate is issued

- (a) a copy of the secure services certificate showing the reason for confinement and the duration of the certificate,
- (b) a notice of the date, time and place at which the appearance to show cause under subsection (3)(a) will be held, and
- (c) an application, if any, for a further period of confinement under subsection (3)(b).

**(5)** A secure services certificate or order is sufficient authority for any person to confine the child in a secure services facility.



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

(7) The judge or justice of the peace that hears an application pursuant to subsection (3) may make a secure services order in respect of a child for a period of not more than 7 days if the judge or justice of the peace is satisfied that a further period of confinement is necessary

- (a) to stabilize the child, or
- (b) to assess the child and prepare a plan for services.

(8) If a judge or justice of the peace makes a secure services order under subsection (7), a director must

- (a) serve a copy of the secure services order on the child not more than one day after it is granted, and
- (b) notify a guardian of the child forthwith by any method, orally or in writing.

2003 c16 s44;2004 c16 s10;2008 c31 s11;2020 c23 s2

#### **Application for secure services order by telecommunication**

**43.2(1)** If the director shows cause or makes an application under section 43.1 by telephone or other means of telecommunication, the information on which the application or show cause is based shall be given on oath and shall be recorded verbatim by a judge of the Court who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the Court.

(2) For the purposes of subsection (1), an oath may be administered by telephone or other means of telecommunication.

(3) The information submitted by telephone or other means of telecommunication must include a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice of the peace.

(4) A judge of the Court referred to in subsection (1) may make an order under section 43.1 if the judge is satisfied that an application made by telephone or other means of telecommunication conforms to the requirements of subsection (3).

(5) If a judge of the Court makes an order pursuant to subsection (4),

- (a) the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,
- (b) the director, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge making the order and the time, date and place at which it was made, and
- (c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.

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

2008 c31 s12

#### **Secure services order**

##### **44(1)** If a child

- (a) other than a youth who is the subject of a custody agreement under section 57.2(2), is in the custody of a director,
- (b) is the subject of a supervision order, temporary guardianship order or permanent guardianship agreement or order, or
- (c) is the subject of a family enhancement agreement under section 8,

the director may make an ex parte application to the Court for a secure services order.

**(2)** The Court may make a secure services order in respect of a child for a period of not more than 5 days if it is satisfied that

- (a) the child is in a condition presenting an immediate danger to the child or others,
- (b) it is necessary to confine the child in order to stabilize and assess the child, and
- (c) less intrusive measures are not adequate to sufficiently reduce the danger.

**(3)** If the Court makes a secure services order under subsection (2), a director must

- (a) serve a copy of the secure services order on the child not more than one day after it is granted, and
- (b) notify a guardian of the child forthwith by any method, orally or in writing.

**(4)** Before the termination of the secure services order granted under subsection (2), a director may apply to the Court in the prescribed form for a continuation of the secure services order and the Court may continue the secure services order for an additional period of not more than 5 days if further confinement is necessary

- (a) to stabilize the child, or
- (b) to assess the child and prepare a plan for services.

**(5)** The director must serve the child and a guardian of the child with notice of the date, time and place of the hearing of an application under subsection (4) not less than one day before the hearing date of the application.

**(6)** If the Court is satisfied that it is proper to do so, the Court, on the ex parte application of the director, may, at any time before the time fixed for the hearing of an application under subsection (4), do any of the following:

- (a) authorize service ex juris, service by registered mail or any other form of substitutional service;
- (b) if an order is made under clause (a), extend or reduce the time within which service may be effected;
- (c) if an order is made under clause (a), extend the time within which a hearing shall be held;
- (d) authorize service on a guardian appointed under the *Adult Guardianship and Trusteeship Act* in respect of the guardian of a child instead of on the guardian of the child;
- (e) authorize the giving of a shorter period of notice;
- (f) dispense with service on any person.

**(6.1)** Whether or not authorization has been given under subsection (6), the Court may do any of the following at the time of the hearing of an application under subsection (4):

- (a) approve service made in a form it considers adequate in the circumstances;

(b) approve a shortened period as sufficient notice;

(c) dispense with service on any person.

(7) A director must specify the secure services facility in which a child is to be confined pursuant to a secure services order.

(8) A secure services order is sufficient authority for any person to confine the child in a secure services facility.

(9) If the Court makes a secure services order, it shall

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

(b) provide the child, the child's guardian and the child's lawyer, if any, with a copy of the order and a written statement showing

(i) the reasons for the confinement,

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

(iii) that the order may be reviewed or appealed on the application of the child, the child's guardian or a director,

(iv) that the child may obtain a copy of the form prescribed for making an application for a review from the person in charge of the secure services facility, and

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

(vi) repealed 2008 c31 s13,

(c) provide the child with a written statement showing the address and telephone number of the Child and Youth Advocate, and

(d) provide the child's guardian with a written statement showing the address and telephone number of the nearest office of the Legal Aid Society.

RSA 2000 cC-12 s44;2003 c16 s45;2004 c16 s11;  
2008 c31 s13;2017 c22 s10;2020 c23 s2

#### **Renewal of section 43.1 and 44 orders**

**44.1(1)** A secure services order granted under section 43.1 or 44 may be renewed in accordance with the application procedures of

section 44, except subsection (4), on the application by a director in the prescribed form for a period of not more than 20 days.

(2) The total period of confinement of a child in a secure services facility under this section and sections 43.1 and 44 shall not exceed 30 consecutive days.

(3) Despite subsection (2), if the child ceases to be in the custody of a director or the subject of a supervision order, a temporary guardianship order, a permanent guardianship agreement or order or a family enhancement agreement under section 8, the confinement in the secure services facility terminates immediately.

2003 c16 s46;2004 c16 s12

#### **Exclusion from proceedings**

**44.2(1)** Subject to subsection (2), if the Court is satisfied that

- (a) the evidence or information presented to the Court may be seriously injurious or seriously prejudicial to the child who is the subject of a hearing under this Division, or
- (b) it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom,

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

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

(3) At the outset of a hearing under this Division, the Court shall inform the parties of their right to make an application under subsection (1) to exclude persons.

2008 c31 s14

#### **Secure treatment facility**

**45(1)** A secure services certificate or order is sufficient authority for any peace officer or director to apprehend and convey the child named in it to the secure services facility specified by a director and to detain the child while the child is being conveyed to the secure services facility.

(2) On the issuing of a secure services certificate or order, the person in charge of the secure services facility specified by a director must admit the child to the secure services facility if the child is not already resident in that facility, and the person is responsible for ensuring that

- (a) the child is provided with services to stabilize the child in accordance with the standards prescribed for such services in the regulations,
- (b) any assessment required for the preparation of a plan for services for the child is undertaken, and
- (c) the level of security provided to the child meets what is reasonably required for the confinement of the child.

RSA 2000 cC-12 s45;2003 c16 s47

#### **Transfer**

**46** When the child named in a secure services certificate or order is in a secure services facility, a director may transfer the child to another secure services facility and the certificate or order is sufficient authority for any peace officer, director or member of the staff of the secure services facility to detain the child while the child is being transferred.

RSA 2000 cC-12 s46;2003 c16 s48

#### **Leave of absence**

**47** During the term of a secure services certificate or order, a director may grant the child a leave of absence from the secure services facility for medical, humanitarian or rehabilitative reasons on any terms and conditions that the director considers necessary.

RSA 2000 cC-12 s47;2003 c16 s49

#### **Search and apprehension order**

**48(1)** When a child who is the subject of a secure services certificate or order

- (a) leaves a secure services facility when no leave of absence has been granted, or
- (b) leaves a secure services facility pursuant to a leave of absence and fails to return within the time permitted by the leave,

a director may apprehend and convey or authorize a peace officer or any other person to apprehend and convey the child, and to detain the child while the child is being conveyed, to a secure services facility.

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

- (a) has left a secure services facility when a leave of absence has not been granted, or

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

the director may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace, for an order authorizing the director or any person named in the order and any peace officer called on for assistance, to enter, by force if necessary, any place or premises specified in the order, to search for, apprehend and convey the child to any secure services facility and to detain the child while the child is being conveyed to a secure services facility.

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

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

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

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

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

- (a) a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice of the peace;
- (b) a statement of the director's belief that the child is the subject of a secure services certificate or order and
  - (i) has left the secure services facility without a leave of absence, or
  - (ii) has not returned to the secure services facility within the time prescribed;
- (c) a statement of the director's grounds for believing that the child will be found in the place or premises to be searched;

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

**(8)** A judge of the Court or a justice of the peace referred to in subsection (4) who is satisfied that an application made by telephone or other means of telecommunication

- (a) conforms to the requirements of subsection (7), and
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (2)

may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (2).

**(9)** If a judge of the Court or a justice of the peace makes an order under subsection (8),

- (a) the judge or justice shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,
- (b) the director, on the direction of the judge or justice, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge or justice making the order and the time, date and place at which it was made, and
- (c) the judge or justice shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.

**(10)** An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under subsection (2).

**(11)** If a director or a peace officer or other person authorized under subsection (1) to apprehend a child has reasonable and probable grounds to believe that

- (a) the child may be found in a place or premises, and
- (b) the life or health of the child would be seriously and imminently endangered as a result of the time required to obtain an order under subsection (2) or (4),



the director, peace officer or other person may, without an order and by force if necessary, enter that place or those premises and search for and remove the child for the purpose of conveying the child to a secure services facility and may detain the child while the child is being conveyed to a secure services facility.

RSA 2000 cC-12 s48;2002 c9 s7;2003 c16 s50;  
2008 c31 s15

### Review

**49(1)** A child with respect to whom a secure services order has been made, a guardian of the child or a director may apply to the Court in the prescribed form for a review of the order.

**(2)** An application for a review of a secure services order may be made

- (a) by a director, at any time during the period of the order and the period of any renewal of the order, or
- (b) by the child who is the subject of the secure services order or a guardian of the child, once during the period of the order and once during the period of any renewal of the order.

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

**(4)** If a director is not the applicant, the clerk of the Court shall notify a director of the application.

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

- (a) the child,
- (b) a guardian of the child if a director is not the guardian of the child, and
- (c) the person in charge of the secure services facility in which the child is confined

not less than one day before the date fixed for the hearing.

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

- (a) authorize service ex juris, service by registered mail or any other form of substitutional service;
  - (b) if an order is made under clause (a), extend or reduce the time within which service may be effected;
  - (c) if an order is made under clause (a), extend the time within which a hearing shall be held;
  - (d) authorize service on a guardian appointed under the *Adult Guardianship and Trusteeship Act* in respect of the guardian of a child instead of on the guardian of the child;
  - (e) authorize the giving of a shorter period of notice;
  - (f) dispense with service on any person.
- (7) Whether or not authorization has been given under subsection (6), the Court may do any of the following at the time of the hearing:
- (a) approve service made in a form it considers adequate in the circumstances;
  - (b) approve a shortened period as sufficient notice;
  - (c) dispense with service on any person.

RSA 2000 cC-12 s49; 2003 c16 s51;2004 c16 s13;  
2008 c31 s16;2017 c22 s10

#### **Order of Court on review**

**50(1)** After hearing an application for the review of a secure services order, the Court may make an order in accordance with section 44 confirming, varying or terminating the secure services order.

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

**(3)** The director shall provide the child, the child's guardian, the child's lawyer, if any, and the person in charge of the secure services facility in which the child is confined with a copy of the order made under subsection (1).

RSA 2000 cC-12 s50;2003 c16 s52;2008 c31 s17

#### **Adjournment and extension of confinement**

**51(1)** The Court may adjourn the hearing of an application under section 43.1, 44, 44.1 or 49

- (a) with the consent of the parties to the application, or

- (b) if the Court is satisfied that the adjournment is necessary in order to obtain evidence to assist the Court in determining whether a secure services order should be made, or confirmed, varied or terminated.

**(1.1)** A justice of the peace may adjourn the hearing of an application under section 43.1(3) for a hearing before a judge of the Court

- (a) with the consent of the parties to the application, or
- (b) if the justice of the peace is satisfied that the adjournment is necessary in order to obtain evidence to assist in determining whether a secure services order should be issued.

**(2)** Unless it is satisfied that it would be in the best interests of the child to order otherwise, the Court shall in respect of a child who is confined under this Division extend the confinement pending the hearing of an application under section 44 or 44.1 or the hearing of a review under section 49, as the case may be.

**(3)** The number of days that the hearing of an application under section 43.1, 44, 44.1 or 49 is adjourned shall be included in a calculation of the duration of the order made at the hearing if the child is confined in the secure services facility during the adjournment.

RSA 2000 cC-12 s51;2003 c16 ss53,115;2004 c16 s14;  
2005 c28 s2;2008 c31 s18

## **Division 5 Private Guardianship**

### **Private guardianship**

**52(1)** Any adult may apply to the Court in the prescribed form for a private guardianship order in respect of a child who is in the custody of a director or is the subject of a temporary guardianship order or a permanent guardianship agreement or order.

**(1.01)** Notwithstanding any other enactment, a person may not apply to any court to be appointed as a guardian of a child who is in the custody of a director, or is the subject of a temporary guardianship order or a permanent guardianship agreement or order, except under this Act.

**(1.1)** An application under subsection (1) must include a home study report prepared by a qualified person respecting

- (a) the suitability of the applicant as a guardian,

- (b) the ability and willingness of the applicant to assume the responsibility of a guardian with respect to the child, and
- (c) whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.

**(1.2)** If the child is the subject of a permanent guardianship agreement or order, the report required under subsection (1.1) must be prepared by a director.

**(1.3)** If an applicant has reason to believe that the child is an Indigenous child, the application under subsection (1) must include a plan that addresses how the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved.

**(2)** A director may, on behalf of an applicant, make an application under subsection (1) if

- (a) the applicant consents in writing, and
- (b) the director is satisfied that it is in the best interests of the child for the child to be placed under the guardianship of the applicant.

**(3) to (5)** Repealed 2003 c16 s55.

RSA 2000 cC-12 s52;2003 c16 s55;2008 c31 s19;  
2018 c24 s5;2020 c23 s2

#### Notice

**53(1)** The applicant shall serve notice of the nature, date, time and place of the hearing of the application under section 52, a copy of the report described in section 52(1.1) and a copy of the plan described in section 52(1.3) if one was required under that section, not less than 30 days before the date of the hearing on

- (a) the guardian of the child,
- (b) the child, if the child is 12 years of age or older, and
- (c) a director, if a director is not the guardian.

**(1.1)** In addition to serving notice on the persons listed in subsection (1), if the child is a First Nation Individual or a member of a band, the applicant shall serve notice of the nature, date, time and place of the hearing of the application under section 52 not less than 30 days before the date of the hearing on the band or bands identified by a director as the band or bands of which the child is a member or is entitled to be a member.

- (2) The Court may, if it considers it appropriate to do so,
- (a) order that service of the notice of the application, the copy of the report described in section 52(1.1) and the copy of the plan described in section 52(1.3) if one was required under that section, be made substitutionally or ex juris,
  - (b) shorten the period of service required under subsection (1), or
  - (c) dispense with service on any band or any person other than the director.

RSA 2000 cC-12 s53;2003 c16 s56;2008 c31 s20;  
2018 c24 s6

#### **Band participation in proceedings**

**53.1(1)** A band that is required to be served with notice of an application under section 53(1.1) may attend Court the first time the matter is heard in Court and may make submissions to the Court regarding the band's participation in the proceedings.

(2) In any proceedings before the Court relating to the application, a band that is required to be served under section 53(1.1) and that attends Court the first time the matter is heard in Court may

- (a) appear,
- (b) be represented by a lawyer,
- (c) make representations to the Court, and
- (d) if the Court grants leave, and subject to any conditions the Court may impose, take further part in the proceedings.

(3) If a band is served in accordance with section 53(1.1) and does not attend Court the first time the matter is heard in Court, no further notice to the band is required, and the Court may proceed to hear the application if the Court considers it to be in the best interests of the child to do so.

(4) A band that makes submissions to the Court regarding the band's participation in the proceedings may appeal the Court's decision referred to in subsection (2)(d) to the Court of Queen's Bench.

2018 c24 s7

**54** Repealed 2003 c16 s57.

**Consent to guardianship**

**55(1)** A private guardianship order shall not be made without the consent in the prescribed form of

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

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

- (a) the guardian of the child, or
- (b) the child,

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

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

RSA 2000 cC-12 s55;2003 c16 s58;2008 c31 s21;  
2018 c24 s8

**Private guardianship order**

**56(1)** If the Court is satisfied that

- (a) the applicant is able and willing to assume the responsibility of a guardian toward the child,
- (b) it is in the best interests of the child, and
- (c) the child has been in the continuous care of the applicant for a period of at least 3 months immediately prior to the hearing,

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

**(1.01)** If it is satisfied that it is in the best interests of the child to do so, the Court may waive the requirement in subsection (1)(c).

**(1.1)** On making an order under subsection (1), the Court may include terms respecting custody of and contact with the child.

**(1.2)** On making an order under subsection (1) appointing a guardian of an Indigenous child, the Court shall advise the guardian of the guardian's obligations under section 57.01.

**(2)** The clerk of the Court shall provide a certified copy of an order made under subsection (1) to

- (a) the applicant,
- (b) any person who was a guardian of the child immediately before the making of the order,
- (c) the child, if the child is 12 years of age or older,
- (d) a director, if a director was not the guardian of the child immediately before the making of the order, and
- (e) any other person that the Court directs.

RSA 2000 cC-12 s56;2003 cF-4.5 s114;2003 c16 s59;  
2008 c31 s22;2018 c24 ss9,33

**56.1** Repealed 2018 c24 s10.

#### **Review of contact terms in order**

**56.2(1)** If an order made under section 56 includes terms respecting contact with a child, the following may apply to the Court in the prescribed form for a review of those terms:

- (a) the child, if the child is 12 years of age or older;
- (b) a person who has been granted contact with the child under the order;
- (c) a guardian of the child;
- (d) a person who has a significant relationship with the child.

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

- (a) the child, if the child is 12 years of age or older,
- (b) a person who has been granted contact with the child under the order, if that person is not the applicant, and
- (c) a guardian of the child

not less than 15 days before the date fixed for the hearing.

- (3) The Court may, if it considers it appropriate to do so,
- (a) order that service of the notice of the application be made substitutionally or ex juris,
  - (b) shorten the period of notice required under subsection (2), or
  - (c) dispense with service on any person.
- (4) On hearing an application under subsection (1), the Court may continue, vary or terminate the terms respecting contact contained in the order.

2008 c31 s24

**Effect of order**

**57(1)** Notwithstanding Part 2 of the *Family Law Act*, for all purposes when a private guardianship order is made the applicant is a guardian of the child.

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

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

(3) to (5) Repealed 2003 c16 s61.

RSA 2000 cC-12 s57;2003 cF-4.5 s113;2003 c16 s61

**Private guardianship of Indigenous child**

**57.01** If a private guardianship order is made under section 56 appointing a guardian of an Indigenous child, that guardian shall

- (a) take reasonable steps to comply with the plan included in the application in respect of that child under section 52(1.3), and
- (b) if the Indigenous child is a First Nation Individual,
  - (i) take reasonable steps on behalf of the child necessary for the child to exercise any rights the child may have as a First Nation Individual, and



- (ii) inform the child of the child's status as a First Nation Individual as soon as, in the opinion of that guardian, the child is capable of understanding the child's status as a First Nation Individual.

2008 c31 s25;2018 c24 ss33,34,35

#### **Termination of order**

**57.1(1)** If a private guardianship order is made under this Division, a guardian whose guardianship is not terminated under section 57 may apply to the Court in the prescribed form to terminate the private guardianship order and, if the Court is satisfied that

- (a) the applicant is capable of fully resuming and willing to fully resume the responsibilities of guardianship of the child, and
- (b) it is in the best interests of the child to do so,

the Court may, subject to subsection (3), terminate the private guardianship order.

**(2)** If the Court terminates a private guardianship order, the applicant and any other person whose guardianship was not terminated under section 57 are the guardians of the child.

**(3)** No order shall be made under subsection (1) relating to a child who is 12 years of age or older without the consent of the child.

**(4)** Sections 53 and 55 apply to an application under this section, and the applicant must include a report described in section 52(1.1) in the application.

2003 c16 s62

## **Division 6 Agreements with Youths**

#### **Family enhancement, custody agreements**

**57.2(1)** A director may enter into an agreement with a youth with respect to the provision of services to the youth if the director is

- (a) satisfied that the youth is living independently of the youth's guardian, and
- (b) of the opinion that
  - (i) the youth is in need of intervention, and
  - (ii) as a result of the provision of services, the youth's safety, security or development will be adequately

protected while the youth continues to live independently of the youth's guardian.

- (2) Subject to section 33, a director may enter into a custody agreement for terms of not more than 6 months each with a youth under which custody is given to the director if the director is
- (a) satisfied that the youth is living independently of the youth's guardian, and
  - (b) of the opinion that
    - (i) the youth is in need of intervention, and
    - (ii) the survival, security and development of the youth can be adequately protected through the agreement.
- (3) The terms of an agreement under this section must include
- (a) in the case of a custody agreement, the visits or other access to be provided between the youth and the youth's guardian or any other person, and
  - (b) a plan of care that addresses the youth's need for preparation for the transition to independence and adulthood.

2003 c16 s62;2018 c24 s32;2020 c23 s2

#### **Post-18 care and maintenance**

**57.3** When a youth who is the subject of a family enhancement agreement under section 57.2(1), a custody agreement under section 57.2(2), a temporary guardianship order or a permanent guardianship agreement or order attains the age of 18 years, a director may continue to provide the person with support and financial assistance

- (a) for the periods and the purposes, and
- (b) on the conditions

prescribed in the regulations.

2003 c16 s62

### **Division 7 Child Support Agreements and Orders**

#### **Child support agreement**

**57.4(1)** If

- (a) a child is in the custody of a director or the subject of a temporary guardianship order or a permanent guardianship agreement or order, or
- (b) a director has entered into an agreement with a child under section 57.2,

a director may enter into an agreement with the parent of the child whereby the parent agrees to provide child support.

**(2)** An agreement for child support entered into under subsection (1) does not prevent the director from applying to the Court for an order under section 57.5.

2003 c16 s62;2004 c16 c15;2008 c31 s27;2020 c23 s2

### **Child support order**

**57.5(1)** If a child is in the custody of a director or the subject of a temporary guardianship order or a permanent guardianship agreement or order or if a director has entered into an agreement with the child under section 57.2, a director may apply in the prescribed form to the Court for an order requiring any or all of the parents of the child to provide child support.

**(2)** The Court on hearing an application under subsection (1) may make an order requiring a parent to provide child support.

**(3)** An order of the Court under subsection (2) may be retroactive in effect to the commencement of the child's being

- (a) in the custody of a director,
- (b) the subject of a temporary guardianship order or a permanent guardianship agreement or order, or
- (c) the subject of an agreement under section 57.2.

**(4)** In making an order requiring a parent to provide child support for a child under this section, the Court may consider

- (a) the income, earning capacity and other financial resources or benefits of the parent, and
- (b) the child support guidelines made or adopted under the *Family Law Act*.

**(5)** Notice of the nature, date, time and place of a hearing under this section must be served personally by the applicant on the parent of the child at least 5 days before the date fixed for the hearing.

(6) Section 23(5) and (6) apply to an application under this section.  
2008 c31 s27

#### **Review of child support order**

**57.6(1)** If an order is made under section 57.5, the following may apply to the Court for a review of the order:

- (a) a director;
- (b) a parent who is required to provide child support under the order;
- (c) a private guardian who is entitled under section 57.7 to receive child support in respect of the child who is the subject of the order.

(2) On reviewing an order made under section 57.5, the Court may vary, suspend or terminate the order or may reduce or cancel arrears if the Court is satisfied that there has been a substantial change in the ability of the parent to provide the child support.

(3) Notice of the nature, date, time and place of a hearing under this section must be served personally by the applicant

- (a) on the parent, if the applicant is the director or a private guardian of the child referred to in subsection (1)(c), and
- (b) on the director and on a private guardian of the child referred to in subsection (1)(c), if the applicant is the parent,

at least 5 days before the date fixed for the hearing.

(4) Section 23(5) and (6) apply to an application under this section.  
2008 c31 s27

#### **Transfer of child support**

**57.7(1)** If the Court makes a private guardianship order with respect to a child who is the subject of an agreement under section 57.4 or an order under section 57.5, the Court may direct that child support provided pursuant to the agreement or order shall be provided to the private guardian, notwithstanding that the private guardian was not a party to the agreement or the application for the order.

(2) Until the Director of Maintenance Enforcement receives a copy of the private guardianship order referred to in subsection (1), the Director of Maintenance Enforcement is not responsible for the repayment of any money disbursed by the Director of Maintenance Enforcement after the private guardianship order is made.

2008 c31 s27

**Financial information**

**57.8(1)** In order to assist a director in determining terms of an agreement under section 57.4 or to assist the Court in determining terms of an order under section 57.5, the director may request a parent to disclose financial information.

**(2)** If the parent refuses to disclose the financial information requested by the director, the director may apply to the Court in the prescribed form for an order for financial disclosure.

**(3)** If a parent refuses to disclose financial information requested or ordered under this section, in making an order under section 57.5, the Court may draw an adverse inference against the parent and impute income to the parent in the amount that the Court considers appropriate.

2008 c31 s27;2020 c23 s2

## Part 2 Adoption

**Interpretation**

**58(1)** In this Part,

- (a) “Court”, notwithstanding section 1(1)(h), means the Court of Queen’s Bench;
- (b) “descendant”, in respect of a deceased adopted person, means an adult child or adult grandchild of the adopted person, or a guardian of a child or grandchild of the adopted person;
- (c) “licensed adoption agency” means an adoption agency that holds a licence issued under section 88.

(d), (e) repealed 2003 c16 s64.

**(2)** An appeal from an order of the Court under this Part may be made to the Court of Appeal not more than 30 days after the date on which the order is made.

RSA 2000 cC-12 s58;2003 c16 s64;2020 c39 s3

**Matters to be considered**

**58.1** A court and all persons who must exercise any authority or make any decision under this Act relating to the adoption of a child, including relating to the placement of a child, must do so in the best interests of the child, and must consider the following as well as any other relevant matter:

- (a) there should be no unreasonable delay in making or implementing a decision respecting the child;

- (b) the importance of a positive relationship with a parent, and a secure place as a member of a family, in the child's development;
- (c) the importance of stability, permanence and continuity of care and relationships to the child's long-term safety and well-being;
- (d) in the case of an Indigenous child, the benefits to the child of a place where the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved;
- (e) the mental, emotional, spiritual and physical needs of the child and the child's mental, emotional and physical stage of development;
- (f) if the child is capable of forming an opinion, the child's opinion should be taken into account;
- (g) the benefits to the child of lasting relationships with the people with whom the child is connected, including family, friends, caregivers and other significant individuals, including
  - (i) the benefits to the child of a placement within the child's extended family, or with persons who have a significant relationship with the child, and
  - (ii) the benefits to the child of a placement within or as close as possible to the child's home community;
- (h) the benefits to the child of a place where the child's familial, cultural, social, linguistic and spiritual heritage are valued as central to the child's safety, security and development;
- (i) the benefits to the child of connections with the child's culture and cultural communities and opportunities to form those connections;
- (j) the child's race, spiritual beliefs, colour, gender, gender identity, gender expression, age, ancestry, place of origin, family status, sexual orientation and any disability the child may have.

2003 c16 s65;2018 c24 s11;2020 c39 s3

## Division 1 Adoption Process

### Consent to adoption

**59(1)** An adoption order in respect of a child must not be made without the consent in the prescribed form of

- (a) all the guardians of the child other than a guardian who is applying to the Court under section 62 for the order, and
- (b) the child, if the child is 12 years of age or older.

**(2)** If the person who is applying to the court under section 62 for an adoption order is the sole guardian of the child, an adoption order in respect of the child shall not be made without the consent in the prescribed form of the person who was the child's guardian before the applicant became the guardian.

**(3)** A consent to an adoption given in a jurisdiction outside Alberta in a form that is valid in that jurisdiction is deemed to be a consent under this Act.

RSA 2000 cC-12 s59;2009 c53 s35

### Automatic joint guardianship status

**60(1)** A prospective adopting parent named in a consent required under section 59 is, on the giving of the consent, a joint guardian of the child with the guardian who gave the consent.

**(2)** The prospective adopting parent's status as a joint guardian under subsection (1) terminates

- (a) if a consent given under section 59 is revoked in accordance with section 61(1),
- (b) when the adoption order is made or the application for the adoption order is dismissed,
- (b.1) when the child leaves the care and custody of the prospective adopting parent because of a breakdown in the adoption placement, or
- (c) if the Court makes an order declaring the status of the joint guardian to be terminated.

RSA 2000 cC-12 s60;2003 c16 s67;2009 c53 s35

### Revocation of consent

**61(1)** A person who has consented to the adoption of a child under section 59(1)(a) or (2) may, not later than 10 days after the date of the consent, revoke the consent by providing written notice of the revocation to a director.

(2) The director who receives a notice under subsection (1) shall ensure that the person in whose custody the child has been placed and any other person who has consented under section 59(1)(a) or (2) to the adoption of the child are notified forthwith of the revocation of consent.

(3) On receiving notification of a revocation of consent by the guardian who surrendered custody of the child, the person in whose custody the child has been placed shall forthwith return the child

- (a) if the child was placed in the custody of that person directly by the guardian who surrendered custody of the child, to the custody of that guardian, or
- (b) if the child was placed in the custody of that person by a licensed adoption agency, to the agency.

(4) A licensed adoption agency to which a child is returned under subsection (3)(b) shall forthwith return the child to the custody of the guardian who surrendered custody of the child.

1988 c15 s35;1994 c36 s6

#### **Application for adoption order**

**62(1)** Subject to this section, an adult who

- (a) maintains the adult's usual residence in Alberta, or
- (b) maintained the adult's usual residence in Alberta at the time the adult received custody of a child under this Division,

may apply to the Court in the prescribed form for an adoption order.

(2) Repealed 2003 c16 s68.

(3) No application for an adoption order shall be filed in respect of a child unless the child is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and

- (a) the period for revoking a consent to adoption under section 61(1) has expired,
- (b) if the child is the subject of a permanent guardianship order, the period for appealing the order has expired or an appeal of the order has been disposed of, or



- (c) if the child is the subject of a permanent guardianship agreement, the period for terminating the agreement has expired or an application for termination of the agreement has been disposed of.

RSA 2000 cC-12 s62;2003 c16 s68;2009 c53 s35

#### **Documentation to accompany application**

**63(1)** An application for an adoption order in respect of a child who is the subject of a permanent guardianship agreement or order or who is the subject of an equivalent order or agreement in another country and has been lawfully admitted to Canada for permanent residence shall be filed with the Court by a director and must be accompanied with the following documentation:

- (a) the affidavit of the director setting out
  - (i) the name, date and place of birth, gender and parentage of the child, so far as is known,
  - (ii) a statement that the director is the guardian of the child pursuant to the agreement or order,
  - (iii) the terms of any agreement or order respecting access to the child,
  - (iv) a statement that the applicant, in the opinion of the director, is a fit and proper person to have the care and custody of the child, and
  - (v) if the child is a First Nation Individual, a statement that section 67 has been complied with;
- (b) the affidavit of the applicant setting out the age, address, marital status and occupation of the applicant and the relationship, if any, of the applicant to the child;
- (c) the consents required under section 59 or an affidavit indicating the reasons why the applicant is requesting that the Court dispense with one or more of the consents;
- (d) a home study report in the form required in the regulations prepared by a qualified person on behalf of the director respecting
  - (i) the suitability of the applicant as an adoptive parent, and
  - (ii) the capability and willingness of the applicant to assume the responsibility of a parent toward the child;

- (e) the affidavit of any person acceptable to the director respecting the fitness of the applicant to adopt the child, or any other material that the director may require;
- (f) if the applicant has reason to believe that the child is an Indigenous child, a plan that addresses how the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved.

(2) An application for an adoption order in respect of a child who is placed in the custody of the applicant by a licensed adoption agency shall be filed with the Court by an officer of the licensed adoption agency and must be accompanied with the following documentation:

- (a) the affidavit of an officer of the licensed adoption agency setting out
  - (i) the name, date and place of birth, gender and parentage of the child, so far as is known,
  - (ii) a statement that the applicant, in the opinion of the officer, is a fit and proper person to have the care and custody of the child, and
  - (iii) if the child is a First Nation Individual, a statement that section 67 has been complied with;
  - (iv) repealed 2003 c16 s69;
- (b) the affidavit of the applicant setting out
  - (i) the age, address, marital status and occupation of the applicant and the relationship, if any, of the applicant to the child,
  - (ii) the terms of any agreement and any document or writing relating to any agreement under which payment or other consideration passes from the applicant in respect of care, maintenance, medical treatment or other necessities to or for the benefit of the parent of the child, and
  - (iii) the terms of any agreement or order respecting time with the child or contact with the child;
- (c) the consents required under section 59 or an affidavit indicating the reasons why the applicant is requesting that the Court dispense with one or more of the consents;

- (d) a home study report in the form required in the regulations prepared by a qualified person on behalf of an officer of the licensed adoption agency respecting
  - (i) the suitability of the applicant as an adoptive parent, and
  - (ii) the capability and willingness of the applicant to assume the responsibility of a parent toward the child;
- (e) the affidavit of any person acceptable to an officer of the licensed adoption agency respecting the fitness of the applicant to adopt the child, or any other material that the officer may require;
- (f) if the applicant has reason to believe that the child is an Indigenous child, a plan that addresses how the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved.

**(3)** An application for an adoption order in respect of a child whose step-parent is the applicant or a child who is placed by a guardian directly in the custody of an applicant shall be filed with the Court and must be accompanied with the following documentation:

- (a) the affidavit of the applicant setting out
  - (i) the name, date and place of birth, gender and parentage of the child, so far as is known,
  - (ii) the age, address, marital status and occupation of the applicant and the relationship of the applicant to the child,
  - (iii) where the applicant is the step-parent of the child, the name of the parent who has lawful custody of the child, and
  - (iv) the terms of any agreement or order respecting time with the child or contact with the child;
- (b) the consents required under section 59 or an affidavit indicating the reasons why the applicant is requesting that the Court dispense with one or more of the consents;
- (c) family and medical history of the child's biological parent as required by the regulations;
- (d) the results of a criminal record check of the applicant;

- (e) in the case of an applicant who is not a step-parent of the child, if the applicant has reason to believe that the child is an Indigenous child, a plan that addresses how the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved.

RSA 2000 cC-12 s63;2003 c16 s69;2008 c31 s28;  
2009 c53 s35;2018 c24 ss12,35;2020 c23 s2;2020 c39 s3

#### **Service of notice of hearing**

**64(1)** An applicant under section 62 shall serve, by personal service,

- (a) a notice of the nature, date, time and place of the hearing of the application not less than 30 days before the date of the hearing, or
- (b) a notice of objection in the prescribed form,

together with the documentation required under section 63, on

- (c) the guardians of the child other than the applicant,
- (d) if the applicant is the sole guardian of the child, the person who consented to the adoption under section 59(2),
- (e) the child, if the child is 12 years of age or older,
- (f) the Minister, if a person other than a director is filing the application, and
- (g) in the case of the adoption of a child who is not the subject of a permanent guardianship agreement or order, the biological father of the child.

**(2)** Any guardian who has indicated a desire not to be notified of the hearing need not be served under subsection (1).

**(3)** A child referred to in subsection (1)(e) need not be served with the home study report under subsection (1) or the results of a criminal record check under section 63(3).

**(4)** A person who is served with a notice of objection form under subsection (1) may, within 10 days after being served, file a notice of objection with the clerk of the Court.

**(5)** If no notice of objection is filed within 10 days after service on all the persons required to be served under subsection (1), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (1).

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of the nature, date, time and place of the hearing.

(7) No order for service ex juris is necessary for service of a copy of a notice on any of the persons referred to in subsection (1) in a province or territory of Canada other than Alberta or in the United States of America, but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory other than Alberta, or
- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(8) The Court may, if it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (1), and
- (b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (1).

RSA 2000 cC-12 s64;2003 c16 s70;2004 c16 s16;  
2008 c31 s29;2009 c53 s35

**65** Repealed 2003 c16 s71.

#### **Investigation by the Minister**

**66(1)** On being served with a notice under section 64, the Minister may conduct an investigation with respect to the proposed adoption and may file a report of the investigation with the clerk of the Court.

(2) The Minister shall provide to the applicant forthwith a copy of any report filed by the Minister under subsection (1).

RSA 2000 cC-12 s66;2003 c16 s72;2009 c53 s35;2020 c39 s3

#### **Consultation with band of First Nation child**

**67(1)** If a director or an officer of a licensed adoption agency, as the case may be, has reason to believe that a child who is being placed for adoption is a First Nation Individual and a member of a band and that the guardian who is surrendering custody of the child is a resident of a reserve, the director or officer shall involve a person designated by the council of the band in decisions relating to the adoption of the child.

**(2)** If a director or an officer of a licensed adoption agency, as the case may be, has reason to believe that a child who is being placed for adoption is a First Nation Individual and a member of a band and that the guardian who is surrendering custody of the child is not a resident of a reserve, the director or officer shall

- (a) request the guardian who is surrendering custody of the child to consent to the involvement of a person designated by the council of the band in decisions relating to the adoption of the child, and
- (b) if the guardian consents to the involvement under clause (a), involve the person designated by the council of the band in decisions relating to the adoption of the child.

RSA 2000 cC-12 s67;2003 c16 s73;2018 c24 s35

### **Court proceedings**

**68(1)** If the Court considers, under section 64, that a hearing is necessary, the proceedings relating to the adoption of a child shall be heard in private unless the Court orders otherwise.

**(2)** The applicant and the child if the child is 12 years of age or older are entitled to be heard, in person or by counsel, at the hearing before the Court.

**(3)** The Court may adjourn the hearing of an application under this Division for not more than 30 days

- (a) with the consent of the parties to the application, or
- (b) if the Court is satisfied that the adjournment is necessary in order to obtain evidence to assist the Court in determining whether an adoption order should be made.

**(4)** Notwithstanding sections 59 and 63, on considering an application under this Division, the Court may make an order dispensing with the consent of

- (a) a guardian of the child other than a director,
- (b) a person who is required under section 59(2) to provide a consent, or
- (c) the child

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

RSA 2000 cC-12 s68;2003 c16 ss74,115;2009 c53 s35

**Direct placement adoption**

**69** The Court may, if it considers it appropriate to do so, require a person who has applied to the Court for an adoption order in respect of a child referred to in section 63(3) to submit to the Court a home study report in the form required in the regulations prepared by a qualified person respecting

- (a) the suitability of the applicant as an adoptive parent, and
- (b) the capability and willingness of the applicant to assume the responsibility of a parent toward the child.

RSA 2000 cC-12 s69;2008 c31 s30;2009 c53 s35

**Adoption order**

**70(1)** If the Court is satisfied that

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

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

**(2)** An adoption order shall be in the prescribed form and shall show the name of the child prior to the adoption.

**(2.1)** On making an adoption order in respect of a child who the Court has reason to believe is an Indigenous child, the Court shall advise the adopting parent of the adopting parent's obligations under section 71.1.

**(3)** If the adopting parent is a widow or widower whose deceased spouse was a party to the application for the adoption order, or if on and after the coming into force of the *Adult Interdependent Relationships Act* the adopting parent is an adult interdependent partner, as defined in that Act, whose deceased adult interdependent partner was a party to the application, the Court may, on the request of the adopting parent and with the consent of the child if the child is 12 years of age or older, name both the applicant and the deceased spouse as the adopting parents of the child.

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

(5) When an adoption order is made, the surname of the adopting parent becomes the surname of the child unless the Court orders otherwise.

RSA 2000 cC-12 s70;2003 c16 s75;2008 c31 s31;2009 c53 s35;  
2018 c24 s33

#### **Subsequent application**

**71(1)** If the Court dismisses an application for an adoption order, no further application for an adoption order under this Division shall be filed with the Court by or on behalf of that applicant until the expiration of a period of not less than 2 years after the date of the hearing of the application.

(2) Notwithstanding subsection (1), an application may be filed with the permission of the Court within the 2-year period set out in subsection (1) if the Court is satisfied that the reasons for dismissal of the previous application no longer exist.

RSA 2000 cC-12 s71;2003 c16 s115;2009 c53 s35;2014 c13 s16

#### **Adoption of Indigenous child**

**71.1** If an adoption order is made in respect of an Indigenous child, the adopting parent shall

- (a) take reasonable steps to comply with the plan filed in respect of that child under section 63, and
- (b) if the Indigenous child is a First Nation Individual,
  - (i) take reasonable steps on behalf of the child necessary for the child to exercise any rights the child may have as a First Nation Individual, and
  - (ii) inform the child of the child's status as a First Nation Individual as soon as, in the opinion of that adopting parent, the child is capable of understanding the child's status as a First Nation Individual.

2008 c31 s32;2018 c24 ss33,34,35

#### **Effect of adoption order**

**72(1)** For all purposes, when an adoption order is made, the adopted child is the child of the adopting parent and the adopting parent is the parent and guardian of the adopted child as if the child had been born to that parent.

(2) Subject to subsection (3), for all purposes, when an adoption order is made, the adopted child ceases to be the child of that child's previous parents, whether that child's biological mother and biological father or that child's adopting parents under a previous adoption order, and that child's previous parents cease to be that child's parents and guardians.



(3) If a child is adopted by the step-parent of the child, the child does not cease to be the child of the parent who has lawful custody and that parent does not cease to be the parent and guardian of the child.

(4) In any testamentary or other document, whether made before or after the coming into force of this section, unless the contrary is expressed, a reference to a person or a group or class of persons described in terms of their relationship by blood or marriage to another person is deemed to refer to or to include, as the case may be, a person who comes within the description as a result of the person's own adoption or the adoption of another person.

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

(6) Subsections (2), (4) and (5) do not apply

- (a) for the purposes of the laws relating to incest, and
- (b) with respect to the prohibited degrees of marriage, to remove a person from a relationship in consanguinity that, but for this section, would have existed between them.

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

(8) This section

- (a) applies and is deemed always to have applied to an adoption made under any enactment previously in force, and
- (b) is binding on the Crown for the purpose of construing this Act and the rights of succession affecting adopted children,

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

(9) An adoption order in respect of a child terminates any agreement or order made under this Act relating to the child except a restraining order made under section 30.

RSA 2000 cC-12 s72;2010 c16 s1(42)

#### **Adoption of non-resident of Canada**

**72.1** A resident of Alberta who wishes to adopt a child who is not lawfully admitted to reside in Canada must apply to a director, in

accordance with the regulations, for approval to proceed with the placement of the child.

2003 c16 s76;2004 c16 s17

#### **Effect of foreign order**

**73** An adoption effected according to the law of any jurisdiction outside Alberta has the effect in Alberta of an adoption order made under this Act, if the effect of the adoption order in the other jurisdiction is to create a permanent parent-child relationship.

RSA 2000 cC-12 s73;2003 c16 s77

#### **Setting aside an adoption order**

**73.1(1)** No application to set aside an adoption order shall be made after the expiration of one year from the date of the adoption order except on the ground that the order was procured by fraud, in which case it may be set aside only if it is in the best interests of the adopted child.

**(2)** Notice of the nature, date, time and place of the hearing of an application under subsection (1) must be served by the applicant on

- (a) the Minister,
- (b) the adopting parent, if the adopting parent is not the applicant,
- (c) the adopted child, if the adopted child is 12 years of age or older and is not the applicant,
- (d) the person who was the guardian of the child immediately before the adoption order was made, if the person is not the applicant,
- (e) the Public Trustee, if a director was the guardian of the child immediately before the adoption order was made, and
- (f) any other person who in the opinion of the Court should be served.

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

**(4)** The clerk of the Court shall send a certified copy of an order setting aside an adoption order to

- (a) the Registrar of Vital Statistics, and
- (b) the Registrar under the *Indian Act* (Canada) if the adopted child is a First Nation Individual.

- (5) When an adoption order is set aside,
- (a) the child ceases to be the child of the adopting parent,
  - (b) the adopting parent ceases to be the parent and guardian of the child,
  - (c) the relationships between the child and all persons as they were immediately before the adoption order was made are re-established,
  - (d) unless the Court orders otherwise, the person who was the guardian of the child immediately before the adoption order was made is the guardian of the child, and
  - (e) unless the Court orders otherwise,
    - (i) the child's given name is the given name the child had before the adoption order was made, if any, and
    - (ii) the child's surname is the surname the child had before the adoption order was made.

2003 c16 s78;2007 cV-4.1 s81;2018 c24 s35

**Distribution of adoption order**

**74(1)** Not more than 35 days after an adoption order is made, the clerk of the Court shall send a certified copy of the adoption order to

- (a) the adopting parent,
- (b) the Minister,
- (c) the Public Trustee, if
  - (i) a director was the guardian of the child immediately before the making of the order, and
  - (ii) the Public Trustee requests a copy of the order,
- (d) the Registrar under the *Indian Act* (Canada), if the adopted child is a First Nation Individual, and
- (e) the Registrar of Vital Statistics.

**(2)** The clerk of the Court shall provide to the Registrar of Vital Statistics

- (a) any other information relating to an adoption order that the Registrar of Vital Statistics requires to enable that Registrar to carry out the requirements of the *Vital Statistics Act*, and
- (b) if the adopted child was born outside Alberta, an additional certified copy of the adoption order.

(3) If a guardian other than a director has consented to the adoption of a child and an officer of a licensed adoption agency filed the application, an officer of the licensed adoption agency must, within 35 days after the making of the adoption order, notify the consenting guardian that the adoption order has been made, unless the consenting guardian has indicated a desire not to be notified.

(4) A person who has consented under section 59(2) to the adoption of a child must be notified in accordance with subsection (3) that the adoption order has been made, unless that person has indicated a desire not to be notified.

(5) to (10) Repealed 2003 c16 s79.

RSA 2000 cC-12 s74; 2003 c16 s79;2004 c16 s18;  
2007 cV-4.1 s81;2009 c53 s35;2018 c24 s35

## Division 2 Adoption Information

### Sealed information

**74.1(1)** The clerk of the Court must seal all documents possessed by the Court that relate to an adoption, and those documents are not available for inspection by any person except on order of the Court or with the consent in writing of the Minister.

(2) Despite the *Freedom of Information and Protection of Privacy Act*, the Minister must seal adoption orders, all documents required by section 63 of this Act to be filed in support of adoption applications, adopted children's original registrations of birth and other documents required to be sealed by the regulations that are in the possession of the Minister, and they are not available for inspection by any person except on order of the Court or pursuant to this Division.

(3) For the purposes of this section, a person may apply for an order of the Court by filing an originating application in the appropriate judicial centre.

2003 c16 s80;2004 c16 s19;2009 c53 s35;2020 c39 s3

### Right to disclosure

**74.2(1)** In this section, "parent" means a biological parent and an adoptive parent under a previous adoption order.

(2) Subject to subsection (4), on receiving a written request from an adopted person who is 18 years of age or older, a descendant of a deceased adopted person, a parent of an adopted person or a sibling who is 18 years of age or older of an adopted person, the Minister may release to the person making the request the information, including personal information, in the orders, registrations and documents sealed under section 74.1(2).

(3) Subject to subsection (4), if a biological parent of an adopted person is deceased, on receiving a written request from a biological grandparent, aunt or uncle who is related to the deceased biological parent, the Minister may release to the person making the request the information, including personal information, in the orders, registrations and documents sealed under section 74.1(2).

(4) The Minister shall not accept a request under subsection (2) or (3) from a parent of an adopted person, a sibling of an adopted person or a biological grandparent, aunt or uncle of an adopted person unless the adopted person is 18 years and 6 months of age or older.

(5) Despite subsections (2) and (3) and subject to subsection (11), if an adopted person who is 18 years of age or older or a parent of the adopted person has, before the coming into force of this section and prior to the request under subsection (2) or (3), registered with the Minister a veto in a form satisfactory to the Minister prohibiting the release of personal information in the orders, registrations and documents sealed under section 74.1(2), the Minister shall not release the personal information unless the veto is revoked.

(6) Despite subsections (2) and (3) and subject to subsection (11), if a person adopted prior to January 1, 2005 who is 18 years of age or older or a parent of that adopted person has, within 6 months of the coming into force of this section and prior to the request under subsection (2) or (3), registered with the Minister a veto in a form satisfactory to the Minister prohibiting the release of personal information in the orders, registrations and documents sealed under section 74.1(2), the Minister shall not release the personal information unless the veto is revoked.

(7) Despite subsections (2) and (3) and subject to subsection (11), a person adopted prior to January 1, 2005 who is not 18 years of age or older on the coming into force of this section may, prior to the person becoming 18 years and 6 months of age or older and prior to the request under subsection (2) or (3), register with the Minister a veto in a form satisfactory to the Minister prohibiting the release of personal information in the orders, registrations and documents sealed under section 74.1(2) and, if the adopted person

has done so, the Minister shall not release the personal information unless the veto is revoked.

**(8)** For greater certainty,

- (a) no adopted person or parent of an adopted person may register a veto under subsection (6) after 6 months have elapsed since the coming into force of this section, and
- (b) no adopted person may register a veto under subsection (7) after the person is 18 years and 6 months of age or older.

**(9)** A person who has registered a veto referred to in subsection (5), (6) or (7) may revoke the veto by providing written notice of the revocation to the Minister.

**(10)** A veto referred to in subsection (5), (6) or (7) is revoked when the person who registered the veto is deceased.

**(11)** Despite the registration of a veto referred to in subsection (5), (6) or (7), the Minister may release the information, including personal information, in the orders, registrations and documents sealed under section 74.1(2) to a person who has made a request under subsection (2) or (3) if the Minister is satisfied, based on the information that the person has supplied and other information available to the Minister, that the release of the information is appropriate.

**(12)** An adopted person, a parent or any person whose personal information may be in orders, registrations or documents sealed under section 74.1(2) may register a contact preference with the Minister that indicates the person's preferences concerning contact with a person who makes a request under subsection (2) or (3).

**(13)** The Minister shall advise a person making a request under subsection (2) or (3) of any contact preference registered with respect to the requested information.

2003 c16 s80;2004 c16 s19;2008 c31 s33;2020 c39 s3

**74.3** Repealed 2020 c39 s3.

#### **General disclosure**

**74.4(1)** If a child who is Indigenous is adopted under this Act or any predecessor to this Act, the Minister, on the request of the child, whether a minor or an adult, the child's guardian or a descendant of a deceased adoptee, at any time, may provide a copy of the original registration of birth of the child, identifying information about the child's biological parents and any other information sealed under section 74.1 that the Minister considers

relevant to the Registrar under the *Indian Act* (Canada), a settlement council of a Metis settlement, a federal or provincial official responsible for providing benefits to persons of Inuit ancestry, or an organization for purposes relating to a First Nation Individual's, a Metis person's or an Inuit person's status, registration or rights.

(2) Despite section 74.1, on request the Minister may provide a copy, and the clerk of the Court may provide a certified copy, of an adoption order to

- (a) the adopted person, if that person is 18 years of age or older or is 16 years of age or older and, in the opinion of the Minister, is living independently from the child's guardian,
- (b) a descendant of a deceased adopted person,
- (c) a guardian who consented under section 59(1) and a person who consented under section 59(2) to the adoption of the child who is the subject of the adoption order, and
- (d) any person named in section 74(1).

(3) The Minister may disclose the identity of a person referred to in a sealed order, registration or document if, in the opinion of the Minister, there are compelling circumstances that support disclosure.

(4) The Minister may disclose personal information sealed under section 74.1

- (a) to the Director of Maintenance Enforcement for the purposes of administering the *Maintenance Enforcement Act*,
- (b) for use in a proceeding before a Court to which the Government of Alberta is a party,
- (c) to a Public Guardian or Trustee, a personal representative as defined by the *Estate Administration Act* or a lawyer who is representing an estate, for the purpose of confirming an adoption in order to settle an estate claim, and
- (d) to any person who applies to the Minister in writing for the information for the purpose of distributing money to the adoptee that is held in trust.

(5) The Minister, on request, may release to an adopted person or the adopted person's

- (a) biological mother,
- (b) biological father,
- (c) adult sibling,
- (d) adopting parent, or
- (e) descendant, if the adopted person is deceased,

any information about one or more of those persons if the information does not disclose the identity of any of those persons.

**(6)** Repealed 2020 c39 s3.

**(7)** If an adopted child or a sibling, child, grandchild, great-grandchild, aunt, uncle or cousin of an adopted child is in need of intervention, the Minister may release personal information in orders, registrations and documents sealed under section 74.1(1) to a director for the purposes of providing intervention services to that adopted child or sibling.

**(8)** If an adoptee or a birth relative of an adoptee has provided the Minister with written confirmation from a member of the College of Physicians and Surgeons of Alberta or an equivalent college, or any other category of person approved by the Minister, that the adoptee or birth relative has been diagnosed with a serious or life-threatening condition that is genetic or hereditary in nature, and that contact with or information from the biological family of the adoptee or, in the case of a birth relative, from the adoptee or adoptive parents is warranted and would be beneficial to the adoptee or birth relative of the adoptee, the Minister may access personal information held by the Minister's department and may provide that information to the adoptee or birth relative.

2003 c16 s80;2004 c16 s19;2008 c31 s34;2018 c24 s33;  
2020 c39 s3

#### **Matching applications for voluntary disclosure of identities**

**75(1)** In this section,

- (a) “adopted person” means a person who is the subject of an adoption order made under this Act or any predecessor to this Act;
- (b) “adoptive applicant” means
  - (i) an adopted person who is 18 years of age or older,



- (ii) an adopted child who is 16 years of age or older who is, in the opinion of the Minister, living independently from the child's guardian,
  - (iii) an adopted child, where the application is made on the child's behalf by the child's guardian,
  - (iv) a descendant of a deceased adopted person,
  - (v) a parent, by adoption, of a deceased adopted person, and
  - (vi) an adult sibling, by adoption, of a deceased adopted person;
- (c) "family applicant", in respect of an adopted person, means any one or more of the following:
- (i) a biological parent of the adopted person;
  - (i.1) repealed 2020 c39 s3;
  - (ii) an adult sibling of the adopted person;
  - (iii) an adult related by blood to the adopted person;
  - (iv) an adult member of any band or Metis settlement of which the adopted person is a member or could become entitled to be a member;
  - (v) a person who was a parent of the adopted person under a previous adoption order.

**(2)** An adoptive applicant or a family applicant who wishes to learn the other's identity may apply to the Minister in the form set by the Minister.

**(3)** The Minister

- (a) shall maintain a registry of applications made under subsection (2),
- (b) shall, on receiving an application made under subsection (2), examine the registry to determine if it contains another application from an associated adoptive applicant or family applicant,
- (c) shall, on receiving notice of withdrawal, immediately remove from the registry any application that is withdrawn by an adoptive applicant or a family applicant, and

- (d) shall include in the registry
  - (i) all vetoes registered with the Minister under section 74.2, and
  - (ii) the name of an adopted person or an adoptive applicant or family applicant in respect of an adopted person who has died, if the Minister has been advised of the death.

**(4)** Where the Minister determines from examining the registry that applications from an adoptive applicant and from a family applicant within the meaning of subsection (1)(c)(i), (ii) or (iii) concern the same adopted person, the Minister shall make reasonable efforts to locate the applicants and,

- (a) if both applicants are located, shall disclose the applicants' identities to each other, or
- (b) if one applicant only is located, shall disclose the other applicant's identity to the located applicant.

**(5)** Where the Minister determines from examining the registry that applications from an adoptive applicant and from a family applicant within the meaning of subsection (1)(c)(iv) or (v) concern the same adopted person, the Minister

- (a) shall make reasonable efforts to locate the applicants,
- (b) shall advise the adoptive applicant that an application from the family applicant has been entered in the registry,
- (c) shall inquire whether the adoptive applicant wishes to disclose their identity to the family applicant, and
- (d) shall disclose
  - (i) the applicants' identities to each other, if both applicants are located and if the adoptive applicant agrees to the disclosure, or
  - (ii) the family applicant's identity to the adoptive applicant, if the adoptive applicant only is located.

**(6)** Repealed 2003 c16 s81.

**(7)** The Minister shall advise an applicant if

- (a) repealed 2003 c16 s81,

- (b) the registry indicates that the adopted person or an adoptive applicant or family applicant of the adopted person is deceased, or
- (c) the other applicant cannot be located.  
RSA 2000 cC-12 s75; 2003 c16 s81;2004 c16 s20;2018 c24 s13;  
2020 c39 s3

**76 to 80** Repealed 2003 c16 s82.

### **Division 3 Financial Assistance**

**81** Repealed 2018 c24 s14.

**82** Repealed 2003 c16 s84.

### **Division 4 Offences**

#### **Prohibition on payment**

**83(1)** No person shall give or receive or agree to give or receive any payment or reward, whether direct or indirect,

- (a) to procure or assist in procuring, or
- (b) to place or facilitate the placement of

a child for the purposes of an adoption in or outside Alberta.

**(2)** Subsection (1) does not apply to reasonable fees, expenses or disbursements paid to

- (a) a qualified person in respect of the preparation of a home study report pursuant to this Part,
- (b) a lawyer in respect of legal services provided in connection with an adoption,
- (c) a physician in respect of medical services provided to a child who is the subject of an adoption, or
- (d) a licensed adoption agency, if the fees, expenses or disbursements are prescribed in the regulations.

RSA 2000 cC-12 s83;2008 c31 s36

**Prohibition on facilitation**

**84** No person other than the following shall place or facilitate the placement of a child for the purpose of an adoption:

- (a) a guardian of the child;
- (b) a director;
- (c) a licensed adoption agency;
- (d) the Minister.
- (e) repealed 2003 c16 s86.

RSA 2000 cC-12 s84;2003 c16 s86;2020 c39 s3

**Prohibition on advertising**

**85(1)** No person shall publish in any form or by any means an advertisement dealing with the adoption of a child.

**(2)** Subsection (1) does not apply to

- (a) the publication of a notice pursuant to an order of the Court,
- (b) in accordance with section 126.2(2)(a), the publication of any advertisement authorized by the Minister or a director for the purpose of finding homes for children in the custody or under the guardianship of a director,
- (c) the publication of an announcement by an applicant in respect of the adoption,
- (d) the publication of an advertisement by a licensed adoption agency advertising its services only, without making any reference to specific children, or
- (e) the publication of an advertisement by a licensed adoption agency publicizing the profiles of prospective adoptive parents that meets the requirements prescribed in the regulations.

**(3)** A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$2500 and in default of payment to imprisonment for a term not exceeding one month.

RSA 2000 cC-12 s85;2003 c16 s87;2009 c53 s35;2017 c19 s2;  
2020 c39 s3

**Offence and penalty**

**86(1)** Any person and any officer or employee of a corporation who contravenes section 83 or 84 is guilty of an offence and liable

to a fine of not more than \$10 000 and in default of payment to imprisonment for a term not exceeding 6 months.

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

1988 c15 s35;1994 c36 s17

## Division 5 Licensing of Adoption Agencies

### Application for licence

**87(1)** An application for a licence to operate an adoption agency or for a renewal of a licence, may be submitted to a director in accordance with this Division and the regulations by

- (a) a body incorporated under the *Societies Act*,
- (b) an extra-provincial corporation registered under Part 21 of the *Business Corporations Act* if, in the opinion of the director, the corporation does not carry on business for the purpose of gain,
- (c) a body referred to in Part 9 of the *Companies Act*, or
- (d) a body incorporated under Part II or III of the *Canada Corporations Act* (Canada).

(2) An application under subsection (1) must

- (a) be in the prescribed form,
- (b) be accompanied with any other information required under the regulations to enable the director to determine the capacity of the applicant to provide the services and carry out the responsibilities of a licensed adoption agency in accordance with this Act, and
- (c) be accompanied with the prescribed fee.

RSA 2000 cC-12 s87;2003 c16 s89;2008 c31 s37

### Licence

**88(1)** A director, after receiving an application under section 87, may

- (a) issue or renew a licence,
- (b) if the applicant does not meet the requirements under section 87(2), issue a conditional licence, subject to any terms and conditions that the director considers appropriate

and for the period the director considers appropriate, to provide the applicant time to meet the requirements, or

- (c) if the director is not satisfied that the applicant is capable of providing the services and carrying out the responsibilities of a licensed adoption agency, refuse to issue or renew a licence.

(2) A licence issued under this section shall

- (a) identify the name of the corporate body to which it is issued, and
- (b) in the case of a conditional licence, state the terms and conditions to which the licence is subject.

(3) A licence issued under this section, other than a conditional licence, is valid for 2 years from the date of its issue.

(4) A licence issued under this section is not transferable.

RSA 2000 cC-12 s88;2003 c16 s90;2008 c31 s38

#### **Licence required**

**88.1** No person shall operate an adoption agency unless that person holds a subsisting licence issued by a director under this Act.

2020 c39 s3

#### **Suspension, cancellation and refusal of licence**

**89(1)** A director may suspend or cancel a licence issued under section 88 if

- (a) the director is not satisfied that the licensee is capable of continuing to provide the services and to carry out the responsibilities of that licensee, or
- (b) an officer or employee of the licensee has contravened this Act or the regulations or any other Act or has acquiesced in a contravention of this Act or the regulations or any other Act.

(2) If a director imposes terms and conditions under section 88(1)(b), refuses to issue or renew a licence under section 88(1)(c) or suspends or cancels a licence under subsection (1) of this section, the director shall serve on the applicant or licensee, as the case may be, a notice in writing in the prescribed form

- (a) setting out that decision and the reasons for the decision, and

(b) informing the applicant or licensee, as the case may be, of its right to an appeal under section 120.

(3) A decision under subsection (1) of this section or section 88(1)(b) or (c) takes effect 30 days after the date of service of the notice under subsection (2) and remains in force pending the outcome of an appeal.

(4) If a director is of the opinion that a licensed adoption agency is being operated in a manner that presents an imminent risk to the health or safety of children, the director may on 48 hours' notice in writing

(a) suspend the licence of the licensed adoption agency, and

(b) provide to the licensed adoption agency a direction as to what remedy is required to rectify the situation.

(5) A licensed adoption agency that is served with a notice under subsection (4) shall forthwith comply with the direction set out in the notice.

(6) A director may on 48 hours' notice in writing cancel the licence of a licensed adoption agency that does not comply forthwith with the direction set out in the notice.

(7) A director shall notify the clients of a licensed adoption agency of a decision under this section forthwith.

RSA 2000 cC-12 s89;2008 c31 s39

#### **Surrender of licence, etc.**

**90** A licensee

(a) whose licence is cancelled, or

(b) that ceases to carry on the operation of a licensed adoption agency,

shall surrender to a director its licence and the books and records in its possession that relate to its clients or to the children that it has placed for adoption.

RSA 2000 cC-12 s90;2003 c16 s90;2008 c31 s40

#### **Right to enter premises**

**91(1)** A director, on reasonable notice, at a reasonable time and on communicating to an officer of a licensee the purpose and authority for an inspection, may

(a) enter on any land or premises of a licensed adoption agency, other than a private dwelling, and inspect the land or

premises for the purpose of ascertaining if the agency is complying with this Part and the regulations,

- (b) demand the production for examination of any books, records, accounts or other documents that are or may be relevant to the purpose of the inspection, and
- (c) on giving a receipt for them, remove any of the things referred to in clause (b) for the purpose of making copies of them.

**(2)** A person who removes anything referred to in subsection (1)(b) may make copies of the things that were removed and shall return the things that were removed to the premises from which they were removed within a reasonable time after removing them.

**(3)** If a person refuses or fails

- (a) to permit entry on any land or premises under subsection (1)(a), or after permitting entry obstructs a director in the exercise of the director's authority under this section,
- (b) to comply with a demand under subsection (1)(b), or
- (c) to permit the removal of a thing under subsection (1)(c),

the director may apply to a judge of the Court for an order under subsection (4).

**(4)** If on application under subsection (3) the judge is satisfied that there are reasonable and probable grounds to believe that access to land or premises or the production or removal of books, records, accounts or other documents is necessary for the purpose of ascertaining if a licensee is complying with this Part and the regulations, the judge may make any order that the judge considers necessary to enforce compliance with this section.

RSA 2000 cC-12 s91;2003 c16 s91;2008 c31 s41;  
2009 c53 s35

## **Division 6**

### **Intercountry Adoption with Respect to Designated States**

#### **Interpretation**

**92(1)** In this Division,

- (a) "competent authority for Alberta" means a competent authority designated in the regulations under this Division;



- (b) “designated State” means a State that is a contracting party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;
- (c) “licensed adoption agency” means an adoption agency that holds a licence under section 88;
- (d) “State” means a country or a political subdivision of a country.

**(2)** The Central Authority for Alberta is the Central Authority as provided for in section 96.

RSA 2000 cC-12 s92;2003 c16 s115;2020 c39 s3

### Scope of Division 6

**93(1)** This Division applies if, for the purposes of adoption,

- (a) a child habitually resident in a designated State has been, is being or is to be moved to Alberta
  - (i) after the child’s adoption in the designated State, or
  - (ii) for the purposes of adoption in Alberta or in the designated State,

or

- (b) a child habitually resident in Alberta has been, is being or is to be moved to a designated State
  - (i) after the child’s adoption in Alberta, or
  - (ii) for the purposes of adoption in the designated State.

**(2)** This Division applies only to adoptions that create a permanent parent-child relationship.

**(2.1)** For greater certainty, this Division does not apply to a guardianship order obtained in another State and the Central Authority for Alberta has no role with respect to an international guardianship order.

**(3)** This Division ceases to apply to a child if the agreements described in section 100(1)(c) and (2)(c) have not been made before the child attains the age of 18 years.

**(4)** For greater certainty, if a child is habitually resident in

- (a) a State that is not a designated State, or

- (b) Alberta, and the child has been, is being or is to be moved to a State that is not a designated State, this Division does not apply and an application for adoption relating to the child shall be dealt with in accordance with the regulations.

RSA 2000 cC-12 s93;2003 c16 s115;2020 c39 s3

#### **Paramourncy**

**94** Division 1 applies to an adoption to which this Division applies, but if there is a conflict between Division 1 and this Division, this Division prevails.

RSA 2000 cC-12 s94;2003 c16 s93

#### **Intercountry adoptions**

**95(1)** If a child is habitually resident in a designated State, an adoption under this Division may take place only if the competent authority for Alberta

- (a) has determined that the prospective adoptive parents are eligible and suited to adopt,
- (b) has ensured that the prospective adoptive parents have received training, satisfactory to the Central Authority for Alberta, on preparation for international adoption, and
- (c) is satisfied that the child is or will be authorized to enter and reside permanently in Canada.

**(2)** If a child is habitually resident in Alberta, an adoption under this Division may take place only if the competent authority for Alberta

- (a) has established that the child is adoptable,
- (b) has determined, after possibilities for placement of the child within Canada have been given due consideration, that an intercountry adoption is in the child's best interests,
- (c) has ensured that those who are required to consent to the adoption have been informed of the effect of the consent and have given consent freely in writing in the required form, have not withdrawn their consent and have not been induced by payment or compensation to provide consent,
- (d) has ensured that the consent of the guardians of the child has been given only after the birth of the child, and
- (e) if the child is 12 years of age or older, has ensured that
  - (i) the child has been counselled and informed of the effects of the adoption,

- (ii) consideration has been given to the child's wishes and opinions, and
- (iii) the child's consent to the adoption has been given freely in writing in the required form and has not been induced by payment or compensation.

RSA 2000 cC-12 s95;2003 c16 ss93.1,115;  
2004 c16 s21

#### **Central Authority for Alberta**

**96(1)** A director is the Central Authority for Alberta.

**(2)** Repealed 2003 c16 s93.2.

RSA 2000 cC-12 s96;2003 c16 s93.2;2004 c16 s21

#### **Central Authority duties**

**97(1)** The Central Authority for Alberta

- (a) is to co-operate with Central Authorities in other designated States and promote co-operation with the competent authority for Alberta to protect children, and
- (b) is to carry out its powers and duties under this Division.

**(2)** The Central Authority for Alberta must ensure that all appropriate measures are taken, in particular the collection, preservation and exchange of information about the situation of the child and the prospective adoptive parents, as necessary to complete the adoption.

RSA 2000 cC-12 s97;2003 c16 s115

#### **Apply to adopt**

**98** Persons who are habitually resident in Alberta may apply to the Central Authority for Alberta in the required form to adopt a child who is habitually resident in a designated State.

1997 c6 s4

#### **Report on applicants**

**99(1)** If the Central Authority for Alberta determines that the applicants are eligible and suited to adopt, it must ensure that a report is made in accordance with the regulations.

**(2)** The Central Authority for Alberta must send the report referred to in subsection (1) to the Central Authority of the designated State where the child is habitually resident.

1997 c6 s4

#### **Decision on adoption**

**100(1)** If a decision is to be made in a designated State regarding the placement of a child habitually resident in that State with

prospective adoptive parents habitually resident in Alberta, the Central Authority for Alberta may approve the placement if

- (a) the requirements of section 95(1) have been met,
- (b) the prospective adoptive parents have agreed to the adoption, and
- (c) the Central Authority of the designated State and the Central Authority for Alberta have agreed that the adoption may proceed.

**(2)** The Central Authority for Alberta may make a decision regarding the placement of a child habitually resident in Alberta with prospective adoptive parents habitually resident in a designated State if

- (a) the Central Authority of the designated State has approved the placement,
- (b) the prospective adoptive parents have agreed to the adoption, and
- (c) the Central Authority for Alberta and the Central Authority of the designated State have agreed that the adoption may proceed.

1997 c6 s4

#### **Pre-existing relationship termination**

**101** If an adoption granted in a designated State does not have the effect of terminating a pre-existing parent-child relationship, the Court may, on application, convert it into an adoption having that effect only if the required consents are given for the purpose of such an adoption.

RSA 2000 cC-12 s101;2009 c53 s35

#### **Recognition of the adoption**

**102(1)** The Central Authority for Alberta may certify that an adoption granted in Alberta was made in accordance with this Division.

**(2)** A certification referred to in subsection (1) must specify when and by whom the Central Authority for Alberta and the Central Authority of the designated State have agreed that the adoption may proceed.

**(3)** An intercountry adoption certified by the competent authority of the designated State where the adoption was completed is recognizable as having the effect in Alberta of an adoption order under this Act and recognition may be refused only if the adoption

is manifestly contrary to public policy, taking into account the best interests of the child.

RSA 2000 cC-12 s102;2003 c16 s115

#### **Prohibition on contact**

**103** There must be no contact between the prospective adoptive parents habitually resident in a designated State and the parents of the child habitually resident in Alberta to be adopted under this Division or any other person who has care of that child until

- (a) the requirements of section 95(2)(a) to (d) have been met, and
- (b) the competent authority for Alberta is satisfied that the prospective adoptive parents are eligible and suited to adopt

unless the adoption takes place within a family or the contact is in compliance with the conditions established by the competent authority for Alberta.

RSA 2000 cC-12 s103;2003 c16 s115

#### **Regulations**

**104(1)** The Lieutenant Governor in Council may make regulations necessary to carry out the intent and purposes of this Division and, without limiting the generality of the foregoing, may make regulations

- (a) making inapplicable or limiting or varying the application of any enactment of Alberta that applies to adoptions under this Division.
- (b), (c) repealed 2003 c16 s93.3.

**(2)** A regulation made under subsection (1)(a) ceases to have any effect after the last day of the next session of the Legislature.

**(3)** The Minister may make regulations

- (a) respecting the contents of and the approval of a report under this Division;
- (b) designating one or more persons as a competent authority for Alberta with respect to any provision in this Division.

RSA 2000 cC-12 s104;2003 c16 ss93.3,115;  
2004 c16 s21

**105** Repealed 2020 c39 s3.

### Part 3 Licensing of Residential Facilities

#### Definition

**105.1** In this Part, “residential facility” means a facility that provides residential care to a child in the custody or under the guardianship of a director or an authority responsible for the administration of child protection legislation in another province or territory of Canada and includes a secure services facility, a foster home and a group home, but does not include a facility that primarily provides medical care, educational services or correctional services.

2003 c16 s94;2008 c31 s42

#### Licence required

**105.2(1)** No person shall operate a residential facility unless that person holds a subsisting residential facility licence issued by a director under this Act.

**(2)** and **(3)** Repealed 2008 c31 s43.

2003 c16 s94;2004 c16 s22;2008 c31 s43

#### Application for licence

**105.3(1)** An application for a residential facility licence or a renewal of a residential facility licence must

- (a) be made to a director in a form satisfactory to the director, and
- (b) state the maximum number of persons intended to be accommodated or cared for in the residential facility.

**(2)** On considering an application for or renewal of a residential facility licence, a director may issue a residential facility licence and impose terms and conditions in the licence.

**(3)** Unless otherwise specified in the licence, the term of a residential facility licence is one year from the date of its issue.

**(4)** A residential facility licence issued under this section must

- (a) identify the residential facility that may be operated under the licence, and
- (b) state
  - (i) who may operate the residential facility,

- (ii) the maximum number of children, other than children of a foster parent, who may reside in the residential facility,
- (iii) the term of the licence if the term is other than one year from the date of issue, and
- (iv) any conditions to which the licence is subject.

2003 c16 s94;2004 c16 s22;2008 c31 s44

#### **Varying a licence**

**105.31** A director may, on the application by a licensee in a form acceptable to the director, vary the terms or conditions to which the licence is subject.

2003 c16 s94;2004 c16 s22;2008 c31 s45

#### **Standards**

**105.4** A holder of a residential facility licence must ensure that the residential facility meets the requirements of the regulations, and the residential facility licence holder may not charge more for residential facility services than the rates provided for by the regulations.

2003 c16 s94

#### **Inspection**

**105.5(1)** Subject to subsection (2), for the purposes of ensuring compliance with this Act, the regulations and any conditions to which a residential facility licence is subject, a director or a person authorized by a director may

- (a) at any reasonable hour enter a residential facility other than a private dwelling place and inspect it,
- (b) enter a residential facility that is a private dwelling place and inspect it with the consent of the owner or operator of the private dwelling place,
- (c) require the production of any books, records or other documents and examine them, make copies of them or remove them temporarily for the purpose of making copies,
- (d) inspect and take samples of any material, food, medication or equipment being used in a residential facility, and
- (e) perform tests, take photographs or make recordings in respect of a residential facility.

**(2)** When a person removes any books, records or other documents under subsection (1)(c), the person must

- (a) give to the person from whom those items were taken a receipt for those items, and
  - (b) forthwith make copies of, take photographs of or otherwise record those items and forthwith return those items to the person to whom the receipt was given.
- (3)** When a person takes samples of any material, food, medication or equipment under subsection (1)(d), the person must
- (a) give to the person from whom those items were taken a receipt for those items, and
  - (b) on that person's request, return those items to that person when those items have served the purposes for which they were taken.
- (4)** If entry is refused or cannot be reasonably obtained under subsection (1) or a person interferes with a director or a person authorized by a director in exercising rights and performing duties under this section, an application may be made to the Court of Queen's Bench for an order that a director or a person authorized by a director may
- (a) at any reasonable hour enter the residential facility and inspect it,
  - (b) require the production of any books, records or other documents and examine them, make copies of them or remove them temporarily for the purpose of making copies,
  - (c) inspect and take samples of any material, food, medication or equipment being used in the residential facility, and
  - (d) perform tests, take photographs or make recordings in respect of the residential facility,
- and the Court may, on being satisfied that the order is necessary for the purpose of this section, make any order that it considers appropriate.
- (5)** An application under subsection (4) may be made *ex parte*, if the Court considers it proper.

2003 c16 s94;2008 c31 s46;2009 c53 s35

**Order after inspection**

**105.6** If a residential facility has been inspected under section 105.5 and a director is of the opinion that



- (a) this Act, the regulations or a condition of a residential facility licence is not being complied with, or
- (b) the residential facility is not providing proper care,

the director may in writing order the person operating that residential facility to take measures as specified in the order within the time limits specified in the order.

2003 c16 s94;2008 c31 s47

### **Suspension or cancellation of licence**

**105.7(1)** When a director is of the opinion that

- (a) a residential facility licence holder is not providing proper care to a child who resides in the licence holder's residential facility,
- (b) the premises described in the residential facility licence have become unfit or unsuitable for a residential facility,
- (c) a residential facility licence holder has not complied with
  - (i) this Act, the regulations or a condition of the residential facility licence,
  - (ii) an order made under section 105.6, or
  - (iii) any other enactment that applies to a residential facility,

the director may, by notice in writing to the residential facility licence holder, vary, suspend or cancel the residential facility licence and terminate the licensee's contract with the Crown to provide residential facility services.

**(2)** Every contract between the Crown and the owner or operator of a residential facility is deemed to contain a provision that the Crown may terminate the contract without notice and without damages payable by the Crown to the owner or operator if the owner or operator fails to comply with an order issued under section 105.6 or if the residential facility licence is suspended, cancelled or expired.

2003 c16 s94;2004 c16 s22;2008 c31 s48

## **Part 3.1 Quality Assurance**

### **Definitions**

**105.71** In this Part,

- (a) “action” means action as defined in the *Alberta Evidence Act*;
- (b) “business day” means a day other than a Saturday or a Sunday or other holiday;
- (c) “designated individual” means an individual designated under section 105.771(1);
- (d) “serious injury”, in respect of a child, means
  - (i) a life-threatening injury to the child, or
  - (ii) an injury that may cause significant impairment of the child’s health.

2011 cC-11.5 s26;2014 c7 s3;2018 c24 s15

**105.72 and 105.73** Repealed 2018 c24 s16.

#### **Director’s duty**

**105.74** When a director becomes aware of

- (a) an incident giving rise to a serious injury to or the death of a child that occurred while the child was receiving intervention services, or
- (b) an incident referred to in section 105.771(1)(b)

the director must, as soon as practicable, report the incident to the Minister.

2011 cC-11.5 s26;2014 c7 s5;2018 c24 s17

**105.75 to 105.77** Repealed 2018 c24 s18.

#### **Review by designated individual**

**105.771(1)** A director may, in writing, designate individuals to review

- (a) incidents giving rise to the serious injury to or death of a child that occurred while the child was receiving intervention services, and
- (b) any other incident that, in the opinion of the director, is a serious incident and that occurred in respect of a child while the child was receiving intervention services.

**(2)** A designated individual must be

- (a) an individual employed in the public service of the Province, or
  - (b) an individual to whom the director has delegated authority under section 121(4).
- (3) A designated individual must provide the director with a report on a review conducted under subsection (1) that includes the designated individual's findings and recommendations, if any, within one year after the day on which the incident reviewed occurred.
- (4) The Minister may specify a longer period for the provision of a report under subsection (3) if the Minister is satisfied that extenuating circumstances exist.
- (5) On receiving a report under subsection (3), the director shall provide any findings and recommendations included in the report to the Minister.

2014 c7 s8;2018 c24 s19

**Designated individual must not give evidence**

**105.78** A designated individual must not give or be compelled to give evidence in an action in respect of any matter coming to the designated individual's knowledge in the exercise of powers and the performance of duties and functions under this Part, except in a prosecution for perjury.

2011 cC-11.5 s26;2014 c7 s9;2018 c24 s20

**Communications privileged**

**105.79** The following information, records and reports are privileged and not admissible in evidence in an action, except in a prosecution for perjury:

- (a) anything said, any information supplied or any record produced during a review under section 105.771(1) by a designated individual;
- (b) any report referred to in section 105.771(3).

2011 cC-11.5 s26;2014 c7 s10;2018 c24 s20

**Protection from liability**

**105.791(1)** Subject to subsection (2), no action lies or may be commenced or maintained against a designated individual in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Part or in the performance or intended performance of any duty or function under this Part.

(2) Subsection (1) does not apply to a designated individual in relation to anything done or omitted to be done by the designated individual in bad faith.

2011 cC-11.5 s26;2014 c7 s11;2018 c24 s20

**105.792** Repealed 2018 c24 s21.

**Public reporting of serious injury,  
death or incident**

**105.7921** Subject to sections 126 and 126.1, the Minister shall publicly report

- (a) an incident giving rise to the serious injury to or death of a child that occurred while the child was receiving intervention services, or
- (b) an incident referred to in section 105.771(1)(b)

within 4 business days after being notified of the incident under section 105.74.

2018 c24 s22

**Publication of statistics, findings, recommendations**

**105.793** Subject to sections 126 and 126.1, the Minister shall publish the following information on the Minister's department's website and shall update the information at least once a year:

- (a) statistical data about children who are receiving or have received intervention services;
- (b) statistical data about
  - (i) incidents giving rise to serious injuries to and deaths of children that occurred while the children were receiving intervention services, and
  - (ii) incidents referred to in section 105.771(1)(b);
- (c) findings and recommendations provided to the Minister under section 105.771(5);
- (d) the response of the Minister's department to recommendations in a report made by the Child and Youth Advocate under section 15 of the *Child and Youth Advocate Act*, if the recommendations relate to this Act or the administration of it;

- (e) the response of the Minister's department to recommendations in a report made under section 53 of the *Fatality Inquiries Act*, if the recommendations relate to this Act or the administration of it;
- (f) the response of the Minister's department to recommendations made in any other report specified in the regulations made under section 131(2)(ss), if the recommendations relate to this Act or the administration of it.

2014 c7 s13;2018 c24 s23

## Part 4 General

### Financial assistance for children formerly under permanent guardianship

**105.795(1)** A director may, in accordance with the regulations, provide financial assistance in respect of a child who was the subject of a permanent guardianship agreement or order to

- (a) a person who is appointed a guardian of the child under a private guardianship order,
- (b) a person who adopts the child if, immediately before the adoption order was made,
  - (i) the child was the subject of a permanent guardianship agreement or order, or
  - (ii) the person was a guardian of the child under a private guardianship order,

or

- (c) a person who becomes a guardian of the child, or adopts the child, after a guardian is appointed as referred to in clause (a) or the child is adopted as referred to in clause (b).

**(2)** If a guardian or adoptive parent referred to in subsection (1)(a), (b) or (c) is unable or unwilling to continue to care for the child, a director may, in accordance with the regulations, provide financial assistance to an adult person who is caring for the child and who has applied to a court for guardianship of the child or to adopt the child.

**(3)** The director may review the financial assistance from time to time and may vary or terminate the financial assistance in accordance with the regulations.

2018 c24 s24

**Financial assistance for children**

**105.8** If the guardian of a child is unable or unwilling to care for the child and the child is, in the opinion of a director, being cared for by another adult person, financial assistance may be provided in accordance with the regulations to that adult person on behalf of the child.

2003 c16 s96

**106** Repealed 2003 cF-5.3 s12.

**First Nation Child****Band involvement in planning for services**

**107(1)** If a director has reason to believe that a child is a First Nation Individual and a member of a band, the director shall involve a person designated by the council of the band in planning for services to be provided to the child if the child

- (a) is in need of intervention services and
  - (i) is a resident of a reserve, or
  - (ii) if the child is not a resident of a reserve, the guardian of the child has consented to the involvement of a person designated by the council of the band,

or

- (b) is the subject of a temporary guardianship order, a permanent guardianship agreement or order or an application for a permanent guardianship order, regardless of whether the child is a resident of a reserve or not.

**(2)** If a child referred to in subsection (1)(a) is not a resident of a reserve, a director shall ask the child's guardian to consent to the involvement of a person designated by the council of the band.

**(2.1)** The consent of a child's guardian is not required to involve a person designated by the council of a band under subsection (1)(a)(i) or (b).

**(3)** If the Court makes a supervision order, a temporary guardianship order or a permanent guardianship order in respect of a child who is a First Nation Individual and a member of a band, the director must provide the person designated by the council of the band with a copy of the order not more than 20 days after the date of the order.

(4) Despite subsection (3), a director shall not provide a copy of a supervision order referred to in subsection (3) to a person designated by the council of a band if the guardian of a child described in subsection (2) has not consented to the involvement of that person.

(5) and (6) Repealed 2008 c31 s49.

(7) Subsections (1) to (4) do not apply if the child is receiving services pursuant to an agreement under section 122(2).

RSA 2000 cC-12 s107;2003 c16 s97;2004 c16 s23;  
2008 c31 s49;2018 c24 ss25,35

## Evidence

### Witnesses

**108(1)** In a proceeding before the Court under this Act, the Court or a justice of the peace on the application of a party, or the Court on its own motion, may

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

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

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

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

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

1984 cC-8.1 s74;1985 c16 s25

### Confidential evidence

**109(1)** Notwithstanding Part XXII of the *Criminal Code* (Canada), the Court may issue a subpoena requiring

- (a) repealed 2008 cH-4.2 s11,
- (b) a board under the *Hospitals Act* or the board's designate,
- (c) a board under the *Mental Health Act* or the board's designate, or
- (d) the Chief Medical Officer under the *Public Health Act* or the Chief Medical Officer's designate,

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

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

**(3)** If, as the result of the issuing of a subpoena under subsection (1), a person is required to produce any documents, records or other information that is otherwise confidential under the *Health Information Act* or the *Public Health Act*, as the case may be, the documents, records or other information shall be dealt with in accordance with this section.

**(4)** The person named in the subpoena or the person's designate shall permit the Minister, a director, a guardian of the child, the child, if the child is 12 years of age or older, or a lawyer representing any of them to examine the documents, records or other information before the time stated in the subpoena.

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

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

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



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

RSA 2000 cC-12 s109;RSA 2000 cH-5 s112;2008 cH-4.3 s11

### **Age of child**

**110** In any proceedings under this Act,

- (a) the testimony of a parent of the child as to the age of the child,
- (b) a birth or baptismal certificate or a copy of it purporting to be certified by the Registrar of Vital Statistics, or
- (c) in the absence of the testimony or the certificate or copy referred to in clauses (a) and (b), any other information relating to the age of the child that the Court considers reliable, including inferences the Court may draw from the child's appearance or from statements made by the child in direct or cross-examination,

is sufficient evidence as to the age of the child.

RSA 2000 cC-12 s110;2007 cV-4.1 s81

## **Court Proceedings**

### **Right to appear**

**111(1)** In any proceedings before the Court under Part 1, Division 3 or 4,

- (a) a foster parent or any other person who has had continuous care and custody of the child for not less than 6 months, and
- (b) any other person, with the consent of the Court,

may appear and make representations to the Court.

**(2)** Notwithstanding subsection (1), the only parties to a proceeding under Part 1, Division 3 or 4 or an appeal from that proceeding are the child, the child's guardian, the director and the Minister.

**(3)** The Minister need not be served with notice of any proceeding under Part 1, Division 3 or 4.

**(4)** Notwithstanding subsection (2), a child may examine the Court record only with the consent of the Court.

RSA 2000 cC-12 s111;2003 c16 s98

**Legal representative**

**112(1)** If an application is made for a supervision order, a private guardianship order or a temporary or permanent guardianship order, or a child is the subject of a supervision order or a temporary or permanent guardianship order or a permanent guardianship agreement, and the child is not represented by a lawyer in a proceeding under Part 1, Division 3, 4 or 5, the Court may direct that the child be represented by a lawyer if

- (a) the child, the guardian of the child or a director requests the Court to do so, and
- (b) the Court is satisfied that the interests or views of the child would not be otherwise adequately represented.

**(2)** If the Court directs that a child be represented by a lawyer pursuant to subsection (1),

- (a) it shall refer the child to the Child and Youth Advocate.
- (b) repealed 2008 c31 s50.

**(3)** If a referral is made under subsection (2), the Child and Youth Advocate shall appoint or cause to be appointed a lawyer to represent the child.

**(4)** If a referral is made under subsection (2), the Court may make an order directing that the costs of the lawyer be paid by the child, the guardian of the child or a director or apportioned among all or any of them, having regard to the means of the child and the guardian.

RSA 2000 cC-12 s112;2003 c16 s99;2004 c16 s24;  
2008 c31 s50

**Maintenance****Enforcement of maintenance**

**113** An order of the Court under this Act directing a person to pay financial support toward the maintenance of a child or an agreement under this Act in which a person agrees to pay financial support toward the maintenance of a child may be enforced pursuant to the *Maintenance Enforcement Act*.

RSA 2000 cC-12 s113;2003 c16 s100

**Appeals of Orders to  
Court of Queen's Bench****Appeal to Court of Queen's Bench**

**114(1)** An order of the Court made under this Act may be appealed to the Court of Queen's Bench by

- (a) a guardian of the child other than a director,
- (b) a person who was a guardian of the child immediately before the order was made,
- (c) the child,
- (d) the child, if the child is the subject of a secure services order,
- (e) a director, or
- (f) the Minister.

**(2)** If the Court refuses to make an order under this Act, the applicant may appeal the refusal to the Court of Queen's Bench.

RSA 2000 cC-12 s114;2003 c16 s101;2008 c31 s52;  
2013 cC-12.5 s9(51)

#### **Stay of order**

**115** Any person who is entitled to appeal pursuant to section 114 may apply to the Court at the time an order is made by the Court for an order staying the execution of the order of the Court for a period of 5 days and, if a notice of appeal is filed during that period, pending the hearing of the appeal.

1984 cC-8.1 s81

#### **Procedure on appeal**

**116(1)** An appeal of an order of the Court to the Court of Queen's Bench under this Act shall be commenced and proceed in accordance with the regulations.

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

RSA 2000 cC-12 s116;2003 c16 s102;  
2008 c31 s53

#### **Decision of Court**

**117(1)** Repealed 2008 c31 s54.

**(2)** On hearing an appeal made pursuant to section 116, the Court of Queen's Bench may

- (a) confirm the order or refusal,
- (b) revoke or vary the order made, or

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

RSA 2000 cC-12 s117;2008 c31 s54

### **Administrative Decision**

#### **Administrative review**

**117.1(1)** The following persons directly affected by a decision of a director under this Act may request, within 30 days of the decision, that the director review the decision:

- (a) a child;
- (b) a guardian;
- (c) a foster parent;
- (d) an individual who has had continuous care of a child for more than 6 of the 12 months preceding the decision of the director;
- (e) a person who is receiving or may be eligible to receive support and financial assistance pursuant to section 57.3;
- (f) a person who is refused financial assistance under section 105.8;
- (g) an applicant for a residential facility licence or a renewal of a residential facility licence.

**(2)** A request under subsection (1) must set out

- (a) the decision in sufficient details for the director to be able to identify it, and
- (b) the grounds for the review.

**(3)** In reviewing a decision, a director may receive oral or written submissions from the person who requested the review.

**(4)** On completing a review the director

- (a) may confirm, vary or rescind the decision that has been reviewed, and
- (b) must, within 15 days of receiving the request under subsection (1), provide the person who requested the review with a copy of the decision under clause (a) that includes the reasons.

(5) If a copy of the decision is not received under subsection (4)(b) within 15 days of the making of the request under subsection (1), the person who requested the review is deemed to have received a copy of the decision stating that the director has confirmed the decision that was reviewed.

2003 c16 s103;2004 c16 s25;2008 c31 s55;2020 c23 s2

### Appeal to an Appeal Panel

#### Appeal Panel

**118(1)** The Minister may establish one or more Appeal Panels.

(2) A person may be appointed as a member of an Appeal Panel for a term prescribed by the Minister and may be reappointed.

(3) The Minister may designate the chair and one or more vice-chairs of an Appeal Panel.

(3.1) The quorum to hear an appeal is 3 members, but an appeal may be heard by one member for procedural matters related to the appeal or in emergency circumstances provided for in the regulations.

(4) The members of an Appeal Panel shall receive

- (a) remuneration, and
- (b) payment for travelling, living and other expenses incurred in the course of their duties as members.

(5) Remuneration and expenses referred to in subsection (4) must be determined

- (a) in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*, or
- (b) by the Minister if no regulations under the *Alberta Public Agencies Governance Act* are applicable.

(6) Notwithstanding subsection (2), where the appointment of a member of an Appeal Panel expires, the member continues to hold office until

- (a) the member is reappointed,
- (b) a successor is appointed, or
- (c) a period of 3 months has elapsed,

whichever occurs first.

RSA 2000 cC-12 s118;2008 c31 s56;2009 cA-31.5 s34;  
2016 c19 s6

### **Power of the Appeal Panel**

**119(1)** Any Appeal Panel may hear an appeal made pursuant to section 120.

**(1.1)** An Appeal Panel may

- (a) determine whether representations will be oral or by written submission, and
- (b) consider any new evidence that is raised or presented in a hearing.

**(2)** If an appeal is made from a director's decision referred to in section 120(2)(a) to (a.4) or (f.3), the Appeal Panel may, subject to this Act and the regulations, confirm the decision or refer the matter back to the director for further consideration.

**(2.1)** If an appeal is made from a director's decision referred to in section 120(2)(b) to (f.2), (g) or (5), the Appeal Panel may, subject to this Act and the regulations, confirm, reverse or vary the decision.

**(3)** Subject to subsection (1.1), the *Administrative Procedures and Jurisdiction Act* applies to the proceedings of the Appeal Panel.

**(4)** An appellant or a child who is the subject of an appeal may be represented at the hearing of the appeal by a lawyer or by any other person.

**(5)** If no one is present at the hearing of an appeal to represent the interests of a child who is the subject of the appeal, the Appeal Panel may direct that the child be represented at the hearing.

**(6) and (7)** Repealed 2008 c31 s57.

RSA 2000 cC-12 s119;2003 c16 s104;2008 c31 s57;  
2017 c22 s10

### **Appeal to the Appeal Panel**

**120(1)** Any of the following persons who are affected by a decision of a director may appeal that decision in accordance with this section:

- (a) a child;
- (b) a guardian of a child;

- (c) a person who has had the continuous care of the child for more than 6 of the 12 months immediately preceding a decision under subsection (2);
- (d) a person who is receiving or may be eligible to receive support and financial assistance pursuant to section 57.3.

**(1.1)** In this section, “residential facility” means a residential facility as defined in Part 3 other than a secure services facility.

**(2)** An appeal may be made from a decision of a director that has been reviewed under section 117.1 respecting the following:

- (a) the removal from or placement in a residential facility of a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order;
- (a.1) terms and conditions imposed on a renewal of, but not on the original issuance of, a residential facility licence under section 105.3;
- (a.2) a refusal to renew a residential facility licence under section 105.3;
- (a.3) an order made under section 105.6;
- (a.4) the variation, suspension or cancellation of a residential facility licence under section 105.7;
- (b) the permitting or refusing to permit any person who has a significant relationship with the child to visit a child who is the subject of a permanent guardianship agreement;
- (c), (d) repealed 2003 c16 s105;
- (e) the refusal or failure of a director to enter into an agreement under Part 1, Division 2 or 6 or to apply to the Court under Part 1, Division 3 in respect of a child who, in the opinion of that director, is in need of intervention;
- (f) repealed 2003 cF-5.3 s12;
- (f.1) the refusal to provide financial assistance pursuant to section 105.795;
- (f.2) the refusal to provide support or financial assistance pursuant to section 57.3;
- (f.3) a matter prescribed in the regulations as being

- (i) subject to an appeal to an Appeal Panel, and
- (ii) a matter in respect of which the Appeal Panel may only make a decision referred to in section 119(2);
- (g) any other matter prescribed in the regulations as being subject to an appeal to an Appeal Panel.

**(2.1)** Notwithstanding subsection (2)(a), a child who is receiving treatment in a residential facility may not appeal a decision of a director to place the child in that residential facility.

**(3)** A notice of appeal

- (a) must include, where applicable, a copy of the decision provided under section 117.1(4)(b) or a statement that the review is deemed to have confirmed the decision in accordance with section 117.1(5), and
- (b) must be served on the director
  - (i) not more than 30 days after the copy of the decision was provided under section 117.1(4)(b) or the deemed confirmation occurred under section 117.1(5), or
  - (ii) in the case of an appeal of a decision or order described in subsection (5), not more than 30 days after the appellant has received notice of the director's decision or order.

**(4)** Repealed 2008 c31 s58.

**(5)** A person

- (a) who is dissatisfied with the terms and conditions imposed by a director with respect to a conditional licence to operate an adoption agency issued under section 88(1)(b),
- (b) whose application for a licence or renewal of a licence to operate an adoption agency is refused under section 88(1)(c), or
- (c) whose licence to operate an adoption agency has been suspended or cancelled by a director under section 89,

may appeal the decision to an Appeal Panel in accordance with this section.

**(5.1)** Notwithstanding subsection (2), a decision of a director that was made after the matter was referred back to the director for



further consideration under section 119(2) may not be appealed to the Appeal Panel under subsection (2).

(6) Repealed 2003 c16 s105.

RSA 2000 cC-12 s120;2003 cF-5.3 s12;2003 c16 s105;  
2004 c16 s26;2008 c31 s58;2018 c24 s26;2020 c23 s2

### **Appeals of Appeal Panel Decisions to Court of Queen's Bench**

#### **Procedure on appeal**

**120.1(1)** A decision of an Appeal Panel under section 119(2.1) may be appealed to the Court of Queen's Bench by a party to the appeal before the Appeal Panel or by the Minister.

(2) An appeal under this section shall be commenced and proceed in accordance with the regulations.

(3) If a notice of appeal is filed pursuant to this section, the appellant may apply to the Court of Queen's Bench for an order staying the decision of the Appeal Panel appealed from pending the hearing of the appeal.

2008 c31 s59

#### **Decision of Court**

**120.2** On hearing an appeal made pursuant to section 120.1, the Court of Queen's Bench may confirm, reverse or vary the decision of the Appeal Panel.

2008 c31 s59

### **General**

#### **Delegation**

**121(1)** The Minister may delegate to any person or government any power, duty or function of the Minister under this Act.

(2) The Minister may delegate to any person or government

- (a) any power, duty or function of a director under this or any other Act, or
- (b) any power, duty or function conferred or imposed on a director by a court,

including, without limitation, the function of receiving reports under section 4 or 5 and any power, duty or function that involves a director forming an opinion.

(3) Subsection (1) does not apply

- (a) to any power or duty of the Minister to make regulations as defined in the *Regulations Act*, or
  - (b) to the power of the Minister under subsection (2) to delegate a power, duty or function of a director.
- (4) A director may delegate to any of the following any power, duty or function of the director referred to in subsection (2):
- (a) a person employed or engaged in the administration of this Act;
  - (b) a foster parent in respect of a particular child;
  - (c) a person who is providing care to a child in respect of that child;
  - (d) any other person or any government.
- (5) A delegation under subsection (1) or (4) may include the power to subdelegate.
- (6) A delegation under subsection (2) may include the power to subdelegate the director's powers.
- (7) The Minister or a director is authorized to receive any authority delegated to the Minister or director by a government or child welfare authority relating to a child who is in the custody or under the guardianship of that government or authority.

RSA 2000 cC-12 s121;RSA 2000 c26(Supp) s11;2006 cD-17 s8;  
2007 c8 s12;2013 cB-7.5 s9;2018 c24 s27

### Agreements

**122(1)** The Minister or a director may enter into an agreement with any person for the purpose of that person providing intervention services to a child under this Act.

(2) The Minister may enter into an agreement, in accordance with the regulations, for the purposes of providing services under this Act on a reserve.

RSA 2000 cC-12 s122;2003 c16 s106;2004 c16 s27

### Engagement of consultants

**123(1)** The Minister may appoint experts or persons having special technical or other knowledge to advise an Appeal Panel under this Part.

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

1984 cC-8.1 s89

**Minor guardian**

**124** This Act is applicable to a parent or guardian even if that parent or guardian is under the age of 18 years notwithstanding that the parent or guardian does not have a litigation representative, but the Court may appoint the Public Trustee or any other person to safeguard the parent's or guardian's interest in any proceeding before the Court.

RSA 2000 cC-12 s124;2011 c14 s3

**Reciprocal agreement**

**124.1(1)** The Minister may enter into agreements with the appropriate authority in any jurisdiction within or outside Canada with respect to

- (a) the transfer to the authority by a director of the guardianship of a child under a permanent guardianship agreement or order, and
- (b) the transfer to a director by the authority, of the guardianship of any child under the guardianship of that authority.

**(2)** If a director assumes responsibility for the guardianship of a child pursuant to subsection (1), the child is deemed to be under the guardianship of the director pursuant to a permanent guardianship order under this Act.

**(3)** Any proceedings with respect to the guardianship of a child transferred to a director pursuant to this section must be taken in accordance with this Act.

2003 c16 s107

**Foreign orders and agreements**

**125** An order made by a court or an agreement for care entered into pursuant to child welfare legislation in another jurisdiction that is certified as being valid and subsisting by the court or an appropriate authority in that jurisdiction has the same force and effect as if it had been made under this Act as far as is consistent with this Act.

1985 c16 s29

**Confidentiality**

**126(1)** The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the *Freedom of Information and Protection of Privacy Act*, in proceedings under

this Act, in accordance with Part 2, Division 2 or this Part or as follows:

- (a) to any person or organization, including an agency providing services to a child, if the disclosure is necessary to plan services for or provide services to the child or the child's family or to plan or provide for the day-to-day care or education of the child;
- (b) to the guardian of the child to whom the information relates or the guardian's lawyer;
- (c) to the child to whom the information relates or the child's lawyer;
- (d) to any person employed in the administration of child protection legislation in another province or territory of Canada;
- (e) to any person with the written consent of the Minister.

**(2)** Notwithstanding subsection (1), no information shall be disclosed or communicated pursuant to this section without the consent in writing of the Minister of Justice and Solicitor General or that Minister's agent if that information was provided by an agent of the Minister of Justice and Solicitor General.

**(3)** A director or a person acting on behalf of a director, including an agency providing services on behalf of a director, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or providing services under this Act.

**(4)** A custodian may disclose health information to a director or a person acting on behalf of a director, including an agency providing services on behalf of a director, for the purposes set out in subsection (3).

**(5)** A public body may disclose personal information to a director or a person acting on behalf of a director, including an agency providing services on behalf of a director, for the purposes set out in subsection (3).

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

RSA 2000 cC-12 s126;RSA 2000 cH-7 s154;2003 c16 s108;  
2008 c31 s60;2011 cC-11.5 s26;2013 c10 s34

**126.01** Repealed 2011 cC-11.5 s26.

**Privileged information**

**126.1(1)** Despite section 126(1), the name of a person who makes a report to the director or a police officer under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.

**(2)** Despite subsection (1), the Minister may direct the release of information under subsection (1) that would identify the person.

**(3)** If there is a conflict or inconsistency between subsection (1) and the *Freedom of Information and Protection of Privacy Act*, subsection (1) prevails.

2003 c16 s109;2019 c10 s4

**Applying for information**

**126.11(1)** In this section, “court” means the Provincial Court, Court of Queen’s Bench and Court of Appeal.

**(2)** Despite section 126 but subject to sections 126.01 and 126.1, a party to a civil matter under this Act or any other Act, including a matter where a director is a party, may apply to the court hearing the matter for disclosure of a record or part of a record that contains information held under this Act.

**(3)** Section 24 applies to the hearing of an application under this section.

**(4)** An application under subsection (2) must be in writing, include an affidavit and identify the record or the part of the record that contains the information, the person who has possession of the record and the grounds for disclosure.

**(5)** The application must be served on at least 5 days’ notice, or longer if ordered by the court, on a director, the person who has control or possession of the record or the part of the record and any other person that the court directs.

**(6)** The court may adjourn the application.

**(7)** Any one or more of the following assertions are not sufficient on their own to establish that the record or part of the record is relevant, material and likely necessary to advance the position of the party seeking disclosure:

- (a) that the record exists;
- (b) that the record relates to intervention services the family has received or is receiving;
- (c) that the record may relate to the credibility of any witness.

**(8)** The court, on considering

- (a) whether the information contained in the record or the part of the record has or is likely to have probative value and has not been disclosed in another record or in another form,
- (b) the potential prejudice to the dignity and right to privacy of any person to be affected by the disclosure of the record or the part of the record,
- (c) the rights of the parties to a fair hearing,
- (d) the public interest in facilitating and supporting the care of children under the guardianship of or in the custody of a director,
- (e) the need to not unduly delay matters affecting a child,
- (f) the potential danger to the physical, mental or emotional health of a child or another person,
- (g) the size of the requested record or the requested part of the record, and
- (h) any other factor that the court may consider relevant,

may order that the record or the part of the record be produced to the court, if the court is satisfied that it is relevant, material and likely necessary to advance the position of the applicant.

**(9)** On production of the record or the part of the record pursuant to subsection (8), the court must examine it in private and must

- (a) reconsider the factors set out in subsection (8),
- (b) reconsider whether the information contained in the record is relevant, material and likely necessary to advance the position of the applicant, and
- (c) determine whether the record should be disclosed to the applicant.

- (10)** If the court orders disclosure of the record or the part of the record under subsection (9),
- (a) the court may direct that the record or the part of the record be disclosed subject to conditions, including
    - (i) that it be disclosed to other parties in addition to the applicant,
    - (ii) that it be edited as directed by the court,
    - (iii) that it cannot be disclosed to any other person except with the approval of the court,
    - (iv) that it may be viewed only at a location specified by the court and that no copy be made of it,
    - (v) that only a restricted number of copies be made of it,
    - (vi) that personal information be severed from it, and
    - (vii) any other condition considered advisable by the court,and
  - (b) the use of the record is limited to the proceedings unless the court orders otherwise.

**(11)** If the court does not order disclosure of the record or the part of the record under subsection (9), unless the court orders otherwise it must be kept in a sealed package by the court until the expiration of the time for any appeal or the completion of any appeal in the matter and then it must be returned to the person who produced it to the court.

2003 c16 s109;2004 c16 s28;2008 c31 s62

#### **References to guardian**

**126.12** If a director is or has been a guardian of a child, a reference in section 126.2 or 126.3 to a guardian includes the person who was the guardian of the child immediately before a director became the guardian of the child.

2014 c7 s14

#### **Ban on publication**

**126.2(1)** No person shall publish the name or a photograph of a child or of the child's parent or guardian in a manner that reveals that the child is receiving or has received intervention services.

**(2)** Despite subsection (1),

- (a) a director may publish or consent to the publication of the name or a photograph of a child or of the child's parent or guardian and any other information related to the child if, in the opinion of the director, the publication is in the child's best interest or necessary for the proper administration of justice;
- (b) a child who is 16 years of age or older may publish, or consent to the publication of, the child's name or photograph in a manner that reveals that the child has received intervention services;
- (c) a Court may, on the application of
  - (i) a child,
  - (ii) a parent or guardian of a child, or
  - (iii) any interested party, with the permission of the Court,

grant permission to the child, the parent or guardian or the interested party, as the case may be, to publish or consent to the publication of the name or photograph of the child or of the child's parent or guardian in a manner that reveals that the child is receiving or has received intervention services if the Court is satisfied that the publication is in the child's best interest or the public interest.

**(3)** A person who brings an application under subsection (2)(c) must provide notice of the application to a director.

**(4)** Any person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000 and in default of payment to imprisonment for a term of not more than 6 months.

**(4.1)** This section does not apply in respect of a deceased child.

**(5)** Repealed 2014 c7 s15.

2003 c16 s109;2004 c16 s28;2011 cC-11.5 s26;  
2014 c7 s15;2014 c13 s16

**Application for publication ban respecting deceased child**

**126.3(1)** In this section, "family member", in respect of a deceased child, means an individual who

- (a) is a parent, guardian, grandparent or sibling of the deceased child,
- (b) stands in the place of a parent, within the meaning of section 48 of the *Family Law Act*, with respect to the child, or



(c) is a member of a prescribed class of individuals.

(2) Where a child who received intervention services has died,

(a) a director,

(b) a family member, or

(c) with the permission of the Court, any other person

may make an ex parte application in accordance with the regulations to the Court for an order that no person shall publish, in a manner that reveals that the deceased child received intervention services, the name or a photograph of the deceased child, of any parent or guardian of the deceased child or of any other individual identified in the order.

(3) The Court may grant an order applied for under subsection (2) if the Court is satisfied that the order would be appropriate, having regard to

(a) the best interests of any child receiving intervention services who is a sibling of the deceased child,

(b) the known wishes of the deceased child, and

(c) the public interest in the administration of justice.

(4) An order made under subsection (3) does not bind

(a) any family member, or

(b) any person who has not been served with a copy of the order unless the Court is satisfied that, in all of the circumstances, the person has knowledge of the order.

(5) Any person who is bound by an order made under subsection (3) may make an application to the Court to have the order set aside.

2014 c7 s16;2014 c13 s16

### Records

**127(1)** In this section, “record” includes

(a) a document, record, report, return, memorandum or other information whether in writing or in electronic form or represented or reproduced by any other means, and

- (b) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.
- (2) A person required to do so by the regulations shall keep records with respect to a child who is the subject of an investigation, agreement or order under this Act or any predecessor to this Act.
- (3) The records shall be kept
- (a) at the person's place of business in Alberta, or
- (b) subject to any terms and conditions that the Minister may impose, at a place in Alberta or elsewhere approved by the Minister.
- (4) The records shall be kept until 100 years after the year to which the information contained in the records relates.
- (5) Notwithstanding subsection (4), the Minister may order the destruction or consent to the destruction of records required to be kept under this section.
- (6) The records that are required to be kept by a person shall be made available by that person for inspection by the Minister or a person authorized by the Minister whether or not those records are in that person's possession.
- (7) Any person who contravenes this section is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.

1984 cC-8.1 s92

**Maintenance by the Minister**

- 128(1)** The Minister shall pay
- (a) the costs incurred for the care and maintenance of a child who is in the custody of a director or under the guardianship of a director, and
- (b) the costs of any assessment ordered to be made under section 31.
- (2) Subsection (1) does not affect the liability of the parents of a child or of the child to provide care and maintenance for the child.
- (3) The Minister may recover the costs the Minister incurs under this Act for the care and maintenance of a child.

1984 cC-8.1 s93;1988 c15 s45

**Alberta Resource Rebate**

**128.1(1)** In this section, “director” means the director designated by the Minister as the director for the purpose of this section.

(2) Where a child who is the subject of a temporary guardianship order or a permanent guardianship order or agreement, or a youth who is the subject of a custody agreement or a family enhancement agreement, is entitled to a refund of an amount deemed under section 35.2 of the *Alberta Personal Income Tax Act* to be an overpayment, the refund shall be held and administered by the director.

(3) Notwithstanding section 34(4), the director is a trustee for the purposes of section 7 of the *Minors’ Property Act* and shall administer refunds referred to in subsection (2) in accordance with the regulations made under subsection (4).

(4) The Lieutenant Governor in Council may make regulations

- (a) notwithstanding the *Trustee Act*, respecting the manner in which refunds under section 35.2 of the *Alberta Personal Income Tax Act* are to be administered by the director, including the circumstances and manner in which interest may be payable;
- (b) respecting the disposition of refunds in the event that a child cannot be located after the child attains the age of 18 years.

2005 c37 s5

**Appointments**

**129(1)** The Minister shall designate one or more individuals as directors for the purposes of this Act and the *Protection of Sexually Exploited Children Act*.

(1.1) An individual designated under subsection (1) must have the qualifications required by the regulations.

(2) A director or a director’s delegate when acting under section 19, 45, 46 or 48 has the powers of a peace officer.

(3) Repealed 2003 c16 s110.

RSA 2000 cC-12 s129;2003 c16 s110;2007 c8 s12

**Offence**

**130** Any person who

- (a) causes a child to be in need of intervention, or
- (b) obstructs or interferes with, or attempts to obstruct or interfere with, a director, a director’s delegate, a peace

officer or any other duly authorized person exercising any power or performing any duty under this Act

is guilty of an offence and liable to a fine of not more than \$25 000 or to imprisonment for a period of not more than 24 months or to both a fine and imprisonment.

RSA 2000 cC-12 s130; 2003 c16 s111;2004 c16 s29;  
2013 cC-12.5 s9(63)

### Regulations

**131(1)** The Lieutenant Governor in Council may make regulations

- (a) respecting procedures for the assessment and placement of children under this Act;
- (b) prescribing the standards to be met in providing intervention services including the qualifications of persons to be employed in providing those services;
- (c) respecting rules under which appeals under this Act are to be made and heard and dealing generally with all matters of procedure before Appeal Panels, the Court and the Court of Queen's Bench under this Act;
- (c.1) respecting the emergency circumstances in which an appeal may be heard by one member of an Appeal Panel;
- (d) prescribing the forms including notices to be used in any application made to Appeal Panels, the Court and the Court of Queen's Bench under this Act;
- (d.1) respecting applications to the Court under section 126.3, including, without limitation, regulations
  - (i) prescribing classes of individuals for the purpose of section 126.3(1)(c);
  - (ii) respecting service of orders made under section 126.3;
- (e) prescribing the professions or occupations to which section 4(5) applies;
- (e.1) respecting any matter necessary or advisable to carry out effectively the intent and purpose of section 19.1;
- (e.11) respecting notice to bands under section 53 and band participation in proceedings as provided for under section 53.1;

- (e.2) respecting the disclosure of financial information for the purpose of section 57.8;
- (e.3) repealed 2018 c24 s28;
- (f) repealed 2003 c16 s131.
- (2) The Minister may make regulations**
  - (a) prescribing the forms to be used under this Act other than the forms prescribed under subsection (1);
  - (a.1) respecting or adopting the form to be used for a home study report under this Act;
  - (b) prescribing the amount, nature and conditions of services and financial assistance provided under this Act;
  - (c) respecting support services;
  - (d) prescribing the rates payable for the provision of any intervention services under this Act;
  - (e) prescribing the period for which, the purposes for which and the conditions on which a person may be provided with support and financial assistance under section 57.3;
  - (f) designating facilities as secure services facilities;
  - (g), (h) repealed 2003 c16 s112;
  - (i) repealed 2003 cF-5.3 s12;
  - (j) repealed 2018 c24 s28;
  - (k) prescribing a schedule of fees that will be paid to lawyers appointed under section 112;
  - (l) prescribing matters that may be the subject of an appeal to an Appeal Panel and prescribing matters in respect of which the Appeal Panel may only make a decision referred to in section 119(2);
  - (m) prescribing those persons required to keep records under this Act;
  - (n) prescribing any other matter required to be prescribed under this Act;
  - (o), (p) repealed 2011 cC-11.5 s26;

- (q) respecting the establishment and operation of licensed adoption agencies for the placement of children for adoption;
- (r) repealed 2003 c16 s112;
- (s) respecting applications and fees for the licensing of licensed adoption agencies and respecting the issuance, renewal and expiry of licences;
- (t) prescribing the books, records, accounts and other documents required to be maintained by licensed adoption agencies, and the inspection, maintenance and security of those books, records, accounts and other documents;
- (u) prescribing the qualifications to be met by persons operating or employed by licensed adoption agencies and prescribing the duties of those persons;
- (v) prescribing the services that may be provided by licensed adoption agencies and the fees and expenses that may be charged for those services and prescribing the standards of service that must be maintained by licensed adoption agencies;
- (w) prescribing the information, documents and reports required to be submitted to the Minister by licensed adoption agencies;
- (x) respecting the placement of children for adoption in or outside Alberta by licensed adoption agencies;
- (y) prescribing the forms to be used by licensed adoption agencies and providing for their use;
- (z) respecting the contents of advertisements and other promotional material that may be used by licensed adoption agencies ;
- (z.1) specifying other circumstances in which an adult maintains or maintained their usual residence in Alberta for the purposes of this Act;
- (aa) respecting applications under section 72.1;
- (bb) respecting reports under section 34.1;
- (cc) respecting documents required to be sealed under section 74.1(2);

- (dd) respecting licensing and standards for the operation of residential facilities;
- (ee) respecting rates that may be charged by residential facilities;
- (ff) repealed 2004 c16 s30;
- (gg) respecting agreements under section 122;
- (hh) respecting financial assistance under sections 105.795 and 105.8 and support and financial assistance under section 57.3;
- (ii) respecting procedures for review under section 117.1;
- (jj) repealed 2008 c31 s63;
- (kk) repealed 2004 c16 s30;
- (ll) repealed 2020 c23 s2;
- (mm) respecting qualifications of directors;
- (nn) defining alternative dispute resolution;
- (oo) respecting alternative dispute resolution;
- (pp) respecting the qualifications of persons conducting alternative dispute resolution;
- (qq) prescribing qualified persons for the purposes of Part 1, Division 5 and Part 2;
- (rr) respecting the contents of plans for the purposes of sections 52 and 63;
- (ss) specifying reports to which section 105.793(f) applies;
- (tt) prescribing requirements for advertisements under section 85(2)(e).

RSA 2000 cC-12 s131;2002 e9 s9;2003 cF-5.3 s12;2003 c16 s112;  
2004 c6 s8; 2004 c16 s30;2008 c31 s63;2011 cC-11.5 s26;2014 c7 s17;  
2016 c19 s6;2017 c19 s3;2018 c24 s28;2020 c23 s2;2020 c39 s3

#### Restriction

**131.1** For the purposes of section 131(1)(d.1), no regulation shall be made prior to being considered by an all party committee of the Legislative Assembly.

2014 c7 s18

## **Part 5**

### **Review, Transitional, Repeal and Coming into Force**

#### **Review**

**131.2(1)** In this section, “review committee” means the committee appointed under subsection (2).

(2) At least once every 5 years, a comprehensive review must be undertaken of this Act by a committee appointed by the Lieutenant Governor in Council.

(3) The review committee must be composed of

- (a) one or more persons representative of
    - (i) Indigenous communities,
    - (ii) guardians and caregivers of children, and
    - (iii) providers of services to children and families,
- and

- (b) one or more members of each caucus represented in the Legislative Assembly.

(4) The review committee must submit to the Minister a report that includes any amendments recommended by the committee within one year after commencing its review.

(5) On receiving a report under subsection (4), the Minister shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting of the Legislative Assembly.

(6) The first review must commence within 5 years after the day this section comes into force.

(7) Each subsequent review must commence within 5 years after the day the report on the previous review was required to be submitted.

2018 c24 s30

#### **Transitional**

**132** If a child is a permanent ward of the Crown under the *Child Welfare Act*, RSA 1980 cC-8, the child is deemed to be the subject of a permanent guardianship order under this Act.



**Repeals s58(1)(a) and (2)**

**133(1)** Section 58(1)(a) and (2) are repealed on Proclamation.

(2) Repealed 2013 cS-19.3 s3.

(3) On the repeal of section 58(1)(a) pursuant to subsection (1) of this section, a reference in Part 2, Division 1

(a), (b) repealed 2009 c53 s35,

(c) in section 91(3) to “Court” means “Court of Queen’s Bench”.

RSA 2000 cC-12 s133;2003 c16 s114;  
2009 c53 s35;2013 cS-19.3 s3

**134** Repealed 2018 c24 s31.







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