

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION**

Interested Parties

**BOOK OF AUTHORITY OF THE CHIEFS OF ONTARIO RE: DOCUMENTS AND
SUBMISSIONS PROVIDED BY CANADA ON MARCH 4, 2020 IN RESPONSE TO
THE TRIBUNAL'S FEBRUARY 20, 2020 INFORMATION REQUEST**

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Guidelines for Ethical Practice 2005



Ce document est disponible en français.

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Acknowledgements

The Canadian Association of Social Workers (CASW) acknowledges with thanks the National Association of Social Workers (NASW) for permission to use sections of the copyrighted NASW 1999 *Code of Ethics* in the development of the CASW 2005 *Code of Ethics* and *Guidelines for Ethical Practice*.

The CASW also acknowledges that other codes of ethics and resources were used in the development of this *Code* and *Guidelines for Ethical Practice*, in particular, the *Code of Ethics* of the Australian Association of Social Workers (AASW). These resources can be found in the “Reference” section of each document.

Guidelines for Ethical Practice

These guidelines serve as a companion document to the *CASW Code of Ethics* and provide guidance on ethical practice by applying values and principles in the *Code* to common areas of social work practice. While detailed, these guidelines for ethical practice are not intended to be exhaustive, or entirely prescriptive, but rather are intended to provide social workers with greater clarity on how to interpret and apply the ethical values and principles in the *Code*.

The extent to which each guideline is enforceable is a matter of professional judgement. Social workers are encouraged to consult their relevant provincial/territorial regulatory body or professional association for more specific guidance with respect to the application of these ethical guidelines in their own jurisdiction.

Core Social Work Values and Principles

Social workers uphold the following core values of the profession as outlined below. For a more detailed description of these values and principles please see the *CASW Code of Ethics* (2005). While all of these values and principles inform social work practice, to facilitate practical application a cross-reference is provided below between values from the *Code* and values from sections in the *Guidelines to Ethical Practice*. The reader is cautioned that this is not an exhaustive cross-reference and is meant only to enhance reader familiarity. The reader may also use the “Index” at the back of this document to help locate relevant sections of the *Guidelines to Ethical Practice*.

Value 1: Respect for Inherent Dignity and Worth of Persons

See Section 1, “Ethical Responsibilities to Clients.” See also Sections 5.3 and 6.

Value 2: Pursuit of Social Justice

See Section 8, “Ethical Responsibilities to Society.” See also, Sections 1.4, 1.6, 4.1.3 and 4.2.

Value 3: Service to Humanity

See Section 2, “Ethical Responsibilities in Professional Relationships.” See also Sections 3.3, 5.2, 6.4 and 8.

Value 4: Integrity of Professional Practice

See Section 2, “Ethical Responsibilities in Professional Relationships;” Section 3, “Ethical Responsibilities to Colleagues;” Section 4, “Ethical Responsibilities to the Workplace;” and Section 5, “Ethical Responsibilities in Private Practice.” See also Sections 1.1 and 7.4.

Value 5: Confidentiality in Professional Practice

See Section 1.5, 1.4, 6.3 and 7.3.2.

Value 6: Competence in Professional Practice

See Section 6, “Ethical Responsibilities in Research” and Section 7, “Ethical Responsibilities to the Profession.” See also Sections 3.2.1, 3.2.3, 3.4.1, 3.5.1, 3.5.2 and 8.2.5.

1.0 Ethical Responsibilities to Clients

1.1 Priority of Clients’ Interests

- 1.1.1** Social workers maintain the best interests of clients as a priority, with due regard to the respective interests of others.
- 1.1.2** Social workers do not discriminate against any person on the basis of age, abilities, ethnic background, gender, language, marital status, national ancestry, political affiliation, race, religion, sexual orientation or socio-economic status.
- 1.1.3** Social workers collaborate with other professionals and service providers in the interests of clients with the client’s knowledge and consent. Social workers recognize the right of client determination in this regard and include clients (or legally mandated client representatives when clients are not capable of giving consent) in such consultations.
- 1.1.4** Social workers limit their involvement in the personal affairs of clients to matters related to service being provided.
- 1.1.5** In exceptional circumstances, the priority of clients' interests may be outweighed by the interests of others, or by legal requirements and conditions. In such situations clients are made aware of the obligations the social worker faces with respect to the interests of others (see section 1.5), unless such disclosure could result in harm to others.

1.1.6 Social workers seek to safeguard the rights and interests of clients who have limited or impaired decision-making capacity when acting on their behalf, and/or when collaborating with others who are acting for the client (see section 1.3).

1.2 Demonstrate Cultural Awareness and Sensitivity

1.2.1 Social workers strive to understand culture and its function in human behaviour and society, recognizing the strengths that exist in all cultures.

1.2.2 Social workers acknowledge the diversity within and among individuals, communities and cultures.

1.2.3 Social workers acknowledge and respect the impact that their own heritage, values, beliefs and preferences can have on their practice and on clients whose background and values may be different from their own.

1.2.4 Social workers seek a working knowledge and understanding of clients' racial and cultural affiliations, identities, values, beliefs and customs.

1.2.5 Where possible, social workers provide or secure social work services in the language chosen by the client. If using an interpreter, when possible, social workers preferentially secure an independent and qualified professional interpreter.

1.3 Promote Client Self-Determination and Informed Consent

1.3.1 Social workers promote the self-determination and autonomy of clients, actively encouraging them to make informed decisions on their own behalf.

1.3.2 Social workers evaluate a client's capacity to give informed consent as early in the relationship as possible.

1.3.3 Social workers who have children as clients determine the child's capacity to consent and explain to the child (where appropriate), and to the child's parents/guardians (where appropriate) the nature of the social worker's relationship to the child and others involved in the child's care (see section 1.5.5 regarding confidentiality).

1.3.4 Social workers, at the earliest opportunity, discuss with clients their rights and responsibilities and provide them with honest and accurate information regarding the following:

- the nature of the social work service being offered;
- the recording of information and who will have access to such information;
- the purpose, nature, extent and known implications of the options open to them;
- the potential risks and benefits of proposed social work interventions;
- their right to obtain a second opinion or to refuse or cease service (recognizing the limitations that apply when working with involuntary clients);
- the client's right to view professional records and to seek avenues of complaint; and
- the limitations on professional confidentiality (see section 1.5 regarding confidentiality).

1.3.5 Social workers provide services to clients only on valid informed consent or when required to by legislation or court-ordered (see section 1.4 regarding involuntary clients).

1.3.6 Social workers obtain clients' informed consent before audio taping or video taping clients or permitting observation of services to clients by a third party.

1.4 Responsibilities to Involuntary Clients and Clients Not Capable of Consent

1.4.1 Social workers recognize that in some cases their ability to promote self-determination is limited because clients may not be capable of making their own decisions, are involuntary or because clients' actions pose a serious threat to themselves or others.

1.4.2 Social workers endeavour to minimize the use of compulsion. Any action that violates or diminishes the civil or legal rights of clients is taken only after careful evaluation of the situation (see section 1.6 regarding protection of vulnerable members of society).

1.4.3 When a social worker is court-ordered or agrees to conduct a legally-mandated assessment, the social worker's primary obligation is to the judge or designate. The social worker, however, continues to have professional obligations toward the person being

assessed with respect to dignity, openness regarding limits to confidentiality and professional competence.

- 1.4.4** In all cases where clients' right to self-determination is limited by duty of care (e.g., client intent to self-harm), the law (e.g., child abuse), or court order, social workers assist clients to negotiate and attain as much self-determination as possible. In particular, involuntary clients are made aware of any limitations that apply to their right to refuse services and are advised how information will be shared with other parties.
- 1.4.5** Social workers, wherever possible or warranted, notify clients regarding decisions made about them, except where there is evidence that this information may bring about, or exacerbate, serious harm to individuals or the public.
- 1.4.6** In instances when clients lack the capacity to provide informed consent, social workers protect clients' interests by advocating that their interests are represented by an appropriate third party, such as a substitute decision-maker.

1.5 Protect Privacy and Confidentiality

Social workers respect clients' right to privacy. Social workers do not solicit private information from clients unless it is required to provide services or to conduct social work research. Once information is shared or observed in a professional context, standards of confidentiality apply. Social workers protect clients' identity and only disclose confidential information to other parties (including family members) with the informed consent of clients or the clients' legally authorized representatives, or when required by law or court order. This obligation continues indefinitely after the social worker has ceased contact with the client. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others (see section 1.6 regarding protection of vulnerable members of society). In all instances, social workers disclose the least amount of confidential information necessary to achieve the desired purpose.

- 1.5.1** Social workers discuss with clients the nature of confidentiality and limitations of clients' right to confidentiality at the earliest opportunity in their relationship. Social workers review with clients when disclosure of confidential information may be legally or ethically required. Further discussion of confidentiality may be needed throughout the course of the relationship.
- 1.5.2** Social workers ascertain and take into account the manner in which individual clients wish confidentiality to apply within their cultural context.
- 1.5.3** Social workers inform clients, to the extent possible, about the disclosure of confidential information and its potential consequences before the disclosure is made. This applies in all circumstances of disclosure, except when, in the professional judgement of the social worker, sharing this information with the client may bring about, or exacerbate, serious harm to individuals or the public.
- 1.5.4** When social workers provide services to families, couples, or groups, social workers seek agreement among the parties involved concerning each individual's right to confidentiality and the obligation to preserve the confidentiality of information shared by others. Social workers inform participants in family, couples, or group counselling that social workers cannot guarantee that all participants will honour such agreements.
- 1.5.5** When social workers provide services to children, they outline for the child and the child's parents (where appropriate) their practices with respect to confidentiality and children. Social workers may wish to reserve the right to disclose some information provided by a young child to parents when such disclosure is in the best interest of the child. This should be declared prior to the first session with a child (see section 1.3.3. regarding consent and capacity).
- 1.5.6** Social workers take care to not discuss confidential information in public or semi-public areas such as hallways, waiting rooms, elevators, and restaurants.
- 1.5.7** Social workers take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephone answering machines and other electronic technology. Social workers inform clients of the limits to confidentiality that may apply to these forms of communication.

1.5.8 Social workers protect the confidentiality of clients' written and electronic records. Social workers take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access (see section 1.6 regarding protection of vulnerable members of society).

1.5.9 Social workers do not disclose identifying information when discussing clients for teaching or training purposes, unless the client has consented to such disclosure.

1.5.10 Social workers do not disclose identifying information when discussing clients with consultants unless the client has provided informed consent or if there is a compelling need for such disclosure. If the agency practices and policies involve routine consultations with a supervisor or professional team, social workers make clients aware of these practices as a limitation to confidentiality.

1.5.11 Social workers protect the confidentiality of deceased clients consistent with the preceding responsibilities.

1.5.12 Social workers take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacity, or death.

1.5.13 Social workers take appropriate steps to address a breach of confidentiality should it occur, with due care to the values and principles of the *Code*, the standards of their employer and relevant regulatory body.

1.6 Protection of Vulnerable Members of Society

(See sections 1.3 on informed consent; 1.5 on confidentiality.)

1.6.1 Social workers who have reason to believe a child is being harmed and is in need of protection are obligated, consistent with their provincial/territorial legislation, to report their concerns to the proper authorities.

1.6.2 Social workers who have reason to believe that a client intends to harm another person are obligated to inform both the person who may be at risk (if possible) as well as the police.

1.6.3 Social workers who have reason to believe that a client intends to harm him/herself are expected to exercise professional judgement regarding their need to take action consistent with their

provincial/territorial legislation, standards of practice and workplace policies. Social workers may in this instance take action to prevent client self-harm without the informed consent of the client. In deciding whether to break confidentiality, social workers are guided by the imminence of self-harm, the presence of a mental health condition and prevailing professional standards and practices.

- 1.6.4** Social workers who have reason to believe that an adult client is being abused take action consistent with their provincial/territorial legislation. Only a minority of jurisdictions in Canada have mandatory reporting of abuse of adults.

1.7 Maintenance and Handling of Client Records

Social workers maintain one written record of professional interventions and opinions, with due care to the obligations and standards of their employer and relevant regulatory body. Social workers document information impartially and accurately and with an appreciation that the record may be revealed to clients or disclosed during court proceedings. Social workers are encouraged to take care to

- report only essential and relevant details
- refrain from using emotive or derogatory language
- acknowledge the basis of professional opinions
- protect clients' privacy and that of others involved.

- 1.7.1** Social workers do not state a professional opinion unless it can be supported by their own assessment or by the documented assessment of another professional.

- 1.7.2** Where records are shared across professions or agencies, information is recorded only to the degree that it addresses clients' needs and meets the requirements of an employer or professional standards of practice.

- 1.7.3** Before using clients' records for any purpose beyond professional services, for example education, social workers obtain the informed consent of clients.

- 1.7.4** In some circumstances, access to client records may be officially authorized or required by statute. Where consent of clients is not required, social workers attempt to notify clients that such access has been granted, if such notification does not involve a risk to others.

- 1.7.5 Social workers ensure that clients have reasonable access to official social work records concerning them. However, if there are compelling professional, ethical or legal reasons for refusing access, social workers advise clients of their right to request a review of the decision through organizational or legal channels, e.g., *Access to Information Act* (1983).
- 1.7.6 Social workers take due care to protect the confidences of others when providing clients with access to records. This may involve masking third party information in the record.
- 1.7.7 If clients are not satisfied with their records, social workers advise them regarding complaint mechanisms.
- 1.7.8 Social workers protect clients' records, store them securely and retain them for any required statutory period.
- 1.7.9 Social workers transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with provincial/territorial statutes governing records and social work regulation. Social workers also ensure that mechanical or electronic records are properly transferred or disposed of.

1.8 Practices for Termination or Interruption of Services

- 1.8.1 Social workers renegotiate or terminate professional services when these services are no longer required or no longer meet the needs of clients.
- 1.8.2 Social workers respect the right of voluntary clients to discontinue service, engage another practitioner or seek a second opinion.
- 1.8.3 Whether the decision to renegotiate or terminate is that of the client or the social worker, social workers (where appropriate) initiate a discussion with the client to appreciate, and if possible, address any difficulties or misunderstandings that may have occurred. If the client desires other professional services, the social worker may assist in referral.
- 1.8.4 Social workers discuss client's needs, options and preferences before continuing or discontinuing services, or offering to seek transfer or referral.
- 1.8.5 Social workers at the earliest opportunity inform clients of any factor, condition or pressure that affects their ability to practice adequately and competently.

- 1.8.6** When obliged to interrupt or terminate a professional relationship, social workers advise clients regarding the discontinuation of service and if possible, ensure their referral to another professional.

2.0 Ethical Responsibilities in Professional Relationships

It is the responsibility of the social worker to establish the tenor of their professional relationship with clients and others, and to ensure that the relationship serves the needs of clients, and others to whom there is a professional duty, over the needs of the social worker. In establishing a professional relationship the social worker takes into account relevant contextual issues, such as age, culture and gender of the client, and ensures the dignity, individuality and rights of the person and vulnerable members of society are protected.

2.1 Appropriate Professional Boundaries

- 2.1.1** Social workers maintain appropriate professional boundaries throughout the course of the professional relationship and after the professional relationship.

2.2 No Exploitation for Personal or Professional Gain

- 2.2.1** Social workers do not exploit professional relationships for personal benefit, gain or gratification.
- 2.2.2** Social workers do not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political or business interests.

2.3 Declare Conflicts of Interest

Social workers avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgement. Social workers inform clients when a real or potential conflict of interest arises, and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client to another professional.

- 2.3.1** When social workers provide services to two or more people who have a relationship with each other (e.g., couples, family members), social workers clarify with all parties which individuals

will be considered clients and the nature of the professional relationship with other involved parties.

2.3.2 Social workers who anticipate a conflict of interest among the individuals receiving services, or who anticipate having to perform a difficult role, clarify with clients their role and responsibilities. (For example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients).

2.3.3 Social workers consider carefully the potential for professional conflicts of interest where close personal relationships exist or where social, business or sexual relationships with colleagues are contemplated or exist.

2.4 Dual and Multiple Relationships

Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. While having contact with clients in different life situations is not inherently harmful, it is the responsibility of the social worker to evaluate the nature of the various contacts to determine whether the social worker is in a position of power and/or authority that may unduly and/or negatively affect the decisions and actions of their client. (See section 3.2.3 regarding supervisees, and section 3.3.9 regarding students.)

2.4.1 Social workers take care to evaluate the nature of dual or multiple relationships to ensure that the needs and welfare of their clients are protected.

2.5 Avoid Physical Contact with Clients

2.5.1 Social workers avoid engaging in physical contact with clients when there is a possibility of harm to the client as a result of the contact. Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate and culturally sensitive boundaries to govern such physical contact.

2.6 No Romantic or Sexual Relationships with Clients

2.6.1 Social workers do not engage in romantic relationships, sexual activities or sexual contact with clients, even if such contact is sought by clients.

2.6.2 Social workers who have provided psychotherapy or in-depth counselling do not engage in romantic relationships, sexual activities or sexual contact with former clients. It is the responsibility of the social worker to evaluate the nature of the professional relationship they had with a client and to determine whether the social worker is in a position of power and/or authority that may unduly and/or negatively affect the decisions and actions of their former client.

2.6.3 Social workers do not engage in a romantic relationship, sexual activities or sexual contact with social work students whom they are supervising or teaching. (See Section 3.5 Responsibilities to Students.)

2.7 No Sexual Harassment

Sexual harassment refers to unwelcome sexual comments or lewd statements, unwelcome sexual advances, unwelcome requests for sexual favours or other unwelcome conduct of a sexual nature in circumstances where a reasonable person could anticipate that the person harassed would be offended, humiliated or intimidated.

2.7.1 Social workers do not sexually harass any person.

3.0 *Ethical Responsibilities to Colleagues*

3.1 Respect

Social workers relate to both social work colleagues and colleagues from other disciplines with respect, integrity and courtesy and seek to understand differences in viewpoints and practice.

3.2 Collaboration and Consultation

When collaborating with other professionals, social workers utilize the expertise of other disciplines for the benefit of their clients. Social workers participate in and contribute to decisions that affect the well-being of clients by drawing on the knowledge, values and experiences of the social work profession.

- 3.2.1** Social workers co-operate with other disciplines to promote and expand ideas, knowledge, theory and skills, experience and opportunities that improve professional expertise and service provision.
- 3.2.2** Social workers seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.
- 3.2.3** Social workers keep themselves informed about colleagues' areas of expertise and competencies. Social workers only consult colleagues who have, in the judgement of the social worker, knowledge, expertise and competence related to the subject of the consultation.
- 3.2.4** Social workers take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.
- 3.2.5** Social workers honestly acknowledge the work and the contributions made by others.

3.3 Management of Disputes

Social workers remain open to constructive comment on their practice or behaviour. Social workers base criticism of colleagues' practice or behaviour on defensible arguments and concern, and deal with differences in ways that uphold the principles of the *Code of Ethics*, the *Guidelines for Ethical Practice* and the honour of the social work profession.

- 3.3.1** Social workers who have ethical concerns about the actions of a colleague attempt to resolve the disagreement through appropriate channels established by their organization. If the disagreement cannot be resolved, social workers pursue other avenues to address their concerns consistent with client well-being, ethical principles and obligations outlined by their regulatory body.

3.4 Responsibilities in Supervision and Consultation

In addition to the general provisions of the *Code*, social workers in supervisory or consultation roles are guided by the following specific ethical responsibilities.

- 3.4.1** Social workers who have the necessary knowledge and skill to supervise or consult do so only within their areas of knowledge and competence.

- 3.4.2 Social workers do not engage in any dual or multiple relationships with supervisees when there is a risk of exploitation of, or potential harm to the supervisee. If questioned, it is the responsibility of the supervisor to demonstrate that any dual or multiple relationship is not exploitative or harmful to the supervisee. (See section 2.4 regarding dual and multiple relationships.)
- 3.4.3 Social workers evaluate supervisees' performance in a manner that is fair and respectful and consistent with the expectations of the place of employment.

3.5 Responsibilities to Students

In addition to the general provisions of the *Code*, social worker educators and field instructors who supervise students are guided by the following specific ethical responsibilities.

- 3.5.1 Social workers provide instruction only within their areas of knowledge and competence.
- 3.5.2 Social workers endeavour to provide instruction based on the most current information and knowledge available in the profession.
- 3.5.3 Social workers foster in social work students' knowledge and understanding of the social work profession, the *Code of Ethics* and other appropriate sources of ethical practices.
- 3.5.4 Social workers instruct students to inform clients of their student status.
- 3.5.5 Social workers inform students of their ethical responsibilities to agencies, supervisors and clients.
- 3.5.6 Social workers adhere to the principles of privacy and confidentiality in the supervisory relationship, acknowledging with students any limitations early in the professional relationship.
- 3.5.7 Social workers recognize that their role in supervising students is intended to be educational and work-focused. In the event that a student requests or requires therapy, the instructor refers the student to another competent practitioner.
- 3.5.8 Social workers evaluate a student's performance in a manner that is fair and respectful and consistent with the expectations of the student's educational institution.

- 3.5.9** Social workers do not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student. Social work educators and field instructors are responsible for setting clear, appropriate and culturally sensitive boundaries. (See section 2.4 regarding dual and multiple relationships.)

4.0 *Ethical Responsibilities to the Workplace*

4.1 Professional Practice

- 4.1.1** Social workers acknowledge and strive to carry out the stated aims and objectives of their employing organization, agency or service contractor, consistent with the requirements of ethical practice.
- 4.1.2** Social workers work toward the best possible standards of service provision and are accountable for their practice.
- 4.1.3** Social workers use the organization's resources honestly and only for their intended purpose.
- 4.1.4** Social workers appropriately challenge and work to improve policies, procedures, practices and service provisions that
- are not in the best interests of clients;
 - are inequitable;
 - are in any way oppressive, disempowering or culturally inappropriate; and
 - demonstrate discrimination.
- 4.1.5** When policies or procedures of employing bodies contravene professional standards, social workers endeavour to effect change through consultation using appropriate and established organizational channels.
- 4.1.6** Social workers take all reasonable steps to ensure that employers are aware of their professional ethical obligations and advocate for conditions and policies that reflect ethical professional practices.
- 4.1.7** Social workers take all reasonable steps to uphold their ethical values, principles and responsibilities even though employers' policies or official orders may not be compatible with its provisions.

4.2 Labour-Management Disputes

- 4.2.1** Social workers may engage in organized action, including the formation of and participation in labour unions, to improve services to clients and professional wages and working conditions.
- 4.2.2** The actions of social workers who are involved in labour-management disputes, job actions or labour strikes are guided by the profession's values and principles. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labour strike or job action. Social workers carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

4.3 Responsibilities of Managers

In addition to the general provisions of the *Code of Ethics and Guidelines for Ethical Practice*, social workers in management or similar administrative positions are guided by the following specific ethical responsibilities.

- 4.3.1** Social workers acquaint organizational administrators with the ethical responsibilities of social workers. Social workers encourage employers to eliminate workplace factors that prohibit or obstruct adherence ethical practice.
- 4.3.2** Social workers strive to promote effective teamwork and communication and an efficient and accountable social work service.
- 4.3.3** Social workers strive to obtain and maintain adequate staff levels and acceptable working conditions.
- 4.3.4** Social workers strive to facilitate access to appropriate professional consultation or supervision for professional social work practice.
- 4.3.5** Social workers strive to facilitate access for staff under their direction to ongoing training and professional education, and advocate for adequate resources to meet staff development needs.
- 4.3.6** Social workers provide or arrange for appropriate debriefing and professional support for staff, especially when they experience difficult or traumatic circumstances.

5.0 Ethical Responsibilities in Private Practice

In addition to the general provisions of the *Code of Ethics* and *Guidelines for Ethical Practice*, social workers in private practice are guided by the following specific ethical responsibilities.

5.1 Insurance Requirements

5.1.1 Social workers maintain adequate malpractice, defamation and liability insurance.

5.2 Avoid and Declare Conflicts of Interest

(See also section 2.3 regarding conflicts of interest.)

5.2.1 Social workers do not solicit clients for their private practice from their colleagues or their place of work, unless there is a request for social workers to do so. (For example, in hard to serve areas, employers may need employees who also have a private practice to provide follow-up services).

5.2.2 Subject to 5.2.1, social workers may accept clients from their workplace when the workplace does not provide a similar service or in accordance with established workplace guidelines regarding such referrals.

5.3 Responsible Fee Practices

5.3.1 Social workers who enter into a fee for services contract with a client:

- Disclose at the outset of the relationship, the fee schedule for social work services including their expectations and practices with respect to cancellations and unpaid bills.
- Only charge a fee that was disclosed to and agreed upon by the client.
- Charge only for the reasonable hours of client services, research, consultation and administrative work on behalf of a given client.

- Avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation and inappropriate boundaries in social workers' relationships with clients.
- Social workers may participate in bartering when it can be demonstrated that such arrangements are an accepted practice for professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into for the client's benefit and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client and the profession.

5.3.2 Social workers may charge differential fees for services when such a difference in fee is for the benefit of the client and the fee is not discriminatory.

5.3.3 Social workers may charge a rate of interest on delinquent accounts as is allowed by law. When such interest is being charged, social workers state the rate of interest on all invoices or bills.

5.3.4 Social workers may pursue civil remedies to ensure payment for services to a client, where the social worker has advised the client of this possibility at the outset of the contract. (See section 1.5 regarding confidentiality.)

6.0 *Ethical Responsibilities in Research*

In addition to the general provisions of the *Code of Ethics* and *Guidelines for Ethical Practice*, social workers engaged in research are guided by the following ethical responsibilities.

6.1 Responsible Research Practices

6.1.1 Social workers educate themselves, their students and their colleagues about responsible research practices.

6.1.2 Social workers observe the conventions of ethical scholarly inquiry when engaged in study and research. Social workers utilize only appropriately qualified personnel (or provide adequate training) to carry out research, paying particular attention to qualifications required in conducting specialized techniques.

6.2 Minimize Risks

6.2.1 Social workers place the interests of research participants above the social worker's personal interests or the interests of the research project.

6.2.2 Social workers consider carefully the possible consequences for individuals and society before participating in, or engaging in, proposed research and also when publishing research results.

6.2.3 Social workers submit research proposals to an appropriate independent scientific and ethical review prior to implementation of the research.

6.2.4 Social workers strive to protect research participants from physical, mental or emotional discomfort, distress, harm or deprivation.

6.2.5 Social workers take appropriate steps to ensure that research participants have access to appropriate supportive services.

6.2.6 Social workers ensure that due care has been taken to protect the privacy and dignity of research participants.

6.3 Informed Consent, Anonymity and Confidentiality

Social workers obtain informed consent to take part in research from either participants or their legally authorized representatives. In addition, social workers offer children and others whose ability to provide consent is compromised for any reason, the opportunity to express their assent or objection to research procedures and give their views due regard.

6.3.1 Social workers ensure that consent is given voluntarily, without coercion or inferred disadvantage for refusal to participate. Participants are informed that they may withdraw from a study at any time without compromising any professional service being offered in the research project or future access to social work services.

- 6.3.2** Social workers ensure confidentiality of research participants' identity and discuss them only in limited circumstances for professional purposes. It is recommended that any identifying information obtained from or about participants during the research process is treated as confidential and the identity of participants separated from data that is stored, for example, through the use of identification numbers for surveys or similar questionnaires, and pseudonyms in transcripts of qualitative interviews.
- 6.3.3** Social workers ensure the anonymity of research participants is maintained in subsequent reports about the research.
- 6.3.4** Social workers store research material securely and for the required period as indicated by relevant research ethics guidelines.

6.4 Avoid Deception

- 6.4.1** Social workers generally avoid the use of deception in research because of its negative implications for the public trust in the profession.
- 6.4.2** Social workers only design or conduct research that involves deception or waiver of consent, such as certain forms of naturalistic observation and archival research, when third party review of the research has found it to be justified because of its anticipated scientific, educational, or practice value and when equally effective alternative procedures that do not involve deception or waiver of consent are not feasible.

6.5 Accuracy of Report of Research Findings

- 6.5.1** Social workers report research results accurately and objectively, acknowledging the contributions of others, and respecting copyright law. In research and scholarly endeavours, credit is taken only for work actually performed.
- 6.5.2** Where feasible, social workers inform research participants or their legally authorized representatives of research results that are relevant to them.
- 6.5.3** Where feasible, social workers bring research results that indicate or demonstrate social inequalities or injustices to the attention of the relevant bodies.

7.0 Ethical Responsibilities to the Profession

7.1 Maintain and Enhance Reputation of Profession

- 7.1.1** Social workers promote excellence in the social work profession. They engage in discussion about and constructive criticism of, the profession, its theories, methods and practices.
- 7.1.2** Social workers uphold the dignity and integrity of the profession and inform their practice from a recognized social work knowledge base.
- 7.1.3** Social workers cite an educational degree only after it has been conferred by the educational institution.
- 7.1.4** Social workers do not claim formal social work education in an area of expertise or training solely by attending a lecture, demonstration, conference, workshop or similar teaching presentation.
- 7.1.5** Social workers uphold provincial and territorial regulations for continuing professional education, where such regulations exist.
- 7.1.6** Social workers do not make false, misleading or exaggerated claims of efficacy regarding past or anticipated achievements regarding their professional services.
- 7.1.7** Social workers strive to promote the profession of social work, its processes and outcomes and defend the profession against unjust criticism.
- 7.1.8** Social workers distinguish between actions and statements made as private citizens and actions and statements made as social workers, recognizing that social workers are obligated to ensure that no outside interest brings the profession into disrepute.

7.2 Address Unethical Practices of Colleagues

- 7.2.1** Social workers take appropriate action where a breach of professional practice and professional ethics occur, conducting themselves in a manner that is consistent with the *Code of Ethics* and *Guidelines for Ethical Practice*, and standards of their regulatory body.

- 7.2.2 Social workers who have direct knowledge of a social work colleague's incompetence or impairment in professional practice consult with colleagues about their concerns and when feasible assist colleagues in taking remedial action. Impairment may emanate, for example, from personal problems, psychosocial distress, substance abuse or mental health difficulties.
- 7.2.3 Social workers who believe that a colleague has not taken adequate steps to address their impairment to professional practice take action through appropriate channels established by employers, regulatory bodies, or other professional organizations.
- 7.2.4 Social workers do not intervene in the professional relationship of other social workers and clients unless requested to do so by a client and unless convinced that the best interests and well-being of clients requires such intervention.

7.3 Support Regulatory Practices (in jurisdictions where social work is regulated)

- 7.3.1 Social workers co-operate with investigations into matters of complaint against themselves or other social workers and the requirements of any associated disciplinary hearings.
- 7.3.2 Social workers may release confidential information as part of a disciplinary hearing of a social worker when so directed by a tribunal or disciplinary body, taking care to divulge the minimum information required.
- 7.3.3 Social workers report to the relevant professional body, persons who misrepresent their qualifications as a social worker or their eligibility for regulation or membership in a professional association.

8.0 Ethical Responsibilities to Society

Social workers advocate for change in the best interests of clients and for the overall benefit of society, the environment and the global community. In performing their responsibilities to society, social workers frequently must balance individual rights to self-determination with protection of vulnerable members of society from harm. These dual ethical responsibilities are the hallmark of the social work profession and require well-developed and complex professional skills. When social workers' legal obligations require them to break confidentiality and limit client self-determination they do so with the minimum compulsion required by law and/or the circumstances (see Value 1).

8.1 Source of Information on Social Needs

8.1.1 Social workers identify and interpret the basis and nature of individual, group, community, national and international social problems with the intention of bringing about greater understanding and insight for policy makers and the public.

8.2 Participate in Social Action

8.2.1 Social workers strive to identify, document and advocate for the prevention and elimination of domination or exploitation of, and discrimination against, any person, group, or class on the basis of age, abilities, ethnic background, gender, language, marital status, national ancestry, political affiliation, race, religion, sexual orientation or socio-economic status.

8.2.2 Social workers endeavour to engage in social and/or political action that seeks to ensure that all people have fair access to the resources, services and opportunities they require to meet their basic human needs and to develop fully.

8.2.3 Social workers are aware of the impact of the political arena on practice and strive to advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.

8.2.4 Social workers endeavour to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed and exploited people and groups.

8.2.5 Social workers strive to promote conditions that encourage respect for cultural and social diversity within Canada and globally. Social workers promote policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programs and institutions that demonstrate cultural competence and promote policies that safeguard the rights of and confirm equity and social justice for all people.

8.3 Encourage Public Participation

8.3.1 Social workers strive to facilitate informed participation by the public in shaping social policies and institutions.

8.4 Assist in Public Emergencies

8.4.1 Social workers provide professional services during public emergencies to the greatest extent possible.

8.5 Advocate for the Environment

8.5.1 Social workers endeavour to advocate for a clean and healthy environment and advocate for the development of environmental strategies consistent with social work principles and practices.

Glossary

Capacity

The ability to understand information relevant to a decision and to appreciate the reasonably foreseeable consequences of choosing to act or not to act. Capacity is specific to each decision and thus a person may be capable of deciding about a place of residence, for example, but not capable with respect to deciding about a treatment. Capacity can change over time (Etchells, Sharpe, Elliot and Singer, 1996).

Recent references in law point to the concept of “a mature minor,” which Rozovsky and Rozovsky (1990) define as “...one with capacity to understand the nature and consequences of medical treatment. Such a person has the power to consent to medical treatment and parental consent is not necessary” (p. 55). They quote the comments by The Honorable Justice Lambert in *Van Mol v. Ashmore*, which help clarify common law with respect to a minor’s capacity to consent. He states:

At common law, without reference to statute law, a young person, still a minor, may give, on his or her own behalf, a fully informed consent to medical treatment if he or she has sufficient maturity, intelligence and capacity of understanding what is involved in making informed choices about the proposed medical treatment...once the capacity to consent has been achieved by the young person reaching sufficient maturity, intelligence and capability of understanding, the discussions about the nature of the treatment, its gravity, the material risks and any special and unusual risks, and the decisions about undergoing treatment, and about the form of the treatment, must all take place with and be made by the young person whose bodily integrity is to be invaded and whose life and health will be affected by the outcome.

Child

The *Convention on the Rights of the Child* passed by the United Nations in 1959 and ratified by Canada in 1990, define a child as a person under the age of 18 years unless national law recognizes an earlier age of majority (Alberta Law Reform Institute, 1991). The age of majority differs in provinces and territories in

Canada. Under the *Criminal Code of Canada*, the age of consent is held to be over the age of 14 years; age in the context of the criminal code frequently refers to capacity to consent to sexual relations. All jurisdictions in Canada have legislation regarding child protection, which defines the age of a child for the purposes of protection. In Canada, in the absence of provincial or territorial legislation, courts are governed by common law. Social workers are encouraged to maintain current knowledge with respect to legislation on the age of a child, as well as capacity and consent in their jurisdiction.

Client

A person, family, group of persons, incorporated body, association or community on whose behalf a social worker provides or agrees to provide a service or to whom the social worker is legally obligated to provide a service. Examples of legal obligation to provide service include a legislated responsibility (such as in child welfare) or a valid court order. In the case of a valid court order, the judge/court is the client and the person(s) who is ordered by the court to participate in assessment is recognized as an involuntary client.

Conduct Unbecoming

Behaviour or conduct that does not meet social work standard of care requirements and is, therefore, subject to discipline. In reaching a decision in *Matthews and Board of Directors of Physiotherapy* (1986) 54 O.R. (2d) 375, Saunders J. makes three important statements regarding standards of practice, and by implication, professional codes of ethics:

1. Standards of practice are inherent characteristics of any profession.
2. Standards of practice may be written or unwritten.
3. Some conduct is clearly regarded as misconduct and need not be written down, whereas other conduct may be the subject of dispute within a profession.

(See “Standard of Practice.”)

Confidentiality

A professional value that demands that professionally acquired information be kept private and not shared with third parties unless the client provides informed consent or a professional or legal obligation exists to share such information without client informed consent.

Discrimination

Treating people unfavourably or holding negative or prejudicial attitudes based on discernable differences or stereotypes (AASW, 1999).

Informed Consent

Voluntary agreement reached by a capable client based on information about foreseeable risks and benefits associated with the agreement (e.g., participation in counselling or agreement to disclose social work report to a third party).

Human Rights

The rights of an individual that are considered the basis for freedom and justice, and serve to protect people from discrimination and harassment. Social workers may refer to the *Canadian Charter of Rights and Freedoms* enacted as Schedule B to the *Canada Act 1982 (U.K.) 1982, c. 11*, which came into force on April 17, 1982, as well as the *Universal Declaration of Human Rights* (1948) proclaimed by the United Nations General Assembly December 10, 1948.

Malpractice and Negligence

Behaviour that is included in “conduct unbecoming” and relates to social work practice behaviour within the parameters of the professional relationship that falls below the standard of practice and results in, or aggravation of, injury to a client. It includes behaviour that results in assault, deceit, fraudulent misrepresentations, defamation of character, breach of contract, violation of human rights, malicious prosecution, false imprisonment or criminal conviction.

Self-Determination

A core social work value that refers to the right to self-direction and freedom of choice without interference from others. Self-determination is codified in practice through mechanisms of informed consent. Social workers may be obligated to limit self-determination when a client lacks capacity or in order to prevent harm (Regehr and Antle, 1997).

Social Worker

A person who is duly registered to practice social work in a province or territory; or where mandatory registration does not exist, a person with social work education from an institution recognized by the Canadian Association of Schools of Social Work (CASSW) or an institution from outside of Canada that has been approved by the CASW, who is practising social work and who voluntarily agrees to be subject to this *Code of Ethics*. **Note:** Social workers living in Quebec and British Columbia, whose social work education was obtained outside of Canada, follow a separate approval process within their respective provinces.

Standard of Practice

The standard of care ordinarily expected of a competent social worker. It means that the public is assured that a social worker has the training, the skill and the diligence to provide them with social work services. Social workers are urged to refer to standards of practice that have been set by their provincial or territorial regulatory body or relevant professional association (see “Conduct Unbecoming”).

Voluntary

“In the context of consent, ‘voluntariness’ refers to a patient’s right to make treatment decisions free of any undue influence, such as ability of others to exert control over a patient by force, coercion or manipulation. ...The requirement for voluntariness does not imply that clinicians should refrain from persuading patients to accept advice. Persuasion involves appealing to the patient’s reason in an attempt to convince him or her of the merits of a recommendation. In attempting to persuade the patient to follow a particular course of action, the clinician still leaves the patient free to accept or reject this advice.” (Etchells, Sharpe, Dykeman, Meslin and Singer, 1996, p. 1083).

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TAB 2

Child, Youth and Family Services Act, 2017

S.O. 2017, CHAPTER 14 SCHEDULE 1

Consolidation Period: From January 1, 2020 to the [e-Laws currency date](#).

Last amendment: 2019, c. 15, Sched. 5.

Legislative History: 2017, c. 14, Sched. 3; 2017, c. 25, Sched. 9, s. 88; 2017, c. 34, Sched. 4; 2018, c. 3, Sched. 5, s. 5 (see:2019, c. 1, Sched. 3, s. 5); 2018, c. 6, Sched. 3, s. 4; 2018, c. 17, Sched. 34, s. 6; 2019, c. 1, Sched. 4, s. 4; 2019, c. 7, Sched. 17, s. 44; 2019, c. 15, Sched. 5.

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Preamble

The Government of Ontario acknowledges that children are individuals with rights to be respected and voices to be heard.

The Government of Ontario is committed to the following principles:

Services provided to children and families should be child-centred.

Children and families have better outcomes when services build on their strengths. Prevention services, early intervention services and community support services build on a family’s strengths and are invaluable in reducing the need for more disruptive services and interventions.

Services provided to children and families should respect their diversity and the principle of inclusion, consistent with the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families.

Services to children and families should, wherever possible, help maintain connections to their communities.

In furtherance of these principles, the Government of Ontario acknowledges that the aim of the *Child, Youth and Family Services Act, 2017* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child.

With respect to First Nations, Inuit and Métis children, the Government of Ontario acknowledges the following:

The Province of Ontario has unique and evolving relationships with First Nations, Inuit and Métis peoples.

First Nations, Inuit and Métis peoples are constitutionally recognized peoples in Canada, with their own laws, and distinct cultural, political and historical ties to the Province of Ontario.

Where a First Nations, Inuk or Métis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan’s Principle.

The United Nations Declaration on the Rights of Indigenous Peoples recognizes the importance of belonging to a community or nation, in accordance with the traditions and customs of the community or nation concerned.

Further, the Government of Ontario believes the following:

First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.

Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.

For these reasons, the Government of Ontario is committed, in the spirit of reconciliation, to working with First Nations, Inuit and Métis peoples to help ensure that wherever possible, they care for their children in accordance with their distinct cultures, heritages and traditions.

PART I PURPOSES AND INTERPRETATION

PURPOSES

Paramount purpose and other purposes

Paramount purpose

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

Other purposes

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

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
 - i. respects a child's or young person's need for continuity of care and for stable relationships within a family and cultural environment,
 - ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
 - iii. takes into account a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - iv. takes into account a child's or young person's cultural and linguistic needs,
 - v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
 - vi. includes the participation of a child or young person, the child's or young person's parents and relatives and the members of the child's or young person's extended family and community, where appropriate.
4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

INTERPRETATION

Interpretation

Definitions

2 (1) In this Act,

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

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

“Board” means the Child and Family Services Review Board continued under section 333; (“Commission”)

“child” means a person younger than 18; (“enfant”)

“child in care” means a child or young person who is receiving residential care from a service provider and includes,

- (a) a child who is in the care of a foster parent, and
- (b) a young person who is,
 - (i) detained in a place of temporary detention under the *Youth Criminal Justice Act* (Canada),
 - (ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise, or
 - (iii) held in a place of open custody under section 150 of this Act; (“enfant recevant des soins”, “enfant qui reçoit des soins”)

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

“creed” includes religion; (“croyance”)

“customary care” means the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community; (“soins conformes aux traditions”)

“Director” means a Director appointed under subsection 53 (1); (“directeur”)

“extended family” means persons to whom a child is related, including through a spousal relationship or adoption and, in the case of a First Nations, Inuk or Métis child, includes any member of,

- (a) a band of which the child is a member,
- (b) a band with which the child identifies,
- (c) a First Nations, Inuit or Métis community of which the child is a member, and
- (d) a First Nations, Inuit or Métis community with which the child identifies; (“famille élargie”)

“First Nations, Inuit or Métis community” means a community listed by the Minister in a regulation made under section 68; (“communauté inuite, métisse ou de Premières Nations”)

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

- (a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and
- (b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing),

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

“licence” means a licence issued under Part VIII (Adoption and Adoption Licensing) or Part IX (Residential Licensing); a reference to a licence in Part VIII is to a licence issued under that Part and a reference to a licence in Part IX is to a licence issued under that Part; (“permis”)

“licensee” means the holder of a licence; (“titulaire de permis”)

“local director” means a local director appointed under section 38; (“directeur local”)

“mechanical restraints” means a device, material or equipment that reduces the ability of a person to move freely, and includes handcuffs, flex cuffs, leg irons, restraining belts, belly chains and linking chains; (“contentions mécaniques”)

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

- “Ministry” means the ministry of the Minister; (“ministère”)
- “old Act” means the *Child and Family Services Act*; (“ancienne loi”)
- “order” includes a refusal to make an order; (“arrêté, ordre et ordonnance”)
- “personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)
- “physical restraint” means a holding technique to restrict a person’s ability to move freely but, for greater certainty, does not include,
- (a) restricting movement, physical redirection or physical prompting, if the restriction, redirection or prompting is brief, gentle and part of a behaviour teaching program, or
 - (b) the use of helmets, protective mitts or other equipment to prevent a person from physically injuring or further physically injuring themselves; (“contention physique”)
- “place of open custody” means a place or facility designated as a place of open custody under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu ouvert”)
- “place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program; (“lieu de détention provisoire en milieu ouvert”)
- “place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu fermé”)
- “place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program; (“lieu de détention provisoire en milieu fermé”)
- “place of temporary detention” means a place or facility designated as a place of temporary detention under the *Youth Criminal Justice Act* (Canada); (“lieu de détention provisoire”)
- “prescribed” means prescribed by regulations; (“prescrit”)
- “program supervisor” means a program supervisor appointed under subsection 53 (2); (“superviseur de programme”)
- “provincial director” means,
- (a) a person, the group or class of persons or the body appointed or designated by the Lieutenant Governor in Council or the Lieutenant Governor in Council’s delegate to perform any of the duties or functions of a provincial director under the *Youth Criminal Justice Act* (Canada), or
 - (b) a person appointed under clause 146 (1) (a); (“directeur provincial”)
- “record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record; (“dossier”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “relative” means, with respect to a child, a person who is the child’s grandparent, great-uncle, great-aunt, uncle or aunt, including through a spousal relationship or adoption; (“membre de la parenté”)
- “residential care” means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child’s parent, other than boarding, lodging or associated care for a child who has been placed in the lawful care and custody of a relative or member of the child’s extended family or the child’s community; (“soins en établissement”)
- “residential placement” means a place where residential care is provided; (“placement en établissement”, “placé dans un établissement”)
- “service” includes,
- (a) a service for a child with a developmental or physical disability or the child’s family,
 - (b) a mental health service for a child or the child’s family,
 - (c) a service related to residential care for a child,
 - (d) a service for a child who is or may be in need of protection or the child’s family,
 - (e) a service related to adoption for a child, the child’s family or others,
 - (f) counselling for a child or the child’s family,

- (g) a service for a child or the child’s family that is in the nature of support or prevention and that is provided in the community,
- (h) a service or program for or on behalf of a young person for the purposes of the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (i) a prescribed service; (“service”)

“service provider” means,

- (a) the Minister,
- (b) a licensee,
- (c) a person or entity, including a society, that provides a service funded under this Act, or
- (d) a prescribed person or entity,

but does not include a foster parent; (“fournisseur de services”)

“society” means an agency designated as a children’s aid society under subsection 34 (1); (“société”)

“treatment” has the same meaning as in subsection 2 (1) of the *Health Care Consent Act, 1996*; (“traitement”)

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

“young person” means,

- (a) a person who is or, in the absence of evidence to the contrary, appears to be 12 or older but younger than 18 and who is charged with or found guilty of an offence under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (b) if the context requires, any person who is charged under the *Youth Criminal Justice Act* (Canada) with having committed an offence while they were a young person or who is found guilty of an offence under the *Youth Criminal Justice Act* (Canada). (“adolescent”)

Interpretation, “parent”

(2) Unless this Act provides otherwise, a reference in this Act to a parent of a child is deemed to be a reference to,

- (a) the person who has lawful custody of the child; or
- (b) if more than one person has lawful custody of the child, all of the persons who have lawful custody of the child, excluding any person who is unavailable or unable to act, as the context requires.

Member of child’s or young person’s community

(3) For the purposes of this Act, the following persons are members of a child’s or young person’s community:

- 1. A person who has ethnic, cultural or creedal ties in common with the child or young person or with a parent, sibling or relative of the child or young person.
- 2. A person who has a beneficial and meaningful relationship with the child or young person or with a parent, sibling or relative of the child or young person.

Interpretation, child’s or young person’s bands and First Nations, Inuit or Métis communities

(4) In this Act, a reference to a child’s or young person’s bands and First Nations, Inuit or Métis communities includes all of the following:

- 1. Any band of which the child or young person is a member.
- 2. Any band with which the child or young person identifies.
- 3. Any First Nations, Inuit or Métis community of which the child or young person is a member.
- 4. Any First Nations, Inuit or Métis community with which the child or young person identifies.

**PART II
CHILDREN’S AND YOUNG PERSONS’ RIGHTS**

RIGHTS OF CHILDREN AND YOUNG PERSONS RECEIVING SERVICES

Rights of children, young persons receiving services

3 Every child and young person receiving services under this Act has the following rights:

- 1. To express their own views freely and safely about matters that affect them.

2. To be engaged through an honest and respectful dialogue about how and why decisions affecting them are made and to have their views given due weight, in accordance with their age and maturity.
3. To be consulted on the nature of the services provided or to be provided to them, to participate in decisions about the services provided or to be provided to them and to be advised of the decisions made in respect of those services.
4. To raise concerns or recommend changes with respect to the services provided or to be provided to them without interference or fear of coercion, discrimination or reprisal and to receive a response to their concerns or recommended changes.
5. To be informed, in language suitable to their understanding, of their rights under this Part.
6. REPEALED: 2018, c. 17, Sched. 34, s. 6 (1).

2017, c. 14, Sched. 1, s. 3; 2018, c. 17, Sched. 34, s. 6 (1).

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

2018, c. 17, Sched. 34, s. 6 (1) - 01/05/2019

Corporal punishment prohibited

4 No service provider or foster parent shall inflict corporal punishment on a child or young person or permit corporal punishment to be inflicted on a child or young person in the course of the provision of a service to the child or young person.

Detention restricted

5 No service provider or foster parent shall detain a child or young person or permit a child or young person to be detained in locked premises in the course of the provision of a service to the child or young person, except as Part VI (Youth Justice) and Part VII (Extraordinary Measures) authorize.

Physical restraint restricted

6 No service provider or foster parent shall use or permit the use of physical restraint on a child or young person for whom the service provider or foster parent is providing services, except as the regulations authorize.

Mechanical restraints restricted

7 No service provider or foster parent shall use or permit the use of mechanical restraints on a child or young person for whom the service provider or foster parent is providing services, except as Part VI (Youth Justice), Part VII (Extraordinary Measures) and the regulations authorize.

RIGHTS OF CHILDREN IN CARE

Right to be heard in respect of decisions

8 (1) For greater certainty, the rights under section 3 of a child in care apply to decisions affecting them, including decisions with respect to,

- (a) the child’s or young person’s treatment, education or training or work programs;
- (b) the child’s or young person’s creed, community identity and cultural identity; and
- (c) the child’s or young person’s placement in or discharge from a residential placement or transfer to another residential placement.

Views to be given due weight

(2) The child’s or young person’s views with respect to the decisions described in subsection (1) shall be given due weight, in accordance with the child’s or young person’s age and maturity as required by paragraph 2 of section 3.

Right to be informed re residential placement admission

9 Upon admission to a residential placement, and at regular intervals thereafter, or, where intervals are prescribed, at the prescribed intervals thereafter, a child in care has a right to be informed, in language suitable to their understanding, of,

- (a) their rights under this Part;
- (b) the complaints procedures established under subsection 18 (1) and the further review available under section 19;
- (c) the review procedures available for children under sections 64, 65 and 66;
- (d) the review procedures available under section 152, in the case of a young person described in clause (b) of the definition of “child in care” in subsection 2 (1);
- (e) their responsibilities while in the placement; and
- (f) the rules governing day-to-day operation of the residential care, including disciplinary procedures.

Rights of communication, etc.

10 (1) A child in care has a right,

- (a) to speak in private with, visit and receive visits from members of their family or extended family regularly, subject to subsection (2);
- (b) without unreasonable delay, to speak in private with and receive visits from,
 - (i) their lawyer,
 - (ii) another person representing the child or young person,
 - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and
 - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and
- (c) to send and receive written communications that are not read, examined or censored by another person, subject to subsections (3) and (4). 2017, c. 14, Sched. 1, s. 10 (1); 2018, c. 17, Sched. 34, s. 6 (2).

When child is in extended society care

(2) A child in care who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is not entitled as of right to speak with, visit or receive visits from a member of their family or extended family, except under an order for access made under Part V (Child Protection) or an openness order or openness agreement made under Part VIII (Adoption and Adoption Licensing).

Opening, etc., of written communications to child in care

(3) Subject to subsection (4), written communications to a child in care,

- (a) may be opened by the service provider or a member of the service provider's staff in the child's or young person's presence and may be inspected for articles prohibited by the service provider;
- (b) subject to clause (c), may be examined or read by the service provider or a member of the service provider's staff in the child's or young person's presence, where the service provider believes on reasonable grounds that the contents of the written communication may cause the child or young person physical or emotional harm;
- (c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from a person described in subclause (1) (b) (i), (ii), (iii) or (iv); and
- (d) shall not be censored or withheld from the child or young person, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child or young person.

Opening, etc., of young person's written communications

(4) Written communications to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody,

- (a) may be opened by the service provider or a member of the service provider's staff in the young person's presence and may be inspected for articles prohibited by the service provider;
- (b) may be examined or read by the service provider or a member of the service provider's staff and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications,
 - (i) may be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody, or
 - (ii) may contain communications that are prohibited under the *Youth Criminal Justice Act* (Canada) or by court order;
- (c) shall not be examined or read under clause (b) if it is to or from the young person's lawyer; and
- (d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is to or from a person described in subclause (1) (b) (ii), (iii) or (iv).

Definition

(5) In this section,

“written communications” includes mail and electronic communication in any form.

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

2018, c. 17, Sched. 34, s. 6 (2) - 01/05/2019

Conditions and limitations on visitors

11 (1) A service provider may impose such conditions and limitations on persons who are visiting a young person in a place of temporary detention, of open custody or of secure custody as are necessary to ensure the safety of staff or young persons in the facility.

Suspending visits in emergencies

(2) Where a service provider has reasonable grounds to believe there are emergency circumstances within a facility that is a place of temporary detention, of open custody or of secure custody or within the community that may pose a risk to staff or young persons in the facility, the service provider may suspend visits until there are reasonable grounds to believe the emergency has been resolved and there is no longer a risk to staff or young persons in the facility.

Limited exception

(3) Despite subsection (2), the service provider may not suspend visits from,

- (a) REPEALED: 2018, c. 17, Sched. 34, s. 6 (3).
- (b) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff; or
- (c) a member of the Legislative Assembly of Ontario or of the Parliament of Canada,

unless the provincial director determines that suspension is necessary to ensure public safety or the safety of staff or young persons in the facility. 2017, c. 14, Sched. 1, s. 11 (3); 2018, c. 17, Sched. 34, s. 6 (3).

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

2018, c. 17, Sched. 34, s. 6 (3) - 01/05/2019

Personal liberties

12 A child in care has a right,

- (a) to have reasonable privacy and possession of their own personal property, subject to section 155; and
- (b) to receive instruction and participate in activities of their choice related to their creed, community identity and cultural identity, subject to section 14.

Plan of care

13 (1) A child in care has a right to a plan of care designed to meet their particular needs, which shall be prepared within 30 days of the child's or young person's admission to the residential placement.

Rights to care

(2) A child in care has a right,

- (a) to participate in the development of their individual plan of care and in any changes made to it;
- (b) to have access to food that is of good quality and appropriate for the child or young person, including meals that are well balanced;
- (c) to be provided with clothing that is of good quality and appropriate for the child or young person, given their size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to section 14, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to their aptitudes and abilities, in a community setting whenever possible; and
- (f) to participate in recreational, athletic and creative activities that are appropriate for their aptitudes and interests, in a community setting whenever possible.

Parental consent, etc.

14 Subject to subsection 94 (7) and sections 110 and 111 (custody during adjournment, interim and extended society care), the parent of a child in care retains any right that the parent may have,

- (a) to direct the child's or young person's education and upbringing, in accordance with the child's or young person's creed, community identity and cultural identity; and
- (b) to consent to treatment on behalf of an incapable child or young person, if the parent is the child's or young person's substitute decision-maker in accordance with section 20 of the *Health Care Consent Act, 1996*.

SERVICE PROVIDERS' DUTIES IN RESPECT OF CHILDREN'S AND YOUNG PERSONS' RIGHTS

Children's, young persons' rights to respectful services

15 (1) Service providers shall respect the rights of children and young persons as set out in this Act.

Children, young persons to be heard and represented

(2) Service providers shall ensure that children and young persons and their parents have an opportunity to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.

Exception

(3) Subsection (2) does not apply to a child or young person or parent of a child or young person if there is good cause for not giving that person an opportunity to be heard or represented as described in that subsection.

Criteria and safeguards re decisions

(4) Service providers shall ensure that decisions affecting the interests and rights of children and young persons and their parents are made according to clear, consistent criteria and are subject to appropriate procedural safeguards.

(5) REPEALED: 2018, c. 17, Sched. 34, s. 6 (4).

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

2018, c. 17, Sched. 34, s. 6 (4) - 01/05/2019

French language services

16 Service providers shall, where appropriate, make services to children and young persons and their families available in the French language.

ALTERNATIVE DISPUTE RESOLUTION

Resolution of issues by prescribed method of alternative dispute resolution

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

First Nations, Inuk or Métis child

(2) If the issue referred to in subsection (1) relates to a First Nations, Inuk or Métis child, the society shall consult with a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities to determine whether an alternative dispute resolution process established by the bands and communities or another prescribed alternative dispute resolution process could assist in resolving the issue.

Children's Lawyer

(3) If a society or a person, including a child, who is receiving child welfare services proposes that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken to assist in resolving an issue relating to a child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

Notice to band, community

(4) If a society makes or receives a proposal that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken under subsection (3) in a matter involving a First Nations, Inuk or Métis child, the society shall give notice of the proposal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

COMPLAINTS AND REVIEWS

Complaints procedure

18 (1) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with,

- (a) complaints regarding alleged violations of the rights under this Part of children in care; and
- (b) complaints by children in care or other persons affected by conditions or limitations imposed on visitors under subsection 11 (1) or suspensions of visits under subsection 11 (2).

(2) REPEALED: 2018, c. 17, Sched. 34, s. 6 (5).

Review of complaint

(3) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under clause (1) (a) or (b), on the complaint of,

- (a) a child in care or a group of children in care;
- (b) the parent of a child in care who makes a complaint;
- (c) another person representing the child in care who makes a complaint; or
- (d) a person affected by a condition or limitation imposed on visitors under subsection 11 (1) or a suspension of visits under subsection 11 (2),

and shall seek to resolve the complaint.

Response to complainants

(4) Upon completion of its review under subsection (3), the service provider shall inform each person who made the complaint, whether as an individual or as part of a group, of the results of the review.

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

2018, c. 17, Sched. 34, s. 6 (5) - 01/05/2019

Further review

19 (1) Where a person referred to in subsection 18 (3) makes a complaint, whether as an individual or as part of a group, and is not satisfied with the results of the review conducted under that subsection and requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

Same

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may do so by holding a hearing.

Procedure

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

Powers of appointed person

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 53 (2).

Review and report within 30 days

(5) A person appointed under subsection (1) shall, within 30 days after the day of the appointment, complete the review, set out in a report the person's findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) each person who made the complaint, whether as an individual or as part of a group;
- (b) the service provider; and
- (c) the Minister.

Minister to advise persons affected of any decision

20 (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 19 (5), the Minister shall advise the service provider and each person who made the complaint, whether as an individual or as part of a group, of the decision.

Remedies preserved

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available.

CONSENT AND VOLUNTARY SERVICES

Consents and agreements

21 (1) In this section,

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

“nearest relative”, when used in reference to a person who is younger than 16, means the person with lawful custody of the person, and when used in reference to a person who is 16 or older, means the person who would be authorized to give or refuse consent to a treatment on the person's behalf under the *Health Care Consent Act, 1996* if the person were incapable with respect to the treatment under that Act. (“membre de la parenté le plus proche”)

Elements of valid consent or agreement, etc.

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

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

Where person lacks capacity

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

Exceptions: ss. 180, 74 (2) (n)

(4) Subsection (3) does not apply to a consent under section 180 (consents to adoption) or to a parent's consent referred to in clause 74 (2) (n) (child in need of protection).

Consent, etc., of minor

(5) A person's consent or withdrawal of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is younger than 18.

Exception: Part X

(6) This section does not apply in respect of the collection, use or disclosure of personal information under Part X (Personal Information).

Consent to service

Consent to service: person 16 or older

22 (1) Subject to clause (2) (b) and subsection (3), a service provider may provide a service to a person who is 16 or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.

Consent to residential care: child younger than 16 or in society's care

- (2) A service provider may provide residential care to a child,
- (a) if the child is younger than 16, with the consent of the child's parent; and
 - (b) if the child is in a society's lawful custody, with the society's consent,

except where this Act provides otherwise.

Exception — Part VI

(3) Subsections (1) and (2) do not apply where a service is provided to a young person under Part VI (Youth Justice).

Discharge from residential placement

(4) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) may only be discharged from the placement,

- (a) with the consent that would be required for a new residential placement;
- (b) where the placement is made under the authority of an agreement made under subsection 75 (1) (temporary care agreements), in accordance with section 76 (notice of termination); or
- (c) where the placement is made under the authority of an agreement made under subsection 77 (1) (agreements with 16 and 17 year olds), in accordance with subsection 77 (4) (notice of termination).

Transfer to another placement

(5) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

Child's views and wishes

(6) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall,

- (a) ensure that the child and the person whose consent is required under subsection (2) are made aware of and understand, as far as possible, the reasons for the placement, discharge or transfer; and
- (b) take the child's views and wishes into account, given due weight in accordance with the child's age and maturity.

Application of *Health Care Consent Act, 1996*

(7) If the service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of this section.

Counselling service: child 12 or older

23 (1) A service provider may provide a counselling service to a child who is 12 or older with the child's consent, and no other person's consent is required, but if the child is younger than 16, the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

Application of *Health Care Consent Act, 1996*

(2) If the counselling service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of subsection (1).

**PART III
FUNDING AND ACCOUNTABILITY**

Definition

24 In this Part,

“lead agency” means an entity designated as a lead agency under subsection 30 (1).

FUNDING OF SERVICES AND LEAD AGENCIES

Provision of services directly or by others

25 The Minister may,

- (a) provide services;
- (b) establish, operate and maintain premises for the provision of services;
- (c) provide funding, pursuant to agreements, to persons, agencies, municipalities, organizations and other prescribed entities,
 - (i) for the provision or coordination of services by them,
 - (ii) for the acquisition, maintenance or operation of premises used for the provision or coordination of services,
 - (iii) for the establishment of advisory groups or committees with respect to services,
 - (iv) for research, evaluation, planning, development, co-ordination or redesign with respect to services,
 - (v) for any other prescribed purpose; and
- (d) provide funding, pursuant to agreements, to lead agencies with respect to the performance of the functions referred to in subsection 30 (5).

Services to persons older than 18

26 The Minister may provide services and provide funding pursuant to agreements for the provision of services to persons who are not children, and to their families, as if those persons were children.

Minister's advisory committee

27 The Minister may appoint members to a Minister's advisory committee, established by order of the Lieutenant Governor in Council, to advise the Minister on child and family well-being.

Security for payment of funds

28 The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, charge, caution, registration of agreement or in such other manner as the Minister determines.

Conditions on transfer of assets

29 No service provider or lead agency shall transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations or any term of an agreement with the Minister.

Lead agencies

Designation

30 (1) The Minister may designate an entity as a lead agency.

Conditions of designation

(2) The Minister may impose conditions on a designation made under this section and may at any time amend or remove the conditions or impose new ones.

Revocation of designation

(3) The Minister may revoke a designation made under this section.

Categories of lead agencies

(4) The Minister may assign lead agencies to different lead agency categories established by the regulations.

Functions of lead agencies

(5) Every lead agency shall perform the functions assigned to the lead agency's category by the regulations.

List of lead agencies and categories

(6) The Minister shall maintain a list of lead agencies and their categories.

Public availability

(7) The Minister shall make the list available to the public.

Placements must comply with Act and regulations, etc.

31 No service provider shall place a child in a residential placement except in accordance with this Act, the regulations and the directives issued under this Act.

DIRECTIVES AND COMPLIANCE ORDERS (LEAD AGENCIES AND SERVICE PROVIDERS)

Directives by Minister

Non-application

32 (1) This section and section 33 do not apply in respect of,

- (a) licensees under Part IX (Residential Licensing), when acting in their capacity as licensees under that Part; or
- (b) societies, when performing their functions under subsection 35 (1).

Directives

(2) The Minister may issue directives to service providers and lead agencies with respect to any prescribed matter.

Binding

(3) Every service provider and lead agency shall comply with every directive issued to it under this section.

General or particular

(4) A directive may be general or particular in its application.

Law prevails

(5) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

Public availability

(6) The Minister shall make every directive under this section available to the public.

Non-application of Legislation Act, 2006

(7) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

Compliance order

Grounds

33 (1) A program supervisor may make an order under subsection (2) if the program supervisor believes on reasonable grounds that a service provider or lead agency has failed to comply with,

- (a) this Act or the regulations;
- (b) a directive issued under section 32;

- (c) in the case of a service provider, an agreement referred to in clause 25 (c) or section 26; or
- (d) in the case of a lead agency,
 - (i) an agreement referred to in clause 25 (d);
 - (ii) a condition imposed on the lead agency's designation under subsection 30 (2), or
 - (iii) subsection 30 (5) (functions of lead agencies).

Order

(2) For the purposes of subsection (1), a program supervisor may issue an order to the service provider or lead agency that requires either or both of the following:

1. That the service provider or lead agency do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
2. That the service provider or lead agency prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

Compliance required

(3) A service provider or lead agency served with an order under this section shall comply with the order within the time specified in it.

Public availability

- (4) The Minister,
- (a) may make orders under this section available to the public; and
 - (b) shall make a summary of each order under this section available to the public in accordance with the regulations.

Failure to comply

(5) If a service provider or lead agency fails to comply with an order made under this section within the time specified in it, the Minister may terminate all or part of the funding provided to the service provider or lead agency.

CHILDREN'S AID SOCIETIES

Children's aid society

Designation

34 (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 35 (1).

Conditions on designation

(2) For any or all of the functions of a society set out in subsection 35 (1), the Minister may impose conditions on the designation and may at any time amend or remove the conditions or impose new ones.

Amendment of designation

(3) The Minister may at any time amend a designation to provide that the society is no longer designated for a particular function or functions set out in subsection 35 (1) or to alter the society's territorial jurisdiction.

Society deemed to be a local board

(4) A society is deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act, 2006* and the *Municipal Conflict of Interest Act*.

Not Crown agents

(5) A society and its members, officers, employees and agents are not agents of the Crown in right of Ontario and shall not hold themselves out as such.

No Crown liability

(6) No action or other proceeding shall be instituted against the Crown in right of Ontario for any act or omission of a society or its members, officers, employees or agents.

Functions

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

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;

- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VIII (Adoption and Adoption Licensing); and
- (g) perform any other duties given to it by this Act or the regulations or any other Act.

Prescribed standards, etc.

- (2) A society shall,
 - (a) provide the prescribed standard of services in its performance of its functions; and
 - (b) follow the prescribed procedures and practices.

Governance matters

First Nations, Inuit or Métis representatives on board

36 (1) A society that provides services to First Nations, Inuit or Métis children and families shall have the prescribed number of First Nations, Inuit or Métis representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

Employee may not sit on board

(2) An employee of a society shall not be a member of the society’s board.

By-laws

(3) The by-laws of a society shall include any provisions that are prescribed.

No personal liability

37 No action shall be instituted against a member of the board of directors or an officer or employee of a society for any act done in good faith in the execution or intended execution of the person’s duty or for an alleged neglect or default in good faith in the execution of that duty.

Appointment of local director

38 Every society shall appoint a local director with the prescribed qualifications, powers and duties.

Designation of places of safety

39 For the purposes of Part V (Child Protection), a local director may designate a place as a place of safety and may designate a class of places as places of safety.

FUNDING AND ACCOUNTABILITY AGREEMENTS

Funding

Payments by Minister

40 (1) The Minister shall pay to every society, out of money appropriated for the purpose by the Legislature, an amount determined in accordance with the regulations.

Manner of payment

(2) An amount payable to a society under subsection (1), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister.

Accountability agreement

41 (1) Every society shall enter into an accountability agreement with the Minister as a condition of receiving funding.

Term

(2) The term of an accountability agreement shall be for at least one of the Ministry’s fiscal years but may be for a longer term specified by the Minister.

Board approval

(3) The society’s board of directors shall approve the accountability agreement before the society enters into the agreement.

Content

(4) An accountability agreement must include a requirement that the society operate within its approved budget allocation and any other prescribed terms.

If no agreement

(5) If the Minister and a society cannot agree on the terms of an accountability agreement by a date determined by the Minister, the Minister may set the terms of the agreement.

DIRECTIVES AND COMPLIANCE ORDERS (SOCIETIES)

Directives by Minister

42 (1) The Minister may issue directives to societies, including directives with respect to financial and administrative matters and the performance of their functions under subsection 35 (1).

Binding

(2) A society shall comply with every directive issued to it under this section.

General or particular

(3) A directive may be general or particular in its application.

Law prevails

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

Public availability

(5) The Minister shall make every directive under this section available to the public.

Non-application of *Legislation Act, 2006*

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

Compliance order

Grounds

43 (1) A Director may make an order under subsection (2) if the Director believes on reasonable grounds that a society has failed to comply with,

- (a) this Act or the regulations;
- (b) a condition imposed on the society's designation under subsection 34 (2);
- (c) an accountability agreement entered into under section 41; or
- (d) a directive issued under section 42.

Order

(2) For the purposes of subsection (1), a Director may issue an order to the society that requires either or both of the following:

1. That the society do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
2. That the society prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

Compliance required

(3) A society served with an order under this section shall comply with the order within the time specified in it.

Public availability

(4) The Minister,

- (a) may make orders under this section available to the public; and
- (b) shall make a summary of each order under this section available to the public in accordance with the regulations.

MINISTER'S POWERS

Powers of Minister

Grounds

44 (1) The Minister may exercise a power set out in subsection (3) if,

- (a) a society has failed to comply with a compliance order made under section 43 within the time specified in it; or
- (b) the Minister considers it to be in the public interest to do so.

Public interest

(2) In considering the public interest under clause (1) (b), the Minister may consider any matter the Minister regards as relevant including,

- (a) the quality of the financial and operational management of the society;
- (b) the society's capabilities with respect to its corporate governance; and
- (c) the quality of services provided by the society.

Powers

(3) For the purposes of subsection (1), the Minister may do one or more of the following:

1. Order that the society cease a particular activity or take other corrective action within the time specified in the order.
2. Impose or amend conditions on the society's designation under subsection 34 (1).
3. Suspend, amend or revoke the designation of the society.
4. Appoint members of the society's board of directors if,
 - i. there are vacancies on the board, or
 - ii. there are no vacancies, but the appointment is for the purposes of designating that member as chair of the board under paragraph 7.
5. Remove members of the board and appoint others in their place.
6. Designate a chair of the board, if the office of chair is vacant.
7. Designate another chair of the board in place of the current chair.
8. Appoint a supervisor to operate and manage the affairs and activities of the society.

Notice of proposal

(4) If the Minister proposes to act under subsection (3), the Minister shall give written notice of the proposal and reasons for it to the society.

Immediate action

(5) Subsection (4) does not apply if,

- (a) in the Minister's opinion, the society has, by its conduct, acquiesced to the Minister's proposal;
- (b) the society has consented to the proposal; or
- (c) there are not enough members on the board to form a quorum.

Right to respond

(6) A society that receives notice under subsection (4) may make written submissions to the Minister within 14 days after receipt of the notice or within a different time period specified in the notice.

Minister's decision

(7) After considering a written submission from the society or, if no submission is received, after the time period under subsection (6) has expired, the Minister may carry out the proposal and shall give written notice of the decision and reasons for it to the society.

Decision final

(8) The Minister's decision is final.

Provisional action

(9) Despite subsection (4), the Minister may provisionally exercise any of the powers set out in subsection (3) where, in the Minister's opinion, it is necessary to do so to avert an immediate threat to the public interest or to a person's health, safety or well-being.

Notice

(10) The Minister shall give written notice of the provisional exercise of the power and reasons for it to the society.

Decision final

(11) The Minister's decision to provisionally exercise the power is final.

Appointments to board, etc.

Members

45 (1) If the Minister appoints members of a society's board of directors under paragraph 4 or 5 of subsection 44 (3), the following rules apply:

1. The Minister shall ensure that the members do not constitute a majority of the number of members required to be on the board.
2. The members shall be appointed at the pleasure of the Minister for a period that does not exceed two years.
3. The members may serve as appointed members for no more than two consecutive years.
4. The members shall have the same rights and responsibilities as the members of the board that have been elected.

Chair

(2) If the Minister designates a chair of the board of directors under paragraph 6 or 7 of subsection 44 (3), the following rules apply:

1. The chair may be designated from among the members of the board, including any members appointed by the Minister under paragraph 4 or 5 of subsection 44 (3).
2. The chair shall be designated at the pleasure of the Minister for a period that does not exceed two years.
3. The chair may serve as chair for no more than two consecutive years.
4. In the case of a designation under paragraph 7 of subsection 44 (3), the former chair may remain a member of the board.

Appointment of supervisor

46 (1) This section applies if a supervisor is appointed to operate and manage the affairs and activities of a society under paragraph 8 of subsection 44 (3).

Term of appointment

(2) The appointment of a supervisor is valid for a period not exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period at any time.

Powers and duties of supervisor

(3) Unless the appointment provides otherwise, the supervisor has the exclusive right to exercise all the powers and perform all the duties of the society and its members, directors, Executive Director and officers.

Same

(4) The Minister may, in the appointment, specify the supervisor's powers and duties and the conditions governing them.

Examples of powers and duties

(5) Without limiting the generality of subsection (4), the supervisor's powers and duties may include the following:

1. Carrying on the society's affairs and activities.
2. Entering into contracts on the society's behalf.
3. Arranging for bank accounts to be opened in the society's name.
4. Authorizing persons to sign financial and other documents on the society's behalf.
5. Hiring or dismissing employees of the society.
6. Making, amending or revoking the society's by-laws.
7. Executing and filing documents on the society's behalf, including applications under the *Corporations Act* and notices and returns under the *Corporations Information Act*.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, paragraph 7 of subsection 46 (5) of the Act is amended by striking out "the *Corporations Act*" and substituting "the *Not-for-Profit Corporations Act, 2010*". (See: 2017, c. 14, Sched. 3, s. 1)

Continued powers and duties of society, etc.

(6) If, under the appointment, the society or its members, directors, Executive Director or officers continue to have any powers or duties during the supervisor's appointment, any exercise of that power or performance of that duty by the society or its members, directors, Executive Director or officers during that time is valid only if approved by the supervisor in writing.

Assistance

(7) The supervisor may apply to the Superior Court of Justice for an order directing a peace officer to assist the supervisor in occupying the premises of a society.

Report to Minister

(8) The supervisor shall report to the Minister as the Minister requires.

Minister's directions

(9) The Minister may issue directions to the supervisor with regard to any matter within the supervisor's jurisdiction, and the supervisor shall carry them out.

No proceedings against Crown

(10) No proceeding, other than a proceeding referred to in subsection (12), shall be commenced against the Crown or the Minister with respect to the appointment of the supervisor or any act of the supervisor done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

No personal liability

(11) No action or other proceeding shall be instituted against the supervisor for any act done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

Crown liability

(12) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (11) of this section does not relieve the Crown of liability to which the Crown would otherwise be subject in respect of a tort committed by a supervisor. 2017, c. 14, Sched. 1, s. 46 (12); 2019, c. 7, Sched. 17, s. 44 (1).

Effect on board

(13) On the appointment of a supervisor, the members of the society's board cease to hold office, unless the appointment provides otherwise.

Same

(14) During the term of the supervisor's appointment, the powers of any member of the board who continues to hold office are suspended, unless the appointment provides otherwise.

No personal liability

(15) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the supervisor after the member's removal under subsection (13) or while the member's powers are suspended under subsection (14).

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

2017, c. 14, Sched. 3, s. 1 - not in force

2019, c. 7, Sched. 17, s. 44 (1) - 01/07/2019

RESTRUCTURING

Amalgamation by societies

Amalgamation proposal

47 (1) Two or more societies that are proposing to amalgamate and continue as one society shall submit an amalgamation proposal to the Minister containing the information and in the form specified by the Minister.

Minister approval of proposal

(2) The Minister may amend the amalgamation proposal and may approve it in whole or in part.

Amalgamation agreement

(3) The societies shall not enter into an agreement to amalgamate under subsection 113 (2) of the *Corporations Act* until they have received the Minister's approval of the amalgamation proposal under subsection (2). The amalgamation agreement must be consistent with the amalgamation proposal.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, subsection 47 (3) of the Act is amended by striking out "subsection 113 (2) of the *Corporations Act*" and substituting "subsection 110 (2) of the *Not-for-Profit Corporations Act, 2010*". (See: 2017, c. 14, Sched. 3, s. 2 (1))

Minister approval of amalgamation application

(4) The societies shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, subsection 47 (4) of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 2 (2))

Minister approval of articles of amalgamation

(4) The societies shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister. 2017, c. 14, Sched. 3, s. 2 (2).

Minister's directions

(5) The Minister may, at any time, issue directions to the societies with regard to the proposed amalgamation, including requiring that a society provide information or documents to the Minister, and the society shall comply with the directions.

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

2017, c. 14, Sched. 3, s. 2 - not in force

Restructuring by Minister's order

48 (1) If the Minister considers it to be in the public interest, including to enhance the efficiency, effectiveness and consistency of services, the Minister may order a society to do any of the following on or after the date set out in the order:

1. To amalgamate with one or more other societies.
2. To transfer all or any part of its operations to one or more other societies.
3. To cease operating, to dissolve or to wind up its operations.
4. To do anything or refrain from doing anything in order for the society to achieve anything under paragraphs 1 to 3.

Minister's directions

(2) The Minister may, in the order, include directions to provide the following to the Minister within the time set out in the order:

1. A plan to implement the order, including with respect to the transfer of assets, liabilities, rights and obligations, and of employees.
2. A timeline according to which the order will be implemented.
3. A proposed budget for implementation of the order.
4. Information about the status of the implementation of the order.
5. In the case of an order made under paragraph 1 of subsection (1), an amalgamation agreement for the Minister's approval.
6. Information with respect to any other matter specified by the Minister.

Notice of proposed order

(3) If the Minister proposes to make an order under subsection (1), the Minister shall give written notice of the proposed order and any directions contained in the order, and reasons for them, to each affected society.

Notice to employees and bargaining agents

(4) Each society that receives a notice under subsection (3) shall give a copy of the notice to affected employees and their bargaining agents.

Right to respond re directions

(5) A society may make written submissions to the Minister within 30 days after receipt of the notice or within a different time period specified in the notice. The written submissions may be with respect to any directions contained in the order, but not with respect to the order itself.

Minister's decision re directions

(6) After considering a written submission from the society or, if no submission is received, after the time period under subsection (5) has expired, the Minister may confirm, revoke or amend the directions contained in the order.

Notice of order

(7) The Minister shall give a copy of the order to each affected society.

Duty of society

(8) Each society that receives an order under subsection (7) shall,

- (a) give notice of the order to affected employees and their bargaining agents and to other persons or entities whose contracts are affected by the order; and
- (b) make the order available to the public.

Additional changes

(9) The Minister may, at any time, revoke or amend an order made under this section, including any directions contained in the order. If the Minister does so, subsections (3) to (8) apply with necessary modifications.

Compliance

(10) A society that is the subject of an order under this section shall comply with it.

Corporate powers

(11) A society that is the subject of an order under this section is deemed to have the necessary powers to comply with the order, despite any of the following:

1. Any Act or regulation.
2. Any other instrument related to the corporate governance of a society, including the *Corporations Act* or any letters patent, supplementary letters patent or by-laws.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, paragraph 2 of subsection 48 (11) of the Act is amended by striking out “the *Corporations Act* or any letters patent, supplementary letters patent or by-laws” at the end and substituting “the *Not-for-Profit Corporations Act, 2010* or any articles or by-laws”. (See: 2017, c. 14, Sched. 3, s. 3 (1))

Non-application of *Legislation Act, 2006*

(12) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under this section.

Minister approval of amalgamation agreement

(13) When a society provides an amalgamation agreement to the Minister in accordance with directions given under paragraph 5 of subsection (2), the Minister may amend the agreement and may approve it in whole or in part.

Minister approval of amalgamation application

(14) A society shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, subsection 48 (14) of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 3 (2))

Minister approval of articles of amalgamation

(14) A society shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister. 2017, c. 14, Sched. 3, s. 3 (2).

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

2017, c. 14, Sched. 3, s. 3 - not in force

Appointment of supervisor for restructuring

49 (1) The Minister may appoint a supervisor to implement or facilitate the implementation of an order made under section 48 if,

- (a) an affected society has failed to comply with the order; or
- (b) in the Minister’s opinion, there is undue delay, lack of progress or disagreement between or among affected parties that is preventing or is likely to prevent an affected society from complying with the order.

Application of other provisions

(2) If the Minister proposes to appoint a supervisor under subsection (1), subsections 44 (4) to (8) and subsections 46 (2) to (15) apply with necessary modifications.

Board compliance

(3) The members of an affected society’s board of directors shall comply with decisions of a supervisor appointed under subsection (1) to facilitate the implementation of an order made under section 48 with regard to matters within the supervisor’s jurisdiction.

Conflict with *Corporations Act*, etc.

50 In the event of a conflict between sections 44 to 49 and any of the following, sections 44 to 49 prevail:

1. The *Corporations Act* or regulations made under that Act.
2. A society's letters patent, supplementary letters patent or by-laws.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, section 50 of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 4)

Conflict with society's articles or by-laws

50 In the event of a conflict between sections 44 to 49 and a society's articles or by-laws, sections 44 to 49 prevail. 2017, c. 14, Sched. 3, s. 4.

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

2017, c. 14, Sched. 3, s. 4 - not in force

Transfer of property held for charitable purpose

51 (1) If an order made under section 48 directs a society to transfer to a transferee property that it holds for a charitable purpose, all gifts, trusts, bequests, devises and grants of property that form part of the property being transferred are deemed to be gifts, trusts, bequests, devises and grants of property to the transferee.

Specified purpose

(2) If a will, deed or other document by which a gift, trust, bequest, devise or grant mentioned in subsection (1) is made indicates that the property being transferred is to be used for a specified purpose, the transferee shall use it for the specified purpose.

Application

(3) Subsections (1) and (2) apply whether the will, deed or document by which the gift, trust, bequest, devise or grant is made, is made before or after this section comes into force.

No compensation

52 (1) Despite any other Act, no person or entity, including a society, is entitled to any compensation for any loss or damages arising from any direct or indirect action that the Minister or a supervisor appointed under section 44 or 49 takes under this Act, including making an order under section 48.

Same, transfer of property

(2) Despite any other Act, no person or entity, including a society, is entitled to compensation for any loss or damages, including loss of use, loss of revenue and loss of profit, arising from the transfer of property under an order made under section 48.

No expropriation

(3) Nothing in this Part and nothing done or not done in accordance with this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

APPOINTMENTS AND DELEGATIONS

Directors and program supervisors

Appointment of Director

53 (1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

Appointment of program supervisor

(2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

Limitations, etc., on appointments

(3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

Remuneration and expenses

(4) The remuneration and expenses of a person appointed under this section who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of money appropriated for the purpose by the Legislature.

Duties of Director with respect to societies

54 (1) A Director shall exercise the powers and perform the duties of a society in any area in which no society is functioning.

Powers of local director

(2) In exercising the powers and performing the duties of a society under subsection (1), a Director has all the powers of a local director.

Delegation by Minister

55 (1) Where, under this Act, a power is given to or a duty is imposed on the Minister, a Director, a program supervisor or an employee in the Ministry, the Minister may delegate that power or duty to any other person or class of persons.

Conditions, etc.

(2) The delegation must be made in writing and is subject to such limitations, conditions and requirements as are set out in it.

Deeds and contracts

(3) Section 6 of the *Executive Council Act* does not apply to a deed or contract that is executed under a delegation made under this section.

REPORTS AND INFORMATION

Reports and information to Minister

56 Every service provider and lead agency shall,

- (a) make the prescribed reports and provide the prescribed information, including personal information, to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) make a report and provide information, including personal information, to the Minister whenever the Minister requests it.

Reports and information to prescribed entities

57 Every service provider and lead agency shall provide the prescribed reports and the prescribed information to the prescribed entities in the prescribed manner.

Information available to the public

58 Every service provider and lead agency shall make the prescribed information available to the public in the prescribed manner.

PROGRAM SUPERVISOR INSPECTIONS

Inspection by program supervisor without a warrant

59 (1) For the purpose of determining compliance with this Act, the regulations and the directives issued under this Act, a program supervisor may, at any reasonable time and without a warrant or notice, enter the following premises in order to conduct an inspection:

1. Premises where a service is provided under this Act.
2. Premises where a lead agency's function referred to in subsection 30 (5) is performed.
3. Business premises of a service provider.
4. Business premises of a lead agency.

Limitation, dwelling

(2) The power to enter and inspect a premises described in subsection (1) shall not be exercised to enter and inspect any room or place actually being used as a dwelling, except with the consent of the occupier.

Identification

(3) A program supervisor conducting an inspection shall, upon request, produce proper identification.

Application of other provisions

(4) Sections 276 (powers on inspection) and 279 (admissibility of certain documents) apply with necessary modifications with respect to an inspection conducted under this section.

Inspection by program supervisor with a warrant

60 (1) A program supervisor may, without notice, apply to a justice for a warrant under this section.

Issuance of warrant

(2) A justice may issue a warrant authorizing a program supervisor named in the warrant to enter the premises specified in the warrant and to exercise any of the powers mentioned in subsection 276 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises is a premises described in subsection 59 (1);
- (b) in the case of a premises that is not used as a dwelling,
 - (i) that the program supervisor has been prevented from exercising a right of entry to the premises under section 59 or a power under subsection 276 (1), or
 - (ii) that there are reasonable grounds to believe that the program supervisor will be prevented from exercising a right of entry to the premises under section 58 or a power under subsection 276 (1); and
- (c) in the case of a premises that is used as a dwelling,
 - (i) that,
 - (A) the program supervisor believes on reasonable grounds that a service being provided, or the manner of providing it, is causing harm or is likely to cause harm to a person's health, safety or well-being as a result of non-compliance with this Act, the regulations or the directives issued under this Act, and
 - (B) it is necessary for the program supervisor to exercise the powers mentioned in subsection 276 (1) in order to inspect the service or the manner of providing it, or
 - (ii) that a ground exists that is prescribed for the purposes of this subclause.

Expert help

(3) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the program supervisor in the execution of the warrant.

Expiry of warrant

(4) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

Extension of time

(5) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the program supervisor named in the warrant.

Use of force

(6) A program supervisor named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

Time of execution

(7) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

Other matters

(8) Subsections 276 (2) to (7) and section 279 apply with necessary modifications with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.

Definition

(9) In this section,

“justice” means a provincial judge or a justice of the peace.

Inspection report

61 (1) After completing an inspection, a program supervisor shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the service provider or lead agency; and
- (c) any other prescribed person.

All non-compliance to be documented

(2) If a program supervisor finds that a service provider or lead agency has not complied with a requirement of this Act, the regulations or a directive issued under this Act, the program supervisor shall document the non-compliance in the inspection report.

REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE

Definitions

62 In sections 63 to 66,

“advisory committee” means a residential placement advisory committee established under subsection 63 (1); (“comité consultatif”)

“institution” means,

- (a) a children’s residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Residential Licensing) in which residential care can be provided to 10 or more children at a time, or
- (b) a building, group of buildings or part of a building, designated by a Director, in which residential care can be provided to 10 or more children at a time; (“foyer”)

“residential placement” does not include,

- (a) a placement made under the *Youth Criminal Justice Act* (Canada) or under Part VI (Youth Justice),
- (b) commitment to a secure treatment program under Part VII (Extraordinary Measures), or
- (c) a placement with a person who is neither a service provider nor a foster parent; (“placement en établissement”)

“special need” means a need that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability. (“besoin particulier”)

Residential placement advisory committees

63 (1) The Minister may establish residential placement advisory committees and shall specify the territorial jurisdiction of each advisory committee.

Composition

(2) Each residential placement advisory committee shall consist of persons whom the Minister considers appropriate, which may include,

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, a representative of a band or First Nations, Inuit or Métis community.

Payments to members, hiring of staff

(3) The Minister may pay allowances and reasonable travelling expenses to the members of an advisory committee, and may authorize an advisory committee to hire support staff.

Duties of advisory committee

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential care and alternatives to residential care, to conduct reviews under section 64 and to name persons for the purpose of subsection 75 (11) (contact with child under temporary care agreement), and has such further duties as are prescribed.

Reports to Minister

(5) An advisory committee shall make a report of its activities to the Minister annually and at any other time requested by the Minister.

Review by advisory committee

Mandatory review

64 (1) An advisory committee shall review,

- (a) every residential placement in an institution of a child who resides within the advisory committee’s jurisdiction, if the residential placement is intended to last or actually lasts 90 days or more,
 - (i) as soon as possible, but no later than 45 days after the day on which the child is placed in the institution,

- (ii) unless the residential placement is reviewed under subclause (i), within 12 months of the establishment of the advisory committee or within such longer period as the Minister allows, and
- (iii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i) or (ii);
- (b) every residential placement of a child who objects to the residential placement and resides within the advisory committee's jurisdiction,
 - (i) within the week immediately following the day that is 14 days after the child is placed, and
 - (ii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within 30 days of the referral.

Discretionary review

(2) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction.

Review to be informal, etc.

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

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records relating to the child and members of the child's family that are disclosed to the committee.

Service providers to assist advisory committee

(4) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review.

Matters to be considered

(5) In conducting a review, an advisory committee shall,

- (a) consider whether the child has a special need;
- (b) consider the child's views and wishes, given due weight in accordance with the child's age and maturity;
- (c) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (d) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- (e) if it considers that a less restrictive alternative to the residential placement would be more appropriate for the child in the circumstances, specify that alternative;
- (f) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (g) in the case of a First Nations, Inuk or Métis child, also consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

Advisory committee's recommendations

Persons to be advised

65 (1) An advisory committee that conducts a review shall advise the following persons of its recommendations as soon as the review has been completed:

1. The service provider.
2. Any representative of the child.
3. The child's parent or, where the child is in a society's lawful custody, the society.

4. The child, in language suitable to the child's understanding.

5. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2, 3 and 4 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Child to be advised of right to review by Board of residential placement

(2) An advisory committee that conducts a review shall advise the child of the child's right to a further review under section 66.

Report to Minister

(3) An advisory committee that conducts a review shall, within 30 days of completing the review, make a report of its findings and recommendations to the Minister.

Recommendation for less restrictive service

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

Review by Board

Child may request review

66 (1) A child who is in a residential placement to which the child objects may apply to the Board for a determination of where the child should remain or be placed, if the residential placement has been reviewed by an advisory committee under section 64 and,

(a) the child is dissatisfied with the advisory committee's recommendations; or

(b) the advisory committee's recommendations are not followed.

Board to conduct review

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

Notice to child of hearing

(3) The Board shall advise the child whether it intends to hold a hearing or not within 10 days of receiving the child's application.

Parties

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

(a) the child;

(b) the child's parent or, where the child is in a society's lawful custody, the society;

(c) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a) and (b) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and

(d) any other persons that the Board specifies.

Time for determination

(5) The Board shall complete its review and make a determination within 30 days of receiving a child's application, unless,

(a) the Board holds a hearing with respect to the application; and

(b) the parties consent to a longer period for the Board's determination.

Board's order

(6) After conducting a review under subsection (2), the Board may,

(a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;

(b) order that the child be discharged from the residential placement; or

(c) confirm the existing residential placement.

OFFENCES

Offences

67 (1) A person or entity is guilty of an offence if the person or entity,

- (a) contravenes section 56 (reports and information);
- (b) contravenes section 57 (reports and information to prescribed entities);
- (c) contravenes section 58 (information available to public);
- (d) knowingly provides false information in a statement, report or return required to be provided under this Part or the regulations.

Penalty

(2) A person or entity convicted of an offence under subsection (1) is liable to a fine of not more than \$5,000.

Offence — obstruction of program supervisor

(3) A person is guilty of an offence if the person hinders, obstructs or interferes with a program supervisor conducting an inspection under this Part, or otherwise impedes a program supervisor in exercising the powers or performing the duties of a program supervisor under this Part.

Penalty

(4) A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000.

Limitation

(5) A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or program supervisor.

Directors, officers and employees

(6) If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence.

**PART IV
FIRST NATIONS, INUIT AND MÉTIS CHILD AND FAMILY SERVICES**

Regulations listing First Nations, Inuit and Métis communities

68 (1) The Minister may make regulations establishing lists of First Nations, Inuit and Métis communities for the purposes of this Act.

More than one community

(2) A regulation made under subsection (1) may list one or more communities as a First Nations, Inuit or Métis community.

Consent of representatives

(3) Before making a regulation under subsection (1), the Minister must obtain the consent of the community's representatives.

Agreements with bands and First Nations, Inuit or Métis communities

69 The Minister may, for the provision of services,

- (a) make agreements with bands and First Nations, Inuit or Métis communities and with any other parties whom the bands or communities choose to involve; and
- (b) provide funding to the persons or entities referred to in clause (a) pursuant to such agreements.

Designation of child and family service authority

70 (1) A band or First Nations, Inuit or Métis community may designate a body as a First Nations, Inuit or Métis child and family service authority.

Agreements, etc.

(2) Where a band or First Nations, Inuit or Métis community has designated a First Nations, Inuit or Métis child and family service authority, the Minister,

- (a) shall, at the band's or community's request, enter into negotiations for the provision of services by the child and family service authority;
- (b) may enter into agreements with the child and family service authority and, if the band or community agrees, any other person, for the provision of services; and
- (c) may designate the child and family service authority, with its consent, as a society under subsection 34 (1).

Subsidy for customary care

71 If a band or First Nations, Inuit or Métis community declares that a First Nations, Inuk or Métis child is being cared for under customary care, a society or entity may grant a subsidy to the person caring for the child.

Consultation with bands and First Nations, Inuit or Métis communities

72 A society, person or entity that provides services or exercises powers under this Act with respect to First Nations, Inuit or Métis children or young persons shall regularly consult with their bands and First Nations, Inuit or Métis communities about the provision of the services or the exercise of the powers and about matters affecting the children or young persons, including,

- (a) bringing children to a place of safety and the placement of children in residential care;
- (b) the provision of family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part V (Child Protection);
- (e) temporary care agreements under Part V (Child Protection);
- (f) society agreements with 16 and 17 year olds under Part V (Child Protection);
- (g) adoption placements;
- (h) the establishment of emergency houses; and
- (i) any other matter that is prescribed.

Consultation in specified cases

73 A society, person or entity that proposes to provide a prescribed service to a First Nations, Inuk or Métis child or young person, or to exercise a prescribed power under this Act in relation to such a child or young person, shall consult with a representative chosen by each of the child's or young person's bands and First Nations, Inuit or Métis communities in accordance with the regulations.

PART V CHILD PROTECTION

INTERPRETATION

Interpretation

Definitions

74 (1) In this Part,

“child protection worker” means a Director, a local director or a person who meets the prescribed requirements and who is authorized by a Director or local director for the purposes of section 81 (commencing child protection proceedings) and for other prescribed purposes; (“préposé à la protection de l'enfance”)

“extra-provincial child protection order” means a temporary or final order made by a court of another province or a territory of Canada, or of a prescribed jurisdiction outside Canada if it meets prescribed conditions, pursuant to child welfare legislation of that province, territory or other jurisdiction, placing a child into the care and custody of a child welfare authority or other person named in the order; (“ordonnance extraprovinciale de protection d'un enfant”)

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

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children's Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 217 or 218.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of the individual's family, or has acknowledged parentage of the child and provided for the child's support.

7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force; ("parent")

"place of safety" means a foster home, a hospital, a person's home that satisfies the requirements of subsection (4) or a place or one of a class of places designated as a place of safety by a Director or local director under section 39, but does not include a place of temporary detention, of open custody or of secure custody; ("lieu sûr")

Child in need of protection

- (2) A child is in need of protection where,
 - (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
 - (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
 - (c) the child has been sexually abused or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child;
 - (d) there is a risk that the child is likely to be sexually abused or sexually exploited as described in clause (c);
 - (e) the child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996* and the parent is a substitute decision-maker for the child, the parent refuses or is unavailable or unable to consent to the treatment on the child's behalf;
 - (f) the child has suffered emotional harm, demonstrated by serious,
 - (i) anxiety,
 - (ii) depression,
 - (iii) withdrawal,
 - (iv) self-destructive or aggressive behaviour, or
 - (v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
 - (g) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the harm;
 - (h) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
 - (i) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment to prevent the harm;
 - (j) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide treatment or access to treatment, or where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the condition;

- (k) the child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (l) the child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment;
- (m) the child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately;
- (n) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is 12 or older, with the child's consent, for the matter to be dealt with under this Part; or
- (o) the child is 16 or 17 and a prescribed circumstance or condition exists.

Best interests of child

- (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,
- (a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;
 - (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
 - (c) consider any other circumstance of the case that the person considers relevant, including,
 - (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
 - (ii) the child's physical, mental and emotional level of development,
 - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - (iv) the child's cultural and linguistic heritage,
 - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
 - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
 - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,
 - (viii) the merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
 - (ix) the effects on the child of delay in the disposition of the case,
 - (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
 - (xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

Place of safety

- (4) For the purposes of the definition of "place of safety" in subsection (1), a person's home is a place of safety for a child if,
- (a) the person is a relative of the child or a member of the child's extended family or community; and
 - (b) a society or, in the case of a First Nations, Inuk or Métis child, a society or a child and family service authority, has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child.

Definition, child and family service authority

(5) In subsection (4),

"child and family service authority" means a First Nations, Inuit or Métis child and family service authority designated under section 70.

VOLUNTARY AGREEMENTS

Temporary care agreement

75 (1) A person who is temporarily unable to care adequately for a child in the person's custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

Older child to be party to agreement

(2) No temporary care agreement shall be made in respect of a child who is 12 or older unless the child is a party to the agreement.

Exception: developmental disability

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

Duty of society

(4) A society shall not make a temporary care agreement unless the society,

- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
- (b) is satisfied that no course of action less disruptive to the child, such as care in the child's own home, is able to adequately protect the child.

Term of agreement limited

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed 12 months.

Time limit

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the agreement is entered into or extended; or
- (b) 24 months, if the child is 6 or older on the day the agreement is entered into or extended.

Calculating time in care

(7) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (6):

1. An interim society care order made under paragraph 2 of subsection 101 (1).
2. A temporary care agreement under subsection (1) of this section.
3. A temporary order made under clause 94 (2) (d).

Previous periods to be counted

(8) The period referred to in subsection (6) shall include any previous periods that the child was in a society's care and custody as described in subsection (7) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

Authority to consent to medical treatment may be transferred

(9) A temporary care agreement may provide that, where the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society is entitled to act in the place of a parent in providing consent to treatment on the child's behalf.

Contents of temporary care agreement

(10) A temporary care agreement shall include the following:

1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
2. A statement by all the parties to the agreement that the child's placement is voluntary.
3. A statement, by the person referred to in subsection (1), that the person is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.

5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another person who is willing to do so.
6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
7. Such other provisions as are prescribed.

Designation by advisory committee

(11) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 of subsection (10) or designate another person under paragraph 5 of subsection (10), a residential placement advisory committee established under subsection 63 (1) that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

Variation of agreement

(12) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

Agreement expires at 18

(13) No temporary care agreement shall continue beyond the 18th birthday of the person who is its subject.

Notice of termination of agreement

76 (1) A party to a temporary care agreement may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

When notice takes effect

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period not exceeding 21 days as the agreement specifies, after the day on which every other party has actually received the notice.

Society response to notice of termination

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

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made;
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 77 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 77 (1).

Expiry of agreement

(4) Where a temporary care agreement expires or is about to expire and is not extended, the society shall, before the agreement expires or as soon as practicable thereafter, but in any event within 21 days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made;
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 77 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 77 (1).

Society agreements with 16 and 17 year olds

77 (1) The society and a child who is 16 or 17 may make a written agreement for services and supports to be provided for the child where,

- (a) the society has jurisdiction where the child resides;
- (b) the society has determined that the child is or may be in need of protection;
- (c) the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and
- (d) the child wants to enter into the agreement.

Term of agreement

(2) The agreement may be for a period not exceeding 12 months, but may be renewed if the total term of the agreement, as extended, does not exceed 24 months.

Previous or current involvement with society not a bar to agreement

(3) A child may enter into an agreement under this section regardless of any previous or current involvement with a society, and without regard to any time during which the child has been in a society's care pursuant to an agreement made under section 75 (1) or pursuant to an order made under clause 94 (2) (d) or paragraph 2 or 3 of subsection 101 (1).

Notice of termination of agreement

(4) A party to an agreement made under this section may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

Agreement expires at 18

(5) No agreement made under this section shall continue beyond the 18th birthday of the person who is its subject.

Current agreements and orders must be terminated first

(6) Despite subsection (3), an agreement may not come into force under this section until any temporary care agreement under section 75 or order for the care or supervision of a child under this Part is terminated.

Representation by Children's Lawyer

(7) The Children's Lawyer may provide legal representation to the child entering into an agreement under this section if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

LEGAL REPRESENTATION

Legal representation of child

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

Court to consider issue

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

- (a) shall, as soon as practicable after the commencement of the proceeding; and
- (b) may, at any later stage in the proceeding,

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

Direction for legal representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

Criteria

(4) Where,

- (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be placed in interim or extended society care under paragraph 2 or 3 of subsection 101 (1);
- (b) the child is in the society's care and,
 - (i) no parent appears before the court, or
 - (ii) it is alleged that the child is in need of protection within the meaning of clause 74 (2) (a), (c), (f), (g) or (j); or
- (c) the child is not permitted to be present at the hearing,

legal representation is deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes, given due weight in accordance with the child's age and maturity, that the child's interests are otherwise adequately protected.

Where parent a minor

(5) Where a child's parent is younger than 18, the Children's Lawyer shall represent the parent in a proceeding under this Part unless the court orders otherwise.

PARTIES AND NOTICE

Parties

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

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2 and 3 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Director to be added

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

Right to participate

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

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a lawyer; and
- (d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

Child 12 or older

(4) A child 12 or older who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive notice of the proceeding and not be permitted to be present at the hearing.

Child younger than 12

(5) A child younger than 12 who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

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

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

Child's participation

(6) A child who is the applicant under subsection 113 (4) or 115 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 121 as if the child were a party.

Dispensing with notice

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

CUSTOMARY CARE

Customary care

80 A society shall make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child,

- (a) is in need of protection;
- (b) cannot remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part or, where there is an order for the child's custody that is enforceable in Ontario, of the person entitled to custody under the order; and
- (c) is a member of or identifies with a band, or is a member of or identifies with a First Nations, Inuit or Métis community.

COMMENCING CHILD PROTECTION PROCEEDINGS

Warrants, orders, etc.

Application

81 (1) A society may apply to the court to determine whether a child is in need of protection.

Warrant to bring child to place of safety

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

- (a) the child is younger than 16;
- (b) the child is in need of protection; and
- (c) a less restrictive course of action is not available or will not protect the child adequately.

When warrant may not be refused

(3) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (7).

Order to produce child or bring child to place of safety

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

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

the court may order,

- (c) that the person having charge of the child produce the child before the court at the time and place named in the order for a hearing under subsection 90 (1) to determine whether the child is in need of protection; or
- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

Child's name, location not required

(5) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (4), to describe the child by name or to specify the premises where the child is located.

Authority to enter, etc.

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

Bring child to place of safety without warrant

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

- (a) a child is in need of protection;
- (b) the child is younger than 16; and
- (c) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 90 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

Police assistance

(8) A child protection worker acting under this section may call for the assistance of a peace officer.

Consent to examine child

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

Right of entry, etc.

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (7) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations re power of entry

(11) A child protection worker authorized to enter premises under subsection (6) or (10) shall exercise the power of entry in accordance with the regulations.

Peace officer has powers of child protection worker

(12) Subsections (2), (6), (7), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

Protection from personal liability

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

Exception, 16 and 17 year olds brought to place of safety with consent

82 (1) A child protection worker may bring a child who is 16 or 17 and who is subject to a temporary or final supervision order to a place of safety if the child consents.

Temporary or final supervision order

(2) In this section,

“temporary or final supervision order” means an order under clause 94 (2) (b) or (c), paragraph 1 or 4 of subsection 101 (1), subsection 112 (8) or 115 (10) or clause 116 (1) (a).

SPECIAL CASES OF BRINGING CHILDREN TO A PLACE OF SAFETY

Bringing children who are removed from or leave care to place of safety

With warrant

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

- (a) the child is actually or apparently younger than 16, and,
 - (i) has left or been removed from a society's lawful care and custody without its consent, or
 - (ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child. 2017, c. 14, Sched. 1, s. 83 (1); 2019, c. 15, Sched. 5, s. 1.

When warrant may not be refused

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4). 2017, c. 14, Sched. 1, s. 83 (2).

No need to specify premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located. 2017, c. 14, Sched. 1, s. 83 (3).

Without warrant

(4) A peace officer or child protection worker may without a warrant bring the child to a place of safety if the peace officer or child protection worker believes on reasonable and probable grounds that,

- (a) the child is actually or apparently younger than 16, and,
 - (i) has left or been removed from a society's lawful care and custody without its consent, or
 - (ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1). 2017, c. 14, Sched. 1, s. 83 (4).

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

2019, c. 15, Sched. 5, s. 1 - 10/12/2019

Bringing child younger than 12 home or to place of safety

84 (1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently younger than 12 has committed an act in respect of which a person 12 or older could be found guilty of an offence may bring the child to a place of safety without a warrant and on doing so,

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or

- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall bring the child to a place of safety until the child can be returned to the parent or other person.

Notice to parent, etc.

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

Where child not returned to parent, etc., within 12 hours

(3) Where a child brought to a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 81 (7) and not under subsection (1).

Children who withdraw from parent's care

Warrant to bring child to a place of safety

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

- (a) the child is younger than 16;
- (b) the child has withdrawn from the person's care and control without the person's consent; and
- (c) the person believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not brought to a place of safety.

Child to be returned or brought to a place of safety

(2) A person acting under a warrant issued under subsection (1) shall return the child to the person with care and control of the child as soon as practicable and where it is not possible to return the child to that person within a reasonable time, bring the child to a place of safety.

Notice to person with care, custody or control

(3) The person in charge of a place of safety to which a child is brought under subsection (2) shall make reasonable efforts to notify the person with care and control of the child that the child is in the place of safety so that the child may be returned to that person.

Where child not returned within 12 hours

(4) Where a child brought to a place of safety under subsection (2) cannot be returned to the person with care and control of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 81 (2) and not under subsection (1).

Where custody enforcement proceedings more appropriate

(5) A justice of the peace shall not issue a warrant under subsection (1) in respect of a child who has withdrawn from the care and control of a person where a proceeding under section 36 of the *Children's Law Reform Act* would be more appropriate.

No need to specify premises

(6) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

Child protection proceedings

(7) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child brought to a place of safety under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the person with care and control of the child,

- (a) the peace officer or child protection worker may bring the child to a place of safety under subsection 81 (7); or
- (b) where the child has been brought to a place of safety under subsection (4), the child is deemed to have been brought there under subsection 81 (7).

Authority to enter, etc.

86 (1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 83 (1) or 85 (1) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child

Right of entry, etc.

(2) A person authorized under subsection 83 (4) or 84 (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations re power of entry

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

Police assistance

(4) A child protection worker acting under section 83 or 85 may call for the assistance of a peace officer.

Consent to examine child

(5) Where subsection 84 (3) or 85 (4) applies to a child brought to a place of safety, a child protection worker may authorize the child's medical examination where a parent's consent would be otherwise required.

Protection from personal liability

(6) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 83, 84 or 85 or for an alleged neglect or default in the execution in good faith of that duty.

HEARINGS AND ORDERS

Rules re hearings

Definition

87 (1) In this section,

“media” means the press, radio and television media.

Application

(2) This section applies to hearings held under this Part, except hearings under section 134 (child abuse register).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 87 (2) of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 5)

Application

(2) This section applies to hearings held under this Part. 2017, c. 14, Sched. 3, s. 5.

Hearings separate from criminal proceedings

(3) A hearing shall be held separately from hearings in criminal proceedings.

Hearings private unless court orders otherwise

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

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

Media representatives may attend

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

Selection of media representatives

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

1. The media representatives in attendance shall choose not more than two persons from among themselves.
2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
3. The court may permit additional media representatives to be present at the hearing.

Order excluding media representatives or prohibiting publication

(7) Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

Prohibition re identifying child

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

Prohibition re identifying person charged

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

Transcript

(10) No person except a party or a party's lawyer shall be given a copy of a transcript of the hearing, unless the court orders otherwise.

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

2017, c. 14, Sched. 3, s. 5 - not in force

Time in place of safety limited

88 As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 81, subclause 83 (1) (a) (ii) or subsection 136 (5),

- (a) the matter shall be brought before a court for a hearing under subsection 90 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order;
- (c) if the child is the subject of an extra-provincial child protection order, the child shall be returned to the child welfare authority or other person named in the order;
- (d) a temporary care agreement shall be made under subsection 75 (1); or
- (e) an agreement shall be made under section 77 (agreements with 16 and 17 year olds).

Time in place of safety limited, 16 or 17 year old

89 As soon as practicable, but in any event within five days after a child who is 16 or 17 is brought to a place of safety with the child's consent under section 82,

- (a) the matter shall be brought before a court for a hearing under subsection 90 (1); or
- (b) the child shall be returned to the person entitled to custody of the child under an order made under this Part.

Child protection hearing

90 (1) Where an application is made under subsection 81 (1) or a matter is brought before the court to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 101.

Child's name, age, etc.

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

- (a) the child's name and age;
- (b) whether the child is a First Nations, Inuk or Métis child and, if so, the child's bands and First Nations, Inuit or Métis communities; and
- (c) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

Territorial jurisdiction

91 (1) In this section,

“territorial jurisdiction” means a society's territorial jurisdiction under subsection 34 (1).

Place of hearing

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

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the territorial jurisdiction in which the place from which the child was removed is located;

- (b) where the child is in interim society care under an order made under paragraph 2 or 4 of subsection 101 (1) or extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under paragraph 1 of subsection 101 (1) or clause 116 (1) (a), the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides.

Transfer of proceeding

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

Orders affecting society

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction.

Power of court

92 The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

Evidence

Past conduct toward children

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

Evidence re disposition and finding

(2) In a hearing under subsection 90 (1), evidence relating only to the disposition of the matter shall not be considered in determining if the child is in need of protection.

Adjournments

- 94** (1) The court shall not adjourn a hearing for more than 30 days,
- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
 - (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment.

Custody during adjournment

- (2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,
- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
 - (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;
 - (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or
 - (d) remain or be placed in the care and custody of the society, but not be placed in a place of temporary detention, of open or of secure custody.

Where child is subject to extra-provincial order

(3) Where a court makes an order under clause (2) (d) in the case of a child who is the subject of an extra-provincial child protection order the society may, during the period of the adjournment, return the child to the care and custody of the child welfare authority or other person named in the order.

Criteria

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

Placement with relative, etc.

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

Terms and conditions in order

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

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

Application of s. 107

(7) Where the court makes an order under clause (2) (d), section 110 (child in interim society care) applies with necessary modifications.

Access

(8) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child on such terms and conditions as the court considers appropriate.

Power to vary

(9) The court may at any time vary or terminate an order made under subsection (2).

Evidence on adjournments

(10) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Child's views and wishes

(11) Before making an order under subsection (2), the court shall take into consideration the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained.

Use of prescribed methods of alternative dispute resolution

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

Delay: court to fix date

96 Where an application is made under subsection 81 (1) or a matter is brought before the court to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court,

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

Reasons, etc.

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

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
 - (i) a brief statement of the evidence on which the court bases its decision, and
 - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

No requirement to identify person or place

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision.

ASSESSMENTS

Order for assessment

98 (1) In the course of a proceeding under this Part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (3) and (4):

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

Criteria for ordering assessment

(2) An assessment may be ordered if the court is satisfied that,

- (a) an assessment of one or more of the persons specified in subsection (1) is necessary for the court to make a determination under this Part; and
- (b) the evidence sought from an assessment is not otherwise available to the court.

Assessor selected by parties

(3) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court.

Appointment of person selected by parties

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

1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.
2. The person has consented to perform the assessment.

Appointment of a person not selected by parties

(5) If the court is of the opinion that the person selected by the parties under subsection (3) does not meet the criteria set out in subsection (4), the court shall select and appoint another person who does meet the criteria.

Regulations

(6) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed.

Report

(7) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days, unless the court is of the opinion that a longer assessment period is necessary.

Copies of report

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

- (a) the person assessed, subject to subsections (9) and (10);
- (b) the child's lawyer or agent;
- (c) a parent appearing at the hearing, or the parent's lawyer;
- (d) the society caring for or supervising the child;
- (e) a Director, where the Director requests a copy;
- (f) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) (c), (d) and (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and
- (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

Child younger than 12

(9) Where the person assessed is a child younger than 12, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

Child 12 or older

(10) Where the person assessed is a child 12 or older, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.

Conflict

(11) Subsections (9) and (10) prevail despite anything in the *Personal Health Information Protection Act, 2004*.

Assessment is evidence

(12) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

Inference from refusal

(13) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

Report inadmissible

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

- (a) a proceeding under this Part, including an appeal under section 121;
- (b) a proceeding referred to in section 138;
- (c) a proceeding under Part VIII (Adoption and Adoption Licensing) respecting an application to make, vary or terminate an openness order; or
- (d) a proceeding under the *Coroners Act*,

without the consent of the person or persons assessed. 2017, c. 14, Sched. 1, s. 98 (14); 2017, c. 34, Sched. 4, s. 1.

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

2017, c. 34, Sched. 4, s. 1 - 30/04/2018

Consent order: special requirements

99 Where a child is brought before the court on consent as described in clause 74 (2) (n), the court shall, before making an order under section 101 or 102 that would remove the child from the parent's care and custody,

- (a) ask whether,
 - (i) the society has offered the parent and child services that would enable the child to remain with the parent, and
 - (ii) the parent and, where the child is 12 or older, the child, has consulted independent legal counsel in connection with the consent; and
- (b) be satisfied that,
 - (i) the parent and, where the child is 12 or older, the child, understands the nature and consequences of the consent,
 - (ii) every consent is voluntary, and
 - (iii) the parent and, where the child is 12 or older, the child, consents to the order being sought.

Society's plan for child

100 The court shall, before making an order under section 101, 102, 114 or 116, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its care or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
 - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and

- (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person;
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement; and
- (f) a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity.

Order where child in need of protection

101 (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 102, in the child's best interests:

Supervision order

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

Interim society care

2. That the child be placed in interim society care and custody for a specified period not exceeding 12 months.

Extended society care

3. That the child be placed in extended society care until the order is terminated under section 116 or expires under section 123.

Consecutive orders of interim society care and supervision

4. That the child be placed in interim society care and custody under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding a total of 12 months.

Court to inquire

(2) In determining which order to make under subsection (1) or section 102, the court shall ask the parties what efforts the society or another person or entity has made to assist the child before intervention under this Part.

Less disruptive alternatives preferred

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

Community placement to be considered

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of the child immediately before intervention under this Part, the court shall, before making an order under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person.

First Nations, Inuk or Métis child

(5) Where the child referred to in subsection (4) is a First Nations, Inuk or Métis child, unless there is a substantial reason for placing the child elsewhere, the court shall place the child with a member of the child's extended family if it is possible or, if it is not possible,

- (a) in the case of a First Nations child, another First Nations family;
- (b) in the case of an Inuk child, another Inuit family; or
- (c) in the case of a Métis child, another Métis family.

Further hearing with notice for orders for interim or extended society care

(6) When the court has dispensed with notice to a person under subsection 79 (7), the court shall not make an order for interim society care under paragraph 2 of subsection (1) for a period exceeding 30 days or an order for extended society care under paragraph 3 of subsection (1) until a further hearing under subsection 90 (1) has been held upon notice to that person.

Terms and conditions of supervision order

- (7) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,
 - (a) reasonable terms and conditions relating to the child's care and supervision;
 - (b) reasonable terms and conditions on,
 - (i) the child's parent,

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

Order for child to remain or return to person who had charge before intervention

(8) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

No order where child not subject to parental control

(9) Where the court finds that a child who was not subject to parental control immediately before intervention under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this Part is in need of protection, but is not satisfied that a court order is necessary to protect the child in the future, the court shall make no order in respect of the child.

Custody order

102 (1) Subject to subsection (6), if a court finds that an order under this section instead of an order under subsection 101 (1) would be in a child's best interests, the court may make an order granting custody of the child to one or more persons, other than a foster parent of the child, with the consent of the person or persons.

Deemed to be order under s. 28 *Children's Law Reform Act*

(2) An order made under subsection (1) and any access order under section 104 that is made at the same time as the order under subsection (1) is deemed to be made under section 28 of the *Children's Law Reform Act* and the court,

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

Restraining order

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

Deemed to be final order under s. 35 *Children's Law Reform Act*

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

Appeal under s. 121

(5) Despite subsections (2) and (4), an order under subsection (1) or (3) and any access order under section 104 that is made at the same time as an order under subsection (1) are orders under this Part for the purposes of appealing from the orders under section 121.

Conflict of laws

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

Application of s. 101 (3)

(7) Subsection 101 (3) applies for the purposes of this section.

Effect of custody proceedings

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

ACCESS

Access order

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

(a) when making an order under this Part; or

(b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

Who may apply

(2) Where a child is in a society's care and custody or supervision, the following may apply to the court at any time for an order under subsection (1):

1. The child.

2. Any other person, including a sibling of the child and, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

3. The society.

Notice

(3) An applicant referred to in paragraph 2 of subsection (2) shall give notice of the application to the society.

Society to give notice of application

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

(a) the child, subject to subsections 79 (4) and (5) (notice to child);

(b) the child's parent;

(c) the person caring for the child at the time of the application; and

(d) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) and (c) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Child older than 16

(5) No order respecting access to a person 16 or older shall be made under subsection (1) without the person's consent.

Six-month period

(6) No application shall be made under subsection (2) by a person other than a society within six months of,

(a) the making of an order under section 101;

(b) the disposition of a previous application by the same person under subsection (2);

(c) the disposition of an application under section 113 or 115; or

(d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

No application where child placed for adoption

(7) No person or society shall make an application under subsection (2) where the child,

(a) is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);

(b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VIII (Adoption and Adoption Licensing); and

(c) still resides in that person's home.

Access: where child removed from person in charge

105 (1) Where an order is made under paragraph 1 or 2 of subsection 101 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with the person would not be in the child's best interests.

Access after custody order under s. 102

(2) If a custody order is made under section 102 removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact will not be in the child's best interests.

Access after supervision order or custody order under s. 116 (1)

(3) If an order is made for supervision under clause 116 (1) (a) or for custody under clause 116 (1) (b), the court shall make an order for access by every person who had access before the application for the order was made under section 115, unless the court is satisfied that continued contact will not be in the child's best interests.

Existing access order terminated if order made for extended society care

(4) Where the court makes an order that a child be in extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), any order for access made under this Part with respect to the child is terminated.

When court may order access to child in extended society care

(5) A court shall not make or vary an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) unless the court is satisfied that the order or variation would be in the child's best interests.

Additional considerations for best interests test

(6) The court shall consider, as part of its determination of whether an order or variation would be in the child's best interests under subsection (5),

- (a) whether the relationship between the person and the child is beneficial and meaningful to the child; and
- (b) if the court considers it relevant, whether the ordered access will impair the child's future opportunities for adoption.

Court to specify access holders and access recipients

(7) Where a court makes or varies an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the court shall specify,

- (a) every person who has been granted a right of access; and
- (b) every person with respect to whom access has been granted.

When court to terminate access to child in extended society care

(8) The court shall terminate an access order with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) if the order is no longer in the best interests of the child as determined under subsection (6).

Society may permit contact or communication

(9) If a society believes that contact or communication between a person and a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is in the best interests of the child and no openness order under Part VIII (Adoption and Adoption Licensing) or access order is in effect with respect to the person and the child, the society may permit contact or communication between the person and the child.

Review of access order made concurrently with custody order

106 No order for access under section 104 is subject to review under this Act if it is made at the same time as a custody order under section 102, but it may be the subject of an application under section 21 of the *Children's Law Reform Act* and the provisions of that Act apply as if the order had been made under that Act.

Restriction on access order

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

PAYMENT ORDERS

Order for payment by parent

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

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

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

Criteria

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

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

Order ends at 18

(3) No order made under subsection (1) shall extend beyond the day on which the child turns 18.

Power to vary

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

Collection by municipality

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

Enforcement

(6) An order made against a parent under subsection (1) may be enforced as if it were an order for support made under Part III of the *Family Law Act*.

INTERIM AND EXTENDED SOCIETY CARE

Placement of children

109 (1) This section applies where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1) or extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).

Placement

- (2) The society having care of a child shall choose a residential placement for the child that,
- (a) represents the least restrictive alternative for the child;
 - (b) where possible, respects the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, creed, sex, sexual orientation, gender identity and gender expression;
 - (c) where possible, respects the child's cultural and linguistic heritage;
 - (d) in the case of a First Nations, Inuk or Métis child, is with, if possible, a member of the child's extended family or, if that is not possible,
 - (i) in the case of a First Nations child, another First Nations family,
 - (ii) in the case of an Inuk child, another Inuit family, or
 - (iii) in the case of a Métis child, another Métis family; and
 - (e) takes into account the child's views and wishes, given due weight in accordance with the child's age and maturity, and the views and wishes of any parent who is entitled to access to the child.

Education

(3) The society having care of a child shall ensure that the child receives an education that corresponds to the child's aptitudes and abilities.

Placement outside or removal from Ontario

(4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.

Rights of child, parent and foster parent

(5) The society having care of a child shall ensure that,

- (a) the child is afforded all the rights referred to in Part II (Children's and Young Persons' Rights); and
- (b) the wishes of any parent who is entitled to access to the child and, where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

Change of placement

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

Notice of proposed removal

(7) If a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and has lived continuously with a foster parent for two years and a society proposes to remove the child from the foster parent under subsection (6), the society shall,

- (a) give the foster parent at least 10 days notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (8); and
- (b) in the case of a First Nations, Inuk or Métis child, give the notice required by clause (a), and
 - (i) give at least 10 days notice in writing of the proposed removal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
 - (ii) after the notice is given under subclause (i), consult with representatives chosen by the bands and communities relating to the plan of care for the child.

Application for review

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

Board hearing

(9) Upon receipt of an application by a foster parent for a review of a proposed removal, the Board shall hold a hearing under this section.

First Nations, Inuk or Métis child

(10) Upon receipt of an application for review of a proposed removal of a First Nations, Inuk or Métis child, the Board shall also give notice of receipt of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Practices and procedures

(11) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

Composition of Board

(12) At a hearing under this section, the Board shall be composed of members with the prescribed qualifications and prescribed experience.

Parties

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

1. The applicant.
2. The society.
3. If the child is a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
4. Any person that the Board adds under subsection (14).

Additional parties

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

Board decision

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

No removal before decision

(16) Subject to subsection (17), the society shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the proposed removal under subsection (8) has expired and an application is not made; or
- (b) if an application for a review of the proposed removal is made under subsection (8), the Board has confirmed the proposed removal under subsection (15).

Where child at risk

(17) A society may remove the child from the foster home before the expiry of the time for applying for a review under subsection (8) or at any time after the application for a review is made if, in the opinion of a local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

Review of certain placements

(18) Sections 63, 64, 65 and 66 (review by residential placement advisory committee, further review by the Board) apply with necessary modifications to a residential placement made by a society under this section.

Definition

(19) In this section,

“residential placement” has the same meaning as in section 62.

Child in interim society care

110 (1) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), the society has the rights and responsibilities of a parent for the purpose of the child’s care, custody and control.

Consent to treatment — society or parent may act

(2) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child, unless the court orders that the parent shall retain the authority under that Act to give or refuse consent to treatment on behalf of the incapable child.

Exception

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

Court may authorize society to act re consent to treatment

(4) Where a parent referred to in an order made under subsection (2) refuses or is unavailable or unable to consent to treatment for the incapable child and the court is satisfied that the treatment would be in the child’s best interests, the court may authorize the society to act in the place of a parent in providing consent to the treatment on the child’s behalf.

Consent to child’s marriage

(5) Where a child is in interim society care under an order made under paragraph 2 of subsection 101 (1), the child’s parent retains any right that the parent may have under the *Marriage Act* to give or refuse consent to the child’s marriage.

Child in extended society care

111 (1) Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the Crown has the rights and responsibilities of a parent for the purpose of the child’s care, custody and control, and the Crown’s powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

Consent to treatment — society may act

(2) Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child.

Society's obligation to pursue family relationship for child in extended society care

112 Where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

1. An adoption.
2. A custody order under subsection 116 (1).
3. In the case of a First Nations, Inuk or Métis child,
 - i. a plan for customary care,
 - ii. an adoption, or
 - iii. a custody order under subsection 116 (1).

REVIEW

Status review

113 (1) This section applies where a child is the subject of an order made under paragraph 1 or 4 of subsection 101 (1) for society supervision or under paragraph 2 of subsection 101 (1) for interim society care.

Society to seek status review

(2) The society having care, custody or supervision of a child,

- (a) may apply to the court at any time for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires, unless the expiry is by reason of section 123; and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child from the care of a person with whom the child was placed under an order for society supervision.

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

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

Others may seek status review

(4) An application for review of a child's status may be made on notice to the society by,

- (a) the child, if the child is at least 12;
- (b) a parent of the child;
- (c) the person with whom the child was placed under an order for society supervision; or
- (d) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b) or (c) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Notice

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

- (a) the child, except as otherwise provided under subsection 79 (4) or (5);
- (b) the child's parent;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) any foster parent who has cared for the child continuously during the six months immediately before the application; and
- (e) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c) and (d) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Six-month period

(6) No application shall be made under subsection (4) within six months after the latest of,

- (a) the day the original order was made under subsection 101 (1);
- (b) the day the last application by a person under subsection (4) was disposed of; or

- (c) the day any appeal from an order referred to in clause (a) or the disposition referred to in clause (b) was finally disposed of or abandoned.

Exception

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

Interim care and custody

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

Court may vary, etc.

114 Where an application for review of a child's status is made under section 113, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 101 (1), including a term or condition or a provision for access that is part of the order;
- (b) order that the original order terminate on a specified future date;
- (c) make a further order or orders under section 101; or
- (d) make an order under section 102.

Status review for children in, or formerly in, extended society care

115 (1) This section applies where a child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), or is subject to an order for society supervision made under clause 116 (1) (a) or for custody made under clause 116 (1) (b).

Society to seek status review

(2) The society that has or had care, custody or supervision of the child,

- (a) may apply to the court at any time, subject to subsection (9), for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires if the order is for society supervision, unless the expiry is by reason of section 123; and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child,
 - (i) from the care of a person with whom the child was placed under an order for society supervision described in clause 116 (1) (a), or
 - (ii) from the custody of a person who had custody of the child under a custody order described in clause 116 (1) (b).

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

(3) Clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district,

- (a) in which the parent or other person with whom the child is placed resides, if the child is the subject of an order for society supervision under clause 116 (1) (a); or
- (b) in which the person who has custody resides, if the child is the subject of a custody order under clause 116 (1) (b).

Others may seek status review

(4) An application for review of a child's status under this section may be made on notice to the society by,

- (a) the child, if the child is at least 12;
- (b) a parent of the child;
- (c) the person with whom the child was placed under an order for society supervision described in clause 116 (1) (a);
- (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 116 (1) (b);
- (e) a foster parent, if the child has lived continuously with the foster parent for at least two years immediately before the application; or
- (f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

When leave to apply required

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

Notice

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

- (a) the child, except as otherwise provided under subsection 79 (4) or (5);
- (b) the child's parent, if the child is younger than 16;
- (c) the person with whom the child was placed, if the child is subject to an order for society supervision described in clause 116 (1) (a);
- (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 116 (1) (b);
- (e) any foster parent who has cared for the child continuously during the six months immediately before the application; and
- (f) in the case of a First Nations, Inuk or Métis child, the persons described in clause (a), (b), (c), (d) or (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Six-month period

- (7) No application shall be made under subsection (4) within six months after the latest of,
- (a) the day the order was made under subsection 101 (1) or 116 (1), whichever is applicable;
 - (b) the day the last application by a person under subsection (4) was disposed of; or
 - (c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned.

Exception

- (8) Subsection (7) does not apply if,
- (a) the child is the subject of,
 - (i) an order for society supervision made under clause 116 (1) (a),
 - (ii) an order for custody made under clause 116 (1) (b), or
 - (iii) an order for extended society care made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and an order for access under section 104; and
 - (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

No review if child placed for adoption

(9) No person or society shall make an application under this section with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VIII (Adoption and Adoption Licensing), if the child still resides in the person's home.

Interim care and custody

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

Court order

- 116 (1)** If an application for review of a child's status is made under section 115, the court may, in the child's best interests,
- (a) order that the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months;
 - (b) order that custody be granted to one or more persons, including a foster parent, with the consent of the person or persons;

- (c) order that the child be placed in extended society care until the order is terminated under this section or expires under section 123; or
- (d) terminate or vary any order made under section 101 or this section.

Variation, termination or new order

(2) When making an order under subsection (1), the court may, subject to section 105, vary or terminate an order for access or make a further order under section 104.

Termination of extended society care order

(3) Any previous order for extended society care made under paragraph 3 of subsection 101 (1) or clause (1) (c) is terminated if an order described in clause (1) (a) or (b) is made in respect of a child.

Terms and conditions of supervision order

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

Access

(5) Section 105 applies with necessary modifications if the court makes an order described in clause (1) (a), (b) or (c).

Custody proceeding

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

Rights and responsibilities

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

Director's annual review of children in extended society care

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

- (a) who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
- (b) who was in extended society care under an order described in clause (a) throughout the immediately preceding 24 months; and
- (c) whose status has not been reviewed under this section or under section 116 during that time.

Direction to society

(2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 115 (2) or give any other direction that, in the Director's opinion, is in the child's best interests.

Investigation by judge

118 (1) The Minister may appoint a judge of the Court of Ontario to investigate a matter relating to a child in a society's care or the proper administration of this Part, and a judge who is appointed shall conduct the investigation and make a written report to the Minister.

Application of *Public Inquiries Act, 2009*

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

Complaint to society

119 (1) A person may make a complaint to a society relating to a service sought or received by that person from the society in accordance with the regulations.

Complaint review procedure

(2) Where a society receives a complaint under subsection (1), it shall deal with the complaint in accordance with the complaint review procedure established by regulation, subject to subsection 120 (2).

Public availability

(3) A society shall make information relating to the complaint review procedure available to the public and to any person upon request.

Society's decision

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

Application for review by Board

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

1. A matter described in subsection 120 (4).
2. Any other prescribed matter.

Review by Board

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

Composition of Board

(7) The Board shall be composed of members with the prescribed qualifications and prescribed experience.

Hearing optional

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

Non-application

(9) The *Statutory Powers Procedure Act* does not apply to a hearing under this section.

Board decision

(10) Upon completing its review of a decision by a society in relation to a complaint, the Board may,

- (a) in the case of a matter described in subsection 120 (4), make any order described in subsection 120 (7), as appropriate;
- (b) redirect the matter to the society for further review;
- (c) confirm the society's decision; or
- (d) make such other order as may be prescribed.

No review if matter within purview of court

(11) A society shall not conduct a review of a complaint under this section if the subject of the complaint,

- (a) is an issue that has been decided by the court or is before the court; or
- (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

Complaint to Board

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

- (a) decide not to make the complaint to the society under section 119 and make the complaint directly to the Board under this section; or
- (b) where the person first makes the complaint to the society under section 119, submit the complaint to the Board before the society's complaint review procedure is completed.

Notice to society

(2) If a person submits a complaint to the Board under clause (1) (b) after having brought the complaint to the society under section 119, the Board shall give the society notice of that fact and the society may terminate or stay its review, as it considers appropriate.

Complaint to Board

(3) A complaint to the Board under this section shall be made in accordance with the regulations.

Matters for Board review

(4) The following matters may be reviewed by the Board under this section:

1. Allegations that the society has refused to proceed with a complaint made by the complainant under subsection 119 (1) as required under subsection 119 (2).
2. Allegations that the society has failed to respond to the complainant's complaint within the timeframe required by regulation.
3. Allegations that the society has failed to comply with the complaint review procedure or with any other procedural requirements under this Act relating to the review of complaints.
4. Allegations that the society has failed to comply with subsection 15 (2).
5. Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainant's interests.
6. Such other matters as may be prescribed.

Review by Board

(5) Upon receipt of a complaint under this section, the Board shall conduct a review of the matter.

Application

(6) Subsections 119 (7), (8) and (9) apply with necessary modification to a review of a complaint made under this section.

Board decision

(7) After reviewing the complaint, the Board may,

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

No review if matter within purview of court

(8) The Board shall not conduct a review of a complaint under this section if the subject of the complaint,

- (a) is an issue that has been decided by the court or is before the court; or
- (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

APPEALS

Appeal

121 (1) An appeal from a court's order under this Part may be made to the Superior Court of Justice by,

- (a) the child, if the child is entitled to participate in the proceeding under subsection 79 (6) (child's participation);
- (b) any parent of the child;
- (c) the person who had charge of the child immediately before intervention under this Part;
- (d) a Director or local director; or
- (e) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c) or (d) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Exception

(2) Subsection (1) does not apply to an order for an assessment under section 98.

Care and custody pending appeal

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the 10 days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's care and custody at the time the decision is made, the child shall remain in the care and custody of the society until,

- (a) the 10-day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier.

Temporary order

(4) The Superior Court of Justice may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, and the court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order.

No extension where child placed for adoption

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing).

Further evidence

(6) The court may receive further evidence relating to events after the appealed decision.

Place of hearing

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Application of s. 87

(8) Section 87 (rules re hearings) applies with necessary modifications to an appeal under this section.

EXPIRY OF ORDERS**Time limit**

122 (1) Subject to subsections (4) and (5), the court shall not make an order for interim society care under paragraph 2 of subsection 101 (1) that results in a child being in the care and custody of a society for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the court makes the order; or
- (b) 24 months, if the child is 6 or older on the day the court makes the order.

Calculation of time limit

(2) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (1):

- 1. An agreement made under subsection 75 (1) (temporary care agreement).
- 2. A temporary order made under clause 94 (2) (d) (custody during adjournment).

Previous periods to be counted

(3) The period referred to in subsection (1) shall include any previous periods that the child was in a society's care and custody under an interim society care order made under paragraph 2 of subsection 101 (1) or as described in subsection (2) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

Deemed extension of time limit

(4) Where the period referred to in subsection (1) or (5) expires and,

- (a) an appeal of an order made under subsection 101 (1) has been commenced and is not yet finally disposed of; or
- (b) the court has adjourned a hearing under section 114 (status review),

the period is deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 114, as the case may be.

Six-month extension

(5) Subject to paragraphs 2 and 4 of subsection 101 (1), the court may by order extend the period permitted under subsection (1) by a period not to exceed six months if it is in the child's best interests to do so.

Expiry of orders

123 An order under this Part expires when the child who is the subject of the order,

- (a) turns 18; or
- (b) marries,

whichever comes first.

CONTINUED CARE AND SUPPORT

Continued care and support

124 A society or prescribed entity shall enter into an agreement to provide care and support to a person in accordance with the regulations in each of the following circumstances:

1. A custody order under clause 116 (1) (b) or an order for extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) was made in relation to that person as a child and the order expires under section 123.
2. The person entered into an agreement with the society under section 77 and the agreement expires on the person's 18th birthday.
3. The person is 18 or older and was eligible for the prescribed support services.
4. In the case of a First Nations, Inuk or Métis person who is 18 or older, paragraph 1, 2 or 3 applies or the person was being cared for under customary care immediately before their 18th birthday and the person who was caring for them was receiving a subsidy from the society or an entity under section 71.

DUTY TO REPORT

Duty to report child in need of protection

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

1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
5. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behaviour, or
 - v. delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.

7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

Ongoing duty to report

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if the person has made previous reports with respect to the same child.

Person must report directly

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on the person's behalf.

Duty to report does not apply to older children

(4) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists.

Offence

(5) A person referred to in subsection (6) is guilty of an offence if,

- (a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and
- (b) the information on which it was based was obtained in the course of the person's professional or official duties.

Professionals and officials

(6) Subsection (5) applies to every person who performs professional or official duties with respect to children including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;
- (c) a religious official;
- (d) a mediator and an arbitrator;

- (e) a peace officer and a coroner;
- (f) a lawyer; and
- (g) a service provider and an employee of a service provider.

Volunteer excluded

(7) In clause (6) (b),
“youth and recreation worker” does not include a volunteer.

Director, officer or employee of corporation

(8) A director, officer or employee of a corporation who authorizes, permits or concurs in the commission of an offence under subsection (5) by an employee of the corporation is guilty of an offence.

Penalty

(9) A person convicted of an offence under subsection (5) or (8) is liable to a fine of not more than \$5,000.

Section overrides privilege; protection from liability

(10) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion.

Solicitor-client privilege

(11) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer’s client.

Conflict

(12) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*.

Society to assess and verify report of child in need of protection

126 (1) A society that receives a report under section 125 that a child, including a child in the society’s care or supervision, is or may be in need of protection shall as soon as possible carry out an assessment as prescribed and verify the reported information, or ensure that the information is assessed and verified by another society.

Protection from liability

(2) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (1) or for an alleged neglect or default of that duty.

Society to report abuse of child in its care and custody

127 (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall report the information to a Director as soon as possible.

Definition

(2) In this section and in sections 129 and 133,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 127 (2) of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 6)

Definition

(2) In this section and section 129,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j). 2017, c. 14, Sched. 3, s. 6.

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

2017, c. 14, Sched. 3, s. 6 - not in force

Duty to report child’s death

128 A person or society that obtains information that a child has died shall report the information to a coroner if,

- (a) a court made an order under this Act denying access to the child by a parent of the child or making the access subject to supervision;

- (b) on the application of a society, a court varied the order to grant the access or to make it no longer subject to supervision; and
- (c) the child subsequently died as a result of a criminal act committed by a parent or family member who had custody or charge of the child at the time of the act.

REVIEW TEAMS

Review team

129 (1) In this section,

“review team” means a team established by a society under subsection (2).

Composition

- (2) Every society shall establish a review team that includes,
- (a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and
 - (b) at least one legally qualified medical practitioner.

Chair

(3) The members of a review team shall choose a chair from among themselves.

Duty of team

- (4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chair, shall,
- (a) review the case; and
 - (b) recommend to the society how the child may be protected.

Disclosure to team permitted

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

Section overrides privilege; protection from liability

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

Where child not to be returned without review or hearing

- (7) Where a society with a review team has information that a child placed in its care under subsection 94 (2) (custody during adjournment) or subsection 101 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,
- (a) the society has,
 - (i) referred the case to its review team, and
 - (ii) obtained and considered the review team’s recommendations; or
 - (b) the court has terminated the order placing the child in the society’s care.

COURT-ORDERED ACCESS TO RECORDS

Production of records

Definition

130 (1) In this section and sections 131 and 132,

“record of personal health information” has the same meaning as in the *Mental Health Act*.

Motion or application for production of record

(2) A Director or a society may at any time make a motion or an application for an order under subsection (3) or (4) for the production of a record or part of a record.

Order on motion

(3) Where the court is satisfied that a record or part of a record that is the subject of a motion referred to in subsection (2) contains information that may be relevant to a proceeding under this Part and that the person in possession or control of the

record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court.

Order on application

(4) Where the court is satisfied that a record or part of a record that is the subject of an application referred to in subsection (2) may be relevant to assessing compliance with one of the following and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court:

1. An order under clause 94 (2) (b) or (c) that is subject to supervision.
2. An order under clause 94 (2) (c) or (d) with respect to access.
3. A supervision order under paragraph 1 or 4 of subsection 101 (1).
4. An access order under section 104.
5. An order with respect to access or supervision on an application under section 113 or 115.
6. A custody order under section 116.
7. A restraining order under section 137.

Court may examine record

(5) In considering whether to make an order under subsection (3) or (4), the court may examine the record.

Information confidential

(6) No person who obtains information by means of an order made under subsection (3) or (4) shall disclose the information except,

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part.

Conflict

(7) Subsection (6) prevails despite anything in the *Personal Health Information Protection Act, 2004*.

Solicitor-client privilege

(8) Subject to subsection (9), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

Application of Mental Health Act

(9) Where a motion or an application under subsection (2) concerns a record of personal health information, subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act* applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 35 (7) of that Act; and
- (b) the need to protect the child.

Application of s. 294

(10) Where a motion or an application under subsection (2) concerns a record that is a record of a mental disorder within the meaning of section 294, that section applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 294 (6); and
- (b) the need to protect the child.

Warrant for access to record

131 (1) The court or a justice of the peace may issue a warrant for access to a record or a specified part of it if the court or justice of the peace is satisfied on the basis of information on oath from a Director or a person designated by a society that there are reasonable grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection.

Authority conferred by warrant

(2) The warrant authorizes the Director or the person designated by the society to,

- (a) inspect the record specified in the warrant during normal business hours or during the hours specified in the warrant;
- (b) make copies from the record in any manner that does not damage the record; and
- (c) remove the record for the purpose of making copies.

Return of record

(3) A person who removes a record under clause (2) (c) shall promptly return it after copying it.

Admissibility of copies

(4) A copy of a record that is the subject of a warrant under this section and that is certified as being a true copy of the original by the person who made the copy is admissible in evidence to the same extent as and has the same evidentiary value as the record.

Duration of warrant

(5) The warrant is valid for seven days.

Execution

(6) The Director or the person designated by the society may call on a peace officer for assistance in executing the warrant.

Solicitor-client privilege

(7) This section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

Application of *Mental Health Act*

(8) If a warrant issued under this section concerns a record of personal health information and the warrant is challenged under subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act*, equal consideration shall be given to,

- (a) the matters set out in subsection 35 (7) of that Act; and
- (b) the need to protect the child.

Application of s. 294

(9) If a warrant issued under this section concerns a record of a mental disorder within the meaning of section 294 and the warrant is challenged under section 294, equal consideration shall be given to,

- (a) the matters set out in subsection 294 (6); and
- (b) the need to protect the child.

Telewarrant

132 (1) Where a Director or a person designated by a society believes that there are reasonable grounds for the issuance of a warrant under section 131 and that it would be impracticable to appear personally before the court or a justice of the peace to make application for a warrant in accordance with section 131, the Director or person designated by the society may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the Chief Justice of the Ontario Court of Justice.

Same

- (2) The information shall,
- (a) include a statement of the grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection; and
 - (b) set out the circumstances that make it impracticable for the Director or person designated by the society to appear personally before a court or justice of the peace.

Warrant to be issued

(3) The justice may issue a warrant for access to the record or the specified part of it if the justice is satisfied that the application discloses,

- (a) reasonable grounds to believe that the record or the part of a record is relevant to investigate an allegation that a child is or may be in need of protection; and
- (b) reasonable grounds to dispense with personal appearance for the purpose of an application under section 131.

Validity of warrant

(4) A warrant issued under this section is not subject to challenge by reason only that there were not reasonable grounds to dispense with personal appearance for the purpose of an application under section 131.

Application of provisions

(5) Subsections 131 (2) to (9) apply with necessary modifications with respect to a warrant issued under this section.

Definition

(6) In this section,

“justice” means justice of the peace, a judge of the Ontario Court of Justice or a judge of the Family Court of the Superior Court of Justice.

CHILD ABUSE REGISTER

Register

133 (1) In this section and in section 134,

“Director” means the person appointed under subsection (2); (“directeur”)

“register” means the register maintained under subsection (5); (“registre”)

“registered person” means a person identified in the register, but does not include,

- (a) a person who reports to a society under subsection 125 (1) or (2) and is not the subject of the report, or
- (b) the child who is the subject of a report. (“personne inscrite”)

Director

(2) The Minister may appoint an employee in the Ministry as Director for the purposes of this section.

Duty of society

(3) A society that receives a report under section 125 that a child, including a child in the society’s care, is or may be suffering or may have suffered abuse shall verify the reported information as soon as possible, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall report it to the Director in the prescribed form as soon as possible.

Protection from liability

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

Child abuse register

(5) The Director shall maintain a register in the prescribed manner for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 125 (1) or (2) and is not the subject of the report.

Register confidential

(6) Despite Part X (Personal Information) and any other Act, no person shall inspect, remove or alter or permit the inspection, removal or alteration of information in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

Coroner’s inquest, etc.

(7) The following persons may inspect, remove and disclose information in the register in accordance with that person’s authority:

1. A coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*.
2. The Children’s Lawyer or the Children’s Lawyer’s authorized agent.

Minister or Director may permit access to register

(8) The Minister or the Director may permit the following persons to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose:

1. A person who is employed,
 - i. in the Ministry,
 - ii. by a society, or
 - iii. by a child welfare authority outside Ontario.
2. A person who is providing or proposes to provide counselling or treatment to a registered person.

Minister or Director may disclose information

(9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

Research

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person named in the register.

Access by child or registered person

(11) A child, a registered person or the child's or registered person's lawyer or agent may inspect only the information in the register that refers to the child or registered person.

Physician

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

Amendment of register

(13) The Director or an employee in the Ministry acting under the Director's authority,

- (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
- (b) may amend the register to correct an error.

Register inadmissible: exceptions

(14) The register shall not be admitted into evidence in a proceeding except,

- (a) to prove compliance or non-compliance with this section;
- (b) in a hearing or appeal under section 134;
- (c) in a proceeding under the *Coroners Act*; or
- (d) in a proceeding referred to in section 138.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 133 of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 7)

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

2017, c. 14, Sched. 3, s. 7 - not in force

Hearing re registered person

Definition

134 (1) In this section,

“hearing” means a hearing held under clause (4) (b).

Notice to registered person

(2) Where an entry is made in the register, the Director shall as soon as possible give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's lawyer or agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

Request to amend register

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

Director's response

(4) On receiving a request under subsection (3), the Director may,

- (a) grant the request; or

(b) hold a hearing, on 10 days written notice to the parties, to determine whether to grant or refuse the request.

Delegation

(5) The Director may authorize another person to hold a hearing and exercise the Director’s powers and duties under subsection (8).

Procedure

(6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.

Hearing

(7) The parties to a hearing are,

- (a) the registered person;
- (b) the society that verified the information referring to or identifying the registered person; and
- (c) any other person specified by the Director.

Director’s decision

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person’s name from or otherwise amend the register, and may order that the society’s records be amended to reflect the Director’s decision.

Appeal to Divisional Court

(9) A party to a hearing may appeal the Director’s decision to the Divisional Court.

Hearing private

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Publication

(11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.

Record inadmissible: exception

(12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 142 (1) (c) (confidentiality of child abuse register) or clause 142 (1) (d) (amendment of society’s records).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 134 of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 7)

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

2017, c. 14, Sched. 3, s. 7 - not in force

POWERS OF DIRECTOR

Director’s power to transfer

135 (1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,

- (a) be transferred to the care or supervision of another society; or
- (b) be transferred from one placement to another placement designated by the Director.

Criteria

(2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,

- (a) the length of time the child has spent in the existing placement;
- (b) the views of the foster parents; and
- (c) the views and wishes of the child, given due weight in accordance with the child’s age and maturity.

OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD’S BEHALF AND INJUNCTIONS

Abuse, failure to provide for reasonable care, etc.

Definition

136 (1) In this section,

“abuse” means a state or condition of being physically harmed, sexually abused or sexually exploited.

Child abuse

- (2) No person having charge of a child shall,
- (a) inflict abuse on the child; or
 - (b) by failing to care and provide for or supervise and protect the child adequately,
 - (i) permit the child to suffer abuse, or
 - (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child’s development.

Leaving child unattended

- (3) No person having charge of a child younger than 16 shall leave the child without making provision for the child’s supervision and care that is reasonable in the circumstances.

Allowing child to loiter, etc.

- (4) No parent of a child younger than 16 shall permit the child to,
- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
 - (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual 18 or older to accompany the child.

Police may bring child home or to place of safety

- (5) Where a child who is actually or apparently younger than 16 is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (4) (b), a peace officer may bring the child to a place of safety without a warrant and proceed as if the child had been brought to a place of safety under subsection 84 (1).

Child protection hearing

- (6) The court may, in connection with a case arising under subsection (2), (3) or (4), proceed under this Part as if an application had been made under subsection 81 (1) (child protection proceeding) in respect of the child.

Restraining order

137 (1) Instead of making an order under subsection 101 (1) or section 116 or in addition to making a temporary order under subsection 94 (2) or an order under subsection 101 (1) or section 116, the court may make one or more of the following orders in the child’s best interests:

- 1. An order restraining or prohibiting a person’s access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.**
- 2. An order restraining or prohibiting a person’s contact with the person who has lawful custody of the child following a temporary order made under subsection 94 (2) or an order made under subsection 101 (1) or clause 116 (1) (a) or (b).**

Notice

- (2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

Duration of the order

- (3) An order made under subsection (1) shall continue in force for such period as the court considers in the best interests of the child and,
- (a) if the order is made in addition to a temporary order made under subsection 94 (2) or an order made under subsection 101 (1) or clause 116 (1) (a), (b) or (c), the order may provide that it continues in force, unless it is varied, extended or terminated by the court, as long as the temporary order made under subsection 94 (2) or the order made under subsection 101 (1) or clause 116 (1) (a), (b) or (c), as the case may be, remains in force; or
 - (b) if the order is made instead of an order under subsection 101 (1) or clause 116 (1) (a), (b) or (c) or if the order is made in addition to an order under clause 116 (1) (d), the order may provide that it continues in force until it is varied or terminated by the court.

Application for extension, variation or termination

- (4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,
- (a) the person who is the subject of the order;

- (b) the child;
- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or

(f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Order for extension, variation or termination

- (5) Where an application is made under subsection (4), the court may, in the child's best interests,
- (a) extend the order for such period as the court considers to be in the best interests of the child, in the case of an order described in clause (3) (a); or
 - (b) vary or terminate the order.

Child in society's care not to be returned while order in force

- (6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,
- (a) the person named in the order; or
 - (b) a person who may permit that person to have access to the child.

Legal claim for recovery because of abuse

138 (1) In this section,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

Recovery on child's behalf

(2) When the Children's Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse and considers it to be in the child's best interests, the Children's Lawyer may institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

Society may apply

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

Prohibition

139 No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except in accordance with this Part.

Offences re interfering, etc. with child in society supervision or care

140 If a child is the subject of an order for society supervision, interim society care or extended society care made under paragraph 1, 2 or 3 of subsection 101 (1) or clause 116 (1) (a) or (c), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;
- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

Offences re false information, obstruction, etc.

141 No person shall,

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 81, 83, 84, 85 or 86.

Other offences

142 (1) A person who contravenes,

- (a) an order for access made under subsection 104 (1);
- (b) subsection 130 (6) (disclosure of information);

(c) subsection 133 (6) or (10) (confidentiality of child abuse register);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 142 (1) (c) of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 8 (1))

(d) an order made under subsection 134 (8) (amendment of society's records);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 142 (1) (d) of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 8 (1))

(e) subsection 136 (3) or (4) (leaving child unattended, etc.);

(f) a restraining order made under subsection 137 (1);

(g) section 139 (unauthorized placement);

(h) any provision of section 140 (interference with child, etc.); or

(i) clause 141 (a) or (b) (false information, obstruction, etc.),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

Offence of child abuse

(2) A person who contravenes subsection 136 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

Offences re publication

(3) A person who contravenes subsection 87 (8) or 134 (11) (publication of identifying information) or an order prohibiting publication made under clause 87 (7) (c) or subsection 87 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 142 (3) of the Act is amended by striking out "or 134 (11)". (See: 2017, c. 14, Sched. 3, s. 8 (2))

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

2017, c. 14, Sched. 3, s. 8 - not in force

Injunction

143 (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening section 140, on the society's application.

Variation, etc.

(2) The court may vary or terminate an order made under subsection (1), on any person's application.

PART VI YOUTH JUSTICE

Definitions

144 In this Part,

"bailiff" means a bailiff appointed under clause 146 (1) (c); ("huissier")

"Board" means the Custody Review Board continued under subsection 151 (1); ("Commission")

"probation officer" means,

- (a) a person appointed or designated by the Lieutenant Governor in Council or their delegate to perform any of the duties or functions of a youth worker under the *Youth Criminal Justice Act* (Canada), or
- (b) a probation officer appointed under clause 146 (1) (b); ("agent de probation")

PROGRAMS AND OFFICERS

Programs

Secure and open temporary detention programs

145 (1) The Minister may establish the following in places of temporary detention:

1. Secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community.
2. Open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons.

Secure custody programs

- (2) The Minister may establish secure custody programs in places of secure custody.

Open custody programs

- (3) The Minister may establish open custody programs in places of open custody.

Where locking up permitted

- (4) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

Appointments by Minister

146 (1) The Minister may appoint any person or class of persons as,

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
 - (i) under the *Youth Criminal Justice Act* (Canada), and
 - (ii) under this Act and the regulations;
- (b) a probation officer, to perform any or all of the duties and functions,
 - (i) of a youth worker under the *Youth Criminal Justice Act* (Canada),
 - (ii) of a probation officer for purposes related to young persons under the *Provincial Offences Act*, and
 - (iii) of a probation officer under this Act and the regulations; and
- (c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations.

Conditions or limitations on appointments

- (2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject.

Probation officer and bailiff have powers of peace officer

- (3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer.

Designation of peace officers

- (4) The Minister may designate in writing,
 - (a) a person who is an employee in the Ministry or is employed in a place of open custody, of secure custody or of temporary detention to be a peace officer while performing the person's duties and functions; or
 - (b) a class of persons, from among the persons described in clause (a), to be peace officers while performing their duties and functions.

Conditions or limitations on designations

- (5) The Minister may set out in a designation made under subsection (4) any conditions or limitations to which it is subject.

Remuneration and expenses

- (6) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Reports and information

147 A person in charge of a place of temporary detention, of open custody or of secure custody, a bailiff and a probation officer,

- (a) shall make the prescribed reports and provide the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) shall make a report and provide information to the Minister whenever the Minister requests it.

TEMPORARY DETENTION

Open and secure temporary detention

Open temporary detention unless provincial director determines otherwise

148 (1) A young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention.

Where secure temporary detention available

(2) A provincial director may detain a young person in a place of secure temporary detention if the provincial director is satisfied that it is necessary on one of the following grounds:

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
 - i. the offence includes causing or attempting to cause serious bodily harm to another person,
 - ii. the young person has, at any time, failed to appear in court when required to do so under the *Youth Criminal Justice Act* (Canada) or escaped or attempted to escape from lawful detention, or
 - iii. the young person has, within the 12 months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).
3. The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,
 - i. to ensure the young person's attendance at court,
 - ii. for the protection and safety of the public, or
 - iii. for the safety or security within a place of temporary detention.

Until return to secure custody

(3) Despite subsection (1), a young person who is apprehended because they have left or have not returned to a place of secure custody may be detained in a place of secure temporary detention until they are returned to the first-named place of custody.

Until determination

(4) Despite subsection (1), a young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding 24 hours while a provincial director makes a determination in respect of the young person under subsection (2).

Review of secure temporary detention

(5) A young person who is being detained in a place of secure temporary detention and who is brought before a youth justice court for a review of an order for detention made under the *Youth Criminal Justice Act* (Canada) or the *Criminal Code* (Canada) may request that the youth justice court review the level of their detention.

Powers of youth justice court

(6) The youth justice court conducting a review of an order for detention may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention.

Application for return to secure temporary detention

(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) on the basis that it is necessary that the young person be returned to a place of secure temporary detention because of either of the following:

1. A material change in the circumstances.
2. Any other grounds that the provincial director considers appropriate.

Powers of youth justice court

(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention.

CUSTODY

Detention under *Provincial Offences Act*

Pre-trial detention

149 (1) Where a young person is ordered to be detained in custody under subsection 150 (4) (order for detention) or 151 (2) (further orders) of the *Provincial Offences Act*, the young person shall be detained in a place of temporary detention.

Open custody for provincial offences

- (2) Where a young person is sentenced to a term of imprisonment under the *Provincial Offences Act*,
- (a) the term of imprisonment shall be served in a place of open custody, subject to subsections (3) and (4);
 - (b) section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) applies with necessary modifications; and
 - (c) sections 28 (remission) and 28.1 (determinations of remission) and Part III (Ontario Parole and Earned Release Board) of the *Ministry of Correctional Services Act* apply with necessary modifications.

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 149 (2) (c) of the Act is repealed and the following substituted: (See: 2018, c. 6, Sched. 3, s. 4)

- (c) sections 102 (remission) and 103 (determinations of remission) and Part X (Ontario Parole Board) of the *Correctional Services and Reintegration Act, 2018* apply with necessary modifications.

Transfer to place of secure custody

(3) Where a young person is placed in open custody under clause (2) (a), the provincial director may transfer the young person to a place of secure custody if, in the opinion of the provincial director, the transfer is necessary for the safety of the young person or the safety of others in the place of open custody.

Concurrent terms

(4) Where a young person is committed to custody under the *Youth Criminal Justice Act* (Canada) and is sentenced concurrently to a term of imprisonment under the *Provincial Offences Act*, the term of imprisonment under the *Provincial Offences Act* shall be served in the same place as the sentence under the *Youth Criminal Justice Act* (Canada).

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

2018, c. 6, Sched. 3, s. 4 - not in force

Young persons in open custody

150 Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 103 of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) apply with necessary modifications.

CUSTODY REVIEW BOARD

Custody Review Board

151 (1) The Custody Review Board is continued under the name Custody Review Board in English and Commission de révision des placements sous garde in French and shall have the powers and duties given to it by this Part and the regulations.

Members

(2) The Board shall be composed of the prescribed number of members who shall be appointed by the Lieutenant Governor in Council.

Chair and vice-chairs

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Duties of Board

(6) The Board shall conduct reviews under section 152 and perform such other duties as are assigned to it by the regulations.

Application to Board

152 (1) A young person may apply to the Board for a review of,

- (a) the particular place where the young person is held or to which the young person has been transferred;
- (b) a provincial director's refusal to authorize the young person's reintegration leave under section 91 of the *Youth Criminal Justice Act* (Canada); or
- (c) the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the *Young Offenders Act* (Canada) in accordance with section 88 of the *Youth Criminal Justice Act* (Canada).

30 day time limit

(2) An application under subsection (1) must be made within 30 days of the decision, placement or transfer, as the case may be.

Duty of Board to conduct review

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

Advise whether hearing to be held

(4) The Board shall advise the young person whether it intends to hold a hearing or not within 10 days of receiving the young person's application.

Procedure

(5) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (3).

Time period for review

(6) The Board shall complete its review and make a determination within 30 days of receiving a young person's application, unless,

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

Board's recommendations

(7) After conducting a review under subsection (3), the Board may,

- (a) recommend to the provincial director,
 - (i) where the Board is of the opinion that the place where the young person is held or to which the young person has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,
 - (ii) that the young person's reintegration leave be authorized under section 91 of the *Youth Criminal Justice Act* (Canada), or
 - (iii) where the young person has been transferred as described in clause (1) (c), that the young person be returned to a place of open custody; or
- (b) confirm the decision, placement or transfer.

APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION

Apprehension

Apprehension of young person absent from place of temporary detention

153 (1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

Apprehension of young person absent from place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 150,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of reintegration leave under clause 150 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

Young person to be returned within 48 hours

(3) A young person who is apprehended under this section shall be returned to the place from which the young person is absent within 48 hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 148 (2).

Warrant to apprehend young person

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of reintegration leave under clause 150 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

Authority to enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

Regulations regarding exercise of power of entry

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

INSPECTIONS AND INVESTIGATIONS

Inspections and investigations

154 (1) The Minister may designate any person to conduct such inspections or investigations as the Minister may require in connection with the administration of this Part.

Dismissal for cause for obstruction of inspection

(2) Any person employed in the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment.

SEARCHES

Permissible searches

155 (1) The person in charge of a place of open custody, of secure custody or of temporary detention may authorize a search, to be carried out in accordance with the regulations, of the following:

1. The place of open custody, of secure custody or of temporary detention.
2. The person of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
3. The property of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
4. Any vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention.

Contraband

(2) Any contraband found during a search may be seized and disposed of in accordance with the regulations.

Meaning of contraband

(3) For the purposes of subsection (2),

“contraband” means,

- (a) anything that a young person is not authorized to have,

- (b) anything that a young person is authorized to have but in a place where they are not authorized to have it, and
- (c) anything that a young person is authorized to have but that is being used for a purpose for which they are not authorized to use it.

MECHANICAL RESTRAINTS

Mechanical restraints

Limits on use

156 (1) The person in charge of a place of secure custody or of secure temporary detention shall ensure that no young person who is detained in the place of secure custody or of secure temporary detention is,

- (a) restrained by the use of mechanical restraints, other than in accordance with this section and the regulations;
- (b) restrained by the use of mechanical restraints as a means of punishment.

Conditions for use

(2) The person in charge of a place of secure custody or of secure temporary detention may authorize the use of mechanical restraints on a young person who is detained in the place of secure custody or of secure temporary detention only if all of the following are satisfied:

1. There is an imminent risk, if mechanical restraints were not used, that:
 - i. the young person or another person would suffer physical injury,
 - ii. the young person would escape the place of secure custody or of secure temporary detention, or
 - iii. the young person would cause significant property damage.
2. Alternatives to the use of mechanical restraints would not be, or have not been, effective to reduce or eliminate the risk referred to in paragraph 1.
3. The use of the mechanical restraints is reasonably necessary to reduce or eliminate the risk referred to in paragraph 1.

Exception for transportation

(3) Despite subsection (2), mechanical restraints may be used on a young person who is detained in a place of secure custody or of secure temporary detention where it is reasonably necessary for the transportation of the young person to another place of custody or detention, or to or from court or the community.

PART VII EXTRAORDINARY MEASURES

Definitions

157 In this Part,

“administrator” means the person in charge of a secure treatment program; (“administrateur”)

“intrusive procedure” means,

- (a) the use of mechanical restraints,
- (b) an aversive stimulation technique, or
- (c) any other procedure that is prescribed as an intrusive procedure; (“technique d’ingérence”)

“mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments; (“trouble mental”)

“psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug; (“psychotrope”)

“secure de-escalation room” means a locked room approved under subsection 173 (1) for use for the de-escalation of situations and behaviour involving children or young persons; (“pièce de désescalade sous clé”)

“secure treatment program” means a program established or approved by the Minister under subsection 158 (1). (“programme de traitement en milieu fermé”)

SECURE TREATMENT PROGRAMS

Secure treatment programs

Minister may establish or approve programs

158 (1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.

Terms and conditions

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

Admission of children

(3) No child shall be admitted to a secure treatment program except by a court order under section 164 (commitment to secure treatment program) or under section 171 (emergency admission).

Locking up permitted

159 The premises of a secure treatment program may be locked for the detention of children.

Mechanical restraints permitted

160 (1) Subject to subsection (3), an administrator may use and permit the use of mechanical restraints on a child as a means of controlling the child's behaviour.

Consent not required

(2) An administrator is not required to obtain the consent of or on behalf of the child before using mechanical restraints under this section.

Limitations

- (3) An administrator shall ensure that mechanical restraints are not used on a child in a secure treatment program except,
- (a) in accordance with this Part, the policies established under subsection (4) and the regulations; and
 - (b) in an emergency situation under the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or others.

Policy

- (4) A service provider that is approved to provide a secure treatment program shall,
- (a) establish a policy on the use of mechanical restraints that complies with this Act and the regulations; and
 - (b) ensure that the administrator and the employees of the program comply with the policy.

COMMITMENT TO SECURE TREATMENT

Application for order for child's commitment

161 (1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

1. Where the child is younger than 16,
 - i. the child's parent,
 - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
 - iii. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,
 - i. the child,
 - ii. the child's parent, if the child consents to the application,
 - iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
 - iv. a physician.

Time for hearing

(2) Where an application is made under subsection (1), the court shall deal with the matter within 10 days of the making of an order under subsection (6) (legal representation) or, where no such order is made, within 10 days of the making of the application.

Adjournments

(3) The court may adjourn the hearing of an application but shall not adjourn it for more than 30 days unless the applicant and the child consent to the longer adjournment.

Interim order

(4) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 164 (1) (a) to (f) and, where the child is younger than 12, the Minister consents to the child's admission.

Evidence on adjournments

(5) For the purpose of subsection (4), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Legal representation of child

(6) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

Hearing private

(7) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Child entitled to be present

(8) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,

- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
- (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing without the child's presence.

Court may require child's presence

(9) The court may require a child who has consented to the holding of the hearing without the child being present under clause (8) (b) to be present at all or part of the hearing.

Oral evidence

162 (1) Where an application is made under subsection 161 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 164 (1) without the hearing of oral evidence, and the consent is filed with the court.

Court may hear oral evidence despite consent

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

Time limitation

(3) A child's consent under subsection (1) is not effective for more than the period referred to in subsection 165 (1) (period of commitment).

Assessment

163 (1) The court may, at any time after an application is made under subsection 161 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment.

Report

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days unless the court is of the opinion that a longer assessment period is necessary.

Who may not perform assessment

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates.

Copies of report

(4) The court shall provide a copy of the report to,

- (a) the applicant;
- (b) the child, subject to subsection (6);

- (c) the child's lawyer;
- (d) a parent appearing at the hearing;
- (e) a society that has custody of the child under an order made under Part V (Child Protection);
- (f) the administrator; and

(g) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c), (d), (e) and (f) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Same

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings.

Court may withhold report from child

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm.

Commitment to secure treatment: criteria

164 (1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the 45 days immediately preceding,
 - (i) the application under subsection 161 (1),
 - (ii) the child's detention or custody under the *Youth Criminal Justice Act* (Canada) or under the *Provincial Offences Act*, or
 - (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient,

caused or attempted to cause serious bodily harm to himself or another person;

- (c) the child has,
 - (i) within the 12 months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself or another person, or
 - (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;
- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Where child younger than 12

(2) Where the child is younger than 12, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

Additional requirement where applicant is physician

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met.

Period of commitment

165 (1) The court shall specify in an order under subsection 164 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Where society is applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than 60 days, the child shall be released on a day 60 days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or

(b) the child is made the subject of an order for interim society care under paragraph 2 of subsection 101 (1) or for extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

How time calculated

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 164 (commitment) or pending an application under section 167 (extension) shall be counted.

Where order expires after 18th birthday

(4) A person who is the subject of an order made under subsection 164 (1) or 167 (5) may be kept in the secure treatment program after turning 18, until the order expires.

Reasons, plans, etc.

166 (1) Where the court makes an order under subsection 164 (1) or 167 (5), the court shall give,

- (a) reasons for its decision;
- (b) a statement of the plan, if any, for the child's care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

Plan for care on release

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order, the administrator shall, within 90 days of the date of the order, prepare such a plan and file it with the court.

EXTENSION OF PERIOD OF COMMITMENT

Extension

167 (1) Where a child is the subject of an order made under subsection 164 (1) (commitment) or subsection (5),

- (a) a person referred to in subsection 161 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

Same

(2) Where a person is kept in the secure treatment program under subsection 165 (4) after turning 18,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

Person may be kept in program while application pending

(3) Where an application is made under subsection (1) or (2), the person may be kept in the secure treatment program until the application is disposed of.

ss. 161 (3), (6-9), 162, 163 apply

(4) Subsections 161 (3), (6), (7), (8) and (9) (hearing) and sections 162 (waive oral evidence) and 163 (assessment) apply with necessary modifications to an application made under subsection (1) or (2).

Criteria for extension

(5) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;

- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 164 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

Period of extension

(6) The court shall specify in an order under subsection (5) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

RELEASE BY ADMINISTRATOR

Release

Unconditional release by administrator

168 (1) The administrator may release a child from a secure treatment program unconditionally where the administrator,

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release the child; and
- (b) is satisfied that,
 - (i) the child no longer requires the secure treatment program, and
 - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

Conditional release

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

Administrator may release despite court order

(3) Subsections (1) and (2) apply despite an order made under subsection 164 (1) (commitment) or 167 (5) (extension).

REVIEW OF COMMITMENT

Review of commitment

169 (1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 164 (1) (commitment) or 167 (5) (extension):

1. The child, where the child is 12 or older.
2. The child's parent.
3. The society having care, custody or supervision of the child.

ss. 161 (3), (6-9), 162, 163 apply

(2) Subsections 161 (3), (6), (7), (8) and (9) (hearing) and sections 162 (waive oral evidence) and 163 (assessment) apply with necessary modifications to an application made under subsection (1).

Termination of order

- (3) The court shall make an order terminating a child's commitment unless the court is satisfied that,
 - (a) the child has a mental disorder;
 - (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;
 - (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
 - (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 164 (1) or 167 (5), or other appropriate treatment.

Same

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program.

ss. 167 (3-6), 168, 169 apply

170 Subsections 167 (3), (4), (5) and (6) and sections 168 and 169 apply with necessary modifications to a person who is 18 or older and committed to a secure treatment program as if the person were a child.

EMERGENCY ADMISSION

Emergency admission

171 (1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

1. Where the child is younger than 16,
 - i. the child's parent,
 - ii. a person who is caring for the child with a parent's consent,
 - iii. a child protection worker who brought the child to a place of safety under section 81, or
 - iv. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,
 - i. the child,
 - ii. the child's parent, if the child consents to the application,
 - iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
 - iv. a physician.

Criteria for admission

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) for a period not to exceed 30 days where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to themselves or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Admission on consent

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

- (a) the other criteria set out in subsection (2) are met;
- (b) the child, after obtaining legal advice, consents to the admission; and
- (c) if the child is younger than 16, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission.

Where child younger than 12

(4) Where the child is younger than 12, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

Additional requirement where applicant is physician

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

Notices required

(6) The administrator shall ensure that within 24 hours after a child is admitted to a secure treatment program under subsection (2),

- (a) the child is given written notice of the child's right to a review under subsection (9); and
- (b) the Children's Lawyer and the prescribed person, if any, are given notice of the admission. 2017, c. 14, Sched. 1, s. 171 (6); 2018, c. 17, Sched. 34, s. 6 (6).

Mandatory advice

(7) The Children's Lawyer or, if a person is prescribed for the purposes of clause (6) (b), that person shall ensure that as soon as possible after the notice is received a person who is not employed to provide services in the secure treatment program explains to the child the child's right to a review in language suitable to the child's understanding. 2017, c. 14, Sched. 1, s. 171 (7); 2018, c. 17, Sched. 34, s. 6 (7).

Children's Lawyer to ensure child represented

(8) The Children's Lawyer shall represent the child at the earliest possible opportunity and in any event within five days after receiving a notice under subsection (6) unless the Children's Lawyer is satisfied that another person will provide legal representation for the child within that time.

Application for review

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

Child may be kept in program while application pending

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

Procedure

(11) Subsections 161 (7), (8) and (9) (hearing) and section 162 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

Time for review

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

Order

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses (2) (a) to (e).

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

2018, c. 17, Sched. 34, s. 6 (6, 7) - 01/05/2019

POLICE ASSISTANCE

Powers of peace officers, period of commitment

Police may take child for secure treatment

172 (1) A peace officer may take a child to a place where there is a secure treatment program,

- (a) for emergency admission, at the request of an applicant referred to in subsection 171 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 164.

Apprehension of child who leaves

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Period of commitment

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

SECURE DE-ESCALATION

Director's approval

173 (1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where a service is provided, for use for the de-escalation of situations and behaviour involving children or young persons, on such terms and conditions as the Director determines.

Withdrawal of approval

(2) Where a Director is of the opinion that a secure de-escalation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

Secure de-escalation

174 (1) No service provider or foster parent shall place in a locked room a child or young person who is in the service provider's or foster parent's care or permit the child or young person to be placed in a locked room, except in accordance with this section and the regulations.

Secure treatment, secure custody and secure temporary detention

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part VI (Youth Justice).

Criteria for use of a secure de-escalation room

(3) A child or young person may be placed in a secure de-escalation room where,

(a) in the service provider's opinion,

(i) the child's or young person's conduct indicates that the child or young person is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and

(ii) no less restrictive method of restraining the child or young person is practicable; and

(b) where the child is younger than 12, a Director gives permission for the child to be placed in a secure de-escalation room because of exceptional circumstances.

One-hour limit

(4) A child or young person who is placed in a secure de-escalation room shall be released within one hour unless the person in charge of the premises approves the child's or young person's longer stay in a secure de-escalation room in writing and records the reasons for not restraining the child or young person by a less restrictive method.

Continuous observation

(5) Subject to subsection (9), the service provider shall ensure that a child or young person who is placed in a secure de-escalation room is continuously observed by a responsible person.

Review

(6) Where a child or young person is kept in a secure de-escalation room for more than one hour, the person in charge of the premises shall review the child's or young person's placement in a secure de-escalation room at prescribed intervals.

Release

(7) A child or young person who is placed in a secure de-escalation room shall be released as soon as the person in charge is satisfied that the child or young person is not likely to cause serious property damage or serious bodily harm in the immediate future.

Maximum periods

(8) Subject to subsection (9), in no event shall a child or young person be kept in a secure de-escalation room for a period or periods that exceed an aggregate of eight hours in a given 24-hour period or an aggregate of 24 hours in a given week.

Exception

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is 16 or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the following standards and procedures and with any additional standards and procedures that may be prescribed:

1. The young person must be observed every 15 minutes by a responsible person and these observations must be recorded in the young person's case record.
2. The service provider must determine whether, given the needs of the young person, the young person should be observed at regular intervals that are more frequent than every 15 minutes, and, if that determination is made, the young person must be observed by a responsible person at the more frequent intervals determined by the service provider and these observations must be recorded in the young person's case record.
3. The young person must not be kept in a secure de-escalation room for a continuous period in excess of 24 hours or for a period or periods that exceed an aggregate of 24 hours in a seven-day period.

4. Despite paragraph 3, the service provider may extend a young person's placement in a secure de-escalation room for a continuous period beyond 24 hours or for an aggregate of more than 24 hours in a given seven-day period, if the provincial director approves the extension.
5. The provincial director may approve the extension of the placement of a young person in a secure de-escalation room beyond 24 continuous hours or beyond an aggregate of 24 hours in a given seven-day period if the provincial director has reasonable and probable grounds to believe that the young person's continued placement in a secure de-escalation room is necessary for the safety of staff or young persons in the facility.

Review of use of secure de-escalation

175 A person in charge of premises containing a secure de-escalation room shall review,

- (a) the need for the secure de-escalation room; and
- (b) the prescribed matters,

every three months or, in the case of secure custody or secure temporary detention, every six months from the date on which the secure de-escalation room is approved under subsection 173 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

PSYCHOTROPIC DRUGS

Consent required for use of psychotropic drugs

176 A service provider shall not administer or permit the administration of a psychotropic drug to a child or young person in the service provider's care without a consent in accordance with the *Health Care Consent Act, 1996*.

PROFESSIONAL ADVISORY BOARD

Professional Advisory Board

177 (1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who,

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;
- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed in the Ministry.

Chair

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chair.

Duties of Board

(3) The Professional Advisory Board shall, at the Minister's request,

- (a) advise the Minister on prescribing procedures as intrusive procedures;
- (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- (c) review the practices and procedures of service providers with respect to,
 - (i) secure de-escalation,
 - (ii) intrusive procedures, and
 - (iii) psychotropic drugs,

and make recommendations to the Minister.

Request for review

178 Any person may request that the Minister refer the matter of the use of a secure de-escalation room or an intrusive procedure in respect of a child or young person, or the administration of a psychotropic drug to a child or young person, to the Professional Advisory Board for investigation and review.

PART VIII ADOPTION AND ADOPTION LICENSING

INTERPRETATION

Interpretation

179 (1) In this Part,

“birth parent” means a person who satisfies the prescribed criteria; (“parent de naissance”)

“birth relative” means,

- (a) in respect of a child who has not been adopted, a relative of the child, and
- (b) in respect of a child who has been adopted, a person who would have been a relative of the child if the child had not been adopted; (“membre de la parenté de naissance”)

“birth sibling” means, in respect of a person, a child of the same birth parent as the person, and includes a child adopted by the birth parent and a person whom the birth parent has demonstrated a settled intention to treat as a child of their family; (“frère ou soeur de naissance”)

“openness agreement” means an agreement referred to in section 212; (“accord de communication”)

“openness order” means an order made by a court in accordance with this Act for the purposes of facilitating communication or maintaining a relationship between the child and,

- (a) a birth parent, birth sibling or birth relative of the child,
- (b) a person with whom the child has a significant relationship or emotional tie, including a foster parent of the child or a member of the child’s extended family or community, or
- (c) in the case of a First Nations, Inuk or Métis child,
 - (i) a person described in clause (a) or (b), or
 - (ii) a member of the child’s bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child’s First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child’s cultural identity and connection to community; (“ordonnance de communication”)

“spouse” has the same meaning as in Parts I and II of the *Human Rights Code*. (“conjoint”)

Best interests of child

- (2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,
- (a) consider the child’s views and wishes, given due weight in accordance with the child’s age and maturity, unless they cannot be ascertained;
 - (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child’s cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
 - (c) consider any other circumstance of the case that the person considers relevant, including,
 - (i) the child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
 - (ii) the child’s physical, mental and emotional level of development,
 - (iii) the child’s race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - (iv) the child’s cultural and linguistic heritage,
 - (v) the importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family,
 - (vi) the child’s relationships and emotional ties to a parent, sibling, relative, other member of the child’s extended family or member of the child’s community,
 - (vii) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity, and
 - (viii) the effects on the child of delay in the disposition of the case.

CONSENT TO ADOPTION

Consents

180 (1) In this section,

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

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children’s Law Reform Act*.

2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 217 or 218 of this Act.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of the individual's family, or has acknowledged parentage of the child and provided for the child's support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* came into force.

Consent of parent, etc.

- (2) An order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, shall not be made without,
- (a) the written consent of every parent; or
 - (b) where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the written consent of a Director.

Same

- (3) A consent under clause (2) (a) shall not be given before the child is seven days old.

Same

- (4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until,
- (a) the society or licensee has advised the parent of the parent's right,
 - (i) to withdraw the consent under subsection (8), and
 - (ii) to be informed, on their request, whether an adoption order has been made in respect of the child;
 - (b) the society or licensee has advised the parent of such other matters as may be prescribed; and
 - (c) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

Custody of child

- (5) Where,
- (a) a child is being placed for adoption by a society or licensee;
 - (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
 - (c) the 21-day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 182 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 199.

Consent of person to be adopted

- (6) An order for the adoption of a person who is seven or older shall not be made without the person's written consent.

Same

- (7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

Withdrawal of consent

- (8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within 21 days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

Dispensing with person's consent

- (9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,
- (a) obtaining the consent would cause the person emotional harm; or
 - (b) the person is not able to consent because of a developmental disability.

Consent of applicant's spouse

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

Consents by minors: role of Children's Lawyer

(11) Where a person who gives a consent under clause (2) (a) is younger than 18, the consent is not valid unless the Children's Lawyer is satisfied that the consent is fully informed and reflects the person's true wishes.

Affidavits of execution

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

Form of foreign consents

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

Dispensing with consent

181 The court may dispense with a consent required under section 180 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and
- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

Late withdrawal of consent

182 (1) The court may permit a person who gave a consent to the adoption of a child under section 180 to withdraw the consent after the 21-day period referred to in subsection 180 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

Exception: child placed for adoption

(2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care.

PLACEMENT FOR ADOPTION

Only societies and licensees may place children, etc.

183 (1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Only societies and certain licensees may bring children into Ontario

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

Director's approval of proposed placement

(3) No licensee except a licensee exempted under subsection (6) shall do the following without first obtaining a Director's approval of the proposed placement under section 188:

1. Place a child who is a resident of Canada with another person for adoption.
2. Take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Placement of child from outside Canada

(4) No licensee described in subsection (2) shall bring a child who is not a resident of Canada into Ontario to be placed for adoption without,

- (a) first obtaining a Director's approval of the person with whom the child is to be placed as eligible and suitable to adopt under section 189; and
- (b) after the approval referred to in clause (a) is obtained, obtaining a Director's approval of the proposed placement under section 190.

Director's approval required

(5) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (6), without first receiving a Director's approval of the placement under subsection 188 (3) or 190 (2), as the case may be.

Designation of licensee

(6) A Director may designate a licensee that is an agency as exempt from the requirements of subsection (3).

Placements to be registered

(7) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within 30 days after placing the child.

Same: Director

(8) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (7) shall promptly register the placement in the prescribed manner.

Exception: family adoptions within Canada, etc.

- (9) Subsections (1), (2), (3), (5), (7) and (8) do not apply to,
- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent, if the child to be placed is a resident of Canada and the placement is within Ontario; or
 - (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent, if the placement is within Canada.

Limitation on placement by society

184 A society shall not place a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption until,

- (a) the time for commencing an appeal of the order has expired; or
- (b) any appeal of the order has been finally disposed of or abandoned.

Adoption planning

185 (1) Nothing in this Act prohibits a society from planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) and in respect of whom there is an access order in effect under Part V (Child Protection).

Openness

(2) Where a society begins planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the society shall consider the benefits of an openness order or openness agreement in respect of the child.

First Nations, Inuk or Métis child

186 (1) If a society intends to begin planning for the adoption of a First Nations, Inuk or Métis child, the society shall give written notice of its intention to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Care plan proposed by band or community

(2) If a representative chosen by each of the child's bands or First Nations, Inuit or Métis communities receives notice under subsection (1), each band and community may, within 60 days of the representative receiving the notice,

- (a) prepare its own plan for the care of the child; and
- (b) submit its plan to the society.

Condition for placement

(3) A society shall not place a First Nations, Inuk or Métis child with another person for adoption until,

- (a) at least 60 days after notice is given to a representative chosen by each of the bands and First Nations, Inuit or Métis communities have elapsed; or

(b) if a band or First Nations, Inuit or Métis community has submitted a plan for the care of the child, the society has considered the plan.

First Nations, Inuk or Métis child, openness, etc.

187 (1) Where a society begins planning for the adoption of a First Nations, Inuk or Métis child, the society shall consider the importance of developing or maintaining the child's connection to the child's bands and First Nations, Inuit or Métis communities.

Openness agreement or openness order

(2) For the purposes of subsection (1), the society shall include consideration of the benefits of,

(a) an openness agreement in respect of the child and a member of the child's bands and First Nations, Inuit or Métis communities; or

(b) where the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), an openness order in respect of the child and a representative of the child's bands and First Nations, Inuit or Métis communities.

Child from inside Canada: proposed placement

188 (1) A licensee who intends to act as described in subsection 183 (3) shall notify a Director of the proposed placement and at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed.

Who may make homestudy

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Review by Director

(3) The Director shall review the report of the adoption homestudy promptly and,

(a) approve the proposed placement;

(b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by,
(i) a specified society, licensee or person, or
(ii) in the case of a placement outside Ontario, a specified child welfare authority recognized in the jurisdiction of the placement or a prescribed person; or

(c) refuse to approve the proposed placement.

Notice

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

(a) to the person with whom the placement is proposed; and

(b) to the licensee.

Right to hearing

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom placement is proposed and the licensee are entitled to a hearing before the Board.

Application of other provisions

(6) Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal) apply to the hearing with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.

Extension of time

(7) If the Board is satisfied that there are reasonable grounds for the person with whom placement is proposed or the licensee to apply for an extension of the time fixed for requiring the hearing and for the Board to grant relief, it may,

(a) extend the time either before or after the expiration of the time; and

(b) give the directions that it considers proper as a result of extending the time.

Recording of evidence

(8) The evidence taken before the Board at the hearing shall be recorded.

Placement outside Canada

(9) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

Child from outside Canada: homestudy

189 (1) A licensee who intends to bring a child who is not a resident of Canada into Ontario to be placed for adoption shall provide the Director with a report of an adoption homestudy of the person with whom placement is proposed to assess the person's eligibility and suitability to adopt.

Who may make homestudy

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Review by Director

- (3) The Director shall review the report of the adoption homestudy promptly and,
- (a) approve the person unconditionally as eligible and suitable to adopt;
 - (b) approve the person subject to any conditions the Director considers appropriate; or
 - (c) refuse to approve the person.

Notice

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

- (a) to the person who is the subject of the homestudy; and
- (b) to the licensee.

Right to hearing

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person who is the subject of the homestudy is entitled to a hearing before the Board.

Application of other provisions

- (6) The following provisions apply to the hearing:
1. Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
 2. Subsections 188 (7) (extension of time) and (8) (recording of evidence).

Child from outside Canada: review of proposed placement

190 (1) If a person has been approved or approved subject to conditions as eligible and suitable to adopt under section 189 and a licensee proposes to place a child with the person for adoption, the licensee shall request that a Director review the proposed placement.

Review by Director

- (2) The Director shall promptly review the proposed placement and,
- (a) approve the proposed placement unconditionally;
 - (b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by a specified society, licensee or person; or
 - (c) refuse to approve the proposed placement.

Notice

(3) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

- (a) to the person with whom the placement is proposed; and
- (b) to the licensee.

Right to hearing

(4) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom the placement is proposed and the licensee are entitled to a hearing before the Board.

Application of other provisions

(5) The following provisions apply to the hearing:

1. Sections 233 (hearings), 234 (review of conditions), 266 (parties) and 267 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
2. Subsections 188 (7) (extension of time) and (8) (recording of evidence).

Access orders terminate

191 (1) When a child is placed for adoption by a society or licensee, every order respecting access to the child is terminated, including an access order made under Part V (Child Protection) in respect of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).

No interference, etc., with child in placement

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or
- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

DECISION TO REFUSE TO PLACE CHILD OR TO REMOVE CHILD AFTER PLACEMENT

Decision of society or licensee

192 (1) This section applies if,

- (a) a society decides to refuse an application to adopt a particular child made by a foster parent or other person; or
- (b) a society or licensee decides to remove a child who has been placed with a person for adoption.

Notice of decision

(2) The society or licensee who makes a decision referred to in subsection (1) shall,

- (a) give at least 10 days notice in writing of the decision to the person who applied to adopt the child or with whom the child had been placed for adoption;
- (b) include in the notice under clause (a) notice of the person's right to apply for a review of the decision under subsection (3); and
- (c) in the case of a First Nations, Inuk or Métis child, give the notice required by clauses (a) and (b) and,
 - (i) give at least 10 days notice in writing of the decision to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
 - (ii) after the notice is given, consult with the band or community representatives relating to the planning for the care of the child.

Application for review

(3) A person who receives notice of a decision under subsection (2) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the decision subject to subsection (4).

Where no review

(4) If a society receives an application to adopt a child and, at the time of the application, the child had been placed for adoption with another person, the applicant is not entitled to a review of the society's decision to refuse the application.

Board hearing

(5) Upon receipt of an application under subsection (3) for a review of a decision, the Board shall hold a hearing under this section.

First Nations, Inuk or Métis child

(6) Upon receipt of an application for review of a decision relating to a First Nations, Inuk or Métis child, the Board shall give notice of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Practices and procedures

(7) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

Composition of Board

(8) At a hearing under subsection (5), the Board shall be composed of members with the prescribed qualifications and prescribed experience.

Parties

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

1. The applicant.
2. The society or licensee.
3. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
4. Any person that the Board adds under subsection (10).

Additional parties

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

Board decision

(11) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm or rescind the decision under review and shall give written reasons for its decision.

Subsequent placement

(12) After a society or licensee has made a decision referred to in subsection (1) in relation to a child, the society shall not place the child for adoption with a person other than the person who has a right to apply for a review under subsection (3) unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

No removal before Board decision

(13) Subject to subsection (14), if a society or licensee has decided to remove a child from the care of a person with whom the child was placed for adoption, the society or licensee, as the case may be, shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

Where child at risk

(14) A society or licensee may carry out a decision to remove a child from the care of a person with whom the child was placed for adoption before the expiry of the time for applying for a review under subsection (3) or at any time after the application for a review is made if, in the opinion of a Director or local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

Notice to Director

193 (1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director.

Same

(2) Where no order for a child's adoption has been made and a year has expired since,

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 180 (2) (a); or
- (b) the most recent review under subsection (3) of this section,

whichever is later, the society or licensee shall notify a Director, unless the child is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c).

Director to review

(3) A Director who receives a notice under subsection (1) or (2) shall conduct a review in accordance with the regulations.

OPENNESS ORDERS

No access order in effect

Application for openness order

194 (1) If a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is the subject of a plan for adoption, and no access order is in effect under Part V (Child Protection), the society having care and custody of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 199.

Notice of application

- (2) A society making an application under this section shall give notice of the application to,
- (a) the child;
 - (b) every person who will be permitted to communicate with or have a relationship with the child if the order is made;
 - (c) any person with whom the society has placed or plans to place the child for adoption; and
 - (d) any society that will supervise or participate in the arrangement under the openness order.

Method of giving notice to a child

- (3) Notice to a child under subsection (2) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
 - (b) the child's lawyer, if any; and
 - (c) the child if they are 12 or older.

Openness order

- (4) The court may make an openness order under this section in respect of a child if the court is satisfied that,
- (a) the openness order is in the best interests of the child;
 - (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
 - (c) the following entities and persons have consented to the order:
 - (i) the society,
 - (ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,
 - (iii) the person with whom the society has placed or plans to place the child for adoption, and
 - (iv) the child if they are 12 or older.

Termination of openness order if extended society care order terminates

(5) Any openness order made under this section in respect of a child terminates if the child ceases to be in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) by reason of an order made under subsection 116 (1).

Access order in effect

Notice of intent to place for adoption

195 (1) This section applies where,

- (a) a society intends to place a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption; and
- (b) an order under Part V (Child Protection) is in effect respecting a person's access to the child or the child's access to another person.

Notice

- (2) In the circumstances described in subsection (1), the society shall give notice to the following persons:
1. Every person who has been granted a right of access under the access order.
 2. Every person with respect to whom access has been granted under the access order.

Contents of notice

- (3) The society shall include in the notice the following information:

1. Notice that the society intends to place the child for adoption.
2. Notice that the access order terminates upon placement for adoption.
3. In the case of notice to a person described in paragraph 1 of subsection (2), the fact that the person has a right to apply for an openness order within 30 days after notice is received.
4. In the case of notice to a person described in paragraph 2 of subsection (2), the fact that the person described in paragraph 1 of subsection (2) has the right to apply for an openness order within 30 days after notice is received.

Method of giving notice

- (4) Notice may be given by,
- (a) if the person is not a child, leaving a copy,
 - (i) with the person,
 - (ii) if the person appears to be mentally incapable in respect of an issue in the notice, with the person and with the guardian of the person's property or, if none, with the Public Guardian and Trustee, or
 - (iii) with a lawyer who accepts the notice in writing on a copy of the document; or
 - (b) if the person is a child, leaving a copy,
 - (i) with the Children's Lawyer,
 - (ii) with the child's lawyer, if any, and
 - (iii) with the child, if they are 12 or older.

Alternate method

- (5) On application without notice by a society, the court may order that notice under subsection (2) be given by another method chosen by the court if the society,
- (a) provides detailed evidence showing,
 - (i) what steps have been taken to locate the person to whom the notice is to be given, and
 - (ii) if the person has been located, what steps have been taken to give the notice to the person; and
 - (b) shows that the method of giving notice could reasonably be expected to bring the notice to the person's attention.

Notice not required

- (6) On application without notice by a society, the court may order that the society is not required to give notice under subsection (2) if,
- (a) reasonable efforts to locate the person to whom the notice is to be given have not been or would not be successful; and
 - (b) there is no method of giving notice that could reasonably be expected to bring the notice to the person's attention.

Access order in effect

Application for openness order

196 (1) A person described in paragraph 1 of subsection 195 (2) may, within 30 days after notice is received, apply to the court for an openness order.

Notice of application

- (2) A person making an application for an openness order under this section shall give notice of the application to,
- (a) the society having care and custody of the child;
 - (b) if someone other than the child is bringing the application, the child; and
 - (c) if the child is bringing the application, the person who will be permitted to communicate with or have a relationship with the child if the order is made.

Method of giving notice to child

- (3) Notice to a child under subsection (2) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
 - (b) the child's lawyer, if any; and
 - (c) the child if they are 12 or older.

Limitation on placement

(4) A society shall not place the child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section.

Information before placement

(5) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:

1. The fact that such an application has been made.
2. The relationship of the applicant to the child or, if the child is the applicant, the relationship of the child to the person with whom the child will be permitted to communicate or have a relationship if the order is made.
3. The details of the openness arrangement requested.

Outcome of application

(6) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, after an adoption order is made, the adoptive parent, of the outcome of the application.

Openness order

(7) The court may make an openness order under this section in respect of a child if it is satisfied that,

- (a) the openness order is in the best interests of the child;
- (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
- (c) the child has consented to the order, if they are 12 or older.

Same

(8) In deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption or, after the adoption order is made, the adoptive parent, to comply with the arrangement under the openness order.

Consent of society required

(9) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

Termination of openness order if extended society care order terminates

(10) Any openness order made under this section in respect of a child terminates if the extended society care order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) to which the child was subject terminates by reason of an order made under subsection 116 (1).

Temporary orders

(11) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

Openness order — band and First Nations, Inuit or Métis community

197 (1) This section applies where a society intends to place a First Nations, Inuit or Métis child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption.

Notice

(2) In the circumstances described in subsection (1), the society shall give notice to the following persons:

1. A representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
2. The child.

Contents of notice

(3) The society shall include in the notice the following information:

1. Notice that the society intends to place the child for adoption.
2. The fact that the person has a right to apply for an openness order within 30 days after notice is received.
3. The fact that the society has a right to apply for an openness order within 30 days after notice is given.

Method of giving notice, etc.

(4) Where notice is required under subsection (2),

(a) notice shall be given by,

(i) if the person is not a child, leaving a copy with the person or with a lawyer who accepts the notice in writing on a copy of the document, or

(ii) if the person is a child, leaving a copy,

(A) with the Children's Lawyer,

(B) with the child's lawyer, if any, and

(C) with the child, if they are 12 or older; and

(b) subsections 195 (5) and (6) apply with necessary modifications.

Application for openness order

(5) A person described in paragraph 1 or 2 of subsection (2) may, within 30 days after notice is received, apply to the court for an openness order.

Same, society

(6) The society may, within 30 days after notice is given, apply to the court for an openness order.

Notice of application

(7) A person or society making an application for an openness order under this section shall give notice of the application to every other person or society who could have made such an application.

Method of giving notice to a child

(8) Notice to a child under subsection (7) shall be given by leaving a copy with,

(a) the Children's Lawyer;

(b) the child's lawyer, if any; and

(c) the child if they are 12 or older.

Openness order

(9) The court may make an openness order under this section in respect of a child if it is satisfied that,

(a) the openness order is in the best interests of the child;

(b) the openness order will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community;

(c) the child has consented to the order, if they are 12 or older.

Application of other provisions

(10) Subsections 196 (4) to (6) and (8) to (11) apply with necessary modifications for the purposes of this section.

Application to vary or terminate openness order before adoption

198 (1) A society or a person with whom a child has been placed for adoption may apply to the court for an order to vary or terminate an openness order made under section 194, 196 or 197.

Time for making application

(2) An application under this section shall not be made after an order for the adoption of the child is made under section 199.

Notice of application

(3) A society or person making an application under this section shall give notice of the application to,

(a) the child;

(b) every person who is permitted to communicate with or have a relationship with the child under the openness order;

(c) any person with whom the society has placed or plans to place the child for adoption, if the application under this section is made by the society; and

(d) any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

Method of giving notice to a child

- (4) Notice to a child under subsection (3) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
 - (b) the child's lawyer, if any; and
 - (c) the child if they are 12 or older.

Order to vary openness order before adoption

(5) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,

- (a) a material change in circumstances has occurred;
- (b) the proposed order is in the child's best interests; and
- (c) either,
 - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
 - (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

Order to terminate openness order before adoption

- (6) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
 - (b) termination of the order is in the child's best interests; and
 - (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

Consent of society required

(7) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

Alternative dispute resolution

(8) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.

Temporary orders

(9) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

ADOPTION ORDERS

Orders for adoption

Adoption of child

199 (1) The court may make an order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee; or
- (b) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed.

Family adoption

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

Adoption of adult, etc.

- (3) The court may make an order for the adoption of,
- (a) a person 18 or older; or
 - (b) a child who is 16 or older and has withdrawn from parental control,
- on another person's application.

Who may apply

- (4) An application under this section may only be made,
- (a) by one individual; or
 - (b) jointly, by two individuals who are spouses of one another.

Residency requirement

- (5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario.

Where applicant a minor

200 The court shall not make an order under section 199 on the application of a person who is younger than 18 unless the court is satisfied that special circumstances justify making the order.

Where order not to be made

201 Where the court has made an order,

- (a) dispensing with a consent under section 181; or
 - (b) refusing to permit the late withdrawal of a consent under subsection 182 (1),
- the court shall not make an order under section 199 until the later of,
- (c) the time for commencing an appeal of the order has expired; or
 - (d) any appeal of the order has been finally disposed of or abandoned.

Director's statement

202 (1) Where an application is made for an order for the adoption of a child under subsection 199 (1), a Director shall, before the hearing, file a written statement with the court indicating,

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 199 (1) (b), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) in the case of an application under clause 199 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 199 (1) (b), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order.

Additional circumstances

- (2) The written statement shall refer to any additional circumstances that the Director wishes to bring to the court's attention.

Local director may make statement

- (3) Where a child was placed by a society and has resided with the applicant for at least six months, the written statement may be made and filed by the local director.

Amendment of statement, etc.

- (4) The Director or local director, as the case may be, may amend the written statement at any time and may attend at the hearing and make submissions.

Where recommendation negative

- (5) Where the written statement indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least 30 days before the hearing.

Report of child's adjustment

- (6) The written statement shall be based on a report of the child's adjustment in the applicant's home, prepared by,

- (a) the society that placed the child or has jurisdiction where the child is placed; or
- (b) a person approved by the Director or local director.

Family adoptions

- (7) Where an application is made for an order for the adoption of a child under subsection 199 (2),
- (a) subsections (1), (2), (4), (5) and (6) apply to the application, if the child was not a resident of Canada before being placed for adoption; and
 - (b) the court may order that subsections (1), (2), (4), (5) and (6) apply to the application, if the child was a resident of Canada before being placed for adoption.

Place of hearing

203 (1) An application for an adoption order shall be heard and dealt with in the county or district in which,

- (a) the applicant; or
- (b) the person to be adopted,

resides at the time the application is filed.

Transfer of proceeding

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there.

Rules re applications

Hearing in private

204 (1) An application for an adoption order shall be heard and dealt with in the absence of the public.

Court files private

(2) No person shall have access to the court file concerning an application for an adoption order, except,

- (a) the court and authorized court employees;
- (b) the parties and the persons representing them under the authority of the *Law Society Act*; and
- (c) a Director and a local director.

Stale applications

(3) Where an application for an adoption order is not heard within 12 months of the day on which the applicant signed it,

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application.

No right to notice

(4) A person is not entitled to receive notice of an application under section 199 if,

- (a) the person has given a consent under clause 180 (2) (a) and has not withdrawn it;
- (b) the person's consent has been dispensed with under section 181; or
- (c) the person is a parent of a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) who is placed for adoption.

Power of court

205 (1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

Duty of court

(2) The court shall not make an order for the adoption of a child under subsection 199 (1) or (2) unless the court is satisfied that,

- (a) every person who has given a consent under section 180 understands the nature and effect of the adoption order; and
- (b) every applicant understands and appreciates the special role of an adoptive parent.

Participation of child

(3) Where an application is made for an order for the adoption of a child under subsection 199 (1) or (2), the court,

- (a) shall inquire into the child's capacity to understand and appreciate the nature of the application;
- (b) shall take the child's views and wishes into account and give them due weight in accordance with the child's age and maturity; and
- (c) where it is practical to do so, shall hear the child.

Participation of adult, etc.

(4) Where an application is made for an order for the adoption of a person under subsection 199 (3), the court shall consider the person's views and wishes and, on request, hear the person.

Change of name

206 (1) Subject to subsection (1.1), when the court makes an order under section 199, the court may, at the request of the applicant or applicants,

- (a) change the person's surname to any surname that the person could have been given if the person had been born in Ontario to the applicant or applicants at the time of the order;
- (b) change the person's forename;
- (c) change the person's surname as described in clause (a) and change the person's forename;
- (d) change the person's single name to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name;
- (e) change the person's single name to a name with at least one forename and a surname as described in clause (a); or
- (f) change the person's forename and surname to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name. 2017, c. 14, Sched. 3, s. 9.

Same

(1.1) A court shall not make a change described in subsection (1) unless,

- (a) doing so is in the best interests of the child, if the person adopted is a child; and
- (b) the person adopted consents, if the person is 12 or older. 2017, c. 14, Sched. 3, s. 9.

When child's consent not required

(2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 180 (9).

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

2017, c. 14, Sched. 3, s. 9 - 30/04/2018

Varying or terminating openness orders after adoption

207 (1) Any of the following persons may apply to the court to vary or terminate an openness order made under section 194, 196 or 197 after an order for adoption has been made under section 199:

1. An adoptive parent.
2. The adopted child.
3. A person who is permitted to communicate or have a relationship with the child under the openness order.
4. Any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

Leave

(2) Despite paragraphs 2 and 3 of subsection (1), the child and a person who is permitted to communicate or have a relationship with the child under an openness order shall not make an application under subsection (1) without leave of the court.

Jurisdiction

(3) An application under subsection (1) shall be made in the county or district,

- (a) in which the child resides, if the child resides in Ontario; or
- (b) in which the adoption order for the child was made if the child does not reside in Ontario, unless the court is satisfied that the preponderance of convenience favours having the matter dealt with by the court in another county or district.

Notice

(4) A person making an application under subsection (1) shall give notice of the application to every other person who could have made an application under that subsection with respect to the order.

Method of giving notice to a child

(5) Notice to a child under subsection (4) shall be given by leaving a copy with,

- (a) the Children's Lawyer;
- (b) the child's lawyer, if any; and
- (c) the child if they are 12 or older.

Order to vary openness order

(6) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,

- (a) a material change in circumstances has occurred;
- (b) the proposed order is in the child's best interests; and
- (c) either,
 - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
 - (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

Order to terminate openness order

(7) The court shall not terminate an openness order under this section unless the court is satisfied that,

- (a) a material change in circumstances has occurred;
- (b) termination of the order is in the child's best interests; and
- (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

Consent of society required

(8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

Alternative dispute resolution

(9) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to a matter relevant to the proceeding.

Appeal of order to vary or terminate openness order

208 (1) An appeal from a court's order under section 198 or 207 may be made to the Superior Court of Justice by,

- (a) any person who was entitled to apply for the order to vary or terminate the openness order; or
- (b) any person who was entitled to notice of the application to vary or terminate the openness order.

Temporary order

(2) Pending final disposition of the appeal, the Superior Court of Justice may on any party's motion make a temporary order in the child's best interests that varies or suspends an openness order.

No time extension

(3) No extension of the time for an appeal shall be granted.

Further evidence

(4) The court may receive further evidence relating to events after the appealed decision.

Place of hearing

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Application of s. 204

209 Subsections 204 (1) and (2) apply with necessary modifications to proceedings under sections 194, 196, 197, 198, 207 and 208.

Child may participate

210 A child is entitled to participate in the proceeding under section 194, 196, 197, 198, 207 or 208 as if they were a party.

Legal representation of child

211 (1) A child may have legal representation at any stage in a proceeding under section 194, 196, 197, 198, 207 or 208 and subsection 78 (2) applies with necessary modifications to such a proceeding.

Children's Lawyer

(2) The Children's Lawyer may provide legal representation to a child under this Part if, in the opinion of the Children's Lawyer, such representation is appropriate.

Court may refer matter to Children's Lawyer

(3) Where the court determines that legal representation is desirable, the court may refer the matter to the Children's Lawyer.

OPENNESS AGREEMENTS

Who may enter into openness agreement

212 (1) For the purposes of facilitating communication or maintaining relationships, an openness agreement may be made by an adoptive parent of a child or by a person with whom a society or licensee has placed or plans to place a child for adoption and any of the following persons:

1. A birth parent, birth relative or birth sibling of the child.
2. A foster parent of the child or another person who cared for the child or in whose custody the child was placed at any time.
3. A member of the child's extended family or community with whom the child has a significant relationship or emotional tie.
4. An adoptive parent of a birth sibling of the child or a person with whom a society or licensee has placed or plans to place a birth sibling of the child for adoption.
5. In the case of a First Nations, Inuk or Métis child,
 - i. a person described in paragraph 1, 2, 3 or 4, or
 - ii. a member of the child's bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

When agreement may be made

(2) An openness agreement may be made at any time before or after an adoption order is made.

Agreement may include dispute resolution process

(3) An openness agreement may include a process to resolve disputes arising under the agreement or with respect to matters associated with it.

Child's views and wishes of child

(4) Before an openness agreement is made, the child's views and wishes shall be taken into account and given due weight in accordance with the child's age and maturity.

INTERIM ORDERS

Interim order

213 (1) Where an application is made for an order for the adoption of a child under subsection 199 (1) or (2), the court, after considering the statement made under subsection 202 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

Terms and conditions

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

Not an adoption order

(3) An order under subsection (1) is not an adoption order.

Consents required

(4) Sections 180 and 181 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

Departure from Ontario

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 199 (1) or (2) where the statement made under subsection 202 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order.

Successive adoption orders

214 An adoption order under subsection 199 (1) or (2) or an interim custody order under subsection 213 (1) may be made in respect of a person who is the subject of an earlier adoption order.

APPEALS

Appeals

Appeal: adoption order

215 (1) An appeal from a court's order under section 199 may be made to the Superior Court of Justice by,

- (a) the applicant for the adoption order; and
- (b) the Director or local director who made the statement under subsection 202 (1).

Same: dispensing with consent

(2) An appeal from a court's order under section 181 dispensing with a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person whose consent was dispensed with.

Same: late withdrawal of consent

(3) An appeal from a court's order under subsection 182 (1) permitting the late withdrawal of a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person who gave the consent.

No extension of time for appeal

(4) No extension of the time for an appeal shall be granted.

Place of hearing

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Hearing in private

(6) An appeal under this section shall be heard in the absence of the public.

EFFECT OF ADOPTION ORDER

Order final

216 (1) An adoption order under section 199 is final and irrevocable, subject only to section 215 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

Validity of adoption order not affected by openness order or agreement

(2) Compliance or non-compliance with the terms of an openness order or openness agreement relating to a child does not affect the validity of an order made under section 199 for the adoption of the child.

Status of adopted child

217 (1) In this section,

“adopted child” means a person who was adopted in Ontario.

Same

- (2) For all purposes of law, as of the date of the making of an adoption order,
- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and
 - (b) the adopted child ceases to be the child of the person who was the adopted child's parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent.

How relationships determined

- (3) The relationship to one another of all persons, including the adopted child, the adoptive parent, the kindred of the adoptive parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

Reference in will or other document

- (4) In any will or other document made at any time before or after the day this subsection comes into force and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person is deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

Application of section

- (5) This section applies and is deemed always to have applied with respect to any adoption made under any Act that is in force, but not so as to affect,
- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and
 - (b) any interest in property or right that has indefeasibly vested before the day this subsection comes into force.

Exception

- (6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections.

Effect of foreign adoption

218 An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part.

No order for access by birth parent, etc.

219 Where an order for the adoption of a child has been made under this Part, no court shall make an order under this Part for access to the child by,

- (a) a birth parent; or
- (b) a member of a birth parent's family.

MAINTENANCE OF RELATIONSHIPS

Maintenance of relationships

220 (1) A society shall make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child in the following circumstances:

1. The child was placed for adoption by the society and the society has decided not to finalize the adoption of the child by the person with whom the child was placed.
2. A child returns to the care of a society after an adoption order was made.

Openness order or agreement or access order

- (2) For the purposes of subsection (1), in addition to what is permitted under subsection 105 (9), a society shall,
- (a) facilitate contact or communication provided for under an existing openness order or openness agreement in respect of the child and the persons who are subject to or parties to the openness order or openness agreement, as the case may be; and
 - (b) consider whether to apply for an order for access under Part V (Child Protection) in respect of the child and the persons.

Existing openness order continues in force

(3) For greater certainty, in a circumstance described in paragraph 1 or 2 of subsection (1), an existing openness order continues to be in force until it is varied or terminated.

RECORDS, CONFIDENTIALITY AND DISCLOSURE

Parent to be informed on request

221 At the request of a person whose consent to an adoption was required under clause 180 (2) (a) or clause 137 (2) (a) of the old Act and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

Court papers

222 (1) In this section,

“court” includes the Superior Court of Justice.

Requirement to seal documents

(2) Subject to subsections (3) and 224 (2), the documents used on an application for an adoption order under this Part or Part VII (Adoption) of the old Act shall be sealed up together with a certified copy of the original order and filed in the court office by the appropriate court officer, and shall not be opened for inspection except by court order.

Transmission of order

(3) Within 30 days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall provide,

- (a) the original order to the adoptive parent;
- (b) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;
- (c) if the adopted child is registered or entitled to be registered under the *Indian Act* (Canada), one certified copy to the Registrar under that Act; and
- (d) one certified copy to such other persons as may be prescribed.

Other court files

(4) Unless the court orders otherwise, only the court may examine identifying information that comes from the records of any of the following persons that is contained in any court file respecting the judicial review of a decision made by any of them:

1. A designated custodian under section 223.
2. A person who, by virtue of a regulation made under paragraph 18 of subsection 346 (1), reviews or hears appeals of decisions concerning the disclosure of information under section 224 or 225.
3. A person referred to in subsection 224 (1) or 225 (1).

Same

(5) No person shall, without the court's permission, disclose identifying information described in subsection (4) that the person obtained from the court file.

Definition

(6) In subsections (4) and (5),

“identifying information” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates.

Designation of custodians of information

223 (1) The Lieutenant Governor in Council may, by regulation, designate one or more persons to act as custodians of information that relates to adoptions and may impose such conditions and restrictions with respect to the designation as the Lieutenant Governor in Council considers appropriate.

Powers and duties

(2) A designated custodian may exercise such powers and shall perform such duties as may be prescribed with respect to the information provided to the custodian under this Act.

Same, disclosure of information

(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed.

Agreements

(4) The Minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians.

Disclosure to designated custodian

224 (1) The Minister, the Registrar General under the *Vital Statistics Act*, a society, a licensee and such other persons as may be prescribed shall give a designated custodian under section 223 such information that relates to adoptions as may be prescribed in such circumstances as may be prescribed.

Same, adoption orders

(2) A court shall give a designated custodian a certified copy of an adoption order made under this Part together with such other documents as may be prescribed in such circumstances as may be prescribed.

Disclosure to others

By the Minister

225 (1) The Minister shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

By a society

(2) A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

By a licensee

(3) A licensee shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

By a custodian

(4) A designated custodian under section 223 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

Scope of application

226 Sections 224 and 225 apply with respect to information that relates to an adoption regardless of when the adoption order was made.

CONFIDENTIALITY OF ADOPTION RECORDS

Confidentiality of adoption information

227 (1) Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the Ministry, a society, a licensee or a designated custodian under section 223 and no person shall permit it to be inspected, removed, altered or disclosed unless the inspection, removal, alteration or disclosure is,

- (a) necessary for the maintenance or updating of the information by the Ministry, society, licensee or designated custodian or their staff; or
- (b) authorized by this Act or the regulations.

Powers of courts and tribunals

(2) Subsection (1) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

Application

(3) This section applies regardless of when the adoption order was made.

Privacy

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption.

INJUNCTION

Injunction

228 (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening subsection 191 (2), on the society's or licensee's application.

Variation, etc.

(2) The Court may vary or terminate an order made under subsection (1), on any person's application.

LICENSING — REQUIREMENT FOR LICENCE; ISSUANCE AND RENEWAL

Licences

Licence required

229 (1) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director.

Issuing licence

(2) Subject to section 231, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any conditions imposed by the Director.

To individual or non-profit agency only

(3) Despite subsection (2), a licence shall only be issued to an individual or a non-profit agency.

Renewal of licence

(4) Subject to section 232, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any conditions imposed by the Director.

Provisional licence or renewal

(5) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such conditions as the Director may impose, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

Not transferable

(6) A licence is not transferable.

Definition

(7) In this section,

“non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

(a) to which Part III of the *Corporations Act* applies, or

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, clause (a) of the definition of “non-profit agency” in subsection 229 (7) of the Act is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act”. (See: 2017, c. 14, Sched. 3, s. 10)

(b) that is incorporated by or under a general or special Act of the Parliament of Canada.

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

2017, c. 14, Sched. 3, s. 10 - not in force

Conditions of licence

230 (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

Amending conditions

(2) A Director may, at any time, amend the conditions imposed on the licence.

Notice

(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

Contents of notice

(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 234 (1).

Conditions take effect upon notice

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

Licensee must comply

(6) Every licensee shall comply with the conditions to which the licence is subject.

LICENSING — REFUSAL AND REVOCATION

Grounds for refusal

231 A Director may propose to refuse to issue a licence where, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to place children for adoption in a responsible manner in accordance with this Act and the regulations;
- (b) the past conduct of any person mentioned in clause (a) affords reasonable grounds for belief that the placement of children for adoption will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) a ground exists that is prescribed as a ground for refusing to issue a licence.

Grounds for revocation, refusal to renew

232 A Director may propose to revoke or refuse to renew a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
 - (i) this Act or the regulations,
 - (ii) any other applicable law, or
 - (iii) a condition of the licence;
- (b) the placement of children for adoption is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (c) a person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (d) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 231 (b) for refusing to issue the licence; or
- (e) a ground exists that is prescribed as a ground for revoking or refusing to renew a licence.

LICENSING — HEARING BY TRIBUNAL

Hearings arising out of s. 231 or 232

Notice of proposal

233 (1) Where a Director proposes to refuse to issue a licence under section 231 or to revoke or refuse to renew a licence under section 232, the Director shall notify the applicant or licensee of the proposal in writing.

Request for hearing

(2) A notice under subsection (1) shall set out the reasons for the proposal and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they deliver a written request for a hearing to the Director and to the Tribunal within 10 days after the notice is given.

Powers of Director where no hearing requested

(3) Where an applicant or licensee does not request a hearing under subsection (2), the Director may carry out the proposal.

Powers of Tribunal where hearing requested

(4) Where an applicant or licensee requests a hearing under subsection (2), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) order the Director to carry out the proposal; or
- (b) order the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

Discretion of Tribunal

(5) In making an order under subsection (4), the Tribunal may substitute its opinion for that of the Director.

Review of conditions by Tribunal

234 (1) A licensee who is dissatisfied with the conditions imposed by a Director under subsection 229 (2), (4) or (5) or section 230 is entitled to a hearing by the Tribunal if the licensee delivers a written request for a hearing to the Director and to the Tribunal within 15 days after receiving the licence.

Powers of Tribunal

(2) Where a licensee requests a hearing under subsection (1), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the conditions;
- (b) strike out any or all of the conditions; or
- (c) impose such other conditions as the Tribunal considers appropriate.

Continuation of licence pending renewal

235 Subject to section 236, where a licensee has applied for renewal of a licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence is deemed to continue,

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to revoke the licence or to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its decision.

Suspension of licence

236 (1) A Director may, by giving written notice to a licensee, suspend the licence where, in the Director's opinion, the manner in which children are placed for adoption by the licensee is an immediate threat to the health, safety or welfare of the children.

Suspension takes effect upon notice

(2) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

s. 233 (2)-(4) apply

(3) Where a notice is given under subsection (1), subsections 233 (2), (3) and (4) apply with necessary modifications.

Application of other provisions

237 Sections 266 and 267 apply with necessary modifications to proceedings before the Tribunal under this Part and to appeals of its orders.

LICENSING — DELIVERY OF LICENCE AND RECORDS

Licence and record to be delivered

238 If a licence is revoked or renewal of it refused, or if a licensee ceases to place children for adoption, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

LICENSING — INJUNCTIONS

Injunction

239 (1) A Director may apply to the Superior Court of Justice for an order enjoining a licensee from placing children for adoption while the licence is suspended under section 236.

Variance or discharge

(2) A licensee may apply to the court for an order varying or discharging an order made under subsection (1).

OFFENCES

No payments for adoption

240 No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 180 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and
- (f) a subsidy paid by a society or by the Minister to an adoptive parent or to a person with whom a child is placed for adoption.

Offences

241 (1) A person who contravenes subsection 183 (1), (2), (3) or (4) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

Same

(2) A person who contravenes subsection 183 (5) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

Same

(3) A person who contravenes subsection 191 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

Same

(4) A person who contravenes section 240 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three years, or to both.

Limitation

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced more than two years after the day on which the offence was, or is alleged to have been, committed.

Offences — licensing

242 (1) A person is guilty of an offence if the person,

- (a) knowingly provides false information in an application for a licence or renewal of a licence under this Part or in a statement, report or return required to be provided in respect of a licensing matter under this Part or the regulations; or
- (b) fails to comply with an order or direction made by a court in relation to a licensing matter under this Part.

Directors, officers and employees

(2) It is an offence for a director, officer or employee of a corporation to authorize, permit or concur in the commission by the corporation of an offence described in subsection (1).

Penalty

(3) Every person convicted of an offence under this section is liable to a fine of not more than \$5,000.

PART IX RESIDENTIAL LICENSING

Definitions

243 In this Part,

“children's residence” means any of the following residences where children live and receive residential care:

1. A parent model residence having five or more children not of common parentage.
2. A staff model residence having three or more children not of common parentage, including an institution that is supervised or operated by a society or a place of temporary detention, of secure custody or of open custody.
3. Any other prescribed residence.

A children's residence does not include the following:

4. A house licensed under the *Private Hospitals Act*.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of the definition of “children’s residence” in section 243 of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 88)

4. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.
5. A child care centre as defined in the *Child Care and Early Years Act, 2014*.
6. A recreational camp under the *Health Protection and Promotion Act*.
7. A home for special care under the *Homes for Special Care Act*.
8. A school or private school as defined in the *Education Act*.
9. A hostel intended for short term accommodation.
10. A hospital that receives financial aid from the Government of Ontario.
11. A group home or similar facility that receives financial assistance from the Minister of Community Safety and Correctional Services but receives no financial assistance from the Minister under this Act.
12. Any other prescribed place; (“foyer pour enfants”)

“directive” means a directive issued by the Minister under section 252; (“directive”)

“parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis; (“foyer de type familial”)

“placing agency” means a person or entity, including a society, that places a child in residential care or in foster care and includes a licensee; (“agence de placement”)

“staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty. (“foyer avec rotation de personnel”)

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

2017, c. 25, Sched. 9, s. 88 - not in force

PROTECTIVE MEASURES

Licence required

244 No person shall do any of the following except under the authority of a licence:

1. Operate a children’s residence.
2. Provide residential care, directly or indirectly, in places that are not children’s residences,
 - i. for three or more children not of common parentage, or
 - ii. in such circumstances as may be prescribed.

Prohibition — past offence

245 No person shall operate a children’s residence or provide residential care under the authority of a licence if they have been convicted of a prescribed offence.

Prohibition — holding out as licensed

246 No person shall represent or hold out expressly or by implication that they are licensed to operate a children’s residence or to provide residential care unless the person is licensed to do so.

Placements must comply with Act and regulations, etc.

247 No licensee shall place a child in a children’s residence or other place where residential care is provided except in accordance with this Act, the regulations and the directives.

Duty to keep licence

248 (1) A licensee shall keep a copy of the licence at the following premises and shall ensure that the licence is available for public inspection:

1. In the case of a children’s residence, at the residence.
2. In the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

Duty to post information

(2) A licensee shall post any prescribed information in a conspicuous place at the children's residence or other place where residential care is provided under the authority of a licence.

Duty to provide licence and other information

249 (1) Before a child is placed in a children's residence or other place where residential care is provided under the authority of a licence, the licensee shall give the following to the placing agency, where the placing agency is not the licensee, or to the person placing the child:

1. A copy of the licence to operate the children's residence or to provide residential care, as the case may be.
2. Any other prescribed information.

Record of compliance

(2) The licensee shall make and keep a record of its compliance with subsection (1),

- (a) in the case of a children's residence, at the residence; or
- (b) in the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

Report certain matters to a Director

250 (1) If, in the course of employment, it comes to the attention of a prescribed person that there are reasonable grounds to suspect that there is an immediate threat to the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a licence, the person shall immediately report the suspicion and the information on which it is based to a Director.

Inspection

(2) If a suspicion is reported to a Director under subsection (1), the Director shall have an inspector conduct an inspection or make inquiries for the purpose of determining compliance with this Act, the regulations and the directives.

Solicitor-client privilege

(3) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

Duty to report

(4) Nothing in this section affects the duty to report a suspicion under section 125.

Director may exempt

251 A Director may, in the prescribed circumstances, exempt the following from any provision of this Part, the regulations under this Part or a directive for the time period and on the conditions specified by the Director:

1. A place or class of places where residential care is provided under the authority of a licence.
2. A person or class of persons who provide, or are applying to provide, residential care under the authority of a licence.

Directives by Minister

252 (1) The Minister may issue directives to licensees with respect to any prescribed matter.

Binding

(2) A licensee shall comply with every directive issued to it under this section.

General or particular

(3) A directive may be general or particular in its application.

Law prevails

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

Public availability

(5) The Minister shall make every directive under this section available to the public.

Non-application of *Legislation Act, 2006*

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

Publication of information by Minister

253 (1) The Minister may publish the following information with respect to licences and applications for licences:

1. The name of the licensee and prescribed contact information.
2. The name of the children's residence or other place where residential care is provided.
3. The conditions, if any, imposed on the licence under section 255.
4. The term of the licence specified under section 256.
5. The class, if any, assigned to the licence under section 258.
6. The maximum number of children for whom residential care may be provided by the licensee, set out in the licence under section 259.
7. Information about the programs and services to be provided under the authority of the licence.
8. A summary of each proposal to refuse to issue a licence under section 261, or under section 195 of the old Act, or to revoke or refuse to renew a licence under section 262, or under section 196 of the old Act, unless the refusal or revocation was not carried out.
9. A summary of each notice of a suspension under section 264, or under section 200 of the old Act.
10. The amount that the licensee shall charge for the provision of residential care under section 268.
11. A summary of each inspection report prepared under section 278.
12. Any other prescribed licensing information.

Not in force

(2) The authority under subsection (1) includes the authority to publish information with respect to licences that are no longer in force.

Manner

(3) The Minister may publish the information in any manner or format the Minister considers appropriate.

LICENCES

Issuance and renewal of licence

Application

254 (1) An application for a licence or the renewal of a licence to operate a children's residence or to provide residential care shall be made by submitting to a Director,

- (a) an application in a form approved by the Minister;
- (b) an attestation, to be completed by the applicant in a form approved by the Minister, confirming that the applicant is not prohibited from operating a children's residence or from providing residential care under the authority of a licence under section 245;
- (c) any other information or documentation that may be specified by the Minister; and
- (d) payment of the prescribed fee.

Additional requirements

(2) An applicant for a licence or the renewal of a licence shall comply with any other prescribed requirements and the directives that relate to the application process, unless the applicant withdraws the application.

Director's duty to issue or renew

- (3) A Director shall issue or renew a licence if the applicant applied in accordance with subsections (1) and (2) unless,
 - (a) the Director proposes to refuse to do so in accordance with section 261 or 262; or
 - (b) the applicant is under 18 years old, is a partnership or is an association of persons.

Not transferable

(4) A licence is not transferable.

Conditions of licence

255 (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

Amending conditions

(2) A Director may, at any time, amend the conditions imposed on the licence.

Notice

(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

Contents of notice

(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

Conditions take effect upon notice

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

Licensee must comply

(6) Every licensee shall comply with the conditions to which the licence is subject.

Term of licence

256 (1) A licence shall be issued or renewed,

- (a) for a term specified by the Director in accordance with the regulations; or
- (b) if there are no regulations governing the term, for a term specified by the Director that does not exceed one year.

Expiry at end of term

(2) A licence expires at the end of its term, unless it is deemed to continue under section 257.

Revocation for cause

(3) Nothing in this section prevents a licence from being revoked or suspended.

Continuation of licence pending renewal

257 Subject to a suspension under section 264, if a licensee has applied for renewal of a licence and paid the prescribed fee before the licence expires, the licence is deemed to continue,

- (a) until the renewal is granted; or
- (b) if the licensee is given notice that the Director proposes to revoke or refuse to renew the licence under section 262, until the time for requiring a hearing by the Tribunal has expired and, if a hearing is required, until the Tribunal has made its decision.

Class of licence

258 A Director may assign a class to a licence in accordance with the regulations,

- (a) when issuing or renewing a licence; or
- (b) at any other time, if authorized by the regulations.

Maximum number of children

259 (1) On issuing or renewing a licence, a Director may set out in the licence the maximum number of children for whom residential care may be provided by the licensee in the children's residence or other place where residential care is provided.

Changing maximum number

(2) A Director may at any time, but with notice to the licensee that is reasonable in the circumstances, change the maximum number of children set out in the licence.

Licensee must comply

(3) A licensee shall not admit to the children's residence or other place where residential care is provided more children than the maximum number set out in the licence, unless the admission is approved by a Director for a specified period of time.

Appeals of class or maximum number

260 If authorized by the regulations, a licensee may, in accordance with the regulations,

- (a) require a review by the Tribunal of,
 - (i) the class assigned to a licence under section 258, or
 - (ii) the maximum number of children set out in a licence under section 259; and
- (b) appeal the Tribunal's decision to the Divisional Court.

Refusals and revocations

Proposal to refuse to issue

261 A Director may propose to refuse to issue a licence if, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or where the applicant is a corporation, an officer or director of the corporation is not competent to operate a children's residence or to provide residential care, as the case may be, in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (b) the past conduct of any person mentioned in clause (a) affords reasonable grounds to believe that the operation of the children's residence or the provision of residential care will not be carried on in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (c) the premises in which the applicant proposes to operate the children's residence or to provide residential care do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) any person has made a false statement in the application for the licence, or in any report, document or other information required to be furnished by this Act or the regulations or any other applicable law;
- (e) a licence held by the applicant has been revoked or the renewal of such a licence has been refused and there has been no material change in the applicant's circumstances; or
- (f) a ground exists that is prescribed as a ground for refusing to issue a licence.

Proposal to revoke or refuse to renew

262 A Director may propose to revoke or refuse to renew a licence if, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
 - (i) this Act or the regulations,
 - (ii) any other applicable law, or
 - (iii) a condition of the licence;
- (b) the conduct of any person mentioned in clause (a) affords reasonable grounds to believe,
 - (i) that the person is not competent to operate a children's residence or to provide residential care in a responsible manner in accordance with this Act, the regulations or any other applicable law, or
 - (ii) that the children's residence or other place where residential care is provided is not being or will not be operated in accordance with this Act, the regulations or any other applicable law;
- (c) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) the operation of the children's residence or the provision of residential care is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (e) any person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (f) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 261 (b) for refusing to issue the licence; or
- (g) a ground exists that is prescribed as a ground for refusing to renew or for revoking a licence.

Notice of proposal

263 (1) The Director shall notify the applicant or licensee, as the case may be, in writing if the Director proposes to,

- (a) refuse to issue a licence under section 261; or
- (b) revoke or refuse to renew a licence under section 262.

Contents of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

Suspension

264 (1) A Director may suspend a licence if, in the Director's opinion, the manner in which the children's residence is operated or residential care is provided is an immediate threat to the health, safety or welfare of the children.

Notice

(2) The Director shall notify the licensee in writing of the suspension.

Contents of notice

(3) The notice shall set out the reasons for the suspension and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 265 (2).

Suspension takes effect upon notice

(4) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

No application

(5) No person whose licence is suspended may apply to a Director for a licence during the suspension.

HEARINGS BY TRIBUNAL

Hearings by Tribunal

265 (1) An applicant or licensee to whom any of the following notices is given by a Director may request a hearing by the Tribunal in accordance with subsection (2):

1. A notice of proposal to refuse to issue a licence under section 261.
2. A notice of proposal to revoke or refuse to renew a licence under section 262.
3. A notice to impose or amend conditions on a licence under section 255.
4. A notice to suspend a licence under section 264.

Request for hearing

(2) The applicant or licensee may request a hearing by giving a written request to the Director who gave the notice referred to in subsection (1), and to the Tribunal,

- (a) in the case of a notice to impose or amend conditions on a licence, within 15 days after the person is given the notice;
or
- (b) in the case of all other notices, within 10 days after the person is given the notice.

If hearing regarding proposal is not requested

(3) If an applicant or licensee to whom a notice of proposal to refuse to issue a licence or to revoke or refuse to renew a licence is given does not request a hearing in accordance with subsection (2), the Director may carry out the proposal.

Hearing

(4) If an applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall appoint a time for and hold a hearing.

Powers of tribunal

(5) After holding the hearing, the Tribunal may by order,

- (a) in the case of a proposal to refuse to issue a licence or to revoke or refuse to renew a licence,
 - (i) direct the Director to carry out the proposal, or
 - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations;
- (b) in the case of the imposition or amendment of conditions on a licence,
 - (i) confirm any or all of the conditions,
 - (ii) strike out any or all of the conditions, or
 - (iii) impose such other conditions as the Tribunal considers appropriate; or
- (c) in the case of the suspension of a licence,
 - (i) confirm the suspension, or
 - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

Discretion of tribunal

(6) In making an order under clause (5) (a) or (c), the Tribunal may substitute its opinion for that of the Director.

Rules for proceedings

Parties

266 (1) The following persons are parties to a proceeding under this Part:

1. The applicant or licensee requiring the hearing.
2. The Director.
3. Any other person specified by the Tribunal.

Members with prior involvement

(2) A member of the Tribunal who has taken part, before a hearing, in any investigation or consideration of its subject matter that relates to the applicant or licensee shall not take part in the hearing.

Discussion of subject matter of hearing

(3) A member of the Tribunal who takes part in a hearing shall not communicate with any person, except another member, a lawyer who is not the lawyer of any party, or an employee of the Tribunal, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate.

When Tribunal seeks independent legal advice

(4) The Tribunal may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond.

Examination of documentary evidence

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing.

Only members at entire hearing to participate in decision

(6) No member of the Tribunal shall participate in a decision of the Tribunal under this Part unless the member was present throughout the hearing and heard the evidence and arguments of the parties.

All members at hearing to participate in decision

(7) Unless the parties consent, the Tribunal shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision.

Final decision of Tribunal within 90 days

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Tribunal shall make a final decision and notify the parties of it within 90 days after the day the Tribunal receives the applicant's or licensee's request for a hearing under subsection 265 (2) of this Act.

APPEALS

Appeal from Tribunal

267 (1) Any party to a hearing before the Tribunal under this Part may appeal from the Tribunal's decision to the Divisional Court.

Record to be filed in the court

(2) If notice of an appeal is served under this section, the Tribunal shall promptly file with the court the record of the proceeding in which the decision appealed from was made.

Minister entitled to be heard

(3) The Minister, represented by a lawyer or otherwise, is entitled to be heard on the argument of an appeal under this section.

AMOUNT CHARGED BY LICENSEE

Amount

268 (1) A licensee shall charge the amount set out in or determined in accordance with the regulations for the provision of residential care under the authority of a licence.

Exemption

(2) A regulation may exempt a licensee or class of licensees from subsection (1) and may prescribe conditions and circumstances for any such exemption.

LICENSEE CEASING TO OPERATE, ETC.

Licence and records to be delivered

269 If a licence is revoked or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

Notice to placing agency or other person; removal of children

270 If a licence is revoked or suspended or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care,

- (a) the licensee shall promptly notify, in writing, every placing agency or person who has a child placed in the children's residence or other place where residential care is provided of the revocation, suspension, refusal or cessation; and
- (b) the placing agency or person who placed a child shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child.

OCCUPATION BY MINISTER AND INJUNCTIONS

Order for Minister's occupation

271 (1) If a Director's notice of proposal to revoke or refuse to renew a licence under clause 263 (1) (b) or notice of suspension under subsection 264 (2) has been given to a licensee and the matter has not yet been finally disposed of, the Minister may apply without notice to the Superior Court of Justice for an order,

- (a) authorizing the Minister or a person appointed by the Minister, pending the outcome of the proceeding and until alternative accommodation may be found for the children who are being cared for, to,
 - (i) occupy and operate the children's residence or the other premises where residential care is provided, or
 - (ii) provide the residential care, directly or indirectly; and
- (b) directing a peace officer to assist the Minister or a person appointed by the Minister as may be necessary in occupying the premises under subclause (a) (i).

Where court may make order

(2) The court may make an order referred to in subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

Interim management

(3) If an order described in subclause (1) (a) (i) has been made, the Minister or the person appointed by the Minister may, despite sections 25 and 39 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

Injunction

272 (1) A Director may apply to the Superior Court of Justice for an order enjoining any person from,

- (a) contravening section 244 (licence required); or
- (b) operating a children's residence or providing residential care while the licence is suspended under section 264.

Variance or discharge

(2) Any person may apply to the court for an order varying or discharging an order made under subsection (1).

RESIDENTIAL LICENSING INSPECTIONS

Appointment of inspectors

273 (1) The Minister may appoint inspectors for the purposes of this Part.

Director is an inspector

(2) A Director is, by virtue of their office, an inspector.

Powers and duties

(3) An inspector shall have the powers and duties set out in this Part and such other powers and duties as may be prescribed.

Restrictions

(4) The Minister may restrict an inspector's powers of entry and inspection to specified premises.

Certificate of appointment

(5) The Minister shall issue to every inspector a certificate of appointment which the inspector shall produce, on request, when exercising the powers or performing the duties of an inspector.

Purpose of inspection

274 An inspector shall conduct inspections for the purpose of determining compliance with this Act, the regulations and the directives.

Inspections without warrant

275 An inspector may, at any reasonable time and without a warrant or notice, enter and inspect,

- (a) the business premises of a licensee;
- (b) the premises of a children's residence;
- (c) a premises, other than a children's residence, where residential care is provided under the authority of a licence; or
- (d) a premises where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part.

Powers on inspection

276 (1) An inspector conducting an inspection may,

- (a) examine the services provided;
- (b) examine a record or other thing that is relevant to the inspection;
- (c) demand the production for inspection of a record or other thing that is relevant to the inspection, including a record or other thing that is not kept on the premises;
- (d) on issuing a written receipt, remove for review or copying a record or other thing that is relevant to the inspection;
- (e) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business at the premises;
- (f) photograph, film or make any other kind of recording that is relevant to the inspection, including of a child or other person at the premises, but only in a manner that does not intercept any private communications and that is in keeping with reasonable expectations of privacy;
- (g) question a person, including a child, on matters relevant to the inspection;
- (h) call upon experts for assistance in carrying out the inspection; and
- (i) exercise any other prescribed power.

Demand

(2) A demand that a record or other thing be produced for inspection may be made orally or in writing and must indicate,

- (a) the nature of the record or thing required; and
- (b) when the record or thing is to be produced.

Obligation to produce and assist

(3) If an inspector demands that a record or other thing be produced for inspection, the person having custody of the record or other thing shall produce it for the inspector within the time provided for in the demand, and shall, on the inspector's demand,

- (a) provide whatever assistance is reasonably necessary to produce the record or thing in readable form, including using a data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret the record or thing for the inspector.

Child's right to refuse

(4) Despite clause (1) (g), a child may refuse to be questioned by an inspector.

Child's right to meet with inspector

(5) An inspector shall meet privately with a child who is receiving residential care in the place being inspected, if the child requests such a meeting.

Power to exclude persons

(6) An inspector who questions a person under clause (1) (g) may exclude from questioning any person except a lawyer for the person being questioned.

Return of things

(7) A record or other thing that has been removed for review or copying,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and the inspector; and
- (b) shall be returned to the person within a reasonable time.

Warrant

277 (1) An inspector may, without notice, apply to a justice for a warrant under this section.

Issuance of warrant

(2) A justice may issue a warrant authorizing an inspector named in the warrant to enter the premises specified in the warrant, and to exercise any of the powers mentioned in subsection 276 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises,
 - (i) is the business premises of a licensee,
 - (ii) is a children's residence,
 - (iii) is a place, other than a children's residence, where residential care is provided under the authority of a licence, or
 - (iv) is a place where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part; and
- (b) that,
 - (i) the inspector has been prevented from exercising a right of entry to the premises under section 275 or a power under subsection 276 (1), or
 - (ii) there are reasonable grounds to believe that the inspector will be prevented from exercising a right of entry to the premises under section 275 or a power under subsection 276 (1).

Dwellings

(3) The power to enter a premises described in clause (2) (a) with a warrant shall not be exercised to enter a premises that is used as a dwelling, except if,

- (a) the justice is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice authorizes the entry into the dwelling.

Expert help

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in the execution of the warrant.

Expiry of warrant

(5) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

Extension of time

(6) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant.

Use of force

(7) An inspector named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

Time of execution

(8) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

Other matters

(9) Subsections 276 (2) to (7) apply, with necessary modifications, with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.

Definition

(10) In this section,

“justice” means a provincial judge or a justice of the peace.

Inspection report

278 (1) After completing an inspection, an inspector shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the licensee; and
- (c) any other prescribed person.

All non-compliance to be documented

(2) If an inspector finds that a licensee has not complied with a requirement of this Act, the regulations or a directive, the inspector shall document the non-compliance in the inspection report.

Admissibility of certain documents

279 A copy made under subsection 276 (1) that purports to be certified by the inspector as being a true copy of the original is admissible in evidence in any proceeding to the same extent as, and has the same evidentiary value as, the original.

OFFENCES**Offences**

280 (1) A person is guilty of an offence if the person,

- (a) contravenes section 244 (licence required);
- (b) contravenes section 245 (prohibition — past offence);
- (c) contravenes section 246 (prohibition — holding out as licensed);
- (d) contravenes subsection 259 (3) (licensee must comply with maximum number of children);
- (e) contravenes clause 269 (b) (records to be delivered);
- (f) causes a child to be cared for in a children’s residence operated by a person who is not licensed, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care;
- (g) is a child’s parent or a person under a legal duty to provide for the child and permits the child to be cared for in a children’s residence or other place referred to in clause (f);
- (h) fails to comply with an order or direction made by a court under this Part;
- (i) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection. 2017, c. 14, Sched. 1, s. 280 (1); 2019, c. 15, Sched. 5, s. 2.

Penalty

(2) A person convicted of an offence under subsection (1) is liable to,

- (a) a fine of not more than \$1,000 for each day on which the offence continues or imprisonment for a term of not more than one year or both, in the case of an individual; or
- (b) a fine of not more than \$1,000 for each day on which the offence continues, if the person is not an individual. 2017, c. 14, Sched. 1, s. 280 (2).

Offence — obstruction of inspector, false information, etc.

(3) A person is guilty of an offence if the person,

- (a) hinders, obstructs, or interferes with an inspector conducting an inspection under this Part, or otherwise impedes an inspector in exercising the powers or performing the duties of an inspector under this Part.

- (b) knowingly provides false information in an application under this Part or in a statement, report or return required to be provided under this Part or the regulations; or
- (c) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection. 2017, c. 14, Sched. 1, s. 280 (3).

Penalty

(4) A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000. 2017, c. 14, Sched. 1, s. 280 (4).

Limitation

(5) A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or inspector. 2017, c. 14, Sched. 1, s. 280 (5).

Directors, officers and employees

(6) If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence. 2017, c. 14, Sched. 1, s. 280 (6).

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

2019, c. 15, Sched. 5, s. 2 - 10/12/2019

**PART X
PERSONAL INFORMATION**

DEFINITIONS

Definitions

281 In this Part,

“Assistant Commissioner” means an Assistant Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire adjoint”)

“capable” means able to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure of personal information and able to appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent and “capacity” has a corresponding meaning; (“capable”)

“Commissioner” means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire”)

“incapable” means not capable, and “incapacity” has a corresponding meaning; (“incapable”)

“information practices” means the policy or policies respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information; (“pratiques relatives aux renseignements”)

“proceeding” includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator; (“instance”)

“service” means a service or program that is provided or funded under this Act or provided under the authority of a licence; (“service”)

“service provider” includes a lead agency designated under section 30; (“fournisseur de services”)

“substitute decision-maker” means a person who is authorized under this Part to consent, withhold or withdraw consent on behalf of an individual to the collection, use or disclosure of personal information about the individual. (“mandataire spécial”)

Confidentiality provisions prevail

282 Subsections 87 (8), (9) and (10) and 134 (11) prevail over this Part.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 282 of the Act is amended by striking out “and 134 (11)”. (See: 2017, c. 14, Sched. 3, s. 11)

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

2017, c. 14, Sched. 3, s. 11 - not in force

MINISTER'S POWERS TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION

Collection, use and disclosure of personal information by the Minister

Collection of personal information

283 (1) The Minister may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

1. Administering this Act and the regulations.
2. Determining compliance with this Act and the regulations.
3. Planning, managing or delivering services that the Ministry provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.
4. Conducting risk management and error management activities in respect of the services that the Ministry provides or funds, in whole or in part.
5. Conducting activities to improve or maintain the quality of the services that the Ministry provides or funds, in whole or in part.
6. Conducting research and analysis that relate to children and their families, including longitudinal studies, by or on behalf of the Ministry that relate to,
 - i. a service,
 - ii. the transition of children and their families between and out of services, including the resulting outcomes, or
 - iii. programs that support the learning, development, health and well-being of children and their families, including programs provided or funded in whole or in part by the Ministry or any other ministry of the Government of Ontario.

Personal information required by Minister

(2) The Minister may require any of the following persons to disclose to the Minister such personal information as is reasonably necessary for the purposes described in subsection (1):

1. A service provider.
2. Any other prescribed person who has information that is relevant to any of the purposes described in subsection (1).

Information other than personal information

(3) The Minister shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

Personal information limited to what is reasonably necessary

(4) The Minister shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.

Sharing with other ministers

(5) The Minister and other ministers of the Crown in right of Ontario who may be prescribed may disclose personal information to and indirectly collect personal information from each other for the purposes set out in paragraphs 3 and 6 of subsection (1).

Deemed compliance

(6) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under subsection (2) or (5) is deemed to be for the purposes of complying with this Act.

Personal information for research

(7) The collection, use or disclosure of personal information to conduct research and analysis described in paragraph 6 of subsection (1) is subject to any requirements and restrictions that may be prescribed.

Notice required by s. 39 (2) of FIPPA

(8) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or

- (b) any other method that may be prescribed.

Information requested by Minister

Collection of information by service providers

284 (1) The Minister may request that a service provider collect information, including personal information, directly from the individuals to whom it provides a service as is reasonably necessary for a prescribed purpose that is consistent with a purpose described in subsection 283 (1) and, upon being so requested, a service provider shall collect the information directly from the individuals.

Disclosure to Minister

(2) A service provider shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister.

Notice required by s. 39 (2) of FIPPA

(3) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or
- (b) any other method that may be prescribed.

Notice to and by service providers

(4) The Minister shall advise a service provider that collected personal information under subsection (1) of the notice referred to in subsection (3) and the service provider shall advise the individual to whom it provides a service of the information set out in the notice in the form and manner specified by the Minister.

COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION BY SERVICE PROVIDERS

Application of Part

285 (1) Subject to subsections (2), (3), (4), (5) and (7), sections 286 to 332 apply to the collection, use and disclosure of personal information by a service provider.

Exceptions — where other Acts apply to an institution

(2) Sections 286 to 292 and 306 to 332 do not apply to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*.

Exceptions — where other Acts apply to a health information custodian

(3) Sections 286 to 292 and 295 to 332 do not apply to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* in respect of the collection, use or disclosure of personal health information.

Exceptions — adoption matters

- (4) Sections 286 to 332 do not apply to,
- (a) the use or disclosure under section 227 by a licensee or a society of information that relates to an adoption; or
 - (b) the collection, use or disclosure of information given to a designated custodian under section 224 or to another person under section 225.

Exceptions — other matters

- (5) Sections 286 to 332 do not apply to,
- (a) records in the register maintained under subsection 133 (5);
 - (b) records to which subsection 130 (6) or (8) apply;
 - (c) reports for which an order was made under subsection 163 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 285 (5) of the Act is repealed and the following substituted: (See: 2017, c. 14, Sched. 3, s. 12)

Exceptions — other matters

- (5) Sections 286 to 332 do not apply to,
- (a) records to which subsection 130 (6) or (8) apply; or
 - (b) reports for which an order was made under subsection 163 (6). 2017, c. 14, Sched. 3, s. 12.

Service provider's records

(6) Except if this Act or its regulations provide otherwise, this Part applies to any record in the custody or under the control of a service provider regardless of whether it was recorded before or after this Part comes into force.

Where disclosure is prohibited under federal law

(7) For greater certainty, nothing in this Part permits or requires the disclosure of information whose disclosure is prohibited under the *Criminal Code* (Canada), the *Youth Criminal Justice Act* (Canada) or any other law of Canada.

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

2017, c. 14, Sched. 3, s. 12 - not in force

Collection, use and disclosure of personal information — requirement for consent

286 A service provider shall not collect personal information about an individual for the purpose of providing a service or use or disclose that information unless,

- (a) the service provider has the individual's consent under this Act and the collection, use or disclosure, to the best of the service provider's knowledge, is necessary for a lawful purpose; or
- (b) the collection, use or disclosure without the individual's consent is permitted or required by this Act.

Collection, use and disclosure of information other than personal information

287 (1) A service provider shall not collect personal information for the purposes of providing a service or use or disclose that personal information if other information will serve the purpose of the collection, use or disclosure.

Collection, use and disclosure of personal information limited to what is reasonably necessary

(2) For the purposes of providing a service, a service provider shall not collect, use or disclose more personal information than is reasonably necessary to provide the service.

Exception

(3) This section does not apply to personal information that a service provider is required by law to collect, use or disclose.

Indirect collection of personal information

With consent

288 (1) A service provider may collect personal information indirectly for the purpose of providing a service if the individual to whom the information relates consents to the collection being made indirectly.

Without consent

(2) A service provider may collect personal information indirectly for the purpose of providing a service and without the consent of the individual to whom the information relates if,

- (a) the information to be collected is reasonably necessary to provide a service or to assess, reduce or eliminate a risk of serious harm to a person or group of persons and it is not reasonably possible to collect personal information directly from the individual,
 - (i) that can reasonably be relied on as accurate and complete, or
 - (ii) in a timely manner;
- (b) the information is to be collected by a society from another society or from a child welfare authority outside of Ontario and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child;
- (c) the information is to be collected by a society and the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 35 (1);
- (d) the indirect collection of information is authorized by the Commissioner; or
- (e) subject to the requirements and restrictions, if any, that are prescribed, the indirect collection of information is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

Direct collection without consent

289 A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if,

- (a) the collection is reasonably necessary for the provision of a service and it is not reasonably possible to obtain consent in a timely manner;
- (b) the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or

- (c) the service provider is a society and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

Notice to individual re use or disclosure of information

290 Where a service provider collects personal information directly from an individual, the service provider shall give the individual notice that the information may be used or disclosed in accordance with this Part.

Permitted use

- 291** (1) A service provider may use personal information collected for the purpose of providing a service,
- (a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, including providing the information to an officer, employee, consultant or agent of the service provider, but not if the information was collected with the consent of the individual or under clause 288 (2) (a) and the individual expressly instructs otherwise;
 - (b) if the service provider believes on reasonable grounds that the use is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons;
 - (c) for a purpose for which this Act, another Act or an Act of Canada permits or requires a person to disclose it to the service provider;
 - (d) for planning, managing or delivering services that the service provider provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;
 - (e) for the purpose of risk management and error management activities;
 - (f) for the purpose of activities to improve or maintain the quality of a service;
 - (g) for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;
 - (h) for the purpose of seeking the individual's consent, or the consent of the individual's substitute-decision maker, when the personal information used by the service provider for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, where applicable;
 - (i) for the purpose of a proceeding or contemplated proceeding in which the service provider or an officer, employee, agent or former officer, employee or agent of the service provider is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;
 - (j) for research conducted by the service provider, subject to the requirements and restrictions, if any, that may be prescribed; or
 - (k) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

Exception

- (2) Despite clause (1) (a), where the individual to whom the personal information relates expressly instructs otherwise,
- (a) a society may nonetheless use that personal information,
 - (i) if it is reasonably necessary to assess, reduce or eliminate a risk of harm to a child, or
 - (ii) for a prescribed purpose related to a society's functions under subsection 35 (1); and
 - (b) a service provider may nonetheless use that personal information if it is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.

Disclosure without consent

- 292** (1) A service provider may, without the consent of the individual, disclose personal information about an individual that has been collected for the purpose of providing a service,
- (a) to a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or to allow the agency to determine whether to undertake such an investigation;
 - (b) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;
 - (c) to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding;

- (d) for the purpose of contacting a relative, member of the extended family, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or otherwise not capable;
- (e) for the purpose of contacting a relative, member of the extended family or friend of the individual if the individual is deceased;
- (f) subject to section 294, for the purpose of complying with,
 - (i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or
 - (ii) a procedural rule that relates to the production of information in a proceeding;
- (g) if the service provider believes on reasonable grounds that the disclosure is necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or
- (h) if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada, subject to the requirements and restrictions, if any, that are prescribed.

To assess, etc. risk of harm to a child

(2) A society may disclose to another society or to a child welfare authority outside Ontario personal information that has been collected for the purpose of providing a service if the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

For a prescribed purpose related to society’s functions

(3) A society may disclose personal information that has been collected for the purpose of providing a service if the information is reasonably necessary for a prescribed purpose related to a society’s functions under subsection 35 (1).

Definition

(4) In this section,

“law enforcement” has the same meaning as in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

Disclosure for planning and managing services, etc.

Disclosure to prescribed entity

293 (1) A service provider may disclose personal information collected by the service provider under the authority of this Act to a prescribed entity for the purposes of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of services, the allocation of resources to or planning for those services, including their delivery, if the prescribed entity meets the requirements under subsection (5).

Disclosure to other person or entity

(2) A service provider may, subject to the prescribed requirements and restrictions, disclose personal information collected by the service provider under the authority of this Act to a person or entity that is not a prescribed entity for the purposes described in subsection (1) and a person or entity to whom a service provider discloses personal information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

Minister may require disclosure

(3) The Minister may require a service provider to disclose information, including personal information, to a prescribed entity, if the prescribed entity meets the requirements under subsection (5), or to a person or entity that is not a prescribed entity, for the purposes described in subsection (1) and a person or entity, including a prescribed entity, to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

Exception

(4) Subsections (1), (2) and (3) do not apply to prescribed information in prescribed circumstances.

Requirements for prescribed entity

- (5) A service provider may disclose personal information to a prescribed entity under subsection (1) or (3) if,
 - (a) the prescribed entity has in place practices and procedures to protect the privacy of the individuals whose personal information it receives and to maintain the confidentiality of the information; and
 - (b) the Commissioner has approved the practices and procedures.

Exception

(6) Despite clause (5) (b), a service provider may disclose personal information to a prescribed entity under subsection (1) or (3) before the first anniversary of the day this section comes into force even if the Commissioner has not approved its practices and procedures.

Review of practices and procedures by Commissioner

(7) The Commissioner shall review the practices and procedures of each prescribed entity every three years after they were first approved and advise the service provider whether the prescribed entity continues to meet the requirements of subsection (5).

Prescribed entity or other person or entity may collect personal information

(8) A prescribed entity or a person or entity that is not a prescribed entity is authorized to collect the personal information that a service provider may disclose to it under subsection (1), (2) or (3).

Use and disclosure of personal information by prescribed entity, other person or entity

(9) Subject to the exceptions and additional requirements, if any, that are prescribed, a prescribed entity or a person or entity that is not a prescribed entity that receives personal information under subsection (1), (2) or (3) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law.

Deemed compliance

(10) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under this section is deemed to be for the purposes of complying with this Act.

Records of mental disorders

Definitions

294 (1) In this section,

“court” includes the Divisional Court; (“tribunal”)

“record of a mental disorder” means a record or a part of a record made about an individual concerning a substantial disorder of the individual’s emotional processes, thought or cognition which grossly impairs the individual’s capacity to make reasoned judgments. (“dossier relatif à un trouble mental”)

Disclosure pursuant to summons, etc.

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a summons, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court or other body unless a physician states in writing that the physician believes that to do so,

- (a) is likely to detrimentally affect the treatment or recovery of the individual to whom the record relates; or
- (b) is likely to result in,
 - (i) injury to the mental condition of another individual, or
 - (ii) bodily harm to another individual.

Court or body to determine whether to disclose

(3) Where the disclosure, transmittal or examination of a record of a mental disorder is required by a court or body before which a matter is in issue, the court or body shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

Hearing

(4) Before making a determination under subsection (3), the court or body shall give notice to the physician and, if the court or body holds a hearing to determine whether the record should be disclosed, transmitted or examined, it shall be held in the absence of the public.

Matters to be considered

(5) In making a determination under subsection (3), the court or body shall consider whether or not the disclosure, transmittal or examination of the record of a mental disorder referred to in the physician’s statement is likely to have a result described in clause (2) (a) or (b) and, for that purpose, the court or body may examine the record.

Order

(6) The court or body shall not order that the record of a mental disorder referred to in the physician's statement be disclosed, transmitted or examined if the court or body is satisfied that a result described in clause (2) (a) or (b) is likely, unless satisfied that to do so is essential in the interests of justice.

Conflict

(7) Subsections (2) to (6) apply despite anything in the *Personal Health Information Protection Act, 2004*.

Return of record to service provider

(8) Where a record of a mental disorder is ordered to be disclosed, transmitted or examined under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted, shall return the record to the service provider as soon as possible after the determination of the matter in issue in respect of which the record was required.

CONSENT

Elements of consent for collection, use and disclosure of personal information

295 (1) If this Act or any other Act requires the consent of an individual to the collection, use or disclosure of personal information by a service provider, the consent,

- (a) must be a consent of the individual;
- (b) must be knowledgeable;
- (c) must relate to the information; and
- (d) must not be obtained through deception or coercion.

Implied consent for collection and use

(2) A consent to the collection and use of personal information may be implied if the collection is made directly from the individual to whom the information relates and is collected for the purpose of providing a service.

Consent may be written or oral

(3) A consent may be written or oral, but an oral consent may be relied on only if the service provider that obtains the consent makes a written record that sets out the following information:

1. The name of the individual who gave the consent.
2. The information to which the consent relates.
3. The manner in which the notice of purposes required by subsection (5) was provided to the individual.

Knowledgeable consent

(4) A consent to the collection, use or disclosure of personal information is knowledgeable if it is reasonable in the circumstances to believe that the individual to whom the information relates knows,

- (a) the purposes of the collection, use or disclosure; and
- (b) that the individual may give, withhold or withdraw consent.

Notice of purposes

(5) Unless it is not reasonable in the circumstances, an individual is deemed to know the purposes of the collection, use or disclosure of personal information about the individual if the service provider,

- (a) posts a notice describing the purposes where it is likely to come to the individual's attention;
- (b) makes such a notice readily available to the individual;
- (c) gives the individual a copy of such notice; or
- (d) otherwise communicates the content of such notice to the individual.

Transition

(6) A consent that an individual gives, before the day that subsection (1) comes into force, to a collection, use or disclosure of personal information is a valid consent if it meets the requirements of this section for consent.

Withdrawal of consent

296 A consent may be withdrawn by the individual who gave the consent by providing notice to the service provider, but the withdrawal of the consent shall not have retroactive effect.

Conditional consent

297 If an individual places a condition on their consent to the collection, use or disclosure of personal information, the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal information by a service provider that is required by law or by established standards of professional or institutional practice.

Presumption of consent's validity

298 A service provider that has obtained an individual's consent to the collection, use or disclosure of personal information about the individual or who has received a copy of a document purporting to be a record of the individual's consent, may presume that the consent fulfils the requirements of this Act and that the individual has not withdrawn it, unless it is not reasonable to do so.

CAPACITY AND SUBSTITUTE DECISION-MAKING

Presumption of capacity

299 An individual is presumed to be capable, and a service provider may rely on this presumption unless the service provider has reasonable grounds to believe that the individual is not capable.

Differing capacity

Re different information

300 (1) An individual may be capable with respect to some parts of personal information, but incapable with respect to other parts.

At different times

(2) An individual may be capable at one time, but incapable at another time.

Substitute decision-maker

301 (1) An individual who is capable may give, withhold or withdraw consent or may, if the individual is 16 or older, authorize in writing another individual who is 16 or older and capable to be the individual's substitute decision-maker.

For child younger than 16

(2) If the individual is a child younger than 16, the child's parent or a society or other person who is authorized to give, withhold or withdraw consent in the place of the parent may be the child's substitute decision-maker unless the information relates to,

- (a) treatment about which the child has made a decision in accordance with the *Health Care Consent Act, 1996*; or
- (b) counselling to which the child has consented on their own under this Act or the old Act.

Capable child prevails over substitute decision-maker

(3) If the individual is a child younger than 16 who is capable and if there is a person who is authorized to act as the substitute decision-maker of the child under subsection (2), a decision of the child to give, withhold or withdraw the consent prevails over a conflicting decision by the substitute decision-maker.

Person authorized under PHIPA may be substitute decision-maker

(4) Where an individual is not capable of consenting to the collection, use or disclosure of personal information, a person who would be authorized to consent to the collection, use or disclosure of personal health information on the individual's behalf under the *Personal Health Information Protection Act, 2004* may be the individual's substitute decision-maker.

Factors to consider for consent

302 (1) A person who consents under this Part on behalf of or in the place of an individual to a collection, use or disclosure of personal information by a service provider, who withholds or withdraws such a consent or who provides an express instruction under clause 291 (1) (a) shall take into consideration,

- (a) the wishes, values and beliefs that,
 - (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal information, or
 - (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal information;
- (b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;
- (c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

Determination of compliance

(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal information about the individual by a service provider or provides an express instruction under clause 291 (1) (a) and if the service provider is of the opinion that the substitute decision-maker has not complied with subsection (1), the service provider may apply to a body prescribed for the purposes of this section for a determination as to whether the substitute decision-maker complied with that subsection.

Deemed application concerning capacity

(3) An application to a body prescribed under subsection (2) is deemed to include an application to a prescribed body under subsection 304 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 304 within the previous six months.

Parties

(4) The parties to the application are:

1. The service provider.
2. The incapable individual.
3. The substitute decision-maker.
4. Any other person whom the prescribed body specifies.

Power of prescribed body

(5) In determining whether the substitute decision-maker complied with subsection (1), the prescribed body may substitute its opinion for that of the substitute decision-maker.

Directions

(6) If the prescribed body determines that the substitute decision-maker did not comply with subsection (1), it may give the substitute decision-maker directions and, in doing so, shall take into consideration the matters set out in clauses (1) (a) to (d).

Time for compliance

(7) The prescribed body shall specify the time within which the substitute decision-maker must comply with its directions.

Deemed not authorized

(8) If the substitute decision-maker does not comply with the directions of the prescribed body within the time specified by the prescribed body, the substitute decision-maker is deemed not to meet the requirements of subsection 301 (4).

Public Guardian and Trustee

(9) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the substitute decision-maker is required to comply with the directions and subsection (7) does not apply to the substitute decision-maker.

Procedure

(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

Additional authority of substitute decision-maker

303 (1) If this Part permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent or withhold or withdraw consent on behalf of the individual to the collection, use or disclosure of personal information about the individual, the substitute decision-maker may also make the request, give the instruction or take the step on behalf of the individual.

References to individual read as substitute decision-maker

(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this Part to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not to the individual.

Determination of incapacity

304 (1) A service provider that determines that an individual is incapable shall do so in accordance with the requirements and restrictions, if any, that are prescribed.

Information about determination

(2) If it is reasonable in the circumstances, a service provider shall provide, to an individual determined to be incapable, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed.

Review of determination

(3) When a service provider determines that an individual is incapable, the individual or a prescribed person may apply to a body prescribed for the purposes of this section for a review of the determination.

Review body

(4) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

Parties

- (5) The parties to an application made under subsection (3) are,
- (a) the individual or prescribed person who applied for the review of the determination;
 - (b) the service provider who made the determination of incapacity; and
 - (c) any other persons whom the prescribed body specifies.

Powers of review body

(6) A body prescribed for the purposes of this section may confirm the determination of incapacity or may determine that the individual is capable.

Restriction on repeated applications

(7) If a determination that an individual is incapable is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the body prescribed for the purposes of this section gives leave in advance.

Grounds for leave

(8) The prescribed body may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual's capacity.

Appointment of representative

305 (1) An individual who is 16 or older and who is determined to be incapable may apply to a body prescribed for the purposes of this section for appointment of a representative to consent on the individual's behalf to a collection, use or disclosure of personal information by a service provider.

Application by proposed representative

(2) If an individual is incapable, another individual who is 16 or older may apply to a body prescribed for the purposes of this section to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of personal information.

Deemed application concerning capacity

(3) An application to a prescribed body under subsection (1) or (2) is deemed to include an application to a prescribed body under subsection 304 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 304 within the previous six months.

Exception

(4) Subsections (1) and (2) do not apply if the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

Parties

- (5) The parties to the application are:
1. The individual to whom the personal information relates.
 2. The proposed representative named in the application.
 3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26 (1) of the *Personal Health Information Protection Act, 2004*.
 4. All other persons whom the prescribed body specifies.

Appointment

(6) In an appointment under this section, the prescribed body may authorize the representative to consent, on behalf of the individual to whom the personal information relates, to,

- (a) a particular collection, use or disclosure at a particular time;
- (b) a collection, use or disclosure of the type specified by the prescribed body in circumstances specified by the prescribed body, if the individual is determined to be incapable at the time the consent is sought; or
- (c) any collection, use or disclosure at any time, if the individual is determined to be incapable at the time the consent is sought.

Criteria for appointment

(7) The prescribed body may make an appointment under this section if it is satisfied that the following requirements are met:

- 1. The individual to whom the personal information relates does not object to the appointment.
- 2. The representative consents to the appointment, is at least 16 and is capable.
- 3. The appointment is in the best interests of the individual to whom the personal information relates.

Powers of prescribed body

(8) Unless the individual to whom the personal information relates objects, the prescribed body may,

- (a) appoint as representative a different individual than the one named in the application;
- (b) limit the duration of the appointment;
- (c) impose any other condition on the appointment; or
- (d) on any person’s application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

Termination

(9) A body prescribed for the purposes of this section may, on any person’s application, terminate an appointment made under this section if,

- (a) the individual to whom the personal information relates or the representative requests the termination;
- (b) the representative is no longer capable;
- (c) the appointment is no longer in the best interests of the individual to whom the personal information relates; or
- (d) the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

Procedure

(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

INTEGRITY AND PROTECTION OF PERSONAL INFORMATION

Steps to ensure accuracy, etc. of personal information

Personal information used by service provider

306 (1) A service provider that uses personal information for the purpose of providing a service shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.

Personal information disclosed by service provider

- (2) A service provider that discloses personal information that has been collected for the purpose of providing a service shall,
 - (a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the service provider at the time of the disclosure; or
 - (b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

Record of disclosed personal information

(3) A service provider that discloses personal information that has been collected for the purpose of providing a service shall record the disclosures made under the prescribed provisions in the prescribed manner.

Steps to ensure collection of personal information is authorized

307 A service provider shall take reasonable steps to ensure that personal information is not collected without authority.

Steps to ensure security of personal information

308 (1) A service provider shall take reasonable steps to ensure that personal information that has been collected for the purpose of providing a service and that is in the service provider's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

Notice of theft, loss, etc. to individual

(2) Subject to any prescribed exceptions and additional requirements, if personal information that has been collected for the purpose of providing a service and that is in a service provider's custody or control is stolen or lost or if it is used or disclosed without authority, the service provider shall,

- (a) notify the individual to whom the information relates at the first reasonable opportunity of the theft, loss or unauthorized use or disclosure; and
- (b) include in the notice a statement that the individual is entitled to make a complaint to the Commissioner under section 316.

Notice to Commissioner and Minister

(3) If the circumstances surrounding the theft, loss or unauthorized use or disclosure meet the prescribed requirements, the service provider shall notify the Commissioner and the Minister of the theft, loss or unauthorized use or disclosure.

Handling of records

309 (1) A service provider,

- (a) shall take reasonable steps to ensure that the records of personal information collected for the purpose of providing a service that are in its custody or control are retained, transferred and disposed of in a secure manner; and
- (b) shall comply with any prescribed requirements in respect of the retention, transfer and disposal of those records.

Retention of records subject to access request

(2) Despite subsection (1), a service provider that has custody or control of personal information that is subject to a request for access under section 312 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that they may have with respect to the request.

Disclosure to successor

310 (1) A service provider may disclose personal information about an individual to a potential successor of the service provider, for the purpose of allowing the potential successor to assess and evaluate the operations of the service provider, if the potential successor first enters into an agreement with the service provider to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

Transfer to successor

(2) A service provider may transfer records of personal information about an individual to the service provider's successor if the service provider makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

Definitions

(3) In this section,

"potential successor" and "successor" mean a potential successor or a successor that is a service provider or that will be a service provider if it becomes a successor.

Written public statement by service provider

311 (1) A service provider shall, in a manner that is practical in the circumstances, make available to the public a written statement in plain, easy-to-understand language that,

- (a) provides a general description of the service provider's information practices;
- (b) describes how to contact the service provider;
- (c) describes how an individual may obtain access to or request correction of a record of personal information about the individual that is in the custody or control of the service provider; and
- (d) describes how to make a complaint to the service provider and to the Commissioner under this Part.

Use or disclosure contrary to service provider's information practices

(2) If a service provider uses or discloses personal information about an individual, without the individual's consent, in a manner that is outside the scope of the service provider's description of its information practices under clause (1) (a), the service provider shall,

- (a) inform the individual of the uses and disclosures at the first reasonable opportunity, unless the individual does not have a right of access under section 312 to a record of the information;
- (b) make a note of the uses and disclosures; and
- (c) keep the note as part of the record of personal information about the individual that it has in its custody or under its control or in a form that is linked to that record.

INDIVIDUAL'S ACCESS TO PERSONAL INFORMATION

Individual's right of access

312 (1) An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless,

- (a) the record or the information in the record is subject to a legal privilege that restricts its disclosure to the individual;
- (b) another Act, an Act of Canada or a court order prohibits its disclosure to the individual;
- (c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, has not been concluded; or
- (d) granting the access could reasonably be expected to,
 - (i) result in a risk of serious harm to the individual or another individual,
 - (ii) lead to the identification of an individual who was required by law to provide information in the record to the service provider, or
 - (iii) lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence if the service provider considers it appropriate in the circumstances that the identity of the individual be kept confidential.

Right of access to part of record not restricted

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access under any of clauses (1) (a) to (d).

Right of access to part of record not dedicated to provision of service

(3) Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service to the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

Consultation regarding harm

(4) Before deciding to refuse to grant an individual access to a record of personal information under subclause (1) (d) (i), a service provider may consult with a member of the College of Physicians and Surgeons of Ontario, a member of the College of Psychologists of Ontario or a member of the Ontario College of Social Workers and Social Service Workers.

Informal access

(5) Nothing in this Part prevents a service provider from granting an individual access to a record of personal information to which the individual has a right of access, if the individual makes an oral request for access or does not make a request for access under section 313.

Service provider may communicate with individual

(6) Nothing in this Part prevents a service provider from communicating with an individual or the individual's substitute decision-maker with respect to a record of personal information to which the individual has a right of access.

Request for access

313 (1) An individual may exercise a right of access to a record of personal information by making a written request for access to the service provider that has custody or control of the information.

Details required

(2) The request must contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts.

Service provider must assist individual making request

(3) If the request does not contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts, the service provider shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2).

Response of service provider

314 (1) A service provider that receives a request from an individual for access to a record of personal information shall,

- (a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of the purpose and nature of the record and any term, code or abbreviation used in the record;
- (b) give a written notice to the individual stating that, after a reasonable search, the service provider has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies;
- (c) if the service provider refuses the request, in whole or in part, under any provision of this Part other than clause 312 (1) (c) or (d), give a written notice to the individual stating that the service provider is refusing the request, in whole or in part, providing a reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; or
- (d) subject to subsection (2), if the service provider refuses the request, in whole or in part, under clause 312 (1) (c) or (d), give a written notice to the individual stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316 and that the service provider is refusing,
 - (i) the request, in whole or in part, while citing which of clauses 312 (1) (c) and (d) apply,
 - (ii) the request, in whole or in part, under one or both of clauses 312 (1) (c) and (d), while not citing which of those provisions apply, or
 - (iii) to confirm or deny the existence of any record subject to clauses 312 (1) (c) and (d).

Exception

(2) A service provider shall not act under subclause (1) (d) (i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the service provider to reveal to the individual, directly or indirectly, information to which the individual does not have a right of access.

Time for response

(3) As soon as possible, but no later than 30 days after receiving the request, the service provider shall, by written notice to the individual, give the response required by subsection (1) or extend the deadline for responding by not more than 90 days if,

- (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or
- (b) the time required to undertake an assessment under subsection 312 (1) necessary to respond to the request within 30 days after receiving it would make it not reasonably practical to respond within that time.

Extension of time — notice and response

(4) A service provider that extends the time limit under subsection (3) shall,

- (a) give the individual written notice of the extension setting out the length of the extension and the reason for it; and
- (b) respond as required by subsection (1) as soon as possible but no later than the expiry of the time limit as extended.

Expedited access

(5) Despite subsections (3) and (4), if the individual provides the service provider with evidence satisfactory to the service provider that the individual requires access to the requested record of personal information within a specified time period, the service provider shall respond within that time period if the service provider is reasonably able to do so.

Frivolous or vexatious requests

(6) A service provider that believes on reasonable grounds that a request for access to a record of personal information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316.

Deemed refusal

(7) A service provider that does not respond to a request for access within the time required is deemed to have refused the request.

Right to complain

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
- (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; and
 - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider.

Identity of individual

(9) A service provider shall not make a record of personal information or a part of it available to an individual or provide a copy of it to an individual under clause (1) (a) without first taking reasonable steps to be satisfied as to the individual's identity.

No fee for access

(10) A service provider shall not charge a fee for providing access to a record under this section, except in the prescribed circumstances.

CORRECTIONS TO RECORDS**Correction to record****Interpretation**

315 (1) In this section, a reference to a correction to a record or to correct a record includes the addition of, or adding, information to make the record complete. 2017, c. 14, Sched. 1, s. 315 (1).

Written request

(2) If a service provider has granted an individual access to a record of personal information and if the individual believes that the record is inaccurate or incomplete, the individual may request in writing that the service provider correct the record. 2017, c. 14, Sched. 1, s. 315 (2).

Informal request

(3) If the individual makes an oral request that the service provider correct the record, nothing in this section prevents the service provider from making the requested correction. 2017, c. 14, Sched. 1, s. 315 (3).

Time for response

(4) As soon as possible, but no later than 30 days after receiving a request for a correction under subsection (2), the service provider shall, by written notice to the individual, grant or refuse the individual's request or extend the deadline for responding by not more than 90 days if,

- (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider; or
- (b) the time required to undertake the consultations necessary to respond to the request within 30 days would make it not reasonably practical to respond within that time. 2017, c. 14, Sched. 1, s. 315 (4).

Extension of time

(5) A service provider that extends the time limit under subsection (4) shall by written notice to the individual,

- (a) set out the length of the extension and the reason for it; and
- (b) grant or refuse the individual's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended. 2017, c. 14, Sched. 1, s. 315 (5).

Frivolous or vexatious requests

(6) A service provider that believes on reasonable grounds that a request for a correction is frivolous or vexatious or is made in bad faith may refuse to grant the request and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 316. 2017, c. 14, Sched. 1, s. 315 (6).

Deemed refusal

(7) A service provider that does not respond to a request for a correction within the time required is deemed to have refused the request. 2017, c. 14, Sched. 1, s. 315 (7).

Right to complain

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
- (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 316; and
 - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider. 2017, c. 14, Sched. 1, s. 315 (8).

Duty to correct

(9) The service provider shall grant a request for a correction if the individual demonstrates, to the service provider's satisfaction, that the record is inaccurate or incomplete and gives the service provider the information necessary to enable the service provider to correct the record. 2017, c. 14, Sched. 1, s. 315 (9).

Exceptions

- (10) Despite subsection (9), a service provider is not required to correct a record of personal information if,
- (a) it consists of a record that was not originally created by the service provider and the service provider does not have sufficient knowledge, expertise or authority to correct the record; or
 - (b) it consists of a professional opinion or observation that was made in good faith about the individual. 2017, c. 14, Sched. 1, s. 315 (10).

Manner of making the correction

- (11) Upon granting a request for a correction, the service provider shall,
- (a) make the requested correction by,
 - (i) recording the correct information in the record and,
 - (A) striking out the incorrect information in a manner that does not obliterate the record, or
 - (B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or
 - (ii) if it is not possible to make the requested correction in the manner set out in subclause (i), ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;
 - (b) give notice to the individual of what has been done under clause (a); and
 - (c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the service provider has disclosed the information with respect to which the individual requested the correction of the record, unless the correction cannot reasonably be expected to have an effect on the ongoing provision of services. 2017, c. 14, Sched. 1, s. 315 (11); 2019, c. 15, Sched. 5, s. 3.

Notice of refusal

- (12) A notice of refusal under subsection (4) or (5) must give the reasons for the refusal and inform the individual that the individual is entitled to,
- (a) prepare a concise statement of disagreement that sets out the correction that the service provider has refused to make;
 - (b) require that the service provider attach the statement of disagreement as part of the records that it holds of the individual's personal information and disclose the statement of disagreement whenever the service provider discloses information to which the statement relates;
 - (c) require that the service provider make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause (11) (c) if the service provider had granted the requested correction; and
 - (d) make a complaint about the refusal to the Commissioner under section 316. 2017, c. 14, Sched. 1, s. 315 (12).

Rights of individual

(13) If a service provider refuses a request for a correction, in whole or in part, or is deemed to have refused the request, the individual is entitled to take any of the actions described in subsection (12). 2017, c. 14, Sched. 1, s. 315 (13).

Service provider's duty

(14) If the individual takes an action described in clause (12) (b) or (c), the service provider shall comply with the requirements described in the applicable clause. 2017, c. 14, Sched. 1, s. 315 (14).

No fee for correction

(15) A service provider shall not charge a fee for correcting a record under this section, or for complying with subsection (14). 2017, c. 14, Sched. 1, s. 315 (15).

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

2019, c. 15, Sched. 5, s. 3 - 01/01/2020

COMPLAINTS, REVIEWS AND INSPECTIONS

Complaint to Commissioner

316 (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Part or the regulations made for the purposes of this Part may make a complaint to the Commissioner.

Time for complaint

- (2) A complaint made under subsection (1) must be in writing and must be filed within,
- (a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or
 - (b) whatever longer period of time that the Commissioner permits if the Commissioner is satisfied that it does not result in prejudice to any person.

Same, refusal of request

(3) A complaint that an individual makes under clause 314 (1) (c) or (d), subsection 314 (8), 315 (6) or (8) or clause 315 (12) (d) must be in writing and must be filed within six months after the service provider refused or is deemed to have refused the individual's request.

Response of Commissioner

317 (1) Upon receiving a complaint made under this Part, the Commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

- (a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint;
- (b) require the complainant to try to effect a settlement, within the time period that the Commissioner specifies, with the person about which the complaint is made; or
- (c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the Commissioner specifies, between the complainant and the person about which the complaint is made.

Dealings without prejudice

(2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified,

- (a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Part;
- (b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Part; and
- (c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 320, unless all parties expressly consent.

Commissioner's review

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Part if satisfied that there are reasonable grounds to do so.

No review

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

- (a) the person about which the complaint is made has responded adequately to the complaint;
- (b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Part;
- (c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;
- (d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or
- (e) the complaint is frivolous or vexatious or is made in bad faith.

Notice

(5) Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision.

Same

(6) Upon deciding to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the person about whom the complaint is made.

Commissioner's self-initiated review

318 (1) The Commissioner may, on the Commissioner's own initiative, conduct a review of any matter if the Commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this Part or the regulations and that the subject-matter of the review relates to the contravention.

Notice

(2) Upon deciding to conduct a review under this section, the Commissioner shall give notice of the decision to every person whose activities are being reviewed.

Conduct of Commissioner's review

319 (1) In conducting a review under section 317 or 318, the Commissioner may make the rules of procedure that the Commissioner considers necessary and the *Statutory Powers Procedure Act* does not apply to the review.

Evidence

(2) In conducting a review under section 317 or 318, the Commissioner may receive and accept any evidence and other information that the Commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.

Inspection powers

320 (1) In conducting a review under section 317 or 318, the Commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

- (a) the Commissioner has reasonable grounds to believe that,
 - (i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be, and
 - (ii) the premises contains books, records or other documents relevant to the subject-matter of the complaint or the review, as the case may be; and
- (b) the Commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Part or the regulations.

Review powers

- (2) In conducting a review under section 317 or 318, the Commissioner may,
- (a) demand the production of any books, records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;
 - (b) inquire into all information, records, information practices of a service provider and other matters that are relevant to the subject-matter of the review;
 - (c) demand the production for inspection of anything described in clause (b);
 - (d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or
 - (e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the service provider or person being reviewed may charge.

Entry to dwellings

(3) The Commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

Search warrants

(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 317 or 318, the justice of the peace may issue a warrant authorizing the entry by a person named in the warrant.

Time and manner for entry

(5) The Commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with services that are being provided to any person on the premises at the time of entry.

No obstruction

(6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information.

Written demand

(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

Obligation to assist

(8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

Removal of documents

(9) If a person produces books, records and other documents to the Commissioner, other than those needed for the current provision of services to any person, the Commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the Commissioner is not able to review and copy them on the premises that the Commissioner has entered.

Return of documents

(10) The Commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall promptly after the reviewing or copying return the documents to the person who produced them.

Admissibility of copies

(11) A copy certified by the Commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

Answers under oath

(12) In conducting a review under section 317 or 318, the Commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the Commissioner and compel them to give oral or written evidence on oath or affirmation.

Inspection of record without consent

(13) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into, personal information without the consent of the individual to whom it relates, unless,

- (a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and
- (b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner's determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified.

Limitation on delegation

(14) Despite subsection 327 (1), the power to make a determination under clause (13) (a) and to approve the brief written reasons under clause (13) (b) may not be delegated except to an Assistant Commissioner.

Document privileged

(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court.

Protection

(16) Except on the trial of a person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of a review by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Protection under federal Act

(17) The Commissioner shall inform a person giving a statement or answer in the course of a review by the Commissioner of the person's right to object to answer any question under section 5 of the *Canada Evidence Act*.

Representations

(18) The Commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the Commissioner.

Representative

(19) A person who is given an opportunity to make representations to the Commissioner may be represented by a lawyer or another person.

Access to representations

(20) The Commissioner may permit a person to be present during the representations that another person makes to the Commissioner or to have access to them unless doing so would reveal,

- (a) the substance of a record of personal information, for which a service provider claims to be entitled to refuse a request for access made under section 313; or
- (b) personal information to which an individual is not entitled to request access under section 313.

Proof of appointment

(21) If the Commissioner or an Assistant Commissioner has delegated their powers under this section to an officer or employee of the Commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the Commissioner or Assistant Commissioner, as the case may be.

Powers of Commissioner

321 (1) After conducting a review under section 317 or 318, the Commissioner may,

- (a) if the review relates to a complaint into a request by an individual under subsection 313 (1) for access to a record of personal information, make an order directing the service provider about whom the complaint was made to grant the individual access to the requested record;
- (b) if the review relates to a complaint into a request by an individual under subsection 315 (2) for correction of a record of personal information, make an order directing the service provider about whom a complaint was made to make the requested correction;
- (c) make an order directing any person whose activities the Commissioner reviewed to perform a duty imposed by this Part or the regulations;
- (d) make an order directing any person whose activities the Commissioner reviewed to cease collecting, using or disclosing personal information if the Commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Part or the regulations or an agreement entered into under this Part;
- (e) make an order directing any person whose activities the Commissioner reviewed to dispose of records of personal information that the Commissioner determines the person collected, used or disclosed in contravention of this Part or the regulations or an agreement entered into under this Part but only if the disposal of the records is not reasonably expected to adversely affect the provision of services to an individual;
- (f) make an order directing any service provider whose activities the Commissioner reviewed to change, cease or not implement any information practices specified by the Commissioner, if the Commissioner determines that the information practices contravene this Part or the regulations;
- (g) make an order directing any service provider whose activities the Commissioner reviewed to implement information practices specified by the Commissioner, if the Commissioner determines that the information practices are reasonably necessary in order to achieve compliance with this Part and the regulations;
- (h) make an order directing any person who is an agent or employee of a service provider, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent or employee to ensure that the service provider will comply with the order made against the service provider; or
- (i) make comments and recommendations on the privacy implications of any matter that is the subject of the review.

Terms of order

(2) An order that the Commissioner makes under subsection (1) may contain the terms that the Commissioner considers appropriate.

Copy of order, etc.

(3) Upon making comments, recommendations or an order under subsection (1), the Commissioner shall provide a copy of them, including reasons for any order made, to,

- (a) the complainant and the person about whom the complaint was made, if the Commissioner made the comments, recommendations or order after conducting a review under section 317 of a complaint;
- (b) the person whose activities the Commissioner reviewed, if the Commissioner made the comments, recommendations or order after conducting a review under section 318;
- (c) all other persons to whom the order is directed;
- (d) the body or bodies that are legally entitled to regulate or review the activities of a service provider directed in the order or to whom the comments or recommendations relate; and
- (e) any other person whom the Commissioner considers appropriate.

No order

(4) If, after conducting a review under section 317 or 318, the Commissioner does not make an order under subsection (1), the Commissioner shall give the complainant, if any, and the person whose activities the Commissioner reviewed a notice that sets out the Commissioner's reasons for not making an order.

Appeal of order

322 (1) A person affected by an order of the Commissioner made under any of clauses 321 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

Certificate of Commissioner

(2) In an appeal under this section, the Commissioner shall certify to the Divisional Court,

- (a) the order and a statement of the Commissioner's reasons for making the order;
- (b) the record of all hearings that the Commissioner has held in conducting the review on which the order is based;
- (c) all written representations that the Commissioner received before making the order; and
- (d) all other material that the Commissioner considers is relevant to the appeal.

Confidentiality of information

(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

Court order

(4) On hearing an appeal under this section, the court may, by order,

- (a) direct the Commissioner to make the decisions and to do the acts that the Commissioner is authorized to do under this Part and that the court considers proper; and
- (b) if necessary, vary or set aside the Commissioner's order.

Compliance by Commissioner

(5) The Commissioner shall comply with the court's order.

Enforcement of order

323 An order made by the Commissioner under this Part that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect.

Further order of Commissioner

324 (1) After conducting a review under section 317 or 318 and making an order under subsection 321 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

Circumstances

(2) The Commissioner may exercise the powers described in subsection (1) even if the order that the Commissioner rescinds or varies has been filed with the Superior Court of Justice under section 323.

Copy of order, etc.

(3) Upon making a further order under subsection (1), the Commissioner shall provide a copy of it to the persons described in clauses 321 (3) (a) to (e) and shall include with the copy a notice setting out,

- (a) the Commissioner's reasons for making the order; and
- (b) if the order was made under any of clauses 321 (1) (c) to (h), a statement that the persons affected by the order have the right to appeal described in subsection (4).

Appeal

(4) A person affected by an order that the Commissioner rescinds, varies or makes under any of clauses 321 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 322 (2) to (5) apply to the appeal.

Damages for breach of privacy

325 (1) If the Commissioner has made an order under this Part that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this Part or the regulations.

Same

(2) If a person has been convicted of an offence under this Part and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct.

Damages for mental anguish

(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award for mental anguish.

General powers of Commissioner

326 The Commissioner may,

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Part;
- (b) conduct public education programs and provide information concerning this Part and the Commissioner's role and activities;
- (c) receive representations from the public concerning the operation of this Part;
- (d) on the request of a service provider, offer comments on the service provider's actual or proposed information practices;
- (e) assist in investigations and similar procedures conducted by a person who performs similar functions to the Commissioner under the laws of Canada, except that in providing assistance, the Commissioner shall not use or disclose information collected by or for the Commissioner under this Part; and
- (f) in appropriate circumstances, authorize the collection of personal information about an individual in a manner other than directly from the individual.

Delegation by Commissioner

327 (1) The Commissioner may in writing delegate any of the Commissioner's powers, duties or functions under this Part, including the power to make orders, to an Assistant Commissioner or to an officer or employee of the Commissioner.

Subdelegation by Assistant Commissioner

(2) An Assistant Commissioner may in writing delegate any of the powers, duties or functions delegated to the Assistant Commissioner under subsection (1) to any other officers or employees of the Commissioner, subject to the conditions and restrictions that the Assistant Commissioner specifies in the delegation.

Limitations re personal information

328 (1) The Commissioner and any person acting under the Commissioner's authority may collect, use or retain personal information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the collection, use or retention of the personal information and in no other circumstances.

Extent of information

(2) The Commissioner and any person acting under the Commissioner's authority shall not in the course of carrying out any functions under this Part collect, use or retain more personal information than is reasonably necessary to enable the Commissioner to perform the Commissioner's functions relating to this Part or for a proceeding under it.

Confidentiality

(3) The Commissioner and any person acting under the Commissioner's authority shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Part unless,

- (a) the disclosure is required for the purpose of exercising those functions;
- (b) the information relates to a service provider, the disclosure is made to a body that is legally entitled to regulate or review the activities of the service provider and the Commissioner or an Assistant Commissioner is of the opinion that the disclosure is justified;
- (c) the Commissioner obtained the information under subsection 320 (12) and the disclosure is required in a prosecution for an offence under section 131 of the *Criminal Code* (Canada) in respect of sworn testimony; or
- (d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence.

Same

(4) Despite anything in subsection (3), the Commissioner and any person acting under the Commissioner's authority shall not disclose the identity of a person, other than a complainant under subsection 316 (1), who has provided information to the Commissioner and who has requested the Commissioner to keep the person's identity confidential, unless the disclosure is necessary to comply with section 125 (duty to report child in need of protection).

Information in review or proceeding

(5) The Commissioner in a review under section 317 or 318 and a court, tribunal or other person, including the Commissioner, in a proceeding mentioned in section 325 or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a service provider is entitled to refuse a request for access made under section 313.

Not compellable witness

(6) The Commissioner and any person acting under the Commissioner's authority shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise of their functions under this Part that they are prohibited from disclosing under subsection (3) or (4).

Immunity

329 No action or other proceeding for damages may be instituted against the Commissioner or any person acting under the Commissioner's authority for,

- (a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Part; or
- (b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Part.

PROHIBITIONS, IMMUNITY AND OFFENCES

Non-retaliation

330 No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,

- (a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that any other person has contravened or is about to contravene a provision of this Part or the regulations;
- (b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of this Part or the regulations;
- (c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of this Part or the regulations; or
- (d) any person believes that the person will do anything described in clause (a), (b) or (c).

Immunity

331 (1) No action or other proceeding for damages may be instituted against a service provider or any other person for,

- (a) anything done, reported or said, in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Part; or

- (b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Part. 2017, c. 14, Sched. 1, s. 331 (1).

Crown liability

(2) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) of this section does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. 2017, c. 14, Sched. 1, s. 331 (2); 2019, c. 7, Sched. 17, s. 44 (2).

Substitute decision-maker

(3) A person who, on behalf of or in the place of an individual, gives, withholds or withdraws consent to a collection, use or disclosure of personal information about the individual, or makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Part and the regulations. 2017, c. 14, Sched. 1, s. 331 (3).

Reliance on assertion

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under this Part, to the effect that the other person,

- (a) is a person who is authorized to request access to a record of personal information under subsection 313 (1); or
- (b) is a person who is authorized under subsection 301 (1), (2) or (4) to consent to the collection, use or disclosure of personal information about another individual. 2017, c. 14, Sched. 1, s. 331 (4).

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

2019, c. 7, Sched. 17, s. 44 (2) - 01/01/2020

Offences

332 (1) A person is guilty of an offence if the person,

- (a) wilfully collects, uses or discloses personal information in contravention of this Part or the regulations made for the purposes of this Part;
- (b) makes a request under this Act, under false pretences, for access to or correction of a record of personal information;
- (c) in connection with the collection, use or disclosure of personal information or access to a record of personal information, makes an assertion, knowing that it is untrue, to the effect that the person,
 - (i) is a person who is authorized to consent to the collection, use or disclosure of personal information about another individual, or
 - (ii) is a person entitled to access to a record of personal information under section 312;
- (d) disposes of a record of personal information in the custody or under the control of a service provider with an intent to evade a request for access to the record that the service provider has received under subsection 313 (1);
- (e) wilfully disposes of a record of personal information in contravention of section 309;
- (f) wilfully fails to comply with clause 308 (2) (a);
- (g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner in relation to this Part; or
- (j) contravenes section 330.

Penalty

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction, to a fine of not more than \$5,000.

Officers, etc.

(3) If a corporation commits an offence under this Part, every officer, member, employee or agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.

No prosecution

(4) No person is liable to prosecution for an offence under this or any other Act by reason of complying with a requirement of the Commissioner in relation to this Part.

Consent of Attorney General

(5) A prosecution for an offence under subsection (1) shall not be commenced without the consent of the Attorney General.

Presiding judge

(6) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of an offence under subsection (1).

Protection of information

(7) In a prosecution for an offence under subsection (1) or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Part, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal information, including, where appropriate,

- (a) removing the identifying information of any person whose personal information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

No limitation

(8) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Part.

PART XI MISCELLANEOUS MATTERS

Child and Family Services Review Board

333 (1) The Child and Family Services Review Board is continued under the name Child and Family Services Review Board in English and Commission de révision des services à l'enfance et à la famille in French.

Composition and duties

(2) The Board is composed of the prescribed number of members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

Chair and vice-chairs

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Police record checks

334 The Lieutenant Governor in Council may, by regulation, require the following persons to provide a police record check concerning the person to any other person or body in accordance with the regulations:

1. A person who provides or receives services under this Act.
2. A person residing, employed or volunteering in premises where services are provided or received under this Act.
3. Such other persons who may be prescribed.

Society may request police record checks from police, etc.

335 A society may, in prescribed circumstances or for a prescribed purpose, ask the Ontario Provincial Police, a municipal police force or a prescribed entity for police record checks or other prescribed information.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 335 of the Act is amended by striking out "police force" and substituting "police service". (See: 2019, c. 1, Sched. 4, s. 4)

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

2018, c. 3, Sched. 5, s. 5 - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 4 - not in force

Review of Act

336 (1) The Minister shall periodically conduct a review of this Act or those provisions of it specified by the Minister.

Beginning of review

(2) The Minister shall inform the public when a review under this section begins and what provisions of this Act are included in the review.

Consultation with children and young persons

(3) The Minister shall consult with children and young persons when conducting a review under this section.

Written report

(4) The Minister shall prepare a written report, in plain language, respecting the review, including the matters described in sections 337 and 338, and shall make that report available to the public.

Period for review

(5) The first review shall be completed and the report made available to the public within five years after the day this section comes into force.

Subsequent reviews

(6) Each subsequent review shall be completed and the report made available to the public within five years after the day the report on the previous review has been made available to the public.

Review to address rights of children and young persons

337 Every review of this Act shall address the rights of children and young persons in Part II.

Review to address First Nations, Inuit and Métis issues

338 Every review of this Act shall address the following matters:

1. The additional purpose of the Act described in paragraph 6 of subsection 1 (2), with a view to evaluating the progress that has been made in working with First Nations, Inuit and Métis peoples to achieve that purpose.
2. The provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person or in respect of First Nations, Inuit or Métis children, with a view to ensuring compliance by societies with those provisions.

PART XII REGULATIONS

General

Lieutenant Governor in Council regulations

339 (1) The Lieutenant Governor in Council may make regulations for the purposes of this Act,

1. prescribing and governing a dispute resolution mechanism, in accordance with Jordan's Principle, to resolve inter-jurisdictional and intra-jurisdictional disputes in respect of services provided under this Act;
2. prescribing additional services that are services under this Act;
3. prescribing additional powers and duties of Directors and program supervisors;
4. prescribing additional persons and entities who are service providers;
5. governing the use of physical restraint under this Act, including prescribing standards and procedures for its use, requiring service providers to develop policies governing its use and prescribing provisions that must be or may not be included in those policies;
6. governing the use of mechanical restraints under this Act, including prescribing standards and procedures for their use;
7. prescribing and governing an internal procedure by which complaints, other than complaints under section 18 or 119, may be made to service providers, and prescribing and governing an external review by a specified entity of specified classes of such complaints;
8. exempting a service provider, lead agency or service, or any class of them, from any provision or requirement of this Act or the regulations for a specified period or periods;

9. defining any word or expression used in this Act that is not already defined in this Act and further defining any word or expression used in this Act that is already defined in this Act;
10. prescribing or otherwise providing for anything required or permitted by this Act to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations, which is not already provided for in this Part, except as otherwise provided in paragraph 1 of subsection 347 (2);
11. governing transitional matters that may arise due to the enactment of this Act or the repeal of the old Act.

Conflicts

(2) If there is a conflict between a regulation made under paragraph 11 of subsection (1) and any provision of this Act or the regulations, the regulation made under paragraph 11 of subsection (1) prevails.

Minister's regulations

(3) The Minister may make regulations for the purposes of this Act,

1. prescribing performance standards and performance measures for the provision of services to children in care, including prescribing a process for determining what the performance standards and performance measures should be, and implementing the performance standards and performance measures that are prescribed;
2. governing the determination of the bands and First Nations, Inuit or Métis communities with which a First Nations, Inuit or Métis child identifies;
3. governing how service providers, in making decisions in respect of any child, are to take into account the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression in order to give effect to the purpose set out in subparagraph 3 iii of subsection 1 (2);
4. governing how service providers, in making decisions in respect of any child, are to take into account the child's cultural and linguistic needs in order to give effect to the purpose set out in subparagraph 3 iv of subsection 1 (2);
5. governing how service providers, in making decisions in respect of any child, are to take into account regional differences in order to give effect to the purpose set out in paragraph 4 of subsection 1 (2);
6. governing how service providers, in the case of a First Nations, Inuk or Métis child, are to take into account the child's cultures, heritages, traditions, connection to community and the concept of the extended family, in order to give effect to the purpose set out in paragraph 6 of subsection 1 (2);
7. prescribing persons who may represent children and their parents in order to assist service providers in taking into account all the characteristics and needs of a child, and all the other factors referred to in subparagraphs 3 iii and iv and paragraphs 4 and 6 of subsection 1 (2) for the purposes set out in those subparagraphs and paragraphs, and respecting how such persons shall be selected or appointed and governing their roles and duties as representatives;
8. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where services are provided;
9. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
10. requiring that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents;
11. prescribing the qualifications, powers and duties of persons employed in providing services;
12. prescribing classes of persons employed or to be employed in providing services who must undertake training, prescribing that training and prescribing the circumstances under which that training must be undertaken;
13. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services are provided;
14. permitting notices, orders or other documents that are required under this Act to be provided in writing to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified;
15. governing how notices, orders and other documents or things are to be given or served under this Act, including providing rules for when they are deemed to be received;
16. prescribing forms and providing for their use;
17. modifying any provision or requirement of this Act or the regulations to accommodate persons with disabilities within the meaning of the *Accessibility for Ontarians with Disabilities Act, 2005*.

Regulations: Part II (Children's and Young Persons' Rights)

340 The Lieutenant Governor in Council may make regulations for the purposes of Part II,

1. governing how the rights of children and young persons in this Act are to be respected and promoted by service providers;
- 1.1 prescribing a person or entity to perform prescribed functions relating to the promotion of the rights of children and young persons in this Act;
2. prescribing intervals for the purpose of section 9;
3. governing internal complaints procedures to be established under section 18;
4. establishing procedures for reviews under section 19;
5. prescribing an alternative dispute resolution method for the purpose of subsection 17 (1) and an alternative dispute resolution process other than the one established by the bands and communities referred to in subsection 17 (2) for the purpose of that subsection. 2017, c. 14, Sched. 1, s. 340; 2018, c. 17, Sched. 34, s. 6 (8).

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

2018, c. 17, Sched. 34, s. 6 (8) - 01/05/2019

Regulations: Part III (Funding and Accountability)

Minister's regulations

341 (1) The Minister may make regulations for the purposes of Part III,

1. prescribing entities to whom funding may be provided for the purposes of clause 25 (c);
2. prescribing other purposes for which funding may be provided under clause 25 (c);
3. prescribing the information to be contained in or excluded from a summary of an order made available to the public under clause 33 (4) (b) or 43 (4) (b);
4. prescribing standards of services and procedures and practices to be followed by societies for the purposes of subsection 35 (2);
5. governing the management and operation of societies;
6. prescribing a system for determining the amounts of payments under subsection 40 (1);
7. prescribing terms that shall or may be included in accountability agreements for the purposes of subsection 41 (4);
8. governing the provision of services;
9. governing the accommodation, facilities and equipment to be provided,
 - i. in buildings in which services are provided, and
 - ii. in the course of the provision of services;
10. governing the establishment, management, operation, location, construction, alteration and renovation of buildings in which services are provided;
11. prescribing the accounts and records to be kept by societies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;
12. requiring service providers to keep records, and prescribing the form and content of those records;
13. providing for the recovery, by an agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
14. providing for the recovery of payments made to societies under Part III and the regulations;
15. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Residential Licensing), where residential care is provided to children;
16. prescribing reports to be made and information to be provided under section 56, their form and the intervals at which they are to be made or provided;
17. prescribing entities and the reports and information to be provided to them and the manner in which they are to be provided for the purpose of section 57;
18. prescribing information and the manner of making it public for the purpose of section 58;

19. prescribing other persons to whom a program supervisor shall give an inspection report for the purposes of clause 61 (1) (c);
20. prescribing rules to determine whether a child resides within an advisory committee's jurisdiction;
21. prescribing practices, procedures and further duties for advisory committees.

Standards of service, etc.

- (2) A regulation made under paragraph 4 of subsection (1),
 - (a) may exempt one or more societies from anything that is prescribed under that paragraph;
 - (b) may prescribe standards of services that only apply to one or more societies provided for in the regulations;
 - (c) may prescribe procedures and practices that are only required to be followed by one or more societies provided for in the regulations.

Amounts of payments to societies

- (3) A regulation made under paragraph 6 of subsection (1) is, if it so provides, effective with reference to a period before it is filed.

Lieutenant Governor in Council regulations

- (4) The Lieutenant Governor in Council may make regulations for the purposes of Part III,
 1. governing the transfer and assignment of assets of service providers and lead agencies for the purposes of section 29;
 2. establishing and respecting categories of lead agencies for the purposes of subsection 30 (4);
 3. prescribing the functions of each lead agency category for the purposes of subsection 30 (5);
 4. prescribing matters about which the Minister may issue directives for the purposes of subsection 32 (2);
 5. prescribing other duties of a society for the purposes of clause 35 (1) (g);
 6. respecting the composition of boards of directors of societies, including prescribing qualifications or eligibility criteria for board members, and requiring board members to undertake training programs and prescribing those programs;
 7. prescribing the number of First Nations, Inuit or Métis representatives on the boards of directors of societies, the manner of their appointment and their terms, for the purpose of subsection 36 (1);
 8. prescribing provisions to be included in the by-laws of societies for the purpose of subsection 36 (3);
 9. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
 10. prescribing fees that may be charged for services and the conditions under which a fee may be charged;
 11. respecting matters that relate to or arise as a result of an amalgamation under section 47 or a Minister's order under section 48, including rules governing court orders made with respect to a society;
 12. prescribing grounds for the purposes of subclause 60 (2) (c) (ii).

Restructuring

- (5) A regulation made under paragraph 11 of subsection (4) prevails over the *Corporations Act* or regulations made under that Act to the extent of any conflict.

Note: On the first day that section 350 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force, subsection 341 (5) of the Act is amended by striking out "the *Corporations Act*" and substituting "the *Not-for-Profit Corporations Act, 2010*". (See: 2017, c. 14, Sched. 3, s. 13)

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

2017, c. 14, Sched. 3, s. 13 - not in force

Regulations: Part IV (First Nations, Inuit and Métis Child and Family Services)

Lieutenant Governor in Council regulations

- 342** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,
 1. modifying or excluding the application of any provision or requirement of this Act or the regulations to a First Nations, Inuit or Métis child and family service authority, a band or First Nations, Inuit or Métis community or specified persons or classes of persons, including persons caring for children under customary care, and providing for other provisions or requirements to apply instead of or in addition to the provisions or requirements of this Act and the regulations.

Minister's regulations

- (2) The Minister may make regulations for the purposes of Part IV,
1. governing the process for establishing lists of First Nations, Inuit or Métis communities in a regulation made under subsection 68 (1), including procedures that a community must follow and requirements that a community must meet;
 2. prescribing matters requiring consultation between societies, persons or entities and bands or First Nations, Inuit or Métis communities for the purposes of clause 72 (i);
 3. governing consultations with bands and First Nations, Inuit or Métis communities under sections 72 and 73 and prescribing the procedures and practices to be followed by societies, persons and entities and the duties of societies, persons and entities during the consultations;
 4. prescribing services and powers for the purposes of section 73.

Regulations: Part V (Child Protection)

Lieutenant Governor in Council regulations

- 343** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part V,
1. prescribing jurisdictions outside Canada whose court orders may be recognized as extra-provincial child protection orders, and conditions for such recognition;
 2. prescribing additional circumstances and conditions that constitute a 16 or 17 year old being in need of protection for the purpose of clause 74 (2) (o);
 3. governing the exercise of the powers of entry set out in subsections 81 (6) and (10) and 86 (1) and (2);
 4. prescribing methods of alternative dispute resolution for the purpose of section 95;
 5. assigning to a Director any powers, duties or obligations of the Crown with respect to children who are in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
 6. prescribing additional criteria for when an assessment may be ordered under section 98, and governing the scope of an assessment and the form of an assessment report under that section;
 7. respecting applications for a review by the Board under subsection 109 (8);
 8. prescribing additional practices and procedures for the purposes of subsection 109 (11);
 9. prescribing the qualifications or experience a member of the Board is required to have in order to conduct reviews under subsection 109 (9), 119 (6) or 120 (5);
 10. respecting the making of complaints to a society under subsection 119 (1) or to the Board under subsection 119 (5) or 120 (3);
 11. prescribing matters for the purposes of paragraph 2 of subsection 119 (5) and paragraph 6 of subsection 120 (4);
 12. prescribing additional orders that may be made by the Board for the purposes of clauses 119 (10) (d) and 120 (7) (f);
 13. prescribing practices and procedures for the purposes of hearings conducted by the Board under subsection 119 (8) or during a review of a complaint under section 120;
 14. respecting the format of warrants under sections 131 and 132 and the procedures to be followed in applying for, issuing, receiving and filing warrants of different formats;
 15. prescribing manners of applying for a warrant under section 132, including a manner other than submitting an information on oath, setting out the circumstances under which those manners may be used and providing for any additional requirements that must be met if those manners are used;
 16. respecting the manner in which the register referred to in subsection 133 (5) is to be kept;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 16 of subsection 343 (1) of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 14)

17. requiring the removal of a name from the register referred to in subsection 133 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 17 of subsection 343 (1) of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 14)

18. prescribing practices and procedures for hearings held under clause 134 (4) (b).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 18 of subsection 343 (1) of the Act is repealed. (See: 2017, c. 14, Sched. 3, s. 14)

Minister's regulations

- (2) The Minister may make regulations for the purposes of Part V,
1. prescribing requirements and purposes for the purpose of the definition of child protection worker;
 2. respecting the procedures to be followed by a society or a child and family service authority for the purposes of subsection 74 (4);
 3. prescribing additional provisions to be included in a temporary care agreement for the purpose of paragraph 7 of subsection 75 (10);
 4. prescribing the manner of varying a temporary care agreement under subsection 75 (12);
 5. prescribing duties and obligations of societies and rights and responsibilities of children in respect of agreements made under section 77 (agreements with 16 and 17 year olds), including prescribing the services and supports that may be provided under them, prescribing additional circumstances for making such agreements and provisions to be contained in them and governing their variation and termination;
 6. prescribing the complaint review procedure that societies are required to follow for the purpose of subsection 119 (2);
 7. governing agreements entered into under section 124, including prescribing entities required to enter into the agreements, the expiry, renewal and termination of the agreements, the provisions to be included in the agreements, the care and support to be provided to persons under the agreements, the terms and conditions on which the care and support is to be provided and any exceptions to the requirement that an agreement be entered into or that care and support be provided under section 124;
 8. prescribing support services for the purposes of paragraph 3 of subsection 124 (1);
 9. prescribing circumstances and conditions for the purposes of subsection 125 (4);
 10. respecting assessments to be made under subsection 126 (1).

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

2017, c. 14, Sched. 3, s. 14 - not in force

Regulations: Part VI (Youth Justice)

344 The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

1. governing the establishment, operation, maintenance, management and use of places of temporary detention, of open custody and of secure custody;
2. governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises established, operated, maintained or designated for the purposes of the *Youth Criminal Justice Act* (Canada);
3. prescribing additional duties and functions of,
 - i. probation officers, and
 - ii. provincial directors;
4. prescribing the duties and functions of bailiffs;
5. prescribing the qualifications of probation officers;
6. prescribing additional duties and functions of persons in charge of places of temporary detention, of open custody and of secure custody;
7. prescribing reports to be made and information to be furnished under section 147, their form and the intervals at which they are to be made or furnished;
8. governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, of open custody or of secure custody;
9. prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, of open custody or of secure custody or premises in which a service is provided;
10. prescribing the number of members of the Board and the number of members that is a quorum;
11. prescribing additional powers, duties and procedures of the Board;
12. governing the exercise of the power of entry given under subsection 153 (5);
13. governing searches under subsection 155 (1);
14. prescribing procedures for the seizure and disposition of contraband found during a search;

15. respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part VI.

Regulations: Part VII (Extraordinary Measures)

345 The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

1. prescribing procedures for the admission of persons to and their discharge from secure treatment programs;
2. prescribing standards for secure treatment programs;
3. governing policies on the use of mechanical restraints required by section 160, including prescribing provisions that must be or may not be included;
4. prescribing standards for secure de-escalation rooms;
5. prescribing procedures to be followed when a child or young person is placed in or released from a secure de-escalation room;
6. prescribing the frequency of reviews under subsection 174 (6);
7. prescribing additional standards and procedures with which a service provider must comply under subsection 174 (9);
8. prescribing matters to be reviewed and prescribing additional reports under section 175;
9. prescribing procedures as intrusive procedures;
10. prescribing drugs, combinations of drugs or classes of drugs as psychotropic drugs.

Regulations: Part VIII (Adoption and Adoption Licensing)

346 (1) The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

1. designating a person or body to exercise powers and perform duties with respect to adoption;
2. governing the person or body designated under paragraph 1, including prescribing the powers and duties of the person or body;
3. prescribing criteria for the purposes of the definition of “birth parent” in subsection 179 (1);
4. prescribing matters for the purposes of clause 180 (4) (b);
5. prescribing special circumstances for the purposes of subsection 188 (9) (placement outside Canada);
6. governing applications for review under subsection 192 (3);
7. prescribing additional practices and procedures for the purposes of subsection 192 (7);
8. prescribing the qualifications or experience a member of the Board is required to have for the purpose of subsection 192 (8);
9. governing procedures to be followed by a Director in making a review under subsection 193 (3), what types of decisions and directions the Director is authorized to make after conducting a review, and any consequences following as a result of a decision or direction;
10. prescribing an alternative dispute resolution method for the purposes of subsections 198 (8) and 207 (9);
11. governing the placement of children for adoption;
12. prescribing rules and standards governing the placement of children for adoption by licensees;
13. governing openness orders under Part VIII;
14. prescribing persons for the purposes of clause 222 (3) (d);
15. prescribing the powers and duties of a designated custodian under section 223 and governing the fees that the designated custodian may charge in connection with the exercise of its powers and the performance of its duties;
16. governing the disclosure of information under section 224 to a designated custodian;
17. governing the disclosure of information under section 225 by the Minister, a society, a licensee or a designated custodian;
18. establishing and governing a mechanism for the review or appeal of a decision made by the Minister, a society, a licensee or a designated custodian concerning the disclosure of information under section 224 or 225;
19. governing the fees that a society, licensee or designated custodian may charge for the disclosure of information under section 224 or 225;

20. governing the inspection, removal or alteration of information related to an adoption for the purposes of clause 227 (1) (b);
21. exempting a licensee or class of licensees from any or all provisions or requirements of Part VIII or the regulations under it, either indefinitely or for a specified period;
22. governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
23. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 231 (c);
24. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 232 (e);
25. prescribing expenses that may be charged under clause 240 (d) and the conditions under which such expenses may be charged.

Functions of Central Authority

(2) In subsection (3),

“Central Authority” means the Central Authority designated under clause 24 (a) of the *Intercountry Adoption Act, 1998*; (“Autorité centrale”)

“Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, set out in the Schedule to the *Intercountry Adoption Act, 1998*. (“Convention”)

Same

(3) The Lieutenant Governor in Council may make regulations assigning functions of the Central Authority under Part VIII to public authorities, accredited bodies or persons in accordance with Article 22 of the Convention.

Minister’s regulations

(4) The Minister may make regulations for the purposes of Part VIII,

1. prescribing the form of an affidavit of execution for the purposes of subsection 180 (12);
2. prescribing the manner in which placements are to be registered under subsection 183 (7);
3. prescribing persons for the purposes of subclause 188 (3) (b) (ii);
4. prescribing persons and entities and timing requirements for the purposes of clause 238 (b);
5. prescribing the accounts and records to be kept by licensees;
6. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided;
7. providing for the inspection of the records of licensees;
8. governing the qualifications of persons employed by licensees;
9. requiring licensees to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds.

Regulations: Part IX (Residential Licensing)

Lieutenant Governor in Council regulations

347 (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

1. prescribing other residences for the purposes of paragraph 3 of the definition of “children’s residence” in section 243;
2. prescribing other places for the purposes of paragraph 12 of the definition of “children’s residence” in section 243;
3. prescribing circumstances in which a licence is required to provide residential care for the purposes of subparagraph 2 ii of section 244;
4. prescribing circumstances for the purposes of section 251;
5. prescribing matters about which the Minister may issue directives for the purposes of subsection 252 (1);
6. governing reviews and appeals under section 260;
7. governing the issuance, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;

8. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 261 (f);
9. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 262 (g);
10. prescribing other powers and duties of an inspector for the purposes of subsection 273 (3);
11. prescribing other powers of an inspector for the purposes of clause 276 (1) (i);
12. prescribing provisions of Part IX or the regulations for the purposes of clause 280 (1) (i);
13. prescribing provisions of Part IX or the regulations for the purposes of clause 280 (3) (c).

Minister's regulations

- (2) The Minister may make regulations for the purposes of Part IX,
1. prescribing or otherwise providing for anything required or permitted by Part IX, except anything referred to in subsection (1) of this section, to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations;
 2. specifying and governing classes of licence that may be assigned for the purposes of section 258;
 3. governing the amount or method of determining the amount that a licensee may charge for the provision of residential care under the authority of a licence for the purposes of section 268, including governing reviews and variation of the amount or method and circumstances in which a licensee may charge a different amount than the amount that could otherwise be charged;
 4. governing the management and operation of, and the accommodation, facilities, equipment and services to be provided in, children's residences and other places where residential care is provided under the authority of a licence;
 5. specifying and governing performance standards and performance measures with respect to the provision of services in children's residences or other places where residential care is provided under the authority of a licence, including standards with respect to quality of care and responsiveness to cultural needs;
 6. prescribing the accounts and records to be kept by licensees;
 7. prescribing the qualifications, powers and duties of persons supervising children in children's residences or other places where residential care is provided under the authority of a licence;
 8. prescribing screening measures to be conducted for licensees, applicants for a licence or renewal of a licence and other persons providing residential care to children in children's residences or other places where residential care is provided under the authority of a licence;
 9. governing procedures for the admission to and discharge of children from children's residences or other places where residential care is provided under the authority of a licence;
 10. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided.

Regulations: Part X (Personal Information)

348 The Lieutenant Governor in Council may make regulations for the purposes of Part X,

1. prescribing persons for the purpose of paragraph 2 of subsection 283 (2);
2. prescribing other ministers with whom the Minister may share information for the purposes of subsection 283 (5);
3. prescribing requirements and restrictions in relation to research and analysis for the purposes of subsection 283 (7);
4. prescribing and governing methods of giving notice under clauses 283 (8) (b) and 284 (3) (b);
5. prescribing the purposes for the collection under section 284;
6. prescribing purposes related to a society's functions for the purposes of clause 288 (2) (c), subclause 291 (2) (a) (ii) and subsection 292 (3);
7. specifying requirements that an express instruction mentioned in clause 291 (1) (a) must meet;
8. prescribing requirements and restrictions for the purposes of clauses 288 (2) (e), 291 (1) (j) and (k) and 292 (1) (h) and subsections 293 (2) and (3), 302 (10), 304 (1) and (4) and 305 (10);
9. prescribing entities for the purpose of section 293;
10. prescribing information and circumstances for the purposes of subsection 293 (4);
11. prescribing exceptions and additional requirements for the purposes of subsection 293 (9);

12. prescribing a body for the purposes of sections 302, 304 and 305;
13. prescribing information for the purpose of subsection 304 (2);
14. prescribing persons for the purpose of subsection 304 (3);
15. prescribing provisions and prescribing and governing the manner of recording disclosures for the purpose of subsection 306 (3);
16. prescribing exceptions and additional requirements for the purposes of subsection 308 (2);
17. prescribing requirements for the purposes of subsection 308 (3) and clause 309 (1) (b);
18. prescribing circumstances for the purposes of subsection 314 (10) and governing the fees that may be charged in those circumstances;
19. permitting notices, statements or any other things, that under this Part are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this section;
20. requiring service providers to provide information to the Commissioner and specifying the type of information to be provided and the time at which and manner in which it is to be provided.

Regulations: Part XI (Miscellaneous Matters)

349 The Lieutenant Governor in Council may make regulations for the purposes of Part XI,

1. prescribing the number of members of the Board and the number of members that is a quorum;
2. prescribing additional powers, duties and procedures of the Board;
3. respecting police record checks for the purposes of section 334, including,
 - i. requiring different classes of persons to provide different types of police record checks or different types of information as part of a check,
 - ii. prescribing procedures and practices to be followed when a police record check is required,
 - iii. prescribing other persons for the purposes of paragraph 3 of section 334, and
 - iv. requiring police record checks to be obtained from jurisdictions outside Ontario in specified circumstances;
4. respecting police record checks for the purposes of section 335, including,
 - i. prescribing other entities from whom a society may request police record checks or other information,
 - ii. prescribing other information that may be requested,
 - iii. prescribing circumstances in which and purposes for which the request may be made, and
 - iv. prescribing procedures and practices to be followed when a police record check or other information is requested.

PART XIII (OMITTED)

350 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

351 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

352 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

Français

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TAB 3

Child, Youth and Family Services Act, 2017

ONTARIO REGULATION 155/18 GENERAL MATTERS UNDER THE AUTHORITY OF THE LIEUTENANT GOVERNOR IN COUNCIL

Consolidation Period: From January 1, 2020 to the [e-Laws currency date](#).

Last amendment: 79/19.

Legislative History: 155/18, 79/19.

This is the English version of a bilingual regulation.

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GENERAL

Interpretation, First Nations, Inuk or Métis child

1. A child is a First Nations, Inuk or Métis child for the purposes of the Act if,
 - (a) the child identifies themselves as a First Nations, Inuk or Métis child or a parent of the child identifies the child as a First Nations, Inuk or Métis child;
 - (b) the child is a member of or identifies with, as determined under section 21 of Ontario Regulation 156/18 (General Matters Under the Authority of the Minister) made under the Act, one or more bands or First Nations, Inuit or Métis communities; or
 - (c) it cannot be determined under clause (a) or (b) whether the child is a First Nations, Inuk or Métis child but there is information that demonstrates that,
 - (i) a relative or sibling of the child identifies as a First Nations, Inuk or Métis person, or
 - (ii) there is a connection between the child and a band or a First Nations, Inuit or Métis community.

Powers of Director

2. Where an approval is required by a Director, where something is to be done as required by a Director or where a determination is to be made by a Director under any regulation made under the Act, the approval, requirement or determination is prescribed to be a power of a Director.

Methods of alternative dispute resolution

3. (1) A method of alternative dispute resolution that satisfies the following criteria is a prescribed method of alternative dispute resolution for the purposes of the Act:

1. The alternative dispute resolution must be undertaken with the consent of all participants.
2. The alternative dispute resolution must be one that can be terminated at any time by any of the participants.
3. The alternative dispute resolution must be conducted by an impartial facilitator who has no decision-making power.
4. The alternative dispute resolution must not be an arbitration.
5. The alternative dispute resolution is subject to the following rules respecting the confidentiality of and access to records and information:
 - i. Neither the participants nor the facilitator conducting the alternative dispute resolution nor any other person providing alternative dispute resolution services is compellable to give testimony or to produce documents in a civil proceeding with respect to matters relating to or prepared or exchanged during the alternative dispute resolution.

- ii. Representations, statements or admissions made in the course of the alternative dispute resolution and documents prepared or exchanged during the alternative dispute resolution cannot be used in evidence or produced in a civil proceeding, subject to the following exceptions:
 - A. Statements, admissions or documents may be disclosed if they give rise to the duty to report that a child may be in need of protection under section 125 of the Act.
 - B. Statements, admissions or documents may be disclosed if there are reasonable grounds to believe that the disclosure is necessary to address a real or perceived threat to any person’s life or physical safety.
 - C. Personal information contained in statements, admissions or documents may be disclosed if the individual to whom the personal information relates consents to the disclosure.
 - D. The terms of an agreement, memorandum of understanding or plan arising from the alternative dispute resolution may be disclosed to a court and all counsel for the participants in the alternative dispute resolution, including counsel for the child where applicable.
- iii. The alternative dispute resolution facilitator may use or disclose non-identifying information relating to the alternative dispute resolution for research or educational purposes, but the facilitator must provide written notice of this intended use or disclosure to all participants in the alternative dispute resolution before the alternative dispute resolution begins.

(2) Nothing in subsection (1) abrogates or derogates from the rights of the participants in an alternative dispute resolution to discuss the content of the alternative dispute resolution with their counsel.

(3) Nothing in subsection (1) limits the powers of a program supervisor under subsection 53 (2) or section 59 of the Act.

(4) In this section,

“non-identifying information” means information which, when used or disclosed either alone or in combination with other information, does not reveal the identity of the person to whom it relates.

RIGHTS OF CHILDREN AND YOUNG PERSONS

Service provider to inform

4. (1) This section applies to a service provider who provides a service to a child or young person in a circumstance in which the child or young person is not entitled to be informed under section 9 of the Act. O. Reg. 155/18, s. 4 (1).

(2) The service provider shall inform the child or young person of the matters set out in subsection (5), as required by subsection (6). O. Reg. 155/18, s. 4 (2).

(3) Subject to subsection (4), the service provider shall inform the following individuals of the matters set out in subsection (5), as required by subsection (6):

- 1. In the case of a child who is not in the care of a society, a parent of the child.
- 2. In the case of a child who is in the care of a society, except for extended society care, a person who was the child’s parent immediately before the child was placed in the care of the society.
- 3. In the case of a child who is being cared for under customary care, the person who, immediately before the child was placed in customary care, was the child’s parent. O. Reg. 155/18, s. 4 (3).

(4) The requirements in this section apply in respect of an individual described in paragraph 1, 2 or 3 of subsection (3) only if,

- (a) to the knowledge of the service provider, the individual is aware that the child is receiving the service provided by the service provider; and
- (b) the service provider is able to contact the individual after making reasonable efforts to do so. O. Reg. 155/18, s. 4 (4).

(5) For the purposes of subsections (2) and (3), the service provider shall inform the child, young person or individual described in paragraph 1, 2 or 3 of subsection (3) of,

- (a) the child or young person’s rights under Part II of the Act; and
- (b) the service provider’s complaints procedures.
- (c) REVOKED: O. Reg. 79/19, s. 1.

O. Reg. 155/18, s. 4 (5); O. Reg. 79/19, s. 1.

(6) The service provider shall inform the child, young person or individual described in paragraph 1, 2 or 3 of subsection (3) of the matters set out in subsection (5),

- (a) as part of the process of the service provider beginning to provide a service to the child or young person;

- (b) at any other times as is considered to be necessary, in the opinion of the service provider, to ensure that the child, young person or individual understands the information; and
- (c) as soon as practicable after information comes to the attention of the service provider that the child or young person's rights under Part II of the Act may have been violated by another service provider. O. Reg. 155/18, s. 4 (6).

Manner of providing information

5. (1) Subject to subsection (2), in providing information under section 9 of the Act or under section 4 of this Regulation, a service provider shall provide the information verbally and in a written format.

(2) If the information provided verbally and in a written format would not be accessible for the person being informed, the service provider shall provide the information in a format that is accessible for the person.

(3) In providing information to a child or young person under section 9 of the Act or to a person under section 4 of this Regulation, a service provider shall do the following:

- 1. Consider such information as may be available to the service provider about the child or young person to identify what supports, if any, may assist the child or young person in understanding the information to be provided.
- 2. In the case of providing information to a child or young person, ask the child or young person to identify what, if any, supports may assist the child or young person in understanding the information to be provided.
- 3. In the case of providing information to an individual described in paragraph 1, 2 or 3 of subsection 4 (3), ask the individual to identify what, if any, supports may assist the individual or the child or young person in understanding the information to be provided.
- 4. Consider any supports identified under paragraphs 1, 2 and 3 and make reasonable efforts to provide supports that the service provider considers to be necessary.

(4) After providing information under section 9 of the Act or section 4 of this Regulation, the service provider shall make reasonable efforts to confirm that the person has understood the information provided, including that the child or young person understands how to exercise and receive the benefit of their rights under Part II of the Act in connection with the service being provided.

(5) The service provider shall record the following in the file of the child or young person:

- 1. A description of how the service provider complied with this section.
- 2. A record of any supports identified under paragraphs 1, 2 and 3 of subsection (3).
- 3. If the service provider did not provide supports identified under subsection (3), the reasons for that decision.

Service provider to make reasonable efforts to assist

6. (1) A service provider shall make reasonable efforts to assist a child or young person for whom it provides a service to exercise or receive the benefit of their rights under Part II of the Act, including by doing the following:

- 1. Considering such information as may be available to the service provider about the child or young person to identify what supports, if any, may assist the child or young person in exercising or receiving the benefit of the rights.
- 2. Asking the child or young person to identify what, if any, supports may assist in enabling the child to exercise or receive the benefit of the rights.
- 3. If the service provider is required under section 4 to inform an individual described in paragraph 1, 2 or 3 of subsection 4 (3), making reasonable efforts to ask the individual to identify what, if any, supports may assist the child or young person in exercising or receiving the benefit of the rights.
- 4. Considering the supports identified under paragraphs 1, 2 and 3 and making reasonable efforts to provide supports that the service provider considers to be necessary.

(2) The service provider shall record the following in the file of the child or young person:

- 1. A description of any assistance the service provider provided in accordance with this section.
- 2. A record of any supports identified under subsection (1).
- 3. If the service provider did not provide supports identified under subsection (1), the reasons for that decision.

Service provider to document child, young person's participation

7. A service provider shall document the following in the file of a child or young person for whom it provides a service:

- 1. How and when the service provider gave the child or young person an opportunity to participate in decision-making about the services provided to or to be provided to them or decisions affecting them.

2. Whether the child or young person participated in the decision and, if they did participate, a description of how they participated and any views they expressed.

Service provider to take steps re services, programs, activities

8. (1) A service provider shall comply with subsection (2) if it has received information respecting,
 - (a) the child or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity, gender expression or cultural or linguistic needs; or
 - (b) regional differences that may affect the child or young person, such as the fact that a child or young person is from a region that is different from the region in which the services are provided to the child or young person.
- (2) A service provider shall make reasonable efforts to,
 - (a) determine whether there are services, programs or activities that may complement the service being provided by the service provider and support the objectives of the service and that relate to the information described in subsection (1); and
 - (b) if the service provider determines that such a service, program or activity is available and would assist the child or young person,
 - (i) ask the child or young person if they wish to receive the service or participate in the program or activity, and
 - (ii) if so, facilitate the child or young person receiving the service or participating in the program or activity in addition to continuing to receive the service from the service provider.
- (3) The service provider shall document the steps it has taken to comply with the requirements of this section.

Right to be informed, prescribed intervals

9. The following intervals are prescribed for the purposes of section 9 of the Act:
 1. 30 days after the child in care's placement in residential care.
 2. Three months after the child in care's placement in residential care.
 3. Six months after the child in care's placement in residential care and every six months after that.

USE OF PHYSICAL RESTRAINT – SECTION 6 OF THE ACT

Restrictions

10. (1) Subject to subsection 11 (3), a service provider is authorized to use or permit the use of physical restraint on a child or young person for whom it provides a service only if the following are satisfied:

1. There is imminent risk that,
 - i. the child or young person will physically injure or further physically injure themselves or others, or
 - ii in the case of a young person, the young person will escape from a place of open custody, of secure custody or of temporary detention or will cause significant damage to property where there is also an imminent risk that the property damage will cause personal harm to a person, including the young person.
2. The physical restraint will be used to prevent, reduce or eliminate a risk referred to in paragraph 1.
3. It has been determined that a less intrusive intervention is or would be ineffective in preventing, reducing or eliminating a risk referred to in paragraph 1.
4. The person who will use the physical restraint has successfully completed the training required under section 16 or 17, as the case may be, including training in the particular holding technique that will be used.
5. The person who will use the physical restraint has completed the education required under section 16 or 17, as the case may be.
6. In each circumstance in which the person was required to complete education requirements as described in paragraph 5, the person has been assessed as required under section 20 with respect to the education requirements and has received a satisfactory assessment in the most recent assessment.

(2) For greater certainty, physical restraint shall not be used on a child or young person under subsection (1) for the purpose of punishing the child or young person or for the convenience of the service provider or a person the service provider has permitted to use a physical restraint.

(3) For greater certainty, a service provider that holds a licence to provide residential care in the circumstances described in paragraph 2 of section 244 of the Act may, if providing foster care under the authority of that licence, permit a foster parent to use physical restraint under this section.

- (4) The physical restraint shall be used in the following manner:
 1. The least amount of force that is necessary in the circumstances shall be used.
 2. The child or young person's condition shall be continually monitored and assessed by a responsible person designated by the service provider while the child or young person is restrained.
 3. The type of physical restraint used must be the least intrusive that is necessary in the circumstances, having regard to the risk referred to in paragraph 1 of subsection (1).
 4. The use of the physical restraint shall be stopped immediately upon the earliest of the following:
 - i. When there is a risk that the use of the physical restraint itself will endanger the health or safety of the child or young person.
 - ii. When the risk referred to in paragraph 1 of subsection (1) is no longer present.
 - iii. When the physical restraint is determined to be ineffective in reducing or eliminating the risk referred to in paragraph 1 of subsection (1).

Policy

11. (1) A service provider that uses or permits the use of physical restraint shall maintain a written policy on the use of physical restraint that includes the following information:

1. Alternative interventions to physical restraint that must be considered or used to reduce or eliminate a risk referred to in paragraph 1 of subsection 10 (1).
2. The titles or positions of persons who are authorized to use physical restraint on a child or young person and the training that those persons must complete.
3. The measures that must be taken to prevent and minimize the use of physical restraint on a child or young person.
4. Protocols that must be followed in monitoring and assessing a child or young person's condition while they are being physically restrained.
5. Protocols that must be followed during the debriefing process under section 12.

(2) A service provider that decides that it will not use or permit the use of physical restraint shall develop and maintain a written policy that,

- (a) provides that the service provider will not use or permit the use of physical restraint; and
 - (b) sets out the rationale for the service provider's decision not to use or permit the use of physical restraint.
- (3) A service provider described in subsection (2) is not authorized to use or permit the use of physical restraint.

Debriefing

12. A service provider that has used or permitted the use of physical restraint on a child or young person for whom it provides a service shall ensure that a debriefing is conducted in accordance with the following rules:

1. A debriefing process must be conducted among the persons who were involved in the use of the physical restraint, in the absence of any children or young persons.
2. A second debriefing process must be conducted among the persons mentioned in paragraph 1 and the child or young person on whom the physical restraint was used.
3. A third debriefing process must be offered to be conducted among any children or young persons who witnessed the use of the physical restraint and must be conducted if any such children or young persons wish to participate in the debriefing process.
4. The debriefing processes referred to in paragraphs 2 and 3 must be structured to accommodate any child or young person's psychological and emotional needs and cognitive capacity.
5. Subject to paragraph 6, the debriefing processes referred to in paragraphs 1 to 3 must be conducted within 48 hours after the use of the physical restraint.
6. If the circumstances do not permit a debriefing process to take place within 48 hours after the physical restraint is used, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in paragraph 5, and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.
7. The service provider must record the following:
 - i. The date and time of each debriefing, the names and, if applicable, titles of the persons involved in each debriefing and the duration of each debriefing.

- ii. The name of each child or young person for whom a debriefing was offered in accordance with paragraph 3 and who indicated that they did not wish to participate in the debriefing process.
- iii. A description of the efforts made to conduct the debriefing processes required by this section that includes the names of the persons who made those efforts.

Service provider to notify parent

13. (1) A service provider that has used or permitted the use of physical restraint on a child or young person for whom it provides a service shall notify the child or young person's parent and, in the case of a child in care, the placing agency or person who has placed the child.

(2) Subsection (1) does not apply to a society or a licensee who holds a licence issued under Part VIII of the Act who uses or permits the use of physical restraint on a child that the society or licensee has placed for adoption.

Record re use of physical restraint

14. (1) A service provider shall ensure that a record is created of each instance of the use of physical restraint on a child or young person, and the record shall include the following:

- 1. The name and age of the child or young person on whom the physical restraint was used.
- 2. The dates and times when physical restraint was used and the name and title of the person or persons who used it.
- 3. A description of the risk referred to in paragraph 1 of subsection 10 (1) that existed before the physical restraint was used.
- 4. A description of the alternatives to the use of physical restraint that were considered and why those alternatives were not used.
- 5. The type or types of physical restraint used.
- 6. The time period during which the physical restraint was used.
- 7. All documentation related to assessment and monitoring of the child or young person while they were physically restrained, including assessments of the child's or young person's medical condition while being physically restrained.
- 8. The date and time when the child or young person ceased being physically restrained.
- 9. Documentation relating to notification and attempted notification under section 13 of the child or young person's parent and, in the case of a child in care, the placing agency or person who has placed the child.

(2) The service provider shall keep the record in the file of the child or young person.

Monthly, annual records

15. (1) A service provider that uses or permits the use of physical restraint shall maintain the records required by this section.

(2) The service provider shall, for every month, maintain a written record that summarizes every instance of the use of physical restraint on a child or young person for whom it provides a service, including the following for each instance:

- 1. The name and age of each child or young person who was physically restrained.
- 2. The dates and time periods during which the physical restraint was used in respect of each child or young person.
- 3. A description of the risk referred to in paragraph 1 of subsection 10 (1) that existed before the physical restraint was used.

(3) The service provider shall make the record available to,

- (a) in the case of a child who is not a young person, a Director, upon request; or
- (b) in the case of a young person, a provincial director, upon request.

(4) The service provider shall, for every month, prepare a written analysis of every instance of the use of physical restraint in order to ensure that the physical restraint was used in accordance with this Regulation.

(5) The service provider shall make an analysis available to,

- (a) in the case of a child who is not a young person, a Director, upon request; or
- (b) in the case of a young person, a provincial director, upon request.

(6) The service provider shall, at least once every calendar year, ensure that a written evaluation is conducted respecting,

- (a) the effectiveness of the policy required by subsection 11 (1); and

- (b) whether changes or improvements to the policies are required, particularly with respect to whether changes are required to minimize the use of physical restraint.

Training and education, licensee of a children’s residence

16. (1) Subject to subsection (2), this section applies in respect of a service provider that is licensed to operate a children’s residence, including a licensee that does not use or permit the use of physical restraint.

(2) This section only applies in respect of a licensee who is an individual if that individual provides direct care to a child or young person in the course of the licensee’s provision of a service to a child or young person.

(3) The licensee shall ensure that all persons who provide direct care to a child or young person in the course of the licensee’s provision of a service to the child or young person complete the following training on the use of physical restraint:

1. A training program that includes training in the use of physical restraint that is approved by the Minister, including training in a particular holding technique that may be used.
2. All refresher courses required by the program referred to in paragraph 1.
3. Training on the use of less intrusive intervention measures.

(4) The licensee shall ensure that all persons who provide direct care to a child or young person in the course of the licensee’s provision of a service to the child or young person complete education in respect of a matter described in Column 1 of the following Table within the time period set out opposite the matter in Column 2 of the Table.

TABLE

Item	Column 1 Matter in respect of which education is required	Column 2 Time period for completion
1.	The provisions of the Act and this Regulation concerning the use of physical restraint	Within 30 days after the day this section comes into force and within 30 days after any amendment to the Act or this Regulation concerning the use of physical restraint comes into force.
2.	The policies established by the Ministry concerning the use of physical restraint	Within 30 days after each new or revised policy established by the Ministry concerning the use of physical restraint is received by the service provider.
3.	The service provider’s policy concerning the use of physical restraint required under section 11	Within 30 days after each new or revised policy of the service provider required under section 11 is established or amended.

Training and education, other service provider

17. (1) Subject to subsection (2), this section applies in respect of a service provider that is not a licensee of a children’s residence.

(2) This section only applies in respect of a service provider who is an individual if that individual provides direct care to a child or young person in the course of the service provider’s provision of a service to the child or young person.

(3) Except in the case of a service provider that does not use or permit the use of physical restraint, the service provider shall ensure that all persons who provide direct care to a child or young person in the course of the service provider’s provision of a service to the child or young person, including foster parents, complete the following training:

1. Training on the use of physical restraint, including training in a particular holding technique that may be used.
2. All refresher courses, if any, that are required by the training referred to in paragraph 1.
3. Training on the use of less intrusive intervention measures.

(4) The service provider shall ensure that all persons who provide direct care to a child or young person in the course of the service provider’s provision of a service to the child or young person, including foster parents, complete education in respect of each matter described in Column 1 of the Table to subsection 16 (4) within the time period set out opposite the matter in Column 2 of the Table.

Person who commences providing direct care

18. Despite the requirements set out in sections 16 and 17 with respect to education, if a person commences providing direct care to a child or young person in the context of a service provider’s provision of a service to that child or young person, the service provider shall ensure that the person completes education required by the applicable section within 30 days after the person commences providing direct care.

Records re training and education

19. (1) The service provider shall maintain a written record of the training and education provided to each person in accordance with section 16, 17 or 18, the date the training and education was provided and the details of the training and education.

- (2) The service provider shall make the record available to a Director upon request.

Assessment re education

20. (1) This section applies to a service provider each time a person, including the service provider, who provides direct care to a child or young person in the course of the service provider's provision of a service to a child or young person, is required to complete education requirements under section 16, 17 or 18.

(2) The service provider shall ensure that each time the person is required to complete an education requirement under section 16, 17 or 18, and at least on an annual basis, the person is immediately assessed after their completion of the education requirement to determine their understanding of and ability to apply the education.

(3) If the assessment identifies a deficiency in a person's understanding of and ability to apply the matters in respect of which education is required, the service provider shall ensure that the person completes additional education until their understanding of and ability to apply the education is satisfactory.

(4) The service provider shall ensure that a written record is prepared of the date on which each assessment took place and the results of the assessment, including whether or not the person's understanding of and ability to apply the education is satisfactory for the purposes of paragraph 6 of subsection 10 (1).

(5) The service provider shall make the record available to a Director upon request.

USE OF MECHANICAL RESTRAINT – SECTION 7 OF THE ACT

Mechanical restraints – plan of treatment, etc.

21. (1) In this section,

“health practitioner” means a member of a College under the *Regulated Health Professions Act, 1991* or a person designated by the Minister; (“praticien de la santé”)

“PASD” means a personal assistance service device, being a device used to assist a child or young person with hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation or positioning or any other routine activity of living; (“appareil d’aide personnelle”)

“plan of treatment” and “substitute decision-maker” have the same meaning as in the *Health Care Consent Act, 1996*. (“plan de traitement”, “mandataire special”)

(2) A service provider may use or permit the use of a mechanical restraint on a child or young person for whom the service provider is providing a service if the use is authorized by,

- (a) a plan of treatment to which the child or young person, or their substitute decision-maker, has consented in accordance with the *Health Care Consent Act, 1996*; or
- (b) a plan for the use of a PASD that is a mechanical restraint to which the child or young person, or their nearest relative as defined in subsection 21 (1) of the Act, has consented.

(3) For the purposes of clause (2) (b), a plan for the use of a PASD means a plan that is developed by one or more health practitioners and provides for how a PASD that is a mechanical restraint will assist a child or young person with hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation or positioning or any other routine activity of living.

(4) In circumstances where this section and section 160 of the Act would apply to the use of mechanical restraints on a child in a secure treatment program, section 160 of the Act applies and this section does not apply.

(5) A service provider shall ensure that the use of mechanical restraints under this section is carried out in accordance with the following rules:

1. Mechanical restraints shall not be used on a child or young person for the purposes of punishment or solely for the convenience of the service provider, foster parent or staff member who is providing the service.
2. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances.
3. The service provider shall ensure that the child or young person being restrained by the use of mechanical restraints is monitored on a regular basis and in accordance with any instructions or recommendations provided in the child or young person's plan of treatment or plan for the use of a PASD.
4. Mechanical restraints must be removed immediately upon the earliest of the following:
 - i. When there is a risk that their use will endanger the health or safety of the child or young person.
 - ii. When the continued use of the mechanical restraints would no longer be authorized by the plan of treatment or plan for the use of a PASD.

(6) A service provider shall ensure that mechanical restraints used under this section,

- (a) are applied in accordance with the manufacturer's instructions, if any;
- (b) are maintained in good condition in accordance with the manufacturer's instructions, if any; and

(c) are not altered except for adjustments made in accordance with the manufacturer's instructions, if any.

(7) A service provider shall ensure that a staff member or foster parent who is permitted to use a mechanical restraint on a child or young person under this section has received the necessary training, instruction or education to allow the staff member or foster parent to use the mechanical restraint in accordance with the child or young person's plan of treatment or plan for the use of a PASD.

(8) A service provider shall maintain written records regarding the use of a mechanical restraint on a child or young person under this section and those records shall include,

- (a) information that is necessary to demonstrate that use of the mechanical restraint was in conformity with the child or young person's plan of treatment or plan for the use of a PASD; and
- (b) the names of every staff member or foster parent who was permitted to use mechanical restraints on the child or young person and a description of the training, instruction or education that the staff member or foster parent received.

(9) A service provider that uses or permits the use of a mechanical restraint under this section shall develop and maintain policies regarding the following:

1. Protocols that must be followed in monitoring and assessing a child or young person's condition while a mechanical restraint is being used.
2. Protocols for developing and maintaining records required under subsection (8).

(10) The following rules apply, despite any other subsection of this section, with respect to the period beginning on the day this section comes into force and ending on the day that is 60 days later:

1. Subsections (1), (4) and (6) apply and subsections (2), (3), (5), (7), (8) and (9) do not apply.
2. A service provider may use or permit the use of a mechanical restraint on a child or young person for whom the service provider is providing a service if the mechanical restraint is used as part of the child or young person's treatment, as defined in subsection 2 (1) of the *Health Care Consent Act, 1996*, or if the mechanical restraint is a PASD.
3. A service provider shall ensure that the use of mechanical restraints under this section is carried out in accordance with the following rules:
 - i. Mechanical restraints shall not be used on a child or young person for the purposes of punishment or solely for the convenience of the service provider, foster parent or staff member who is providing the service.
 - ii. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances.
 - iii. The service provider shall ensure that the child or young person being restrained by the use of mechanical restraints is monitored on a regular basis.
 - iv. Mechanical restraints must be removed immediately when there is a risk that their use will endanger the health or safety of the child or young person.

COMPLAINTS PROCEDURE

Complaints procedure re residential care, placements

22. (1) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall ensure that their written complaints procedure under subsection 18 (1) of the Act meets the requirements of this section.

(2) The written procedure shall set out,

- (a) how a child in care may make a complaint, either verbally or in writing, with respect to alleged violations of the rights of the child in care under Part II of the Act to,
 - (i) a staff member or a foster parent, either in private or in the presence of other children or young persons, and
 - (ii) the service provider or a person designated by the service provider;
- (b) how the parent of a child in care or other person representing the child in care may make a complaint, either verbally or in writing, with respect to alleged violations of the rights of the child in care under Part II of the Act to,
 - (i) a staff member or a foster parent, and
 - (ii) the service provider or a person designated by the service provider;
- (c) how an individual affected by conditions or limitations on visitors imposed under subsection 11 (1) of the Act may make a complaint, either verbally or in writing, respecting those conditions or limitations to,
 - (i) a staff member, and

- (ii) the service provider or a person designated by the service provider; and
- (d) how an individual affected by the suspension of visits to a facility under subsection 11 (2) of the Act may make a complaint, either verbally or in writing, respecting the suspension to,
 - (i) a staff member, and
 - (ii) the service provider or a person designated by the service provider.
- (3) In addition to the requirements set out in the Act, the written procedure shall,
 - (a) require a staff member, a foster parent or the service provider to make a record of any complaint described in clause (2) (a), (b) or (c) that is made verbally;
 - (b) set out timelines for responding to a complaint, including a requirement that the service provider or a person designated by the service provider must provide an acknowledgement of a complaint within 24 hours of receiving it;
 - (c) require the service provider to, within 24 hours of receiving a complaint, determine what, if any, immediate action can be taken to respond to the complaint and what, if any, supports the child in care or the person making the complaint may require in order to participate in the complaints review process; and
 - (d) require the service provider, until the results of a complaints review have been provided under subsection 18 (4) of the Act to the person who made the complaint, to provide an update to the person on the status of the review,
 - (i) if requested by the person, and
 - (ii) at such other times as necessary to ensure that the person receives an update on the review no later than 30 days after the service provider receives the complaint and subsequently at intervals of no more than 30 days.

Complaints procedure re other services

23. (1) A service provider, other than a society or a service provider who provides residential care to children or young persons or who places children or young persons in residential placements, shall establish and follow a written complaints procedure that meets the requirements of subsection (2). O. Reg. 155/18, s. 23 (1).

- (2) The complaints procedure shall,
 - (a) allow for any person to make a complaint respecting alleged violations of a child or young person's rights under sections 3 to 7 of the Act in a manner that is accessible to the person making the complaint;
 - (b) allow for complaints to be made anonymously;
 - (c) require the service provider, as soon as possible in the circumstances but before the end of the business day following the day on which the complaint was received by the service provider, to,
 - (i) except if the complaint is made anonymously, acknowledge receipt of the complaint in writing,
 - (ii) determine whether, without deciding upon the merits of the complaint, any immediate action can be taken to prevent the alleged violation from occurring or recurring or mitigating any possible harm to any child or young person in respect of whose rights the complaint is made that could be caused by the alleged violation,
 - (iii) except if the complaint is made anonymously, determine what, if any, supports the person making the complaint may require in order to participate in a review of the complaint;
 - (d) REVOKED: O. Reg. 79/19, s. 2.
 - (e) set out a process for complaints received to be considered and responded to by a person other than a person in respect of whom the complaint is made, if possible;
 - (f) subject to subsection (3), require the service provider, until a response to a complaint has been provided under clause (g), to provide an update to the person who made the complaint and any child or young person in respect of whose rights the complaint is made,
 - (i) if requested by the person or by the child or young person, and
 - (ii) at such other times as necessary to ensure that the person and the child or young person receives an update respecting the complaint no later than 30 days after the service provider receives the complaint and subsequently at intervals of no more than 30 days;
 - (g) subject to subsection (3), require the service provider to inform in writing the person who made the complaint and any child or young person in respect of whose rights the complaint is made, of what, if anything, the service provider has decided to do in response to the complaint;
 - (h) require the service provider to obtain the consent of the child or young person in respect of whose rights the complaint is made before disclosing any of the child or young person's personal information in the circumstances described in clauses (f) and (g);

- (i) require the service provider to make reasonable efforts to ensure that any person who is informed of the results of a review understands the results; and
 - (j) require the service provider to document the details of the complaint and the steps taken in response to the complaint in the file of a child or young person in respect of whose rights the complaint is made. O. Reg. 155/18, s. 23 (2); O. Reg. 79/19, s. 2.
- (3) The requirements in clauses (2) (f) and (g) do not apply in respect of the person who made the complaint if the complaint was made anonymously. O. Reg. 155/18, s. 23 (3).

LEAD AGENCIES – CHILD AND YOUTH MENTAL HEALTH

Category established

24. The category of Child and Youth Mental Health is established as a category of lead agencies for the purposes of subsection 30 (4) of the Act.

Functions

25. The functions of a lead agency assigned by the Minister under subsection 30 (4) of the Act to the category of Child and Youth Mental Health are the following:

1. To support the Ministry and work closely with the Ministry and service providers in addressing issues relating to the delivery of services within the child and youth mental health system in the geographic area served by the lead agency.
2. To develop plans referred to in section 26 with respect to the geographic area served by the lead agency in accordance with section 26 and to provide leadership on the implementation of local priorities respecting child and youth mental health as set out in the plans.
3. To provide leadership, including through collaboration with service providers, community providers, youth and families, with respect to services funded by the Minister within the child and youth mental health system.
4. To inform the Ministry’s stewardship of the child and youth mental health system, including providing the Ministry with recommendations relating to the Ministry’s decisions regarding services funded by the Minister within the child and youth mental health system.
5. To advise on, participate in and contribute to effective performance of services funded by the Minister within the child and youth mental health system and to collaborate with partners to inform effective performance within the system.
6. To advise on, participate in and contribute to the development of strategies for continuous quality improvement within the services funded by the Minister within the child and youth mental health system and to collaborate with partners to inform the development of strategies for continuous quality improvement within the system.
7. To provide information to the Ministry to inform the establishment of provincial priorities respecting child and youth mental health.
8. To advise the Ministry on matters that affect children and youth with mental health issues across all services provided to children and youth.

Child and youth mental health plans

26. (1) In order to inform the Ministry and service providers, community providers, youth and families with respect to the child and youth mental health system in the geographic area served by a lead agency, each lead agency shall develop child and youth mental health plans in respect of the geographic area served by the lead agency.

(2) The plans shall address such matters as may be specified by the Ministry and shall be prepared in the manner specified by the Ministry.

(3) The lead agency shall ensure that,

- (a) the plans include reference to the needs and perspectives of children, youth and families and diverse populations within the geographic area, including but not limited to the perspectives of Francophone communities and First Nations, Inuit and Métis peoples; and
- (b) the plans are developed through a collaborative process that considers the needs and perspectives of service providers and community providers, including all providers of services to children and youth, including health and education services.

(4) In order to address identified gaps between services provided and identified priorities within the geographic area, the lead agency shall ensure that the plans include such recommendations as the lead agency considers to be appropriate to the Ministry with respect to the following:

1. Funding by the Minister of various services within the child and youth mental health system, including funding provided to service providers.

2. Adjustments to service targets and the number of services funded by the Minister within the child and youth mental health system.

Minister's directives

27. For the purposes of subsection 32 (2) of the Act, the Minister may issue directives to lead agencies in the category of Child and Youth Mental Health with respect to the following:

1. Financial and administrative matters related to the functions set out in section 25.
2. The performance of the functions set out in section 25.

BOARD REVIEW OF PLACEMENT

New community listed, Board review already commenced

28. (1) This section applies in respect of any review conducted by the Board under section 66 of the Act if,

- (a) a new First Nations, Inuit or Métis community is listed in a regulation made under subsection 68 (1) of the Act after the Board begins to conduct its review but before it has made a determination in respect of the review; and
- (b) the new First Nations, Inuit or Métis community listed is one of the child's communities.

(2) Subject to subsection (3), if the Board is holding a hearing as part of the review and has completed the hearing on or before the day the new First Nations, Inuit or Métis community is listed but has not made a determination in respect of the review on or before that day, clause 66 (4) (c) of the Act does not apply in respect of the new community and the parties to the review are those who were parties immediately before the new community was listed.

(3) Subsection (2) does not apply if the Board is satisfied that it would be in the best interests of the child for clause 66 (4) (c) of the Act to apply and makes an order to that effect.

CHILD PROTECTION – GENERAL

Power of entry

29. A person entering a premises under subsection 81 (11) or 86 (3) of the Act shall produce identification, including evidence of appointment or authorization, as the case may be, on request of the occupier.

Application for telewarrant for access to record

30. (1) To apply for a warrant under section 132 of the Act, a Director or a person designated by a society may, instead of submitting to the justice an information on oath, submit to the justice by fax an information that is not on oath but that includes a written statement, signed by the Director or the person designated by the society, stating that all matters contained in the information are true to their knowledge and belief.

(2) A written statement described in subsection (1) shall be deemed to be a statement made under oath.

(3) A justice who receives by fax an information described in subsection (1) shall, as soon as practicable, cause the information, certified by the justice as to the place, time and date of its receipt, to be filed with the clerk of the court having jurisdiction in the area where the warrant is to be executed.

(4) A justice who issues a warrant under subsection 132 (3) of the Act on the basis of an information submitted by fax under subsection (1) shall,

- (a) complete and sign the warrant, noting on its face the date on which, and the time and place at which, it was issued;
- (b) send the warrant by fax to the Director or person designated by a society who submitted the information; and
- (c) as soon as practicable after the warrant is issued, cause it to be filed with the clerk of the court having jurisdiction in the area where the warrant is to be executed.

Exemptions, licensing requirement re place of safety

31. (1) Subject to subsection (3), a society is exempt from the requirement for a licence under section 244 of the Act in respect of the provision of residential care in a person's home for up to 60 days after a child has been placed in the person's home.

(2) Subject to subsection (3), a person is exempt from the requirement for a licence under section 244 of the Act in respect of the provision of residential care in the person's home for up to 60 days after a child has been placed in the person's home by a society.

(3) The exemption in subsection (1) or (2) applies only if the society is satisfied that the person whose home is being used for the provision of residential care is willing and able to provide a place of safety for the purposes of subsection 74 (4) of the Act.

Application for review of proposed removal of a child in extended society care

32. (1) An application requesting a review of a proposed removal under subsection 109 (8) of the Act shall be submitted in writing to the Board.

(2) For the purposes of subsection 109 (11) of the Act, the following additional practices and procedures are prescribed:

1. Within seven days of receipt of an application for a review under subsection 109 (8) of the Act, the Board shall give the applicant written notice of whether the applicant is eligible for a review under section 109 of the Act.
2. If the Board determines that the applicant is eligible for a review, the notice referred to in paragraph 1 shall set out the date and time of the hearing and shall be sent to all parties.
3. The application for review shall be heard by the Board within 20 days of the day the applicant received notice of eligibility under paragraph 1.
4. A decision and reasons under subsection 109 (15) of the Act shall be sent to all parties no later than 10 days after the end of a hearing.

(3) Notice under subsection (2) may be given by regular mail or by fax.

(4) If notice is sent by regular mail, it shall be sent to the most recent address known to the society and is deemed to be received by the applicant on the fifth day after it is mailed.

(5) If notice is sent by fax, it is deemed to be received on the day after it is sent, unless that day is a holiday, in which case the copy is deemed to be received on the next day that is not a holiday.

Director's powers and duties re child abuse register

33. (1) In this section,

“Director” means the Director within the meaning of subsection 133 (1) of the Act.

(2) Upon receiving an inquiry from a society that a child is or may be suffering or may have suffered abuse within the meaning of subsection 127 (2) of the Act, the Director shall forthwith notify the society whether any person referred to in the information received by the society has been previously identified in the register, the date of any such prior identification and the society or other agency that reported the prior identification.

(3) The Director shall record the information reported under subsection 133 (3) of the Act.

(4) The Director shall maintain information in the register established under subsection 133 (5) of the Act for at least 25 years from the date of the recording of the information unless the information has been previously expunged or amended pursuant to a decision by the Director.

(5) The Director may extend the period of time within which a report must be made to the Director under subsection 34 (1) of Ontario Regulation 156/18 (General Matters Under the Authority of the Minister) made under the Act.

Note: On the day section 7 of Schedule 3 to the *Supporting Children, Youth and Families Act, 2017* comes into force, section 33 of the Regulation is revoked. (See: O. Reg. 155/18, s. 116 (1))

COURT ORDERED ASSESSMENTS

Timing of assessment

34. (1) A court may order an assessment under section 98 of the Act if the criteria set out in subsection 98 (2) of the Act are satisfied and,

- (a) the court has received evidence, held a temporary care and custody hearing and made an order pursuant to subsection 94 (2) of the Act;
- (b) the court has made a finding that a child is in need of protection pursuant to subsection 74 (2) of the Act; or
- (c) all parties to the proceeding consent to the order being made.

(2) An order under clause (1) (c) may be made at any time during the proceeding.

Contents of assessment order

35. (1) In an assessment order, the court shall include the following:

1. The reason the assessment is necessary.
2. The specific questions that are to be addressed by the person performing the assessment.
3. What questions, if any, specifically require recommendations.
4. The time period for completing and filing the assessment report.

(2) Without limiting the generality of the questions that are to be addressed by the person performing the assessment under paragraph 2 of subsection (1), the court may order that some or all of the following be assessed:

1. The parenting capabilities of the proposed participants in the child's plan of care, including those attributes, skills and abilities most relevant to the child protection concerns.
2. Whether the proposed participants in the child's plan of care have any psychiatric, psychological or other disorder or condition which may impact upon their ability to care for the child.
3. The nature of the child's attachment to a proposed participant in the child's plan of care and the possible effects on the child of continuing or severing that relationship.
4. The psychological functioning and developmental needs of the child, including any vulnerabilities and special needs.
5. The current and potential abilities of the proposed participants in the child's plan of care to meet the needs of the child, including an evaluation of the relationship between the child and the proposed participants in the child's plan of care.
6. The need for and likelihood of success of clinical interventions for observed problems.

Contents of assessment report

36. Without limiting the generality of the contents of an assessment report, every assessment report shall include the following:

1. A resumé of the person performing the assessment outlining,
 - i. the assessor's academic and professional qualifications and credentials, including any publications relevant to the questions being addressed, and
 - ii. information regarding the type and number of assessments previously conducted by the assessor.
2. A schedule setting out,
 - i. a summary of the instructions received, whether written or oral,
 - ii. a list of the questions upon which an opinion is sought, and
 - iii. a list of the materials provided and considered.
3. A schedule setting out the methodology used in carrying out the assessment, including the interviews, observations, measurements, examinations and tests, and whether or not they were conducted or carried out under the assessor's supervision.
4. The reasons and factual basis for any conclusions drawn by the assessor.
5. A direct response to the questions presented to the assessor in the assessment order, or an explanation of why these questions could not be addressed.
6. Recommendations where these were required of the assessor, or an explanation of why recommendations could not be made.

BOARD REVIEW OF COMPLAINT TO SOCIETY

Application for review of complaint

37. (1) An application requesting a review of a complaint under subsection 119 (5) or 120 (3) of the Act shall be submitted in writing to the Board.

(2) The Board shall forward a copy of the application requesting the review to the society that is the subject of the complaint.

Eligibility of complaint for review

38. (1) The Board shall determine whether a request for a review of a complaint is eligible for review under section 119 or 120 of the Act within seven days after receiving the request and the Board shall notify the complainant and the society of its decision in writing.

(2) If the complaint is not eligible for review, the notice shall include reasons in writing as to why it is not eligible.

Board to send notice, etc., if request eligible for review

39. If a request for review of a complaint is eligible for review, the Board shall send to the complainant and the society, within 20 days after its decision on eligibility,

- (a) the order or other disposition of the Board under subsection 119 (10) or 120 (7) of the Act; or
- (b) a notice that a hearing may be held under subsection 119 (8) of the Act.

Pre-hearing conference

40. (1) If the Board decides that a hearing may be held to review a complaint, the Board shall first hold a pre-hearing conference.

(2) The notice of a hearing under clause 39 (b) shall include the date and location of the pre-hearing conference.

(3) The pre-hearing conference shall be held within 40 days after the Board's decision on eligibility under section 38.

Attendance at pre-hearing conference

41. (1) The chair of the Board shall designate a member of the Board to conduct the pre-hearing conference.

(2) Subject to subsection (3), the member presiding at the pre-hearing conference may determine who may attend the conference.

(3) The complainant, a representative chosen by each of the complainant's bands and First Nations, Métis or Inuit communities, where appropriate, and one other person of the complainant's choosing and the society may attend the pre-hearing conference.

(4) A pre-hearing conference may be held by conference telephone or using electronic technology that allows persons to hear one another, unless the complainant or the society satisfies the member presiding at the pre-hearing conference that to do so is likely to cause the complainant or the society, as the case may be, significant prejudice.

(5) In a pre-hearing conference held by electronic means, all the participants and the member conducting the conference must be able to hear one another throughout the conference.

Contents of pre-hearing conference

42. At the pre-hearing conference, the member of the Board who is presiding may direct the complainant and the society to consider,

- (a) the settlement of any or all of the issues;
- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing; and
- (f) any other matter that may assist in the just and expeditious disposition of the proceeding.

Summary of pre-hearing results

43. The Board shall send a summary of the results of the pre-hearing conference in writing to the complainant and society within 10 days after the conclusion of the pre-hearing conference.

Additional pre-hearing conferences

44. (1) The Board may require one or more additional pre-hearing conferences to be held.

(2) If the Board requires an additional pre-hearing conference to be held, the Board shall send to the complainant and the society notice of the pre-hearing conference indicating where and when it is to be held.

(3) Sections 41 and 42 apply to additional pre-hearing conferences, and, if one or more additional pre-hearing conferences are held, section 43 applies with the following modifications:

1. The Board may send a single summary of the results of all of the pre-hearing conferences that were held.
2. If the Board sends a single summary, it shall send the summary to the complainant and the society within 10 days after the conclusion of the final pre-hearing conference.

Notice of hearing

45. If the Board has determined that a hearing shall proceed, the Board shall include with the summary of the results of the pre-hearing conference a notice of the date and location of the hearing, which shall be held within 60 days after the Board's decision on eligibility under section 38.

Attendance at hearing

46. (1) Subject to subsection (2), the Board may determine who may attend the hearing.

(2) The society, the complainant, a representative of each of the complainant's bands and First Nations, Métis or Inuit communities, where appropriate, and one other person of the complainant's choosing may attend the hearing.

(3) A hearing may be held by conference telephone or using electronic technology that allows persons to hear one another, unless the complainant or the society satisfies the Board that to do so is likely to cause the complainant or the society, as the case may be, significant prejudice.

(4) In a hearing held by electronic means, all the participants and the Board must be able to hear one another throughout the hearing.

Written hearing

47. A hearing may be held in writing by the exchange of documents in written or electronic form, unless the complainant or the society satisfies the Board that there is good reason for not doing so.

Hearing may be held in different formats

48. Subject to subsection 46 (3) and section 47, a hearing may be held by any combination of electronic means, written means and in person attendance.

Member excluded

49. The Board member who presided at the pre-hearing conference held with respect to the complaint shall not preside at the hearing reviewing the complaint unless the complainant and the society consent.

Power to prevent abuse of process

50. In order to provide for the just and expeditious resolution of a proceeding arising from an application requesting a review of a complaint under subsection 119 (5) or 120 (3) of the Act, the Board may make such orders and give such directions in the proceeding as it considers proper to prevent abuse of its processes.

Board decision

51. If a hearing is held to review a complaint, the Board shall provide to the complainant and the society its decision with respect to the complaint with reasons in writing within 30 days after the conclusion of the hearing.

52. REVOKED: O. Reg. 155/18, s. 116 (2).

Power to vary time

53. The Board may lengthen or shorten any time period set out in section 38, 39, 40, 43, 44, 45 or 51 with respect to a review, if doing so is necessary or advisable for the just and expeditious disposition of the review.

PROCEEDINGS UNDER PART V OF THE ACT – FIRST NATIONS, INUIT OR MÉTIS COMMUNITIES

New community listed, proceeding already commenced

54. (1) This section applies in respect of any proceeding under Part V of the Act in respect of a First Nations, Inuk or Métis child if a new First Nations, Inuit or Métis community is listed in a regulation made under subsection 68 (1) of the Act after the proceeding has commenced and before the proceeding has concluded.

(2) Despite any determination made under clause 90 (2) (b) of the Act in respect of the child, the court shall, as soon as practicable, determine under clause 90 (2) (b) of the Act whether the new First Nations, Inuit or Métis community listed is one of the child's communities.

(3) If it is determined that the new First Nations, Inuit or Métis community listed is one of the child's communities, paragraph 4 of subsection 79 (1) of the Act applies in respect of that community, unless the court is satisfied that it would not be in the child's best interests for that provision to apply in respect of the new community and makes an order stating that the parties to the proceeding are those who were parties immediately before the new community was listed.

(4) Despite subsection (3), if a court has completed its hearing of a proceeding in respect of a child before the day the new First Nations, Inuit or Métis community is listed but reserved its decision, the parties to the proceeding are those who were parties immediately before the new community was listed unless the court is satisfied that it would be in the best interests of the child for paragraph 4 of subsection 79 (1) of the Act to apply in respect of the new community and makes an order to that effect.

New community listed, notice of proposed removal already given

55. (1) This section applies if,

(a) a new First Nations, Inuit or Métis community is listed in a regulation made under subsection 68 (1) of the Act on or after the day a society gives notice under subsection 109 (7) of the Act in respect of the proposed removal of a child from a foster parent; and

(b) the new First Nations, Inuit or Métis community listed is one of the child's First Nations, Inuit or Métis communities.

(2) If the time for applying for a review of the proposed removal as mentioned in subsection 109 (8) of the Act has not expired before the day the new First Nations, Inuit or Métis community is listed, the society shall give notice to any representative of the new community in accordance with subclause 109 (7) (b) (i) of the Act.

(3) If the time for applying for a review of the proposed removal as mentioned in subsection 109 (8) of the Act has expired before the day the new First Nations, Inuit or Métis community is listed, clause 109 (7) (b) of the Act does not apply in respect of the new community.

- (4) Upon receipt of an application for review of the decision,
- (a) the Board shall give notice of the application and of the date of the hearing to those who were parties to the hearing immediately before the new First Nations, Inuit or Métis community was listed and to any representative to whom notice was given under subsection (2); and
- (b) subsection 109 (10) of the Act does not apply.
- (5) Any person to whom notice was given as described in clause (4) (a) is a party to a hearing in respect of the application and paragraph 3 of subsection 109 (13) does not apply.

CUSTODY REVIEW BOARD

Custody Review Board, review of placement of probationers

56. (1) In addition to the duties of the Custody Review Board set out in section 152 of the Act, the Board shall review the placement of probationers who are ordered by the youth justice court under paragraph 55 (2) (g) of the *Youth Criminal Justice Act* (Canada) to reside at a place specified by a provincial director where the place is a place of open custody.

(2) An application by a young person for a review under subsection (1) shall be made within 30 days of the placement at the place specified by the provincial director.

(3) Subsections 152 (3), (4), (5) and (6) of the Act apply with necessary modifications to a review by the Board in respect of an application under subsection (2).

(4) After conducting a review, the Board may confirm the placement or, if the Board is of the opinion that the place where the young person resides is not appropriate to meet the young person's needs, recommend to the provincial director that the young person be transferred to another place.

Hearings

57. (1) If the Board holds a hearing in respect of an application under section 152 of the Act or under section 56 of this Regulation, a young person may be represented at the hearing by a parent or other person of the young person's choice.

(2) The Board shall conduct reviews and hearings in an informal manner and in the absence of the public.

(3) The provincial director shall co-operate with the Board in the conduct of the reviews and shall provide the Board with documents and other information with respect to reviews when requested by the Board to do so.

(4) The Board shall make its recommendations under subsection 152 (7) of the Act and subsection 56 (4) of this Regulation in writing to the provincial director and shall provide a copy of the written recommendations to the young person and their representative.

MECHANICAL RESTRAINTS – SECTION 156 OF THE ACT (PLACES OF SECURE CUSTODY OR OF SECURE TEMPORARY DETENTION)

Definition of “significant property damage”

58. For the purposes of subparagraph 1 iii of subsection 156 (2) of the Act, an imminent risk that a young person would cause significant property damage, if mechanical restraints are not used, only exists if there is also an imminent risk of personal harm to the young person or another person.

Application of ss. 60 to 65

59. (1) Subject to subsections (2) and (3), sections 60 to 65 apply with respect to the use of mechanical restraints at a place of secure custody or of secure temporary detention in accordance with section 156 of the Act.

(2) Sections 60 to 65 do not apply with respect to the use of mechanical restraints in circumstances where the rules set out in section 66 apply.

(3) Sections 60 to 65 do not apply with respect to the use of mechanical restraints at a place of secure custody or of secure temporary detention if the mechanical restraints are used in accordance with section 21.

Rules re use of mechanical restraints

60. A person in charge of a place of secure custody or of secure temporary detention shall ensure that the use of mechanical restraints on a young person while the young person is detained in the place is carried out in accordance with the following rules:

1. Only mechanical restraints that have been approved by a provincial director may be used.
2. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances, having regard to the risk referred to in paragraph 1 of subsection 156 (2) of the Act.
3. The type of mechanical restraint used must be the least intrusive that is necessary in the circumstances, having regard to the risk referred to in paragraph 1 of subsection 156 (2) of the Act.

4. The use of more than one mechanical restraint on a young person at the same time is permitted only if the person applying the mechanical restraint determines that a single restraint is insufficient in the circumstances, having regard to the risk referred to in paragraph 1 of subsection 156 (2) of the Act.
5. A young person must never be secured by mechanical restraint to a fixed object.
6. If a mechanical restraint is applied while a young person is in the prone position with their hands behind their back, the young person must be placed in a sitting or standing position as soon as possible after the mechanical restraint has been applied.
7. The young person must be continuously observed by a responsible person and that person shall record their observations in the young person's case record.
8. The person in charge of the place shall review the continued need for using the mechanical restraints within 15 minutes after the restraints are applied or as soon as possible after 15 minutes has elapsed and then at regular intervals, not exceeding 30 minutes, thereafter. When reviewing the continued need for the use of mechanical restraints, the person in charge of the place shall consider whether there is an alternative to the use of mechanical restraints that would be effective to reduce or eliminate the risk referred to in paragraph 1 of subsection 156 (2) of the Act.
9. Mechanical restraints must not be used for a continuous period in excess of two hours, unless an extension is authorized, on a case-by-case basis, by a provincial director.
10. Mechanical restraints must be removed immediately upon the earliest of the following:
 - i. When there is a risk that the mechanical restraint will endanger the health or safety of the young person.
 - ii. When an alternative to the use of mechanical restraints would be effective to reduce or eliminate the risk referred to in paragraph 1 of subsection 156 (2) of the Act.
 - iii. When the risk referred to in paragraph 1 of subsection 156 (2) of the Act is no longer present.

Debriefing

61. A person in charge of a place of secure custody or of secure temporary detention shall ensure that when mechanical restraints are used on a young person who is detained in a place of secure custody or of secure temporary detention, a debriefing is conducted in accordance with the following rules:

1. One debriefing process must be conducted among the staff members of the place who were involved in the use of the mechanical restraints.
2. Another debriefing process must be conducted among the persons mentioned in paragraph 1 and the young person who was placed in mechanical restraints, and this process must be structured to accommodate the young person's psychological and emotional needs and cognitive capacity.
3. Subject to paragraph 4, the debriefing processes referred to in paragraphs 1 and 2 must be conducted within 48 hours after the mechanical restraints are removed.
4. If circumstances do not permit a debriefing process to take place within 48 hours after the mechanical restraints are removed, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in paragraph 3 and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.

Records

62. A person in charge of a place of secure custody or of secure temporary detention shall maintain a written record of each instance of the use of mechanical restraints on a young person who is detained in a place of secure custody or of secure temporary detention and the record shall include the following:

1. The name and age of the young person who was restrained by the use of mechanical restraints.
2. The dates and times when mechanical restraints were used and the name and title of the person or persons who applied them.
3. A description of the circumstances and the imminent risk referred to in paragraph 1 of subsection 156 (2) of the Act that existed before the mechanical restraints were used.
4. A description of the alternatives to the use of mechanical restraints that were considered and why those alternatives were not used.
5. The name and title of the person who approved the use of the mechanical restraints and, if an authorization for an extension of time is granted under paragraph 9 of section 60, the name of the provincial director who authorized the extension.
6. The type or types of mechanical restraints that were used.

7. The duration of time that the mechanical restraints were used.
8. All documentation related to assessment and monitoring of the young person while they were restrained by the use of mechanical restraints.
9. The date and time when the mechanical restraints were removed, the name and title of the person who removed them and a description of the care that the young person received after they were removed.

Monthly summaries

63. (1) A person in charge of a place of secure custody or of secure temporary detention shall, for every month, maintain a written record that summarizes every instance of the use of mechanical restraints on a young person at the place for that month and the record shall include the following in respect of each instance:

1. The name and age of each young person who was restrained by the use of mechanical restraints.
2. The dates and the duration of time that the mechanical restraints were used in respect of each young person.
3. A description of the circumstances and the imminent risk referred to in paragraph 1 of subsection 156 (2) of the Act that existed before the mechanical restraints were used.

(2) The person in charge of the place of secure custody or of a secure temporary detention shall provide a copy of the record required under subsection (1) in respect of a month to a provincial director on or before the fifth day of the following month.

Training and education

64. (1) A person in charge of a place of secure custody or of secure temporary detention shall ensure that the following training and education is successfully completed by all staff members who provide direct care to young persons at the place:

1. Training in the use of mechanical restraints that have been approved by a provincial director for use in the place.
2. Education respecting the following subject matters:
 - i. The provisions of the Act and of this Regulation concerning the use of mechanical restraints in a place of secure custody or of secure temporary detention.
 - ii. The policies and standards established by the Ministry concerning the use of mechanical restraints.
 - iii. The policies of the place of secure custody or secure temporary detention, as required under section 65.

(2) If a staff member commences employment at a place of secure custody or of secure temporary detention, the person in charge of the place shall ensure that the new staff member's training and education described in paragraphs 1 and 2 of subsection (1) is completed within 30 days after the person commences employment.

(3) The person in charge of the place of secure custody or of secure temporary detention shall ensure that the training and education of current staff members is completed within the following time periods:

1. With respect to the training in the use of mechanical restraints under paragraph 1 of subsection (1), within 30 days after a new type of mechanical restraint is approved by a provincial director.
2. With respect to the subject matter described in subparagraph 2 i of subsection (1), within 30 days after this section comes into force and within 30 days after any amendment to the Act or this Regulation concerning the use of mechanical restraints comes into force.
3. With respect to the subject matter described in subparagraph 2 ii of subsection (1), within 30 days after each new or revised Ministry policy or standard concerning the use of mechanical restraints is received by the person in charge of the place of secure custody or of secure temporary detention.
4. With respect to the subject matter described in subparagraph 2 iii of subsection (1), within 30 days after each new or revised policy referred to in that subparagraph is established or revised.

(4) The person in charge of the place of secure custody or of secure temporary detention shall maintain a written record of the training and education provided to each staff member and the date the training and education was provided.

Policies

65. (1) A service provider that operates a place of secure custody or of secure temporary detention where mechanical restraints are used shall develop and maintain policies regarding the following:

1. The measures that staff members must take to prevent and minimize the use of mechanical restraints.
2. The interventions that must be employed or considered for the purpose of preventing a young person from physically injuring or further physically injuring themselves or others, in order to avoid the need to use mechanical restraints.

3. The titles or positions of staff members who are authorized to apply a mechanical restraint on a young person or release a young person from a mechanical restraint, and the training that those staff members must complete.
 4. Protocols that must be followed in monitoring and assessing a young person's condition while mechanical restraints are being used.
 5. Protocols related to ensuring that all relevant staff members are notified when mechanical restraints are and continue to be used on a young person.
- (2) A service provider that operates a place of secure custody or of secure temporary detention shall ensure that,
- (a) on a monthly basis, an evaluation of the use of mechanical restraints is performed to ensure that every use of mechanical restraints is carried out in accordance with the Act and the regulations; and
 - (b) at least once every calendar year, an evaluation is performed to determine,
 - (i) the effectiveness of the policies required under subsection (1), and
 - (ii) whether changes or improvements to the policies are required, particularly with respect to whether changes or improvements are required to minimize the use of mechanical restraints.

Transportation, etc.

66. The following rules apply regarding the use of mechanical restraints on a young person who is detained in a place of secure custody or of secure temporary detention during the transportation of the young person to another place of custody or detention, or to or from court or the community, including while the young person is being escorted in the community by one or more staff members of a place of secure custody or of secure temporary detention:

1. Only mechanical restraints that have been approved by a provincial director for use on a young person may be used.
2. The person in charge of the place of secure custody or of secure temporary detention shall identify which staff members are authorized to apply a mechanical restraint on a young person.
3. The type of mechanical restraint used on a young person must be the least intrusive that is necessary in the circumstances, having regard to,
 - i. the health and safety of the young person or of any other person, and
 - ii. the risk that the young person would escape if mechanical restraints were not used.
4. The use of more than one mechanical restraint on a young person at the same time is permitted only if the person applying the mechanical restraint determines that a single restraint is insufficient in the circumstances, having regard to the factors set out in subparagraphs 3 i and ii.
5. A staff member who is escorting a young person must check the young person regularly to ensure that the mechanical restraint is secure and is as comfortable as possible.
6. A mechanical restraint must be removed immediately if there is a risk that the mechanical restraint will endanger the health or safety of the young person.
7. If the young person's hands are secured by mechanical restraints, they must be secured in front of their body.
8. A young person must never be secured by mechanical restraint to any part of a vehicle or to any fixed object whether inside or outside the vehicle or to any other person. However, a staff member may use a mechanical restraint to secure a young person by a single limb to a hospital bed.

SEARCHES UNDER SECTION 155 OF THE ACT

Definitions

67. For the purposes of sections 68 to 70,

“body cavity” means the rectum or the vagina; (“cavité corporelle”)

“body cavity search” means the physical probing of a body cavity. (“fouille des cavités corporelles”)

Rules respecting searches

68. A search authorized by a person in charge of a place of open custody, of secure custody or of temporary detention shall be carried out in accordance with the following rules:

1. In no circumstance shall a search involve a body cavity search.
2. All searches shall be conducted in a manner that,
 - i. respects the dignity of the person being searched and does not subject the person to undue embarrassment or humiliation,

- ii. considers the cultural, religious and spiritual beliefs of the person being searched,
 - iii. respects any personal property or clothing that has cultural, religious or spiritual value to the person being searched, and
 - iv. respects any personal property so that it will not be wilfully discarded, broken or misplaced.
3. A person shall be given the opportunity to express their views as to how any of the following searches are conducted:
 - i. A search of the person.
 - ii. A search of the person's property.
 - iii. A search of a bedroom used by a young person in place of open custody, of secure custody or of temporary detention, but only if the search also involves the young person's property.
 4. A search that could involve physical contact between the staff member and the person being searched or the removal of some or all clothes, other than outer garments, of the person being searched may only be performed on a young person and the following rules apply to such searches:
 - i. At least two staff members shall be present for the search.
 - ii. The young person being searched shall not be searched by a person of the opposite sex unless the person who authorized the search has reasonable cause to believe that an immediate search is necessary because the young person is concealing contraband that poses an immediate threat to the safety of young persons, staff members or any other person in the place, or to the safety or security of the place.
 - iii. Despite subparagraph ii and unless the person who authorized the search has reasonable cause to believe that an immediate search is necessary because the young person is concealing contraband that poses an immediate threat to the safety of young persons, staff members or any other person in the place or to the safety or security of the place, a trans young person shall have the option of,
 - A. requesting that the search be conducted by only a male staff member,
 - B. requesting that the search be conducted by only a female staff member, or
 - C. requesting that the search be conducted by staff members of both sexes and identifying how each of those persons may perform the search.

Procedures re searches

69. (1) A person in charge of a place of open custody, of secure custody or of temporary detention shall develop and maintain written procedures with respect to searches of the person of a young person or the property of a young person, which shall include the following:

1. A description of the different types of searches that may be conducted and the circumstances when those different types of searches may be conducted, based on the principle that the least intrusive search should be conducted whenever possible.
 2. Procedures to be followed when a young person refuses a search, resists a search or fails to co-operate with a search.
 3. Procedures to be followed in circumstances where there is a reasonable cause to believe that a young person is concealing an item in a body cavity that may affect the health of the young person or pose a threat to the safety of young persons, staff members or any other person in the place, or to the security of the place.
- (2) A person in charge of a place of open custody, of secure custody or of temporary detention shall do the following:
1. Post conspicuous notices stating that all persons, vehicles and items entering or exiting the place may be searched in accordance with the Act and the regulations.
 2. Advise a person before they are searched or their property or vehicle is searched of any policies governing searches that have been established in accordance with the Act and the regulations, including providing a description of all search equipment that may be used at the place and describing the circumstances when the equipment may be used.

Records

70. A person in charge of a place of open custody, of secure custody or of temporary detention shall maintain a written record of every search and the record shall include the following information:

1. If the search was of a person or of a person's property, the name of the person who was searched or who is identified as the owner of the property that was searched.
2. If the search was of the place of open custody, of secure custody or of temporary detention, a description of the area or part of the place that was searched.

3. If a person was given the opportunity under paragraph 3 of section 68 to express their views as to how a search was to be conducted, a description of the views they expressed and what, if anything, was done in response to those views.
4. If the search was of a vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention, a description of the vehicle and the area of the vehicle or the part of the vehicle that was searched.
5. The reason for the search.
6. If a young person refuses a search, resists a search or fails to co-operate with a search, the action taken as result of the refusal, resistance or failure to co-operate.
7. If there is reasonable cause to believe that a young person is concealing an item in a body cavity, the basis for that belief and the action taken as a result of that belief.
8. A description of any property seized, discarded, broken or misplaced during the search.
9. Any action taken as a result of the search.

Training and education

71. (1) A person in charge of a place of open custody, of secure custody or of temporary detention shall ensure that the following training and education is successfully completed by all staff members who provide direct care to young persons at the place:

1. Training related to how to conduct the searches referred to in section 155 of the Act that the person in charge of the place has authorized.
2. Education respecting the following subject matters:
 - i. The provisions of the Act and of this Regulation concerning searches referred to in section 155 of the Act that the person in charge of the place has authorized.
 - ii. The policies and standards established by the Ministry concerning searches under section 155 of the Act.
 - iii. The procedures of the place of open custody, of secure custody or of temporary detention, as required under section 69.

(2) If a staff member commences employment at a place of open custody, of secure custody or of temporary detention, the person in charge of the place shall ensure that the new staff member's training and education described in paragraphs 1 and 2 of subsection (1) is completed within 30 days after the person commences employment.

(3) The person in charge of the place of open custody, of secure custody or of temporary detention shall ensure that the education and training of staff members is completed within the following time periods:

1. With respect to the subject matter described in subparagraph 2 i of subsection (1), within 30 days after this section comes into force and within 30 days after any amendment to the Act or this Regulation concerning searches comes into force.
2. With respect to the subject matter described in subparagraph 2 ii of subsection (1), within 30 days after each new or revised Ministry policy or standard concerning searches under section 155 of the Act is received by the person in charge of the place of open custody, of secure custody or of temporary detention.
3. With respect to the subject matter described in subparagraph 2 iii of subsection (1), within 30 days after each new or revised procedure referred to in that subparagraph is established.

(4) The person in charge of the place of open custody, of secure custody or of temporary detention shall maintain a written record of the training and education provided to each staff member and the date the training and education was provided.

Contraband – seizure

72. (1) A person in charge of a place of open custody, of secure custody or of temporary detention shall maintain a written record of contraband that is seized during the search of a young person, their property or their bedroom and the record shall include the following:

1. The name of the young person who was searched or whose property or bedroom was searched.
2. The number of items seized.
3. A description of every item seized, including any identifying marks.
4. The location where the item was seized.
5. The reason the item was seized.
6. The date and time the item was seized.

7. The name of the person who seized the item.
- (2) The following rules apply with respect to contraband that has been seized:
1. If the owner of the item is not known at the time of its seizure and, in the opinion of the person in charge of the place, the keeping of the item would not pose a threat to the safety and security of the place, the person in charge of the place shall ensure that the item is kept for at least 30 days after the seizure, during which time reasonable efforts must be made to locate the owner of the item.
 2. The person in charge of the place must ensure that the appropriate police force is notified if the person in charge of the place suspects that the item is connected to an alleged criminal offence.
 3. The following apply if the owner of the item is known or becomes known, the person in charge of the place does not suspect that the item is connected to an alleged criminal offence and the keeping of the item would not, in the opinion of the person in charge of the place, pose a threat to the safety and security of the place:
 - i. If the young person wishes the item to be returned, the person in charge of the place must hold the item in trust for the owner and return it to them when they are released or discharged from the place.
 - ii. If the young person does not wish for the item to be returned, the person in charge of the place must record details of the item's disposal in the young person's case record.

Contraband – disposal

73. (1) If a person in charge of a place of open custody, of secure custody or of temporary detention authorizes the disposal of contraband, the disposal must be carried out in accordance with the following rules:

1. If the person in charge of the place has informed a police force about the item, the person in charge of the place must comply with any direction provided by the police force with respect to the item's disposal.
2. The person in charge of the place must destroy the item if both of the following apply:
 - i. The person in charge of the place does not suspect that the item is connected to an alleged criminal offence.
 - ii. In the opinion of the person in charge of the place, keeping the item would pose a threat to the safety and security of the place.
3. The person in charge of the place must either donate the item to a local not-for-profit organization or destroy the item if all of the following apply:
 - i. The person in charge of the place does not suspect that the item is connected to an alleged criminal offence.
 - ii. In the opinion of the person in charge of the place, keeping the item would not pose a threat to the safety and security of the place.
 - iii. The owner of the item is not known after reasonable efforts to locate the owner have been made in accordance with paragraph 1 of subsection 72 (2) or, if the owner is known, they do not wish for the item to be returned to them.

(2) The person in charge of the place shall ensure that a written record is maintained with respect to contraband that is disposed of, which shall include the following information:

1. A description of the item, how it was disposed of and the reason why it was disposed of in that way.
2. The date of the item's disposal.
3. The name and title of the person who carried out the disposal.
4. The name and title of the person who authorized the disposal.

MECHANICAL RESTRAINTS – SECTION 160 OF THE ACT (SECURE TREATMENT PROGRAMS)

Application of ss. 75 to 82

74. Sections 75 to 82 apply with respect to a secure treatment program in which the administrator has, under section 160 of the Act, chosen to use or to permit the use of mechanical restraints on a child.

Requirement to obtain order re use of mechanical restraints

75. (1) Immediately before or as soon as possible after mechanical restraints are applied to a child, the administrator shall ensure that an order made by a psychiatrist or other person designated by the Minister authorizing their use is obtained.

(2) The following rules apply with respect to an order made under this section:

1. An order may be made only after an emergency situation referred to in clause 160 (3) (b) of the Act arises.

2. The order may be made orally or in writing. If the order is initially made orally, the psychiatrist or other person designated by the Minister must ensure that the order is reflected in writing as soon as possible afterwards.
3. The order must describe the behaviour that is to be controlled by the use of mechanical restraints.
4. The order must set out the length of time during which the mechanical restraints may be used, subject to the following rules:
 - i. The maximum length of time that may be set out in the order is 12 hours from the time when the mechanical restraints were applied or, in the case of a new order that is made while an order is still in effect, from the time that the new order is made.
 - ii. If the service provider's policy sets out a maximum length of time that is shorter than 12 hours, the maximum length of time set out in the policy applies.
- (3) A new order may be made by a psychiatrist or other person designated by the Minister while an existing order is in effect.
- (4) A psychiatrist or other person designated by the Minister who makes an order under this section shall do the following:
 1. As soon as possible after the order is made, assess the child in person to determine whether to authorize the continued use of mechanical restraints on the child. However, in no circumstance shall the assessment be conducted later than two hours after the order is made.
 2. Make a written record of the assessment referred to in paragraph 1, including the reasons for the determination of whether to authorize the continued use of the mechanical restraints.
- (5) Mechanical restraints must be removed from a child immediately upon the earliest of the following:
 1. When there is a risk that the mechanical restraint will endanger the health or safety of the child.
 2. When the emergency situation referred to in clause 160 (3) (b) of the Act is no longer present.
 3. When an alternative to the use of mechanical restraints would be effective to prevent serious bodily harm to the child or others.
 4. When an order under this section is not obtained within two hours after the mechanical restraints were applied.
 5. When a psychiatrist or other person designated by the Minister determines that an order under this section should not be made.
 6. When the psychiatrist or other person designated by the Minister who made the order fails to assess the child in accordance with paragraph 1 of subsection (4).
 7. When, after assessing the child in accordance with paragraph 1 of subsection (4), the psychiatrist or other person designated by the Minister does not authorize the continued use of the mechanical restraints.
 8. When the length of time set out in the order for the use of mechanical restraints has expired and a new order has not been made before that time.
- (6) Mechanical restraints that are removed may be applied again to a child without the need for a new order if all of the following circumstances exist:
 1. The mechanical restraints were removed because the emergency situation referred to in clause 160 (3) (b) of the Act was no longer present or an alternative to the use of mechanical restraints was effective to prevent serious bodily harm to the child or others.
 2. The order that was in effect when the mechanical restraints were removed has not expired.
 3. An emergency situation referred to in clause 160 (3) (b) of the Act arises after the mechanical restraints were removed.
- (7) If mechanical restraints are applied to a child again under subsection (6), the order that was in effect when the mechanical restraints were removed continues to be in effect as if the mechanical restraints had not been removed.

Rules re use of mechanical restraints

76. An administrator shall ensure that the use of mechanical restraints on a child in a secure treatment program is carried out in accordance with the following rules:

1. Mechanical restraints must not be used on a child as a means of punishment.
2. Only mechanical restraints that have been approved by the administrator may be used.
3. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances, having regard to the emergency situation referred to in clause 160 (3) (b) of the Act.

4. The type of mechanical restraint used must be the least intrusive that is necessary in the circumstances, having regard to the emergency situation referred to in clause 160 (3) (b) of the Act.
5. The use of more than one mechanical restraint on a child at the same time is permitted only if the person applying the mechanical restraint determines that a single restraint is insufficient in the circumstances, having regard to the emergency situation referred to in clause 160 (3) (b) of the Act.
6. Mechanical restraints must not be used unless alternatives to the use of mechanical restraints would not be, or have not been, effective to address the emergency situation referred to in clause 160 (3) (b) of the Act.
7. A child must never be secured by mechanical restraint to a fixed object. However, a child may be secured by mechanical restraint to a bed, but only if the mechanical restraint is specifically designed to be used in conjunction with a bed.
8. A child must never be secured by mechanical restraint to another person.
9. If a mechanical restraint is applied while a child is in the prone position with their hands behind their back, the child must be placed in a sitting or standing position as soon as possible after the mechanical restraint has been applied.
10. The child must be continuously observed, in person, by a responsible person and that person shall record their observations in the child's case record.
11. The administrator shall ensure that the monitoring and assessment of the child's condition while restrained is conducted in accordance with the service provider's policy required under subsection 160 (4) of the Act and any instructions provided by the psychiatrist or other person designated by the Minister in their order made under section 75 of this Regulation.
12. The child must be frequently repositioned or permitted to ambulate while restrained, in accordance with the service provider's policy required under subsection 160 (4) of the Act and any instructions provided by the psychiatrist or other person designated by the Minister in their order made under section 75 of this Regulation.
13. The administrator shall review the continued need for using the mechanical restraints within 15 minutes after the restraints are applied or as soon as possible after 15 minutes have elapsed and then at regular intervals, not exceeding 15 minutes, thereafter. When reviewing the continued need for the use of mechanical restraints, the administrator shall consider whether there is an alternative to the use of mechanical restraints that would be effective to address the emergency situation referred to in clause 160 (3) (b) of the Act.
14. The administrator shall ensure that medical assessments are conducted and any necessary medical care is provided in accordance with any instructions provided by the psychiatrist or other person designated by the Minister in their order made under section 75 of this Regulation.

Debriefing

77. An administrator shall ensure that when mechanical restraints are used on a child in a secure treatment program, a debriefing is conducted in accordance with the service provider's policy required under subsection 160 (4) of the Act and the following rules:

1. One debriefing process must be conducted among the staff members who were involved in the use of the mechanical restraints in the secure treatment program.
2. Another debriefing process must be conducted among the persons mentioned in paragraph 1 and the child who was placed in mechanical restraints, and this process must be structured to accommodate the child's psychological and emotional needs and cognitive capacity.
3. Subject to paragraph 4, the debriefing processes referred to in paragraphs 1 and 2 must be conducted within 48 hours after the mechanical restraints are removed.
4. If circumstances do not permit a debriefing process to take place within 48 hours after the mechanical restraints are removed, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in paragraph 3 and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.
5. The administrator must record the date and time of each debriefing process, the names and titles of the persons involved in each process and the duration of each session.
6. The administrator must consider the results of each debriefing process to determine whether revisions to a child's plan referred to in section 82 may be required.

Records

78. (1) An administrator shall maintain a written record of each instance of the use of mechanical restraints on a child in a secure treatment program and the record shall include the following:

1. The name and age of the child who was restrained by the use of mechanical restraints.
 2. The dates and times when mechanical restraints were used and the name and title of the person or persons who applied them.
 3. A description of the emergency situation referred to in clause 160 (3) (b) of the Act that was present before the mechanical restraints were used.
 4. A description of the alternatives to the use of mechanical restraints that were considered and why those alternatives were not used.
 5. The name and title of the psychiatrist or other person designated by the Minister who made an order under section 75, and any instructions provided by that person or by the order in relation to the use of the mechanical restraints.
 6. The type or types of mechanical restraints that were used.
 7. The duration of time that the mechanical restraints were used.
 8. All documentation related to assessment and monitoring of the child while they were restrained by the use of mechanical restraints, including assessments of the child's medical condition while restrained by the use of mechanical restraints.
 9. The date and time when the mechanical restraints were removed, the name and title of the person who removed them and a description of the care that the child received after they were removed.
- (2) The administrator shall, for every month, maintain a written record that summarizes every instance of the use of mechanical restraints on a child in the secure treatment program for that month and the record shall include the following in respect of each instance:
1. The name and age of each child who was restrained by the use of mechanical restraints.
 2. The dates and the duration of time that the mechanical restraints were used in respect of each child.
 3. A description of the emergency situation referred to in clause 160 (3) (b) of the Act that was present before the mechanical restraints were used.
- (3) The administrator shall provide a copy of the record required under subsection (2) in respect of a month to a Director on or before the fifth day of the following month.

Training and education

79. (1) An administrator shall ensure that the following training and education is successfully completed by all staff members who provide direct care to children in a secure treatment program:

1. Training in the use of mechanical restraints used in the secure treatment program.
 2. Training in how to minimize the use of mechanical restraints in the secure treatment program.
 3. Education respecting the following subject matters:
 - i. The provisions of the Act and of this Regulation concerning the use of mechanical restraints in a secure treatment program.
 - ii. The policies and standards established by the Ministry concerning the use of mechanical restraints in a secure treatment program.
 - iii. The service provider's policy on the use of mechanical restraints required under subsection 160 (4) of the Act.
- (2) If a staff member commences employment in a secure treatment program, the administrator shall ensure that the new staff member's training and education described in paragraphs 1, 2 and 3 of subsection (1) is completed within 30 days after the person commences employment.
- (3) An administrator shall ensure that the training and education of current staff members is completed within the following time periods:
1. With respect to the training in the use of mechanical restraints under paragraph 1 of subsection (1), within 30 days after a new type of mechanical restraint is approved by the administrator.
 2. With respect to the subject matter described in subparagraph 3 i of subsection (1), within 30 days after each new provision of the Act or this Regulation concerning the use of mechanical restraints comes into force.
 3. With respect to the subject matter described in subparagraph 3 ii of subsection (1), within 30 days after each new or revised Ministry policy or standard concerning the use of mechanical restraints in a secure treatment program is received by the administrator.

4. With respect to the subject matter described in subparagraph 3 iii of subsection (1), within 30 days after the policy referred to in that subparagraph is established or revised.

(4) The administrator shall maintain a written record of the training and education provided to each staff member and the date the training and education was provided.

Policy on the use of mechanical restraints

80. (1) The policy on the use of mechanical restraints that a service provider is required to establish under subsection 160 (4) of the Act must contain the following:

1. The measures that staff members must take to prevent and minimize the use of mechanical restraints.
2. The interventions that must be employed or considered for the purpose of preventing a child from physically injuring or further physically injuring themselves or others, in order to avoid the need to use mechanical restraints.
3. The type or types of mechanical restraints that have been approved for use in the secure treatment program.
4. Protocols for developing and maintaining plans required under section 82.
5. The titles or positions of staff members who are authorized to apply a mechanical restraint on a child or release a child from a mechanical restraint, and the training that those staff members must complete.
6. Protocols that must be followed in monitoring and assessing a child's condition while mechanical restraints are being used and following their use.
7. Protocols related to ensuring that all relevant staff members are notified when mechanical restraints are and continue to be used on a child.
8. Protocols related to the repositioning of a child while mechanical restraints are being used and to the assisting of a child to ambulate while mechanical restraints are being used, including setting out how frequently the child must be repositioned or must receive assistance to ambulate.
9. Protocols respecting orders referred to in section 75, including the form in which an order must be provided.
10. Protocols related to post-restraint procedures, including debriefings.
11. Protocols related to evaluations of the use of mechanical restraints required under subsection (2).

(2) An administrator shall ensure that,

- (a) on a monthly basis, an evaluation of the use of mechanical restraints is performed to ensure that every use of mechanical restraints is carried out in accordance with the Act and the regulations; and
- (b) at least once every calendar year, an evaluation is performed to determine,
 - (i) the effectiveness of the policy required under subsection 160 (4) of the Act, and
 - (ii) whether changes or improvements to the policy are required, particularly with respect to whether changes or improvements are required to minimize the use of mechanical restraints.

Maintenance of mechanical restraints

81. An administrator shall ensure that mechanical restraints used in a secure treatment program,

- (a) are applied in accordance with the manufacturer's instructions, if any;
- (b) are maintained in good condition in accordance with the manufacturer's instructions, if any; and
- (c) are not altered except for adjustments made in accordance with the manufacturer's instructions, if any.

Plan re behaviour intervention strategies

82. (1) An administrator shall develop a written plan for each child in a secure treatment program that focuses on positive behaviour intervention strategies for the purposes of preventing the use of mechanical restraints and developing alternatives to the use of mechanical restraints.

(2) The child and their parent shall be invited to participate in the development of the plan and, for the purposes of clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal health information by a health information custodian, within the meaning of that Act, to a parent under this section is deemed to be for the purposes of complying with this Regulation.

(3) The child's wishes with respect to behaviour intervention strategies shall be documented in the plan and considered as part of the development and implementation of the plan.

(4) The plan shall be regularly re-evaluated and updated based on observations or concerns expressed by the child or their parent.

Minister's directives

83. For the purpose of subsection 252 (1) of the Act, the use of mechanical restraints in a secure treatment program is a prescribed matter.

Admission procedures re secure treatment programs

84. Subject to section 294 of the Act, the counsel or agent representing a child who is the subject of an application or order under Part VII of the Act is entitled to examine and to copy the record prepared in respect of the child and maintained by any service provider.

SECURE DE-ESCALATION ROOMS

Standards re secure de-escalation rooms

85. (1) The following standards apply with respect to a secure de-escalation room:

1. The room must not be used as a bedroom for any child or young person.
2. No more than one child or young person may be placed in the room at one time.
3. The room must contain a window that is unbreakable or some other means of observing the child or young person.
4. The room must contain lighting that is adequate to ensure compliance with subsection 174 (5) of the Act and paragraph 1 of subsection 174 (9) of the Act.
5. The room must not contain objects that could be used by the child or young person as instruments of injury or damage.
6. The room must be adequately ventilated and be maintained at not less than 17 degrees Celsius.
7. The room must be maintained in a sanitary condition.

(2) Despite subsection (1), a secure de-escalation room may be used as a bedroom where a young person is held in a facility that is a place of secure temporary detention or a place of secure custody.

Frequency of reviews – s. 174 (6) of the Act

86. (1) The following rules apply for the purposes of subsection 174 (6) of the Act:

1. If a young person who is under 16 or a child is kept in a secure de-escalation room for more than one hour, the person in charge of the premises in which the room is located shall review the continued need to keep the child or young person in the room at the end of the first hour and at least every 30 minutes thereafter.
2. If a young person who is 16 or older is kept in a secure de-escalation room in a place of secure custody or of secure temporary detention for more than one hour, the person in charge of the premises shall review the continued need to keep the young person in the room at the end of the first hour and at least every 60 minutes thereafter.

(2) Despite paragraphs 1 and 2 of subsection (1), the following rules apply in circumstances where a young person who, while restrained by the use of mechanical restraints, is placed in a secure de-escalation room in a place of secure custody or of secure temporary detention:

1. The person in charge of the premises shall review the continued need to keep the young person in the secure de-escalation room at the same time that the person reviews the continued need for using the mechanical restraints as required under paragraph 8 of section 60.
2. If the mechanical restraints are removed while the young person is in the secure de-escalation room, the person in charge of the premises shall,
 - i. review the continued need to keep the young person in the room 30 minutes after the mechanical restraints are removed and at least every 30 minutes thereafter, if the young person is under 16, or
 - ii. review the continued need to keep the young person in the room 60 minutes after the mechanical restraints are removed and at least every 60 minutes thereafter, if the young person is 16 or older.

Policies and procedures

87. (1) A service provider shall develop and maintain written policies and procedures with respect to the use of a secure de-escalation room on the premises of the provider where it is proposed to place a child or young person in a secure de-escalation room.

(2) The policies and procedures referred to in subsection (1) shall be reviewed with each staff member who is involved in the use of a secure de-escalation room upon the initial orientation of the staff member and at least annually thereafter.

Records

88. A service provider shall maintain a written record of each instance of the use of a secure de-escalation room that shall include the following:

1. The name and age of the child or young person placed in a secure de-escalation room.
2. The date and time when the child or young person was placed in a secure de-escalation room.
3. The date and time when the child or young person was released from a secure de-escalation room.
4. The duration of time that the child or young person was kept in a secure de-escalation room.
5. The reasons for the service provider's opinion that the criteria set out in subclauses 174 (3) (a) (i) and (ii) of the Act were met.
6. If the child was younger than 12, a description of the exceptional circumstances referred to in clause 174 (3) (b) of the Act.
7. A description of the alternatives to the use of a secure de-escalation room that were considered and why those alternatives were not used.
8. The name and title of the person who approved the placement of the child or young person in a secure de-escalation room and, if an extension under paragraph 5 of subsection 174 (9) of the Act was approved, the name of the provincial director who gave the approval.
9. All documentation related to assessments and monitoring of the child or young person while they were kept in a secure de-escalation room.

Monthly summaries

89. (1) A service provider shall maintain,

- (a) a written record, for every month, that summarizes each instance of the use of a secure de-escalation room in respect of a child for that month; and
- (b) a written record, for every month, that summarizes each instance of the use of a secure de-escalation room in respect of a young person for that month.

(2) The monthly records required under subsection (1) shall include the following with respect to each instance of the use of a secure de-escalation room:

1. The name and age of the child or young person.
2. The dates and duration of the use of the secure de-escalation room.
3. The reasons for the service provider's opinion that the criteria set out in subclauses 174 (3) (a) (i) and (ii) of the Act were met.
4. If the child was younger than 12, a description of the exceptional circumstances referred to in clause 174 (3) (b) of the Act.

(3) A service provider shall provide,

- (a) a copy of the record required under clause (1) (a) in respect of a month to a Director on or before the fifth day of the following month; and
- (b) a copy of the record required under clause (1) (b) in respect of a month to a provincial director on or before the fifth day of the following month.

(4) A Director may, at any time, request a service provider to provide a copy of a written record required under clause (1) (a) to the Director.

(5) A provincial director may, at any time, request a service provider to provide a copy of a written record required under clause (1) (b) to the provincial director.

Director to inspect premises, room

90. For the purposes of subsection 173 (1) of the Act, a Director who receives an application for approval of a locked room shall inspect the premises and the room to be approved to determine whether the room can be approved for use for the de-escalation of situations and behaviour involving children or young persons.

PSYCHOTROPIC DRUGS

Psychotropic drugs

91. (1) The following anti-psychotic drugs are prescribed as psychotropic drugs:

1. Chlorpromazine.
2. Chlorprothixene.
3. Droperidol.

4. Fluphenazine.
5. Fluspirilene.
6. Haloperidol.
7. Loxapine.
8. Mesoridazine.
9. Methotrimeprazine.
10. Pericyazine.
11. Perphenazine.
12. Piperacetazine.
13. Pipotiazine.
14. Prochlorperazine.
15. Promazine.
16. Thiethylperazine.
17. Thiopropazate.
18. Thioproperazine.
19. Thioridazine.
20. Thiothixene.
21. Trifluoperazine.

(2) The following anti-depressant drugs are prescribed as psychotropic drugs:

1. Amitriptyline.
2. Amoxapine.
3. Clomipramine.
4. Desipramine.
5. Doxepin.
6. Imipramine.
7. Isocarboxazid.
8. Loxapine.
9. Maprotiline.
10. Nortriptyline.
11. Phenelzine.
12. Protriptyline.
13. Tranylcypromine.
14. Trazodone.
15. Trimipramine.

(3) The following sedative and hypnotic drugs are prescribed as psychotropic drugs:

1. Alprazolam.
2. Barbituric Acid Derivatives.
3. Chloral Hydrate.
4. Ethchlorvynol.
5. Flurazepam.
6. Glutethimide.

7. Lorazepam.
 8. Methaqualone.
 9. Methypylon.
 10. Nitrazepam.
 11. Paraldehyde.
 12. Temazepam.
 13. Triazolam.
- (4) The following anti-anxiety drugs are prescribed as psychotropic drugs:
1. Alprazolam.
 2. Bromazepam.
 3. Chlordiazepoxide.
 4. Chlormezanone.
 5. Clonazepam.
 6. Clorazepic acid.
 7. Diazepam.
 8. Hydroxyzine.
 9. Ketazolam.
 10. Lorazepam.
 11. Meprobamate.
 12. Oxazepam.
- (5) The following anti-hyperkinetic drugs are prescribed as psychotropic drugs:
1. Amphetamine.
 2. Deanol.
 3. Dextroamphetamine.
 4. Methylphenidate.
- (6) The following anti-manic drug is prescribed as a psychotropic drug:
1. Lithium Carbonate.

ADOPTION

Definitions

92. In this section and sections 93 to 112,

“adoption agency” means a licensee or a society; (“agence d’adoption”)

“licensee” means a person acting under the authority of a licence issued by a Director under section 229 of the Act; (“titulaire de permis”)

“Part VIII birth parent” means a person, other than a foster parent, who satisfies the criteria set out in section 93; (“parent de naissance - partie VIII”)

“VSA birth parent” means a birth parent within the meaning of the *Vital Statistics Act*. (“parent de naissance - LSEC”)

Part VIII birth parent, criteria

93. A person who satisfies one of the following criteria in relation to a child is a Part VIII birth parent of the child:

1. A parent of the child under sections 6 to 13 of the *Children’s Law Reform Act*.
2. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.

3. An individual who, during the 12 months before the child is placed for adoption under Part VIII of the Act, has demonstrated a settled intention to treat the child as a child of the individual's family, or has acknowledged parentage of the child and provided for the child's support.
4. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
5. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* came into force.
6. Any person, other than those referred to in paragraphs 1 to 5, who was required to give consent to the child's adoption under clause 180 (2) (a) of the Act.

Openness

94. (1) For the purposes of openness orders under Part VIII of the Act and openness agreements under section 212 of the Act,

“openness” includes written, verbal or face to face contact or communication where,

- (a) the communication may be direct or indirect and may permit the disclosure of identifying or non-identifying information, and
- (b) the frequency of contact or communication may vary from episodic to ongoing.

(2) For the purposes of subsection (1),

“non-identifying information” means information which, when disclosed either alone or in combination with other information, does not reveal the identity of the person to whom it relates.

Consent to adoption

95. (1) For the purposes of clause 180 (4) (b) of the Act, before the parent of a child consents to the adoption of the child under clause 180 (2) (a) of the Act, the adoption agency that is placing the child for adoption shall advise the parent of the matters described in subsection (2) or (3), as the case may be.

(2) If the child being placed for adoption has not been previously adopted, the adoption agency shall advise the parent of,

- (a) the right of persons to obtain non-identifying information under section 9 of Ontario Regulation 158/18 (Adoption Information Disclosure) made under the Act and the categories of persons who are entitled to obtain the information;
- (b) the right of persons to have their name added to the adoption disclosure register under section 7 of Ontario Regulation 158/18 and the categories of persons who are entitled to have their name added to the register;
- (c) the right of persons to request a search in cases of severe medical illness under section 11 of Ontario Regulation 158/18 and the categories of persons who are entitled to request the search; and
- (d) the following rights under the *Vital Statistics Act* of a person who is an adopted person or a VSA birth parent:
 - (i) the right of an adopted person to obtain uncertified copies of a birth registration and of an adoption order under section 48.1 of the *Vital Statistics Act*,
 - (ii) the right of a VSA birth parent to obtain information under section 48.2 of the *Vital Statistics Act*,
 - (iii) the right of an adopted person and of a VSA birth parent to register a notice of preferred manner of contact under section 48.3 of the *Vital Statistics Act*, and
 - (iv) the right of an adopted person and of a VSA birth parent to register a notice of a wish not to be contacted under section 48.4 of the *Vital Statistics Act*.

(3) If the child being placed for adoption was previously adopted and is being placed by an adoption agency for a subsequent adoption, whether the parent who gives consent to the subsequent adoption is the adoptive parent who previously adopted the child or any other parent entitled to give consent, the adoption agency shall advise the parent of,

- (a) the matters described in clauses (2) (a), (b) and (c); and
- (b) the following rights under the *Vital Statistics Act* of the person who is an adopted person within the meaning of that Act or of an adoptive parent named in a previous order, judgment or decree of adoption registered under subsection 28 (1) of that Act, or a predecessor of that subsection:
 - (i) the right of an adopted person to obtain uncertified copies of a birth registration and of an adoption order under section 48.1 of the *Vital Statistics Act*,
 - (ii) the right of an adopted person to obtain uncertified copies of a substituted birth registration under subsection 2 (2) of Ontario Regulation 272/08 (Disclosure of Adoption Information) made under the *Vital Statistics Act*, and

- (iii) the right of the adoptive parent under subsection 2 (5) of Ontario Regulation 272/08 to register a notice of preferred manner of contact under section 48.3 of the *Vital Statistics Act* or a notice of a wish not to be contacted under section 48.4 of that Act.

Licensee to create records re person wishing to adopt, board child

96. (1) A licensee that receives an application from a person who wishes to receive a child for adoption or to board a child intended to be placed for adoption shall upon receiving the application,

- (a) record a description of the home of the applicant; and
- (b) assess the home environment of the applicant including the applicant's competence and suitability as a foster parent or adoptive parent, as the case may be, and make a record of the assessment.

(2) The licensee shall reassess each home environment referred to in clause (1) (b) annually if the applicant continues to wish to receive a child who is a resident of Canada for adoption or if the applicant wishes to board a child intended to be placed for adoption.

(3) The licensee shall reassess each home environment referred to in clause (1) (b) every two years if the applicant continues to wish to receive a child who is not a resident of Canada for adoption.

Placement of children, general

97. (1) An adoption agency shall, with respect to the placement of children,

- (a) ensure that counselling is made available to each person who is a parent within the meaning of subsection 180 (1) of the Act who is considering relinquishing a child for adoption;
- (b) recruit prospective adoptive parents for children who are awaiting adoption;
- (c) ensure that an assessment is conducted of each prospective adoptive parent;
- (d) ensure that each adoption placement is supervised;
- (e) ensure that assistance is provided to complete the adoption of children who have been placed by the adoption agency;
- (f) ensure that post-adoption services are provided to a child who is an adopted person, to the adoptive family and to any other person who is directly affected by the adoption if a request is made for such services;
- (g) ensure that services related to the disclosure of information that relates to an adoption are provided in accordance with Part VIII of the Act; and
- (h) ensure that each child awaiting placement for adoption receives residential care if required.

(2) An adoption agency shall provide consulting and interviewing space that ensures privacy for all persons involved in the adoption.

(3) An adoption agency shall ensure that it has access to the services of,

- (a) two members of the College of Physicians and Surgeons of Ontario, one of whom is recognized by the College as a member with a specialty in psychiatry;
- (b) a member of the Ontario College of Social Workers and Social Service Workers who holds a general certificate of registration for social work;
- (c) a member of the College of Psychologists of Ontario; and
- (d) a person licensed to practise law under the *Law Society Act*.

(4) When the licensee contemplates placing a child for adoption, the licensee shall ascertain whether the child is a First Nations, Inuk or Métis child.

(5) When a licensee forms an intention to place a child who is a First Nations, Inuk or Métis child for adoption, the licensee shall, as soon as possible, give a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities 30 days written notice of the licensee's intention to place the child for adoption.

(6) From the time when a licensee forms an intention to place a child who is a First Nations, Inuk or Métis child for adoption until the placement of the child for adoption, the licensee shall consider the benefits of an openness agreement between an adoptive parent and a member of the child's bands and First Nations, Inuit or Métis communities.

(7) For greater certainty, a licensee is only required to give notice under subsection (5) to a representative chosen by a child's First Nations, Inuit or Métis community if the community was listed in a regulation made under subsection 68 (1) of the Act before the day the licensee formed the intention to place the child for adoption.

Approval, designation of persons to visit homes of prospective adoptive parents

98. A Director may approve, or in the case of a society, a local director may designate persons to visit homes of prospective adoptive parents for the purposes of Part VIII of the Act.

Homestudies and visits

99. (1) An adoption agency shall, before placing a child for adoption, arrange for the preparation by a person approved or designated as described in section 98 of a report of a homestudy of the prospective adoptive parents.

(2) An adoption agency shall ensure that the home of the prospective adoptive parents is visited, as soon as possible and no later than one month after the child is placed by the adoption agency, by a person approved or designated as described in section 98.

(3) The adoption agency shall ensure that, subsequent to the visit described in subsection (2), a person described in section 98 visits the home at least two times before the adoption order is made.

Information to be shared by adoption agency re child to be placed

100. (1) An adoption agency that proposes to place a child for adoption shall, before placing the child, prepare a report with respect to the social and medical history of the child and of each person who is a parent of the child.

(2) The adoption agency shall ensure that the information contained in the report, except for any information that would identify the parents of the child, is shared in writing with the prospective adoptive parents prior to the adoption of the child.

(3) If the adoption agency is proposing to place a child for adoption and the child has not been previously adopted, the adoption agency shall ensure that information relating to the following matters is shared with the prospective adoptive parents before placing the child:

1. The right of persons to obtain non-identifying information under section 9 of Ontario Regulation 158/18 (Adoption Information Disclosure) made under the Act and the categories of persons who are entitled to obtain the information.
2. The right of persons to have their name added to the adoption disclosure register under section 7 of Ontario Regulation 158/18 and the categories of persons who are entitled to have their name added to the register.
3. The right of persons to request a search in cases of severe medical illness under section 11 of Ontario Regulation 158/18 and the categories of persons who are entitled to request the search.
4. The following rights under the *Vital Statistics Act* of a person who is an adopted person or a VSA birth parent:
 - i. The right of an adopted person to obtain uncertified copies of a birth registration and of an adoption order under section 48.1 of the *Vital Statistics Act*.
 - ii. The right of a VSA birth parent to obtain information under section 48.2 of the *Vital Statistics Act*.
 - iii. The right of an adopted person and of a VSA birth parent to register a notice of preferred manner of contact under section 48.3 of the *Vital Statistics Act*.
 - iv. The right of an adopted person and of a VSA birth parent to register a notice of a wish not to be contacted under section 48.4 of the *Vital Statistics Act*.

(4) If an adoption agency is proposing to place a child for adoption and the child has been previously adopted, the adoption agency shall ensure that information relating to the following matters is shared with the prospective adoptive parents before placing the child:

1. Matters described in paragraphs 1, 2, 3 and 4 of subsection (3).
2. If the order, judgment or decree for the previous adoption was made before September 1, 2008 and registered under subsection 28 (1) of the *Vital Statistics Act*, or a predecessor of that subsection, the right of the adopted person and VSA birth parent named in that order, judgment or decree to register a disclosure veto under section 48.5 of that Act.
3. The following rights under the *Vital Statistics Act* of the person who is an adopted person within the meaning of that Act or of an adoptive parent named in a previous order, judgment or decree of adoption registered under subsection 28 (1) of that Act, or a predecessor of that subsection:
 - i. The right of an adopted person to obtain uncertified copies of a substituted birth registration under subsection 2 (2) of Ontario Regulation 272/08 (Disclosure of Adoption Information) made under the *Vital Statistics Act*.
 - ii. The right of the adoptive parent under section 2 (5) of Ontario Regulation 272/08 to register a notice of preferred manner of contact under section 48.3 of the *Vital Statistics Act* or a notice of a wish not to be contacted under section 48.4 of that Act.

(5) If the Director's approval of the proposed placement is required, a copy of the report referred to in subsection (1) shall be filed with the Director before the approval under subsection 188 (3) or 190 (2) of the Act is given or refused.

(6) If the Director's approval of the proposed placement is not required, a copy of the report referred to in subsection (1) shall be filed by the adoption agency with the Director when the placement is registered under subsection 183 (7) or (8) of the Act, as the case requires.

First Nations, Inuk or Métis child, ss. 186 and 187 of the Act

101. (1) For the purposes of section 186 of the Act, a society is required to give written notice of its intention to begin planning for the adoption of a First Nations, Inuk or Métis child to a representative chosen by a child's First Nations, Inuit or Métis communities that are listed in a regulation made under subsection 68 (1) of the Act on or before the day the society formed the intention to place the child for adoption.

(2) For the purposes of section 187 of the Act, a society is required to consider the importance of developing or maintaining the child's connection to the child's First Nations, Inuit or Métis communities that are listed in a regulation made under subsection 68 (1) of the Act on or before the day the child is placed for adoption.

Placement outside of Canada

102. (1) A child may be taken or sent out of Canada to be placed for adoption if one of the following special circumstances exists:

1. The placement fulfils a special need of the child that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability.
2. At least one of the prospective adoptive parents is a Canadian citizen.
3. At least one of the prospective adoptive parents is related to the child, including by marriage or adoption.
4. The placement will preserve the child's cultural background.

(2) An adoption agency that intends to take or send a child out of Canada to be placed for adoption shall, before taking or sending the child, prepare a placement plan that,

- (a) includes a copy of the report of an adoption homestudy of the person with whom placement is proposed;
- (b) includes a statement of the health care to be provided for the child, including particulars of health insurance coverage for the child;
- (c) includes a statement of the arrangements made for the care of the child in the event of an adoption breakdown;
- (d) specifies the agency that will be supervising the child during the placement and a description of the proposed supervision;
- (e) includes a description of the provisions made for the child's education during the placement;
- (f) includes a description of the adoption law in the jurisdiction of the placement and an opinion by a qualified legal practitioner in that jurisdiction as to whether or not the child can be adopted under that law; and
- (g) includes a description of the immigration and citizenship laws in the jurisdiction of the placement and an opinion by a qualified legal practitioner in that jurisdiction as to whether or not the child can enter the jurisdiction and obtain citizenship under those laws.

(3) A licensee that prepares a placement plan referred to in subsection (2) shall file a copy of the plan with a Director before the Director's approval or refusal is given under subsection 188 (3) of the Act.

(4) No child shall be taken or sent out of Canada to be placed for adoption until the 21-day period for withdrawing a consent under subsection 180 (8) of the Act has expired.

(5) No child who is seven or older shall be taken or sent out of Canada to be placed for adoption unless the child consents to the placement.

(6) If a licensee intends to take or send a child out of Canada to be placed for adoption and the child has not been placed within 120 days after a Director has approved the placement under subsection 188 (3) of the Act, the licensee shall, as soon as possible after the expiration of the 120-day period, notify a Director in writing that the child has not been placed for adoption and give reasons why the child has not been placed for adoption.

Placement in Ontario or elsewhere in Canada

103. (1) If a licensee is unable to place a child for adoption in Ontario within 60 days after a Director has approved the placement under subsection 188 (3) of the Act, the licensee shall, as soon as possible after the expiration of the 60-day period, notify a Director in writing that the child has not been placed for adoption and give reasons why the child has not been placed for adoption.

(2) If a licensee intends to take or send a child out of Ontario to be placed for adoption outside of Ontario but within Canada and the child has not been placed within 60 days after a Director has approved the placement under subsection 188

(3) of the Act, the licensee shall, as soon as possible after the expiration of the 60-day period, notify a Director in writing that the child has not been placed for adoption and give reasons why the child has not been placed for adoption.

(3) No child shall be removed from Canada after being placed for adoption in Ontario until the 21-day period for withdrawing a consent under subsection 180 (8) of the Act has expired.

(4) No child who is seven or older shall be removed from Canada after being placed for adoption in Ontario unless the child consents to the placement.

Application for hearing

104. An application requesting a hearing under subsection 188 (5), 189 (5) or 190 (4) of the Act shall be submitted to the Board in writing.

Application for review of decision to refuse to place child or to remove child after placement

105. (1) An application requesting a review of a decision under subsection 192 (3) of the Act shall be submitted to the Board in writing.

(2) For the purposes of subsection 192 (7) of the Act, the following additional practices and procedures are prescribed:

1. Within seven days of receipt of an application for a review under subsection 192 (3) of the Act, the Board shall give the applicant written notice of whether the applicant is eligible for a review under section 192 of the Act.
2. If the Board determines that the applicant is eligible for a review, the notice referred to in paragraph 1 shall set out the date and time of the hearing and shall be sent to all parties.
3. The application for review shall be heard by the Board no later than 20 days after the day the applicant received notice of eligibility under paragraph 1.
4. A decision and reasons under subsection 192 (11) of the Act shall be sent to the parties no later than 10 days after the end of a hearing.

(3) Notice under subsection (2) may be given by regular mail or by fax.

(4) If notice is sent by regular mail, it shall be sent to the most recent address known to the adoption agency and is deemed to be received by the applicant on the fifth day after it is mailed.

(5) If notice is sent by fax, it is deemed to be received on the day after it is sent, unless that day is a holiday, in which case the copy is deemed to be received on the next day that is not a holiday.

New community listed, decision already made by adoption agency

106. (1) This section applies if,

- (a) a new First Nations, Inuit or Métis community is listed in a regulation made under subsection 68 (1) of the Act on or after the day an adoption agency makes a decision described in subsection 192 (1) of the Act in respect of a child; and
- (b) the new First Nations, Inuit or Métis community listed is one of the child's communities.

(2) If the time for applying for a review as mentioned in subsection 192 (3) of the Act has not expired before the day the new First Nations, Inuit or Métis community is listed, the adoption agency shall give notice to any representative of the new community in accordance with clause 192 (2) (c) of the Act.

(3) If the time for applying for a review as mentioned in subsection 192 (3) of the Act has expired before the day the new First Nations, Inuit or Métis community is listed, clause 192 (2) (c) of the Act does not apply in respect of the new community.

(4) Upon receipt of an application for review of the decision,

- (a) the Board shall give notice of the application and of the date of the hearing to those who were parties to the hearing immediately before the new First Nations, Inuit or Métis community was listed and to any representative to whom notice was given under subsection (2); and
- (b) subsection 192 (6) of the Act does not apply.

(5) Any person to whom notice was given as described in clause (4) (a) is a party to a hearing in respect of the application and paragraph 3 of subsection 192 (9) of the Act does not apply.

Director's review

107. (1) In conducting a review under subsection 193 (3) of the Act, a Director may make such inquiries as the Director considers appropriate and may require the adoption agency that gave notice under subsection 193 (1) or (2) of the Act to provide such information or documentation as the Director may specify within a specified time period.

(2) The adoption agency that receives a request for information or documentation under subsection (1) shall comply with the request within the specified time period.

- (3) Upon completing the review, a Director may,
- (a) make recommendations to the adoption agency that gave notice under subsection 193 (1) or (2) of the Act respecting the plan for placement of the child named in the notice; and
 - (b) direct the adoption agency to report back to the Director in such manner or within such time period as the Director may specify and to include in the report such information as the Director may specify.

Expenses

108. The following expenses incurred by a licensee are expenses that may be charged by a licensee to an adoptive parent or a prospective adoptive parent:

1. Expenses incurred to prepare a social and medical history of a child who is adopted or who is intended to be adopted and to prepare a social and medical history of a person who is a parent of the child.
2. Expenses incurred to conduct and prepare a homestudy of prospective adoptive parents.
3. Expenses incurred to provide residential care for a child awaiting adoption placement.
4. Expenses incurred to provide counselling services for a person who is a parent of a child, within the meaning referred to in subsection 180 (1) of the Act, regarding the parent's decision to relinquish the child for adoption.
5. Expenses incurred to provide transportation relating to the placement of a child for adoption.
6. Expenses incurred to provide supervision of an adoption placement.
7. Expenses incurred with respect to the administration of an adoption.
8. Expenses incurred to provide post-adoption services that are considered by a Director as being necessary to ensure the success of an adoption.
9. In addition to the matters referred to in paragraphs 1 to 8, expenses incurred with respect to any other services that in the opinion of the Director are necessary to ensure the success of an adoption.

Acknowledgement of adoption placement

109. A licensee shall, as soon as possible upon receiving an acknowledgment of adoption placement, file a copy of the acknowledgment with a Director.

ADOPTION LICENSING

Fee

110. There is no fee payable by an applicant for a licence or renewal of a licence to place children for adoption.

Duration of licence

111. A Director may issue or renew a licence for such period, not to exceed one year, as the Director determines is proper in the circumstances.

Licence to be kept on premises

112. A licence or a provisional licence to place children for adoption shall be kept on the premises of the licensee who shall ensure that the licence is available for inspection by any person.

RESIDENTIAL LICENSING

Licensing applications

113. After receiving an application for a licence or renewal of a licence to operate a children's residence or to provide residential care in places that are not children's residences, a Director may inspect or have inspected the premises that is being used or will be used as a children's residence or to provide residential care by the applicant for the purposes of determining the eligibility of the applicant for the licence or renewal.

Application fees

114. (1) The following regions are designated for the purposes of this section:

1. The Central Region, being the counties of Dufferin and Simcoe and the regional municipalities of Halton, York, Peel, Wellington and Waterloo.
2. The East Region, being the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Northumberland, Peterborough, Prince Edward and Renfrew, the County of Haliburton, the united counties of Leeds and Grenville, Stormont, Dundas and Glengarry and Prescott and Russell and the regional municipalities of Durham, Kawartha Lakes and the city of Ottawa.

3. The North Region, being the territorial districts of Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming, the Regional Municipality of Greater Sudbury and the District Municipality of Muskoka.
4. Toronto Region, being the city of Toronto.
5. The West Region, being the counties of Brant, Bruce, Chatham-Kent, Elgin, Essex, Grey, Huron, Lambton, Middlesex, Oxford and Perth and the regional municipalities of Haldimand-Norfolk, Niagara and Hamilton.

(2) Subject to subsection (3), the fee payable by an applicant for a licence or to renew a licence to operate a children's residence is \$100.

(3) There is no fee payable by an applicant for a licence or to renew a licence to operate a children's residence if, in the three-year period preceding the day on which the application is made, the applicant has paid the fee under subsection (2) with respect to a children's residence located in the same region as the children's residence to which the current application relates.

(4) Subject to subsection (5), the fee payable by an applicant for a licence or to renew a licence to provide residential care in places that are not children's residences is \$100 for each region in which the applicant intends to provide residential care in places that are not children's residences.

(5) There is no fee payable by an applicant for a licence or to renew a licence to provide residential care in places that are not children's residences for a region in which the applicant intends to provide residential care if, in the three-year period preceding the day on which the application is made, the applicant paid the fee under subsection (4) for that region in the context of a previous application for a licence or to renew a licence to provide residential care in places that are not children's residences.

(6) A Director may refund to an applicant a fee paid under this section if no licence is subsequently issued to the applicant.

Minister's directives

115. The following matters are prescribed for the purposes of subsection 252 (1) of the Act:

1. Any matter that is required under Part IX of the Act to be done in accordance with the directives.
2. Training on the provision of residential care under the authority of a licence issued under Part IX of the Act.
3. Monitoring and evaluating the outcomes of children and young persons receiving residential care under the authority of a licence issued under Part IX of the Act.
4. The responsiveness to the cultural needs of children and young persons receiving residential care provided under the authority of a licence issued under Part IX of the Act.

116. OMITTED (PROVIDES FOR AMENDMENTS TO THIS REGULATION).

117. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

Français

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TAB 4

Part X of the *Child, Youth and Family Services Act*: A Guide to Access and Privacy for Service Providers



Disclaimer: This guide is about Part X of the *Child, Youth and Family Services Act, 2017*, and its regulations.

The guide should not be relied on as a substitute for the legislation itself, or legal advice. It is not an official legal interpretation of Part X and does not bind the Office of the Information and Privacy Commissioner of Ontario (IPC). For the most up-to-date version of this guide, visit the IPC's website at www.ipc.on.ca.

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- Association of Native Child and Family Service Agencies of Ontario
- Ministry of Children, Community and Social Services
- Ontario Association of Children's Aid Societies
- Ontario Association of Residences Treating Youth
- Ontario Residential Care Association

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TERMS USED IN THIS GUIDE

CYFSA – Child, Youth and Family Services Act

The *CYFSA* is an Ontario law that governs certain programs and services for children, youth, and families. The *CYFSA* is divided into parts, and it is **Part X** of the *CYFSA* that is the subject of this guide. Part X sets the rules that service providers must follow to protect privacy and enable access to records of personal information.

IPC – Information and Privacy Commissioner of Ontario

The Office of the Information and Privacy Commissioner is the oversight body for Part X of the *CYFSA*. The commissioner is appointed by and reports to the Legislative Assembly of Ontario and is independent of the government of the day. The IPC is the author of this guide. For more information about the IPC's role, see page one.

Other privacy legislation

FIPPA – Freedom of Information and Protection of Privacy Act

MFIPPA – Municipal Freedom of Information and Protection of Privacy Act

PHIPA – Personal Health Information Protection Act

These are three other Ontario privacy laws overseen by the IPC. These laws impact some service providers, and not others. They are not the subject of this guide but are discussed on pages three to five.

Personal information

Personal information means recorded information about an identifiable individual.

When a service provider is collecting information, personal information also includes information that is not recorded. See the full definition on page 48, and discussion on pages five and six.

Service provider

Part X of the *CYFSA* introduces requirements for “service providers,” which are defined to include persons or entities that provide services funded under the *CYFSA*, or under the authority of a licence under the *CYFSA*. See page 49 for the full definition.

INTRODUCTION

Part X of the *Child, Youth and Family Services Act* sets the rules that service providers must follow to protect privacy and enable access to personal information, effective January 1, 2020.

If you are a service provider seeking to understand your obligations under Part X, this guide is for you. It provides an overview of the core rules for collecting, using, disclosing, safeguarding and managing personal information, consent and capacity, and access to and correction of personal information. It also explains how these rules are enforced. Additional Part X requirements, such as those related to research and prescribed entities, are addressed only at a high level.

This guide is not a substitute for legal advice. If you are unsure of how to apply Part X in a given situation, you should contact the person in your organization responsible for ensuring compliance with Part X, or a lawyer.

If you have general questions about Part X, you can contact the Ministry of Children, Community and Social Services or the Office of the Information and Privacy Commissioner of Ontario (IPC).

You may find it helpful to read this guide with the *CYFSA* itself. If so, the guide's endnotes point you to the relevant sections of the legislation. You may also want to consult the definitions section on page 47. In addition to summarizing the requirements of Part X, this guide also presents some best practices and practical examples.

ABOUT THE IPC

The IPC provides oversight of Ontario's access and privacy laws, including Part X. These laws establish the rules for how Ontario's public institutions, health information custodians and service providers may collect, use, and disclose personal information.

As part of our mandate, we investigate privacy complaints related to personal information and ensure compliance with Ontario's access and privacy laws. Any person can file a complaint with the IPC about anyone who has or is about to break the rules of Part X. For more information about our complaints process, see pages 44.

Part of our mandate at the IPC is to provide information and education. We are available to consult with service providers to support their compliance with Part X.

Please visit our website www.ipc.on.ca for the latest guidance on Part X, including frequently asked questions, and any orders or decisions made by our office.

OVERVIEW OF THE *CYFSA*

The *CYFSA* is an Ontario law that governs certain programs and services for children, youth, and families, including:

- child welfare
- residential care
- adoption
- youth justice
- children's mental health
- First Nations child and family services
- Inuit child and family services
- Métis child and family services

The **paramount purpose** of the *CYFSA* is to promote the best interests, protection and well-being of children.¹ One of several additional purposes is to recognize that appropriate sharing of information to plan and provide services is essential for creating successful outcomes for children and families.

Children and youth receiving services under the *CYFSA* have certain rights, including the right to:

- express their views freely and safely about matters that affect them
- be consulted on the nature of the services provided and participate in decisions about services provided to them
- raise concerns or recommend changes to their services, and to receive a response, without interference or fear of coercion, discrimination or reprisal²

Part X of the *CYFSA* sets out rules for service providers regarding privacy and access to personal information. With limited exceptions, service providers must have consent to collect, use or disclose personal information. They must also take steps to safeguard this information and must notify people if there is a breach of their privacy. Service providers must give individuals access to their records of personal information on request, subject to limited exceptions, and must respond to requests for correction of inaccurate or incomplete records.

DOES PART X OF THE *CYFSA* APPLY TO YOU?

Two questions will help determine whether and to what extent Part X applies to your organization: Are you a service provider? If so, are you already subject to other privacy laws?

ARE YOU A SERVICE PROVIDER?

A service provider³ under Part X of the *CYFSA* is:

- a) a person or entity that provides a service funded under the *CYFSA* (children's aid societies, including Indigenous child well-being societies, are one example)
- b) a licensee, meaning the holder of a licence under Part VIII of the *CYFSA* (Adoption Licensing) or Part IX (Residential Licensing)
- c) a lead agency⁴
- d) the Minister of Children, Community and Social Services⁵
- e) any additional person or entity⁶ prescribed through a regulation

While a licenced operator of foster homes is defined as a service provider, a foster **parent** is not.

ARE YOU SUBJECT TO OTHER PRIVACY LEGISLATION?

Once you have determined that you are a service provider, the next step is to consider whether you are already subject to privacy legislation. You are exempt from much of Part X if you are:

- a health information custodian under the *Personal Health Information Protection Act*, when collecting, using or disclosing personal health information
- an institution under the *Freedom of Information and Protection of Privacy Act* or its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act*

Are you a health information custodian under *PHIPA*?

PHIPA governs the collection, use and disclosure of **personal health information** by health information custodians. Section 3 of *PHIPA* sets out who is a custodian, while section 4 sets out what is personal health information.

If you are a service provider who is also a custodian under *PHIPA*, the core rules of Part X do not apply to your collection, use or disclosure of personal

Does Part X
of the *CYFSA*
apply to you?

health information (*PHIPA* would apply instead).⁷ The only sections of Part X which **do** apply are:

- sections 283-284 (Minister's powers to collect, use and disclose personal information)
- section 285 (Application of Part X)
- section 293 (Disclosure for planning and managing services)
- section 294 (Records of mental disorders)

Note that if you are a health information custodian who collects, uses and discloses personal information that is **not** personal health information, then Part X may apply to that information.

A multi-service organization operates a children's aid society. It also runs a children's mental health program, for which it collects information about its clients' health history and provides health care as its primary purpose.

Both *PHIPA* and Part X of the *CYFSA* would apply to different parts of this organization. For example, if a client wanted to access their records of personal health information from the organization's mental health program, they could do so under *PHIPA*. If they wanted to access their records of personal information from the children's aid society, they would do so under Part X of the *CYFSA*.

Are you an institution under *FIPPA* or *MFIPPA*?

FIPPA is a law that applies to provincial public institutions including the Ministry of Children, Community and Social Services. *MFIPPA* is its municipal counterpart — it applies to school boards, municipalities and other municipal institutions.⁸

If you are a service provider and an institution under *FIPPA* or *MFIPPA*, the core rules of Part X do not apply to you.⁹ The only sections of Part X which **do** apply are:

- sections 283-284 (Minister's powers to collect, use and disclose personal information)
- section 285 (Application of Part X)
- section 293 (Disclosure for planning and managing services)
- section 294 (Records of mental disorders)
- sections 295-305 (Consent, capacity and substitute decision-making)

A father wants access to his records of personal information from a program operated directly by the Ministry of Children, Community and Social Services. Can he make an access request?

Yes, but not under Part X of the *CYFSA*. Because the ministry is an institution under *FIPPA*, the core rules of Part X, including the rules about access to records of personal information, do not apply to the ministry. The father would need to make an access request under *FIPPA*.

WHAT INFORMATION DOES PART X APPLY TO?

Now that you have determined you are a service provider to whom Part X applies, the next step is to understand what **types** of information Part X covers.

Generally, Part X applies to **personal information**, which is in the **custody or control** of a service provider, and which relates to the provision of a **service**. However, there are exceptions for certain types of records (such as adoption records) to which Part X does not apply. We will now walk through each of these concepts in turn:

a) What is personal information?

Part X applies to personal information, which means “recorded information about an **identifiable individual**.”¹⁰ It does not apply to records that contain no personal information. For example, this might include things like capital funding records, organizational policies, or building contracts.

Information is about an identifiable individual if:

- it is about the individual in a personal capacity
- the individual can be identified from the information (either alone or by combining it with other information)

Examples include a person’s name when combined with other information about them, such as their address, sex, age, education, or medical history. This is not a complete list; many other kinds of information may still qualify as personal information. Even without a name, a record may contain personal information, if the individual can be identified.

Part X applies to personal information, which is in the custody or control of a service provider, and which relates to the provision of a service.

Personal information can be recorded in *any* format, including:

- paper records, such as written case notes
- electronic records, such as in a client information system
- photographs and video footage, including from security cameras

When a service provider is collecting information, the definition of “personal information” also includes information that is **not** recorded. This means that when a service provider collects personal information, they must follow the rules of Part X even if the information is collected verbally, for example through a phone call or intake interview.¹¹

It doesn’t matter whether a record was created **before or after** Part X came into force. Even if an individual’s personal information was recorded many years before, they have a right to access their record and you must protect it against privacy breaches.¹²

b) What is “custody or control”?

Part X applies to records held by a service provider. More specifically, it applies to records “in the custody or under the control” of a service provider.

“Custody” and “control” are not defined in the *CYFSA* and must be determined on a case-by-case basis. Part X applies to records that are either in the custody **or** under the control of the service provider. It doesn’t have to be both.

- **Custody:** You usually have custody of a record if it’s in your **possession** — in your electronic database or paper files, for example. However, simply possessing the record is not enough to determine the question of custody. To have custody of a record, you must also have some right to deal with the record and some responsibility for its care and protection.¹³ For example, your employee’s personal journal, unrelated to work, would not be in your custody even if it is stored at their work station.
- **Control:** Even if a record is not in your possession, it could potentially be under your **control**. For example, if you have authority to manage a record related to your mandate and function and you rely on it for business purposes, it may be under your control regardless of whether you physically possess it. A record held by your consultant, for example, could be in your control in some circumstances.

The IPC and the courts have reviewed complaints and appeals under other privacy legislation involving this matter,¹⁴ and have tended to take a broad and liberal approach to determining whether a record is in an organization’s custody or control. The IPC has developed a list of factors to consider in

determining whether a record is in the custody or control of an institution, including:

- Did an officer or employee of the institution create the record?
- Does the content of the record relate to the institution's mandate and functions?
- Does the institution have a right to possession of the record?
- Does the institution have the authority to regulate the record's content, use and disposal?

It is possible to have custody or control of a record that was not created by your organization. For example, if a child is referred to you by another service provider and you maintain and rely on the referral records to provide services to the child, the referral records would likely be in your custody or control even though they were authored by the other provider.

It is also possible for a record (or a copy of a record) to be in the custody or control of more than one service provider. For example, if two providers are authorized to share certain records relating to a child they are both serving, it is possible for both providers to have custody or control of the records.

If you are unsure whether you have custody or control of a record after considering these factors, you may want to seek legal advice.

c) What does collected for or relating to the provision of a service mean?

For Part X to apply, the personal information must be collected for or related to the provision of a **service**. Part X defines service as a program or service that is provided or funded under the *CYFSA* or provided under the authority of a licence.¹⁵ It includes services for children and their families related to:

- child protection
- residential care
- community support and prevention
- physical or mental disabilities
- mental health
- adoption
- services or programs under the *Youth Criminal Justice Act* or *Provincial Offences Act*¹⁶

Generally speaking, personal information that is **not** collected for or related to the provision of a service under the *CYFSA* is not covered by the core Part X rules for collection, use, disclosure, access, and correction. For example, this could include certain human resources records or records related to programs that are not provided or funded under the *CYFSA*.

A community organization is funded by the Ministry of Children, Community and Social Services to offer youth support services under the *CYFSA*. The agency also offers other programs including social programs for seniors. To what extent does Part X apply?

- Because it provides a service funded under the *CYFSA*, the organization fits the definition of a “servicer provider,” and Part X will apply to some of its records.
- However, the agency’s seniors’ programs are not provided or funded under the *CYFSA*. Part X will not apply to the organization’s collection, use and disclosure of information for its seniors’ programs, because Part X only applies to records related to the provision of a **service under the *CYFSA***.

d) Exceptions:

In general, Part X applies to personal information in the custody or control of a service provider that relates to the provision of a service under the *CYFSA*. However, there are exceptions.¹⁷ Most of Part X does not apply to:

- the use or disclosure of **adoption** information by a licensee or children’s aid society, once the adoption is finalized¹⁸
- records in the Child Abuse Register¹⁹
- records subject to court-ordered production to a children’s aid society²⁰
- court-ordered assessment reports related to potential admission of a child to secure treatment, where the court has made an order to withhold all or part of the report from the child²¹

Service providers should also be aware of **confidentiality provisions** in other parts of the *CYFSA* which prevail over Part X, including rules against publicly identifying children and families who participate in child protection hearings.²²

Finally, it is important to note that where federal laws such as the *Criminal Code* or *Youth Criminal Justice Act* prohibit disclosure of personal information, they prevail over Part X. This means that service providers cannot disclose information under Part X if the *YCJA* or another federal law prohibits the disclosure.

An adoption practitioner is licensed by the Ministry of Children, Community and Social Services to provide private adoption services under the *CYFSA*, including assessing potential adoptive parents. Does Part X apply to this practitioner?

- Yes, as a licensee under the *CYFSA*, the practitioner is a “service provider” covered by Part X.
- However, the *CYFSA* establishes rules for the confidentiality of adoption information after an adoption order is made and these rules prevail over most of Part X. This means that if a person wanted access to information about their finalized adoption, it would be other legislation, and not Part X, which would guide this process.

Collection, use and disclosure of personal information

COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

Part X protects privacy by setting rules for how service providers collect, use and disclose personal information. In this section, we look at a few overarching rules for collection, use and disclosure, before focusing on each of these three activities in turn.

These rules apply when you are collecting personal information from **any individual** for the purpose of providing a service, or using or disclosing that information. If you are providing services to a child, for example, these rules apply to how you collect, use and disclose the personal information not only of the child, but also of other individuals who may be involved in the services, such as her parents.

As a service provider, you must have an individual's **consent** to collect, use or disclose personal information **unless** the *CYFSA* authorizes you to do so without consent.²³

Consent — including who can give consent and what makes a consent valid — is explained on pages 20-23 of this guide. Permitted collection, use and disclosure *without* consent is explained on pages 12-18.

Even when you have consent, there are three **limits** on when and how much personal information you can collect, use or disclose:²⁴

1. You must ensure, to the best of your knowledge, that the collection, use or disclosure is **necessary for a lawful purpose**. For example, even if a client gave consent for you to use their personal information “in any way you please,” you may only use it where necessary for a lawful purpose.
2. You must only collect, use or disclose as much personal information as is **reasonably necessary** to provide a service. For example, even with consent it would not be appropriate to collect information about clients' political affiliations, unless you somehow need this information to provide service.
3. You must not collect, use or disclose personal information where **non-personal** information will serve the same purpose. For example, if you are applying for a grant and are asked to give evidence of successful client outcomes, you could provide de-identified or statistical information. In this case, there would be no need to disclose clients' personal information in the application.

Note that these limitations do not apply to personal information that you are **required by law** to collect, use or disclose.

COLLECTION OF PERSONAL INFORMATION

While Part X does not define what it means to “collect” personal information, collecting information is generally understood to mean gathering or obtaining it from any source and in any manner (including verbally or in written or electronic format).

For example, when you conduct an intake interview, receive a report from a concerned teacher about a child who may be in need of protection, or ask a parent to fill out a needs assessment form, you are collecting personal information.

Collection of personal information can be either **direct** or **indirect**.

A collection is **direct** when the information comes from the person to whom the information relates (or their substitute decision-maker²⁵). For example, during an intake interview between a worker and a youth, the worker is directly collecting the youth’s personal information.

A collection is **indirect** when the information comes from a third party, and not from the individual or their substitute decision-maker. For example, if a teacher phones a children’s aid society about a child who may be in need of protection, the society would indirectly collect the child’s personal information from the teacher.

Direct collection

When service providers collect information directly, they usually do so with **consent**. This consent may be implied or you can choose to seek explicit consent.²⁶

Implied consent is consent that is not given specifically, but which can be inferred based on the individual’s actions and the facts of a particular situation. For example, if a young person expresses interest in a program and volunteers their personal information to enroll, their consent for the collection of their information may be implied.

In this guide, we use the term **explicit consent** to refer to consent that is more than just implied. It must be stated explicitly, either verbally or in writing. For example, although explicit consent is not required for direct collections of personal information, you may decide it is a good practice to ask all new clients to sign a consent form before you collect their information.

Under Part X, when you directly collect personal information from any person, you must give them **notice** that you may use or disclose their information in accordance with Part X.²⁷ There are various ways you could give this notice. For example, you could advise the individual that their information may be used or disclosed in accordance with Part X and answer any questions they may have. You could also direct the person to a written statement about your information practices under Part X. For more information, see “Public statement about information practices,” page 31.

You must have an individual’s **consent** to collect, use or disclose personal information **unless** the *CYFSA* authorizes you to do so without consent.

Sometimes you may need to collect information directly from an individual who is **not capable** of giving consent.²⁸ For example, a children’s aid society conducting a protection investigation may need to interview a toddler separately from his parents. Service providers may directly collect personal information from an incapable person without consent in three situations. The collection must be **reasonably necessary** either to:

- provide a service, where it is not possible to obtain consent (for example, from a substitute decision-maker) in a timely manner
- assess, reduce or eliminate a risk of **serious harm** to any person or group
- assess, reduce or eliminate a risk of **harm** to a child (if you are a children’s aid society)

Some of the rules for collection, use and disclosure of personal information are based on whether something is “**reasonably necessary.**” What does this mean?

- Part X does not define the term “reasonably necessary.” It is context-specific.
- In general, for something to be **necessary**, it must be more than merely helpful.
- The standard here is one of reasonableness. For example, even if you don’t know for sure, is it **reasonable** to believe that the collection of information is necessary to assess, reduce or eliminate a risk of serious harm to a person or group?

Indirect Collection

Service providers may also collect information indirectly. Sometimes they do so with **consent.**²⁹ For example, a parent may consent to the service provider obtaining information from a specialist who has assessed their child. In this case, the provider would need the parent’s explicit consent for the indirect collection, and cannot rely on implied consent.

As a service provider, there may be times when you need to indirectly collect information, **without consent.** Part X permits you to do so only in the following situations:

First, you can indirectly collect information without consent if it is **permitted or required by law.**³⁰ For example, when a children’s aid society receives a call from a teacher about a child who may be in need of protection, the society can collect this information from the teacher without consent.

Receiving reports about children in need of protection is part of the society's mandate under the *CYFSA* and is permitted by law.

Second, service providers may indirectly collect personal information without consent if:

- the information is **reasonably necessary** to provide a service or to assess, reduce or eliminate a risk of **serious harm** to a person or group *and*
- it is not possible to collect personal information directly that can reasonably be relied on as **accurate and complete**, or in a **timely** manner.³¹

A community service provider is working with a youth who is struggling in school. The service provider wants to speak directly with the teenager's teacher to help understand his classroom challenges.

Speaking with the teacher to gather information would be an indirect collection of the teenager's personal information. In this case, the information would be helpful – but **not reasonably necessary** – to provide services or reduce a risk of serious harm. The provider must therefore get the youth's consent before speaking with his teacher.

Finally, children's aid societies can collect personal information from one another (or from child welfare authorities outside Ontario) if the information is reasonably necessary to assess, reduce or eliminate a **risk of harm to a child**.³² A children's aid society would not require consent in this situation.

In summary, service providers may only collect personal information with consent, or in situations where collection without consent is specifically permitted by Part X.³³ Any other collection is unauthorized and contravenes the *CYFSA*. Providers must take reasonable steps to prevent unauthorized collection of personal information.³⁴ These steps might include developing clear policies and procedures for collecting information, and regularly training staff.

USE OF PERSONAL INFORMATION

Once you have collected personal information for the purpose of providing a service, Part X governs the ways you may **use** this information.

There is no definition of "use" in Part X. Generally, using personal information means viewing or dealing with the information in a manner that does not include disclosing it. For example, when a social worker prepares for a

meeting with a family by reviewing their team’s case notes from a previous meeting with the family, they are “using” the information in the case notes.

When you use personal information, you must take reasonable steps to ensure it is as **accurate**, complete and as up-to-date as necessary for the purposes for which it is used.³⁵ You must exercise judgment about how accurate the information needs to be. For example, personal information used to deliver certain services may in some cases require a higher degree of accuracy than information used solely for administrative purposes.

Service providers can use information with the **consent** of the individual (provided that, to the best of the service provider’s knowledge, the use is necessary for a lawful purpose).³⁶ Service providers can also use personal information **without consent** if certain conditions are met.

As a service provider, you can use personal information without consent for the purpose it was collected or created. You can also use it for all the functions reasonably necessary for carrying out that purpose, including providing the information to an **officer, employee, consultant or agent** of your organization.

A group home requests that all staff arriving to their shift review the log written by their coworkers from the previous shift. The purpose of the log is to improve continuity between shifts and ensure staff are aware of any important issues.

When staff members arrive at work and review the log, they are “using” the information. This use is necessary for ensuring continuity of services which is the purpose of maintaining the log.

In some cases, an individual may instruct you **not** to use their information.³⁷ For example, a parent may consent to their information being used for a single point-in-time service, but not for any other purpose. The service provider is responsible for complying with the individual’s instruction. However, there are exceptions:³⁸

- Even if an individual has explicitly instructed otherwise, you can still use the information if reasonably necessary to assess, reduce or eliminate a risk of **serious harm** to any person or group.
- If you are a children’s aid society, you can also use the information if reasonably necessary to assess, reduce or eliminate a risk of **harm** to a child.³⁹

You may also use personal information, without consent, for the following purposes:⁴⁰

- where permitted or required by law
- for planning, managing and delivering services that you provide or fund (including resource allocation, evaluation, monitoring and preventing fraud)
- for risk and error management, or quality assurance
- to seek consent (in this case you must use only their name and contact information)
- to dispose of or de-identify the information
- for research conducted by the service provider, subject to certain requirements⁴¹
- for a proceeding (or contemplated proceeding) where the service provider is or is expected to be a party or witness and the information relates to a matter at issue
- if you believe on reasonable grounds that the use is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group

In summary, if you collect personal information to provide a service, you can **only** use it for that purpose or for one of the additional purposes set out in Part X or with the individual's consent. Any other use of the information is not authorized and contravenes the *CYFSA*.

An example of an unauthorized use of information is **snooping**. Employees reading records for reasons not related to the performance of their duties, such as curiosity or financial gain, is an unauthorized use of information not permitted under Part X.⁴²

An employee is searching through the service provider's case management system and notices an intake record under a familiar name. Although the record is not relevant to their job, the employee is curious and reads the record to confirm that it involves one of their neighbours.

This represents an **unauthorized use** of the neighbour's personal information and is not allowed under Part X.

DISCLOSURE OF PERSONAL INFORMATION

In the course of providing services, you may sometimes need to **disclose** personal information. There is no definition of “disclose” in Part X. Generally, it means releasing or making the information available to another person or organization.

Note that sharing information with an officer, employee, consultant or agent of your own service provider is considered a use, and not a disclosure when it is for the purpose for which the information was collected, or for one of the other purposes set out in the “use” section of the legislation.⁴³

When you are disclosing personal information, you need consent, unless Part X permits the disclosure without consent.

Disclosure with consent

You may disclose personal information with the explicit consent of the individual to whom the information relates as long as the disclosure is for a lawful purpose. While implied consent is acceptable for collection and use of information in some cases, consent for disclosure must be explicit. This explicit consent may be written or verbal, but verbal consent is only valid if you make a written record of it. See Consent, pages 20-23.

A service provider has directly collected an individual’s personal information to register them for a literacy program at their request.

When intake staff share this information with their colleague who leads the literacy program, this is a “**use**” of information. The service provider can rely on the implied consent of the individual to use their information to deliver the literacy program.

Later, the literacy program leader concludes that the individual needs parenting support. She wants to share their information with another organization that provides parenting classes. This is a “**disclosure**” of the information, requiring explicit consent from the individual.

Disclosure without consent

You may disclose personal information **without consent** in certain situations that are set out in Part X.⁴⁴ This includes where the disclosure is **permitted or required by law**. For example:

- All individuals are required to report to a children’s aid society if they reasonably suspect that a child may be in need of protection.⁴⁵ Part X is not a barrier to this disclosure.

While implied consent is acceptable for collection and use of information in some cases, consent for disclosure must be explicit.

- Children’s aid societies are required by the *CYFSA* to consult with a representative chosen by each of a child’s bands and First Nation, Métis or Inuit communities whenever they are proposing to provide certain services to the child, such as developing a safety plan. With one exception, consent is not required in these situations.⁴⁶

Other examples of where you may disclose personal information without consent:

- if there are reasonable grounds to believe that the disclosure is necessary to assess, reduce or eliminate a **risk of serious harm** to a person or group
- to a law enforcement agency in Canada to aid an investigation⁴⁷
- to a legal representative or litigation guardian, for certain purposes, such as to represent the individual in a proceeding
- to comply with a summons, order or procedural rule relating to the production of information in a proceeding, such as a proceeding before a court or tribunal⁴⁸
- to contact a relative, friend or potential substitute decision-maker in certain instances, such as where the individual is injured or incapacitated

Children’s aid societies can disclose personal information to one another (and to child welfare authorities outside Ontario) if it is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.⁴⁹ The consent of the individual to whom the information relates is not required.

A youth tells a drop-in program worker about her plans to harm herself, but instructs the worker not to tell anyone else. The worker consults with their supervisor. After considering the situation — including the level of risk and degree of urgency — and weighing various options for responding, they decide to disclose the information to the group home where the youth lives.

This type of disclosure is permitted under Part X, which allows for disclosure without consent if necessary to assess, reduce or eliminate a **risk of serious harm** to a person or group.

Disclosure to successors and for planning and managing services

There are special rules for disclosing personal information to a **successor**, such as another service provider that is taking over the delivery of services to your clients.⁵⁰ These rules might apply, for example, when two children’s aid societies are amalgamating or when a new Indigenous child well-being

society is designated to serve Indigenous children within an area currently served by another society. They might also apply when a community organization is ceasing operations and another service provider plans to take over some of its services.

After entering into an agreement with a potential successor to keep the personal information confidential and secure and not to retain it longer than necessary, you may disclose personal information to them, without consent, to allow them to assess and evaluate your operations.

Before you transfer records to your successor, you must make reasonable efforts to notify the individuals whose records will be transferred.⁵¹

Note that a singular transfer of a specific file, such as where a client moves and their file is transferred from one service provider to another, would likely not fall within the successor provisions. In such instances, the file could be disclosed with consent or where permitted by Part X.⁵²

Finally, service providers can disclose personal information for purposes such as planning services, managing services, and research. Service providers may disclose personal information to:

- the **Minister of Children, Community and Social Services** for certain purposes, including determining compliance with the *CYFSA*, and improving the quality of services⁵³
- **prescribed entities** for analysis or compiling statistics for planning, managing and evaluating services, if certain conditions are met⁵⁴
 - Two entities that are currently prescribed for this purpose are the Canadian Institute for Health Information and the Institute for Clinical Evaluative Sciences.
- a **First Nations, Inuit or Métis person or entity**, for analysis or compiling statistics for planning, managing and evaluating services.⁵⁵ Certain conditions apply, including that the personal information to be disclosed must relate to First Nations, Inuit or Métis individuals.

Accuracy and documentation

For any disclosure of personal information, you must take reasonable steps to ensure the information is as accurate, complete and as up-to-date as necessary for the purpose of the disclosure. Alternatively, you must inform recipients of any limitations on the accuracy, completeness, or up-to-date character of the information.⁵⁶

A family you worked with five years ago requests that you forward their records to their new service provider.

Before sending the records, you make a note on the records identifying them as out of date, and specifying when they were last updated.

Service providers should document disclosures of personal information. For example, if you believe a disclosure without consent is reasonably necessary to reduce a risk of serious harm, you should record what information you disclosed, when and to whom, along with the reason for doing so.⁵⁷

CONSENT AND CAPACITY

As a service provider, you must get **consent** before collecting, using or disclosing personal information unless the *CYFSA* authorizes you to do so without consent. In this section, we explain the requirements for getting consent, the meaning of capacity to consent and the rules for substitute decision-makers.

ELEMENTS OF CONSENT

If you require consent to collect, use or disclose personal information, the consent must:⁵⁸

- be provided **by the individual** or their substitute decision-maker (the individual cannot provide a valid consent if they are not capable)
- not be obtained through **deception or coercion**—the individual must give the consent freely and voluntarily
- **relate to the information** that you are collecting, using or disclosing *and*
- be **knowledgeable**

A consent is considered knowledgeable if it is reasonable to believe that the individual knows the **purposes** of the collection, use or disclosure and knows that they have the right to give, withhold or withdraw consent.⁵⁹ It is generally reasonable to believe that an individual knows the purposes for the collection, use or disclosure if you:

- post a notice describing the purposes, where it is likely to come to the individual's attention
- make the notice readily available to the individual
- give the individual a copy of the notice *or*
- otherwise communicate the content of the notice to the individual

This notice can be given in the form of your public statement of information practices if the statement describes the purposes of the collection, use or disclosure and explains that an individual may give, withhold or withdraw consent. For more information, see “Public statement about information practices,” page 31.

It is not always reasonable to believe that a written notice or statement of information practices will sufficiently inform someone of the purposes of

a collection, use or disclosure. For example, when low literacy skills or a language barrier prevent someone from understanding your notice, you must find another way to communicate the relevant information.

Consent may be implied in some cases

When you directly collect personal information to provide a service, an individual's consent may be **implied**.⁶⁰ Implied consent is consent that is not given explicitly, but which can be inferred based on the individual's actions and the facts of a particular situation. You may imply consent for the use of personal information if you collected it directly and to provide a service. For example, if a parent gives you their personal information directly so that you can provide a service, you may imply their consent to use the information for this purpose.

In other cases, consent must be **explicit** and not merely implied. This includes any consent required for:

- an indirect collection (see page 12)
- a collection other than to provide a service
- a use of personal information, if the information had been collected indirectly, or was collected for a purpose other than providing a service
- a disclosure (see page 16)

Consent may be written or verbal

An explicit consent can be given in writing or verbally.⁶¹ However, you can only rely on a verbal consent if you make a written record of:

- the name of the individual who gave the consent
- the information to which the consent relates *and*
- how you notified the individual about the purposes of the collection, use or disclosure

Presumption of consent's validity

You may presume that a consent is valid and has not been withdrawn, unless it is unreasonable to do so.⁶² This applies whether you directly obtain an individual's consent, or receive a document claiming to be a record of their consent.

You can also rely on a person's claim they have authority to consent on someone else's behalf — for example, as a substitute decision-maker — except where it is unreasonable to do so.⁶³ For example, it would be unreasonable to rely on a person's claim that they have authority to consent as a child's custodial parent if you are aware that they no longer have custody of the child.

You receive a letter from a social worker at another organization, requesting certain information about a youth you have served. The letter includes a consent for disclosure form with the youth's signature. Can you disclose the information?

Yes, you may disclose the information to the social worker. You may presume the consent is valid and has not been withdrawn unless it is not reasonable to do so (for example, if you are aware of a more recent document from the individual withdrawing consent).

CONDITIONAL CONSENT AND WITHDRAWAL OF CONSENT

Individuals may choose to place a **condition** or limit on their consent. For example, they may consent to have some records of personal information disclosed to a third party, but not others.

You must respect these conditions **unless** they restrict or prevent a service provider from recording personal information where required by law or by an established standard of professional or institutional practice.⁶⁴ For example, an individual providing information about a child who may be in need of protection cannot restrict a child protection worker from documenting this information.

A youth would like to receive ongoing support from an Indigenous child well-being society. However, she tells the society she doesn't want them to document or store any of her personal information, because she knows an employee of the society and is worried they could read the record.

The society worker explains that legislation and professional standards require them to document certain information in order to provide the service. They speak with the youth about other ways her concerns may be addressed. For example, this could include options for restricting that employee's access to the record.

An individual may also choose to **withdraw** their consent at any time by providing notice to the service provider.⁶⁵ If an individual notifies you verbally that they are withdrawing consent, you should record the direction, the date you received it, and how you became aware of their direction. Ensure that other employees within your organization who are providing services to the individual are aware that consent has been withdrawn.

Note that a withdrawal of consent does not apply in situations where consent is not required to collect, use, or disclose personal information. For example, if the law requires disclosure, you can disclose even if an individual has not provided consent or has withdrawn their consent.

CAPACITY TO CONSENT

Individuals must be **capable** of providing consent for the collection, use or disclosure of personal information. Capable means they are able to:

- understand the information that is relevant to deciding whether to consent *and*
- appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent⁶⁶

When determining someone's capacity to consent, you can **presume** that an individual of any age is capable, **unless** you have reasonable grounds to believe they are not. For example, while Part X does not link capacity to age or provide a minimum age for consent, it would be reasonable to conclude that an infant is incapable of providing consent.

Note that a person can be capable of consenting at one time, but incapable at another.⁶⁷ For example, a traumatic event or a new medication might temporarily affect an individual's capacity to provide consent.

Individuals can also be capable of providing consent for some parts of their personal information, but not others.⁶⁸ For example, a child may be capable of consenting to the disclosure of most of her record to another service provider, but incapable of appreciating the consequences of disclosing or not disclosing a particularly sensitive part of the record.

When assessing if an individual is capable:

- provide them with all the relevant information, including the purpose for the proposed collection, use or disclosure. When you are collecting the information directly, advise them that it may be used or disclosed in accordance with Part X
- consider asking the individual to repeat the relevant information back to you — it may help you to assess their level of understanding
- ensure that language barriers, speech impairments or cultural differences do not influence your assessment of capacity

Determining an individual is incapable

When you determine that someone is incapable, it affects their right to make some or all decisions about their personal information. You must give the individual information about the consequences of this determination if it is reasonable to do so.⁶⁹

When determining someone's capacity to consent, you can **presume** that an individual of any age is capable, **unless** you have reasonable grounds to believe they are not.

The determination of incapacity is specific to an individual's rights **under Part X** – it does not impact their right to make decisions about other matters unrelated to their personal information.

Service providers are responsible for determining capacity under Part X. However, people have a right to challenge determinations of incapacity through an application to the Consent and Capacity Board.⁷⁰ You should make them aware of this right. More information about Ontario's Consent and Capacity Board is available at www.ccboard.on.ca.

SUBSTITUTE DECISION-MAKERS

Substitute decision-makers can consent on behalf of an individual to the collection, use or disclosure of the individual's personal information. They can also act on behalf of the individual to make any request, give any instruction, or take any step that Part X allows an individual to take – including an access request.⁷¹

As described below, certain persons may act as a substitute decision-maker on behalf of:

- an **incapable** person (of any age)
- a **child** under the age of 16 – whether capable or incapable – subject to the exceptions below
- a **capable** person over the age of 16 who has authorized the substitute decision-maker in writing

Substitute decision-makers for incapable individuals

If an individual of any age is not capable of consenting, the *CYFSA* sets out who can be their substitute decision-maker for Part X.⁷² These persons, ranked in order, are the incapable individual's:

1. substitute decision-maker under the *Health Care Consent Act*, for specified purposes⁷³
2. guardian of the person or property
3. attorney for personal care or property
4. representative appointed by the Consent and Capacity Board⁷⁴
5. spouse or partner
6. parent (not including access parent), **or** a children's aid society or other person who is lawfully entitled to consent in the place of the parent⁷⁵
7. access parent (i.e., a non-custodial parent with only a right of access to the child)

8. sibling

9. other relative

A person lower on the list (for example, an access parent) may be the individual's substitute decision-maker only if no one higher on the list (for example, a custodial parent) exists and meets the criteria for consenting on behalf of the individual.⁷⁶ Substitute decision-makers must be 16 years of age or older, available, willing, and capable.⁷⁷

Substitute decision-makers for children under the age of 16

For a child **under the age of 16**, the custodial parent, children's aid society or other person authorized to give, withhold or withdraw consent on the parent's behalf can act as the child's substitute decision-maker.⁷⁸ They can consent on behalf of the child for the collection, use or disclosure of the child's information **except** where the information relates to:

- counselling which the child consented to on their own under the *CYFSA* (or the previous *Child and Family Services Act*) or
- treatment about which the child made a decision under the *Health Care Consent Act*

Subject to these exceptions, a custodial parent or children's aid society can act as substitute decision-maker for a child under the age of 16, whether the child is capable or incapable. However, if the child is capable, then a decision to give, withhold or withdraw consent by the **capable child prevails** over a conflicting decision by the custodial parent or society.⁷⁹

A decision to give, withhold or withdraw consent by the capable child prevails over a conflicting decision by the custodial parent or children's aid society.

A mother phones a service provider to register her ten-year-old for a voluntary community program. She provides the intake worker with her son's personal information, and consents on his behalf for its collection and use. If the mother is a custodial parent, the intake worker can rely on this consent, because a custodial parent may consent on behalf of a child younger than 16-years-old.

Later, the mother and son are visiting the service provider's office together. The son informs the worker that he doesn't want to be part of the program and doesn't want the provider to have any of his information. The mother disagrees. At this point, the service provider must determine whether the son is capable. If so, his decision to withdraw consent **prevails** over his mother's decision, and the provider can no longer collect or use his information.

Substitute decision-makers for capable individuals over the age of 16

Any capable individual, age 16 or older, may choose to authorize another capable individual, age 16 or older, to be their substitute decision-maker for the purposes of Part X.⁸⁰ For example, a 17-year-old working with an advocate could make this advocate her substitute decision-maker, by presenting a written, signed statement to the service provider. The advocate could then consent on her behalf for a collection, use or disclosure of her personal information.

Considerations for substitute decision-makers

When a substitute decision-maker gives, withholds or withdraws consent or provides an instruction on behalf of an individual, they must consider:

- the wishes, values and beliefs they know, or believe, the individual holds or would want reflected in decisions about their personal information⁸¹
- if the benefits of the collection, use or disclosure outweigh the risk of any negative consequences
- if the purpose of the collection, use or disclosure can be otherwise achieved
- if the collection, use or disclosure is required to satisfy a legal obligation

If you believe that a substitute decision-maker has **not complied** with their obligation to consider these factors, you may apply to Ontario's Consent and Capacity Board for a determination.⁸²

SAFEGUARDING AND MANAGING PERSONAL INFORMATION

Whether in paper, electronic or any other format, records of personal information must be safeguarded at all times.

As a service provider, you must take **reasonable steps** to protect personal information in your custody or control against theft, loss or unauthorized collection, use, disclosure, copying, modification or disposal.⁸³ There is no precise definition of a “reasonable step.” What is reasonable depends on the circumstances. It will change as you use new technologies, and as new threats or vulnerabilities emerge.

When determining how to protect personal information, you should assess the nature of the records, including:

- the sensitivity and amount of personal information in the record
- the number and nature of people with access to the information
- any threats and risks associated with the manner in which the information is kept

Based on this assessment, you should put in place measures to safeguard privacy. These measures should be regularly reviewed to ensure they continue to be reasonable. In many cases, reasonable measures will include the following safeguards:

Administrative Safeguards	Technical Safeguards to Protect Electronic Data	Physical Safeguards
<ul style="list-style-type: none"> • privacy and security policies and procedures • staff training on privacy and security • confidentiality agreements • privacy impact assessments 	<ul style="list-style-type: none"> • strong authentication and access controls • logging, auditing and monitoring • strong passwords and encryption • maintaining up-to-date software by applying the latest security patches • firewalls, hardened servers, intrusion detection and prevention, anti-virus, anti-spam, and/or anti-spyware software • protection against malicious and mobile code • threat risk assessments 	<ul style="list-style-type: none"> • controlled access to locations where personal information is stored • locked cabinets • access cards and keys • identification, screening and supervision of visitors

Safeguarding and managing personal information

Under Ontario's health privacy law, the IPC reviewed a privacy breach involving a hospital clerk who viewed hundreds of patients' records without authorization. The hospital discovered the privacy breach during a proactive audit and reported it to the IPC.

In *PHIPA* Decision 64, the IPC reviewed and summarized the hospital's privacy policies, confidentiality agreements, privacy warnings, staff training and auditing policies. The IPC concluded that although the employee's use of information was unauthorized, in the circumstances of the breach and the hospital's response to and investigation of it, the hospital had taken **reasonable steps** to protect the information.

A privacy breach occurs when personal information is stolen or lost or is collected, used or disclosed without authority.

RESPONDING TO PRIVACY BREACHES

A **privacy breach** occurs when personal information is stolen or lost or is collected, used or disclosed without authority.

In the event of a privacy breach, you should immediately notify the relevant staff in your organization and then identify the scope of the breach and take the steps necessary to contain it. We recommend that you have a privacy breach protocol in place detailing the steps to take in response to a breach, in what order, and by whom. Additional information about responding to privacy breaches is available at www.ipc.on.ca.

You should take the following steps to **contain** a privacy breach:

- retrieve and secure any personal information that has been collected, used or disclosed without authority
- ensure that no copies, including digital copies, have been made or retained by the individual who was not authorized to receive or use the information
- determine whether the breach would allow unauthorized access to any other personal information — for example on an electronic information system — and take necessary steps to prevent a further breach, such as changing passwords or temporarily shutting down your system

You must **notify individuals** at the first reasonable opportunity of any breach in which their personal information in your custody or control was lost, stolen or used or disclosed without authority.⁸⁴ This notice must:

- provide a general description of the breach in easy-to-understand language
- inform the individual of any steps you have taken to:
 - mitigate adverse effects on the individual and
 - prevent a similar breach from happening
- provide contact information for one of your employees who can provide additional information *and*
- advise the individual of their right to complain to the IPC

You must also **notify the IPC** and the Minister of Children, Community and Social Services of any privacy breach that meets certain criteria.⁸⁵ This includes any breach you determine to be significant based on the sensitivity and volume of the information breached, the number of service providers involved and the number of people affected.

These types of privacy breaches must also be reported to the IPC:

- those involving stolen personal information
- breaches in which personal information was used or disclosed by someone who knew or should have known they were doing so without authority
- breaches where it is likely personal information has or will be further used or disclosed again without authority
- a privacy breach that is part of a pattern of similar breaches
- a breach that results in an employee being terminated, suspended or disciplined, or resigning

Breach reports can be submitted to the IPC by mail, or online at www.ipc.on.ca. The IPC will review the information you provide, including a description of the breach and your response to it and may, in some cases, decide to conduct an investigation.

To minimize the risk of further breaches, you should review your existing policies, procedures, training programs and safeguards and consider whether you need to make changes. You should also keep a record of all breaches. Statistics about breaches involving a theft, loss, or unauthorized use or disclosure of personal information must be submitted to the IPC as part of your annual statistical report. For more information, see pages 45-46.

A youth worker informs their supervisor that they mistakenly sent correspondence containing a client's personal information to the wrong person.

The supervisor notifies the organization's privacy officer, and together with the worker they take the following steps:

- contain the breach by ensuring the person who received the letter in error has returned it or disposed of it securely
- notify the individual whose privacy was breached (including the required information in the notice)
- make a record of the breach
- take action to prevent similar breaches – in this case, by sending all staff a reminder of privacy policies and tips for avoiding a similar mistake

If the breach was accidental, isolated, and limited in scope, they are not required to report it to the Minister of Children, Community and Social Services or IPC.

RETENTION, TRANSFER AND DISPOSAL

You must have safeguards in place to ensure you are retaining, transferring and disposing of personal information appropriately and securely.⁸⁶

Part X requires that you take reasonable steps to ensure records of personal information in your custody or control are retained, transferred and disposed of in a secure manner. In addition, you must comply with the requirements in the *CYFSA* and its regulations, as described below.

You must have a **retention policy** that sets out the types and classifications of records of personal information you hold, how long you will retain them, and how you will dispose of or transfer them. Part X does not dictate how long you must retain records, but it does require you to consider certain factors in deciding your retention periods.⁸⁷ For example, you must consider whether another service provider has custody or control of the record or requires it to provide services. You must also consider whether the *CYFSA* or another law includes requirements for retention of the record.⁸⁸

Regardless of your retention periods, if an individual requests **access** to a record, you must retain it for as long as it takes to fulfil the request and allow for any recourse the individual has (including complaints to the IPC and any

subsequent appeals or reviews). For more information about individuals requesting access to personal information, see pages 33-39.

To securely **dispose** of records, you must protect against their theft, loss, and unauthorized use or disclosure.⁸⁹ You must also ensure that the personal information in the record cannot be reconstructed or retrieved after disposal. For this reason, recycling records of personal information or leaving intact documents for garbage pick-up are unacceptable methods of disposal.

To securely dispose of records, you should:

- Develop a secure destruction policy to complement your retention policy that determines what records should be destroyed, by whom, and when.
- Ensure that any agreement you enter into with an external service provider, such as a shredding company, to dispose of records addresses the issue of secure disposal.
- When disposing of electronic records, either physically destroy the storage media or overwrite the information stored on the media. The best method will vary depending on the type of media.⁹⁰

You must also document which records you have disposed of — in a way that does not include the personal information contained in the record.

PUBLIC STATEMENT ABOUT INFORMATION PRACTICES

You must make a written statement about your information practices available to the public. This could be included on your website or on posters or brochures in your workplace.⁹¹

Your public statement must include an easy-to-understand description of:

- your **information practices** (This means your policies for collection, use, modification, disclosure, retention and disposal of personal information, as well as the safeguards you have in place to protect the information⁹²)
- how an individual may obtain access to or request correction of a record of personal information held by your organization
- how to contact your organization
- how to make a complaint to your organization and to the IPC

It is good practice to write clear, concise statements describing the information practices of your organization, taking care to avoid technical and legal language. You can consider providing additional details through a separate document. For example, a poster in your waiting room could

You must make a written statement about your information practices available to the public.

provide a high-level statement about your information practices, which directs readers seeking more detail to a brochure or website.

If you use or disclose personal information **outside the scope** of your publicly stated information practices, and without consent, you are required to inform the individual at the first reasonable opportunity. You are also required to make a note about the use or disclosure and attach it to the individual's record.⁹³ This might apply, for example, if you use personal information for research after stating in your description of information practice that you will only use personal information for direct service delivery.

ACCESS TO RECORDS OF PERSONAL INFORMATION

Individuals have a right under Part X to access their records of personal information from service providers, subject to limited exceptions. Service providers must respond to access requests within 30 calendar days and are not permitted to charge fees. In the following section, we review individuals' access rights, exceptions, and detailed rules for how you must respond.

INDIVIDUAL'S RIGHT OF ACCESS

All individuals, regardless of age, have a right to access records of their personal information in your custody or control that relate to providing them with a service.

The general right of access in Part X applies to all records of personal information in the service provider's custody or control, regardless of where the information originated. The right of access is not limited to records in the custody or control of a service provider that were **created by** that service provider.

A youth requests access to all records in his case file at a group home. One of the records was authored by another service provider. Can the group home release this record to the youth even though it was not created by group home staff?

If the group home has **custody or control** of the record, the youth **would** have a right to access the record from the group home, subject to any applicable access exceptions. For a discussion of "custody or control," see pages 6-7.

Access exceptions

There are a few exceptions to the right of access. Individuals do **not** have a right to access their record of personal information if:

- it is subject to a legal privilege restricting its disclosure to the individual
- another act or a court order prohibits its disclosure to the individual or
- the information was collected or created primarily in anticipation of or for use in a legal proceeding which has not concluded

Access to records of personal information

Additionally, individuals do not have a right to access their record of personal information if granting access could reasonably be expected to:

- result in a risk of serious harm to any individual⁹⁴
- lead to the identification of an individual who was required by law to provide information in the record to the service provider *or*
- lead to the identification of an individual who provided the information either explicitly or implicitly in confidence — if the service provider considers it appropriate to keep their identity confidential

If one of these exceptions applies, the individual does not have a right of access to that information in the record. However, you would still be required to grant access to the remainder of the record of personal information if you can **sever** or redact the information to which the exception applies.⁹⁵

A children's aid society receives an access request from a youth looking for records related to a society investigation.

The society reviews the records and finds information about a neighbour who made the initial call to the society to report that the family's children may be in need of protection, as required by the "duty to report."

Before releasing records to the youth, the children's aid society removes or redacts any information which could lead to the identification of the neighbour, who was required by law to provide this information to the society.

In addition to these exceptions, Part X also allows service providers to refuse access if a request is **frivolous or vexatious** or made in bad faith.⁹⁶ The IPC has found, under other privacy legislation, that a request is frivolous or vexatious if it is:

- part of a **pattern of conduct** (for example, an excessive number of access requests by the same person) that amounts to an abuse of the right of access or interferes with the operations of the institution *or*
- made for a purpose other than to obtain access (such as to annoy or harass the institution or to purposefully burden the system)

There is a high threshold for deciding that a request is frivolous or vexatious. Refusing an access or correction request on these grounds is not a routine matter and should not be undertaken lightly.

Is the record dedicated primarily to the provision of service to the individual?

Service providers must ask themselves whether the record is dedicated primarily to the provision of service to the individual requesting access:

- If so, the individual has a right of access to the **entire record** — subject to the exceptions previously noted — even if it incidentally contains information about other individuals and other matters.
- If not, the individual only has a right to their own **personal information** that can reasonably be severed from the rest of the record.

A youth who was in the care of a children's aid society wants to access their old service plan. The society reviews the plan, which contains limited personal information about the youth's parents and former foster parent. Nevertheless, the society determines that the record is **dedicated primarily** to the provision of services to the youth.

After ensuring that none of the access exceptions apply to any information in the record (for example, there is no risk of serious harm to the parents, foster parents, or any individual), the society grants the youth full access to the record, without removing or redacting the personal information of the other individuals.

Determining whether a record is dedicated primarily to providing services to the individual is important because it dictates the access the individual has to a record. Deciding this issue under other legislation, the IPC has considered whether:

- the provision of a service to the individual is central to the purpose for which the record exists
- the record would exist “but for” the provision of a service to the individual
- the record is qualitatively related to other matters, for example, legal advice
- the record would typically be found in an individual's file
- the record contains information about many individuals to whom service has been provided (such as a schedule)
- the record arises indirectly and several steps removed from the actual service experience⁹⁷

It may not always be the case that every record filed under an individual's name is dedicated primarily to providing services to that person. Determining whether a record is dedicated primarily to the provision of service to the person requesting access to it should be done on a record-by-record basis.

How are access requests made?

While you can choose to respond to verbal or informal requests for access, the request must be in writing for the procedural access rules of Part X to apply.⁹⁸ There is no requirement in the *CYFSA* for individuals to use a certain form or to submit the request in a certain way. Even if you'd prefer for individuals to make access requests by filling out a designated form, you must still respond to requests that come in other formats, such as email.

In addition, there is no requirement for a person requesting access to a record to specify that they are seeking access **under Part X of the *CYFSA***. However, it may be helpful to clarify this with the requester in certain circumstances, such as where more than one privacy and access law could apply.

Access requests must include enough detail to enable you to identify and locate the record with reasonable effort. If a request does not contain enough detail, you must **offer to assist** the requester in clarifying the request.⁹⁹ You should do so as soon as you receive a request that is not sufficiently detailed. Once the request contains sufficient detail, your 30-day timeline for response begins.

A former client emails you to request a copy of her complete file. She provides her first and last name, but no other identifying details. You check your case management system and see three people with the same name. This means you are unable to identify which are the requester's records.

You **assist** the requester in clarifying her request by replying the following day to advise that you require additional information, such as her date of birth, to locate the records. One week later, you receive a reply containing the necessary information. At this point, the access request has been made, and you have 30 days in which to respond.

SERVICE PROVIDER'S RESPONSE TO ACCESS REQUESTS

When you receive an access request, you must conduct a reasonable search to locate the responsive record(s). A reasonable search means an experienced employee made a reasonable effort to locate the records.

For more information on how to conduct a reasonable search see our fact sheet on this topic, available at www.ipc.on.ca.

You must respond to an access request as soon as possible and no later than **30 calendar days** after receiving the request.¹⁰⁰ A service provider that does not respond within 30 days is deemed to have refused the request.¹⁰¹ The individual may then make a complaint to the IPC.¹⁰²

In some cases, an individual may request expedited access – for example, they may explain that they need the information within two weeks to meet an application deadline for a specific program or service. If you are satisfied with the evidence that they require access in an expedited period, you must provide access within that period, if you are reasonably able to do so.¹⁰³

Outside of expedited access requests, your response is due within 30 calendar days. The response must do one or more of the following:

- **grant access** to some or all of the requested information
- **refuse or decline access** to some or all of the information, with a written explanation
- **extend the deadline** for fully responding by up to 90 days, with a written explanation (this option is **only** available if the criteria outlined on pages 38-39 are met)

These responses are not mutually exclusive. For example, your response might grant access to some information, while refusing access to other information.

Granting access

Granting access means giving the person requesting access to a record the opportunity to examine it and, at their request, giving them a copy of it. It is not sufficient to provide a summary of the record.

If it is practical to do so, you must explain the purpose and nature of the record and any terms, codes or abbreviations used.

You may not charge a fee for providing access to a record.¹⁰⁴ This rule applies to all of the activities associated with processing an access request. For example, you cannot charge requesters for filing the request, photocopying, postage or the staff time required to process the request.

Before you provide access, you must take reasonable steps to satisfy yourself of the requester's identity.¹⁰⁵ In some cases, this might include the requester signing a confirmation form or showing official identification.

Refusing or declining access

Your written response may also indicate that you are **not** providing access to some or all of the requested records.

You must respond to an access request as soon as possible and no later than **30 calendar days** after receiving the request.

If you cannot locate a record after a reasonable search — or if you have concluded that the record doesn't exist, can't be found or that Part X doesn't apply to it — you must clearly indicate this in your response to the requester. You should also notify the requester of their right to file a complaint the IPC.

If you are refusing all or part of the request based on one of the **access exceptions**, you must give written notice to the requester that you are refusing access and that they are entitled to complain to the IPC. In most cases you are also required to inform the requester of any exceptions that apply, as follows:

You **must** inform the requester when one of the following applies:

- the information is subject to a legal privilege
- another act or a court order prohibits its disclosure to the individual
- the request is frivolous or vexatious or made in bad faith

You have **discretion** about how to inform the requester when one of the following access exceptions apply. You can choose to specifically indicate the exception that applies — or to indicate that one of them applies, without specifying which one. You can also **refuse to confirm or deny** the existence of any record subject to these exceptions¹⁰⁶:

- the information was collected or created primarily in anticipation of or for use in a legal proceeding which has not concluded, or
- granting access could reasonably be expected to:
 - result in a risk of serious harm to any individual¹⁰⁷
 - lead to the identification of an individual who was required by law to provide information in the record to the service provider or
 - lead to the identification of an individual who provided the information either explicitly or implicitly in confidence, if you consider it appropriate to keep their identity confidential

Extending the deadline

In limited circumstances, a service provider may advise the individual they are extending the deadline for responding to an access request by not more than **90 calendar days**.

An extension is allowed only if:

- responding within 30 days would unreasonably interfere with your operations because the request involves numerous pieces of information or requires a lengthy search *or*
- an assessment of the individual's right of access is not feasible within the 30 days¹⁰⁸

If you plan to extend the deadline, you must give the individual **written notice** of the length of the extension and the reason for it — no later than 30 days after receiving the original request.¹⁰⁹ You must then provide a full response, granting and/or refusing access, within the extended time limit. Otherwise, you are deemed to have refused the request.¹¹⁰ People are entitled to file a complaint with the IPC for any refusal of an access request, including a deemed refusal. They can also complain about the time extension itself. For example, if they don't agree their access request meets the criteria for an extension under Part X.¹¹¹

SUBSTITUTE DECISION-MAKERS CAN REQUEST ACCESS

A substitute decision-maker can request access to an individual's record on their behalf.¹¹² For example, the custodial parent of a child under 16-years-old who is receiving services from your organization may request access to the child's records. In these cases, the custodial parent would "stand in the shoes of" the child to make the request. This would be an access request (sections 312-314 of the *CYFSA*), rather than a disclosure. Any reference to the individual in Part X would be read as a reference to the substitute decision-maker. For example, the requirement to respond to the individual within 30 days would be read as a requirement to respond to the **substitute decision-maker** within that timeframe.

You can rely on a person's assertion that they have authority to request access as a substitute decision-maker unless it is unreasonable to do so.¹¹³ Note that it is an offence under the *CYFSA* to make an access or correction request under false pretences.¹¹⁴ For more information, see *Substitute Decision-Makers*, pages 24-26.

When a substitute decision-maker requests access on behalf of a capable child, the decision of the capable child prevails if there is a conflict.¹¹⁵ For example, a custodial parent requests access to her 14-year-old daughter's records, but the daughter indicates that she does not want her mother to have access. Provided the youth is capable, her decision prevails, and the mother's access request will be refused.

If you plan to extend the deadline, you must give the individual **written notice** of the length of the extension and the reason for it – no later than 30 days after receiving the original request.

CORRECTION OF RECORDS

Under Part X, individuals have the right to request correction to records of their personal information, with limited exceptions. As with access requests, service providers must respond to correction requests within 30 calendar days and are not permitted to charge fees. In the following section, we review individuals' correction rights, exceptions, and detailed rules for how you must respond.

INDIVIDUAL'S RIGHT TO CORRECTION

Individuals can request that a service provider correct a record of their personal information if they believe it is inaccurate or incomplete.¹¹⁶ A substitute decision-maker may also request a correction to an individual's record on their behalf.

A correction refers not only to striking out incorrect information but also to adding information to make a record complete.

There is no age requirement for making a correction request. Note that the right to request a correction from a service provider only applies if the service provider has previously given the individual **access** to the record.

Individuals must submit correction requests to the service provider **in writing**.¹¹⁷ The law does not require them to use a certain form or submit the written request in a certain manner. This means that even if you prefer for individuals to make correction requests using a designated form, you must still respond to requests that come in other formats, such as through email.

Service provider's duty to correct, and exceptions

You must grant a correction request if the individual demonstrates, to your satisfaction, that the record is inaccurate or incomplete and gives you the information you need to correct the record.

There are two exceptions. You are **not** required to correct a record if:

- it consists of a professional opinion or observation that was made in good faith *or*
- your organization did not create it, and you do not have sufficient knowledge, expertise or authority to correct it

You are also permitted to refuse a correction request if you have reasonable grounds to believe the request is frivolous or vexatious or made in bad faith. For more information about what makes a request "frivolous or vexatious," see access exceptions, page 34.

An individual complained to the IPC under Ontario's health privacy law after a health information custodian refused to correct a social worker's report.

In *PHIPA* Decision 67, the IPC found that the custodian was not obligated to make the requested corrections — because the information in dispute consisted of the social worker's professional opinions and observations, made in good faith.

SERVICE PROVIDER'S RESPONSE TO CORRECTION REQUESTS

The timelines and other rules for responding to a correction request are very similar to those for access requests. You must respond to a correction request as soon as possible, and no later than **30 calendar days** after receiving the request.¹¹⁸ A service provider that does not respond within 30 days is deemed to have refused the request.¹¹⁹ The individual may then make a complaint to the IPC.

Your response within 30 days must be in writing and must explain that you are doing one or more of the following:

- **granting** the correction request in whole or in part
- **refusing** the correction request, in whole or in part, with a written explanation
- **extending** the deadline for fully responding by up to 90 days, with a written explanation

Granting the correction

When you grant a correction request, you must provide written notice of how you corrected it. Correcting means:

- **recording** the correct information in the record or, if that's not possible, by ensuring a system is in place to inform those who access the record that it is incorrect or incomplete, and to direct them to the correct information *and*
- **striking out** the incorrect information without obliterating it or, if that's not possible, by labelling it incorrect, severing it, storing it separately and maintaining a link to trace the incorrect information

At the request of the individual, you must give written notice of the correction to the people to whom you have disclosed the information, to the extent it is reasonably possible. An exception to this requirement is where providing notice cannot reasonably be expected to affect the ongoing provision of services.

You may not charge a fee for granting a correction. This applies to all activities associated with processing a correction request.

Refusing the correction request

Your written response may indicate that you are **not** making some or all of the requested corrections. In this case, you must explain why you are refusing the request and must inform the individual of their rights, including the right to file a complaint with the IPC.

Additionally, you must inform the individual of their right to prepare a concise **statement of disagreement** regarding the correction that you are refusing to make, and their right to require you to:

- attach this statement to the record, and disclose it whenever you disclose the related information
- make reasonable efforts to provide the statement to any person to whom you previously disclosed the information — unless the statement cannot be expected to affect the ongoing provision of services

Extending the deadline

In limited circumstances, you may extend the deadline for responding to a correction request by no more than **90 calendar days**. You may only extend the deadline if:

- responding within 30 days would unreasonably interfere with your operations *or*
- it is not reasonably practical to respond within the 30 days, given the time required to complete the necessary consultations¹²⁰

If you plan to extend the deadline, you must give the individual **written notice** of the length of the extension and the reason for it within 30 days of receiving the request. You must then provide a full response, granting and/or refusing the correction, within the extended time limit. Otherwise, you are deemed to have refused the request. For any refusal of a correction request, including a deemed refusal, the individual may file a complaint with the IPC. They may also complain about the time extension itself if they don't agree their request meets the criteria where an extension is permitted by Part X.

OFFENCES AND IMMUNITY

In this section, you'll find information about how the rules for privacy and access to personal information are enforced. This includes an overview of offences under Part X, protections against liability and the role of the IPC.

OFFENCES

Under Part X of the *CYFSA*, it is an offence to:¹²¹

- wilfully collect, use or disclose personal information in contravention of Part X or the regulations
- wilfully dispose of a record in a manner that is not secure or with the intent to evade an access request
- wilfully fail to notify an individual, at the first reasonable opportunity, of the theft, loss or unauthorized use or disclosure of their personal information
- wilfully obstruct the IPC or make a false statement to the IPC
- wilfully fail to comply with an order of the IPC
- retaliate against a whistleblower, such as by demoting or firing an employee because they reported a privacy breach to the IPC
- request access or correction of a record under false pretenses
- knowingly make certain false statements about the authority to access a record or to consent on behalf of someone for a collection, use or disclosure of personal information

A prosecution for offences under Part X of the *CYFSA* cannot be initiated without the consent of the Attorney General of Ontario. There is no time limit for commencing these prosecutions. If a person is found guilty, they may be fined up to \$5000. If a corporation commits one of these offences, every officer, member, employee or agent found to have authorized the offence, or who knowingly refrained from using their authority to prevent it, can be found guilty and held personally liable for the fine.

However, service providers are not subject to actions or proceedings for damages resulting from an act or omission related to the execution of their duties under Part X that is made reasonably and in good faith.¹²²

No person can be fired, suspended, demoted, disciplined or otherwise disadvantaged for:

- refusing to contravene Part X
- preventing any person from contravening Part X
- reporting a contravention or future contravention to the IPC¹²³

Offences and immunity

The role of the Information and Privacy Commissioner

THE ROLE OF THE INFORMATION AND PRIVACY COMMISSIONER

The Office of the Information and Privacy Commissioner provides oversight of Ontario's access and privacy laws, including Part X. The commissioner is appointed by and reports to the Legislative Assembly of Ontario and is independent of the government of the day.

Any person may file a complaint with the IPC about another person who has or is about to contravene Part X. This could include complaints about:

- refusal of an access or correction request, or failure to respond
- privacy breaches
- failure to comply with any Part X requirement

In response to complaints, or on its own initiative, the IPC may choose to conduct a review of any matter involving a possible contravention of Part X. Where possible, the IPC promotes informal and early resolution of complaints, and often does this through mediation.

IPC COMPLAINT PROCESS

Any person who believes that another person has or is about to contravene Part X can file a complaint, in writing, with the IPC. Complaints about access and correction decisions must be filed within **six months** after the service provider refused the request (or failed to respond). All other complaints must be filed within **one year** after the subject of the complaint first came or should have come to the complainant's attention.¹²⁴

The following description of the IPC complaint process is subject to change. Please ensure that you consult www.ipc.on.ca for more information about these processes:

Intake

The IPC registrar reviews the complaint to determine how it should be processed. The registrar or an intake analyst may attempt to resolve the complaint informally. They may also dismiss the complaint if it is clearly outside the IPC's jurisdiction, they are satisfied with your response to the complaint, or for other reasons.

Mediation

Complaints that are not resolved or dismissed at intake may be sent to mediation or further investigation. During mediation, the IPC will investigate the circumstances of the complaint and try to help all parties either reach a full settlement or simplify the complaint.

An IPC mediator acts as a neutral third party. Their main role is to offer guidance to help the parties understand one another and to come to a suitable resolution. Mediation is usually conducted by telephone, with the IPC mediator speaking separately with each party.

Mediation can succeed in settling some or all of the issues, clarifying the issues, and helping the parties to better understand the law. The majority of complaints received by the IPC are resolved at the intake or mediation stage.

In some cases, such as a privacy breach, the IPC will appoint an investigator to gather and clarify the facts relating to a contravention or potential contravention of the *CYFSA*.

Adjudication

If a complaint is not resolved at an early stage, the IPC may decide to conduct a formal review. In this situation, an IPC adjudicator will prepare a notice and send it to the parties in turn, including the service provider and complainant. The notice sets out the issues to be addressed and summarizes applicable laws and IPC decisions.

The IPC typically conducts reviews in writing, by asking the parties to submit written representations on the facts and issues described in the notice. The notice includes a deadline for all written representations (arguments and information to support the parties' positions).

The representations will generally be shared with the other parties unless there is an overriding confidentiality concern. Once the adjudicator has considered all representations and, where applicable, reviewed the records, they will then decide how each issue should be resolved. The IPC has the power to make **orders** and issue recommendations for service providers, their agents or employees. For example, the adjudicator may order that a service provider grant the individual access to the requested record. The IPC may also decide not to issue an order. The IPC's decisions are publicly available on our website.

A person affected by an IPC order or by conduct giving rise to a conviction for an offence under Part X can sue for damages for actual harm caused by the contravention or offence.¹²⁵

REPORTING ANNUAL STATISTICS TO THE IPC

All service providers must keep track of certain statistics regarding Part X and report them annually to the IPC.¹²⁶ Reports for each calendar year will be due in March of the following year. The IPC provides an electronic form and guidance for submitting the report on our website.

The annual statistical report will ask you to provide the number of:

- **access requests** you received in the previous year – and the number of times you:

The majority of complaints received by the IPC are resolved at the intake or mediation stage.

- responded within 30 calendar days
- extended the deadline to respond by up to 90 days
- refused access to all or part of a record
- refused the request based on each of the access exceptions (under s. 312(1))
- **correction requests** you received – and the number of times you:
 - responded within 30 calendar days
 - extended the deadline to respond by up to 90 days
 - refused the request based on one of the exceptions (s. 315(6), (9) or (10)),
 - received a statement of disagreement
- **privacy breaches** of the personal information in your custody and control, of the following types:
 - theft
 - loss
 - unauthorized use
 - unauthorized disclosure
- times personal information was used or disclosed **outside the scope of your information practices**

Visit our website at www.ipc.on.ca for the latest guidance, including frequently asked questions about Part X, and recent orders or decisions made by the IPC

IPC'S BROADER ROLE

In addition to resolving complaints and conducting reviews, the IPC also helps to educate service providers and all Ontarians about access and privacy laws and issues. Under the *CYFSA*, the IPC may also:

- offer comments on a service provider's information practices, at their request
- receive representations from the public about the operation of Part X
- engage in research about Part X
- authorize indirect collections of personal information
- provide information and public education about Part X and the IPC's role

Visit our website at www.ipc.on.ca for the latest guidance, including frequently asked questions about Part X, and recent orders or decisions made by the IPC. We're here to help. Email us at info@ipc.on.ca or call us at 416-326-3333 (in the Toronto area) or toll-free at 1-800-387-0073.

DEFINITIONS

Definitions

“**capable**” means able to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure of personal information and able to appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent. “Incapable” means not capable. “Capacity” and “incapacity” have corresponding meanings. (*CYFSA*, s. 281)

“**commissioner**” is used in the *CYFSA* to refer to the Information and Privacy Commissioner of Ontario, and “assistant commissioner” has a corresponding meaning (*CYFSA*, s. 281). In this guide, the acronym “IPC” refers to the Office of the Information and Privacy Commissioner of Ontario.

“**information practices**” means policies respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information. (*CYFSA*, s. 281)

“**law enforcement**” has the same meaning in s. 292 of the *CYFSA* as it does in s. 2(1) of the *Freedom of Information and Protection of Privacy Act*:

- policing,
- investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- the conduct of proceedings referred to in the clause above.

“**minister**” means the Minister of Children, Community and Social Services, who was designated in 2018 to administer the *CYFSA*. (*CYFSA*, s. 2(1))

“**parent**” means:

- the person who has lawful custody of the child, or
- if more than one person has lawful custody of the child, all persons who have lawful custody, excluding any person who is unavailable or unable to act, as the context requires. (*CYFSA*, s. 2(2))

Note that this definition applies to Part X but not to some other parts of the *CYFSA*. For example, Part V (Child Protection) includes a broader definition of parent.

“personal information” has the same meaning as in s. 2(1) of *FIPPA* (*CYFSA*, s. 2(1)), which provides that “personal information” means recorded information about an identifiable individual, including:

- information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- any identifying number, symbol or other particular assigned to the individual,
- the address, telephone number, fingerprints or blood type of the individual,
- the personal opinions or views of the individual except where they relate to another individual,
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- the views or opinions of another individual about the individual, and
- the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Note that personal information does not include information about an individual who has been dead for more than thirty years. (*FIPPA*, s. 2(2))

Personal information also does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. This applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling. (*FIPPA*, s. 2(3-4))

Specific to the *collection* of personal information, the definition of personal information includes information that is not recorded. (*FIPPA*, s. 38(1))

“potential successor” and **“successor”** mean a potential successor or a successor that is a service provider, or that will be a service provider if it becomes a successor. (*CYFSA*, s. 310(3))

“proceeding” includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator. (CYFSA, s. 281)

“service” means a service or program that is provided or funded under the CYFSA or provided under the authority of a licence (CYFSA, s. 281). It includes,

- a service for a child with a developmental or physical disability or the child’s family,
- a mental health service for a child or the child’s family,
- a service related to residential care for a child,
- a service for a child who is or may be in need of protection or the child’s family,
- a service related to adoption for a child, the child’s family or others,
- counselling for a child or the child’s family,
- a service for a child or the child’s family that is in the nature of support or prevention and that is provided in the community,
- a service or program for or on behalf of a young person for the purposes of the *Youth Criminal Justice Act* or the *Provincial Offences Act*, or
- a prescribed service [currently, none are prescribed]. (CYFSA, s. 2(1))

“service provider” means,

- the minister,
- a licensee,
- a person or entity that provides a service funded under this act (e.g., children’s aid societies), or
- a prescribed person or entity [currently, none are prescribed],
- but does *not* include a foster parent. (CYFSA, s. 2(1))

For the purposes of Part X, it also includes a lead agency designated under section 30 of the CYFSA. (CYFSA, s. 281)

“substitute decision-maker” means a person who is authorized under Part X to give, withhold or withdraw consent on behalf of an individual to the collection, use or disclosure of personal information about the individual. (CYFSA, s. 281)

ENDNOTES

- 1 *CYFSA*, s. 1
- 2 *CYFSA*, s. 3. This guide does not include a comprehensive list of a child's and young person's rights under the *CYFSA*. Please see Part II of the *CYFSA* for more information.
- 3 *CYFSA* s. 2(1) and 281
- 4 Lead agencies are designated by the minister under section 30 of the *CYFSA*. O. Reg. 155/18, ss. 24-25, establishes child and youth mental health as a category of lead agencies and sets out their functions.
- 5 "Minister" is defined by the *CYFSA* as "the Minister of Children and Youth Services or such other member of the Executive Council as may be designated under the *Executive Council Act* to administer this Act." In June 2018, an order in council under the *Executive Council Act* transferred the powers and duties of the Minister of MCYS to the new Minister of Children, Community and Social Services.
- 6 Currently, no additional service providers are prescribed.
- 7 *CYFSA*, s. 285(3)
- 8 *FIPPA* institutions are identified in section 2(1) of that act, or listed in Regulation 460. *MFIPPA* institutions are identified in section 2(1) of that act, or listed in O. Reg. 372/91.
- 9 *CYFSA*, s. 285(2)
- 10 The *CYFSA* defines "personal information" as having the same meaning as in *FIPPA* (*CYFSA*, s. 2(1)). Personal information is defined in s. 2(1) of *FIPPA*, as well as in s. 38(1) (specific to the collection of personal information).
- 11 *CYFSA*, s. 2(1), *FIPPA*, s. 38(1)
- 12 *CYFSA*, s. 285(6). Note that the rights and obligations of Part X do not apply retroactively. For example, an individual would not have a right under Part X to complain to the IPC about an access request made before Part X came into force.
- 13 See IPC Order P-239.
- 14 For example, see IPC order MO-3646-I for a discussion of "custody or control" under *MFIPPA*.
- 15 *CYFSA*, s. 281
- 16 *CYFSA*, s. 2(1)
- 17 *CYFSA*, s. 285 (4-5)
- 18 The collection, use, or disclosure of adoption information given to a designated custodian or other persons also falls outside of most of Part X. See *CYFSA*, ss. 224, 225, 227 and 285(4). The rules for disclosure of information about adoptions are found in O. Reg. 158/18 under the *CYFSA*, and the *Vital Statistics Act*.
- 19 See *CYFSA*, s. 133. Note that the Child Abuse Register is to be repealed on a date to be proclaimed.
- 20 See *CYFSA*, ss. 130(6) and (8)
- 21 See *CYFSA*, ss. 163(6) and 285(5)
- 22 *CYFSA*, s. 282; See *CYFSA* s. 87 (8-10)
- 23 *CYFSA*, s. 286
- 24 *CYFSA*, ss. 286-287
- 25 A "substitute decision-maker" means a person who is authorized under Part X to consent, withhold or withdraw consent on behalf of an individual to the collection, use or disclosure of personal information about the individual (*CYFSA*, s. 281).
- 26 *CYFSA*, s. 295(2)
- 27 *CYFSA*, s. 290

- 28 *CYFSA*, s. 289
- 29 *CYFSA*, s. 288(1)
- 30 *CYFSA*, s. 288(2)(e)
- 31 *CYFSA*, s. 288(2)(a)
- 32 *CYFSA*, s. 288(2)(b). Societies are also permitted to collect information from one another if necessary for prescribed purposes related to their functions (s. 288(2)(c)). However, no purposes are currently prescribed.
- 33 Service providers may also indirectly collect personal information if the indirect collection has been specifically authorized by the IPC. *CYFSA*, s. 288(2)(d).
- 34 *CYFSA*, s. 307
- 35 *CYFSA*, s. 306(1)
- 36 *CYFSA*, s. 286
- 37 An express instruction can be made where the information was collected with the consent of the individual; or the information was collected under clause 288(2)(a) of the *CYFSA*.
- 38 *CYFSA*, s. 291(2)
- 39 *CYFSA*, s. 291(2)(a)(i). Societies can also use the information for a “prescribed purpose” related to their functions. However, no purposes are currently prescribed.
- 40 See *CYFSA*, s. 291.
- 41 Part X regulation contains many requirements related to using information for research, including the need to have a research plan approved by a research ethics board. This guide does not provide detail on research-related requirements. See section 5 of Regulation 191/18 under the *CYFSA* for further information.
- 42 Guidance about how to detect and deter snooping is available on the IPC’s [website](#).
- 43 *CYFSA*, s. 291(1)
- 44 See *CYFSA*, s. 292.
- 45 *CYFSA*, s. 125
- 46 *CYFSA*, s. 73; O. Reg. 156/18, s. 29. This requirement also applies to persons or entities providing a prescribed service or power under the *CYFSA*. See also *CYFSA*, s. 72. Note that a child’s consent **is** required before consulting with the child’s bands or First Nation, Métis or Inuit communities if the consultation concerns a plan to transition the child from a society’s care to living independently (O. Reg. 156/18, s. 29(4)).
- 47 “Law enforcement” has the same meaning as in s. 2(1) of *FIPPA* (*CYFSA*, s. 292(4)). For more information about disclosure to law enforcement, please see the IPC’s fact sheet “Disclosure of Personal Information to Law Enforcement” available at [www.ipc.on.ca](#).
- 48 *CYFSA*, s. 292(1)(f). Note that this is subject to section 294 of the *CYFSA*, which deals with the disclosure of records of mental disorders, including where a physician has issued a written statement that the disclosure is likely to be detrimental to treatment or result in bodily harm.
- 49 *CYFSA*, s. 292(2). Societies are also permitted to disclose information to one another if necessary for prescribed purposes related to their functions (s. 292(3)). However, no purposes are currently prescribed.
- 50 *CYFSA*, s. 310. See also O. Reg. 191/18, s. 10(4).
- 51 If providing notice before transferring records to a successor is not reasonably possible, you must do so soon as possible after transferring the records.
- 52 *CYFSA*, s. 292
- 53 *CYFSA*, ss. 283 and 284
- 54 *CYFSA*, s. 293(1); O. Reg. 191/18, ss. 1, 3, 4, 6
- 55 *CYFSA*, s. 293(2); O. Reg. 191/18, ss. 2, 3, 4, 6

- 56 CYFSA, s. 306(2)
- 57 Note that s. 306(3) of the *CYFSA* requires service provider to record disclosures made under the prescribed provisions in the prescribed manner. However, at this time, no such provisions/manners have been prescribed. Also note that recording disclosures is a best practice, given your obligations in the event of a request for a correction, under s. 315(11)(c) of the *CYFSA*.
- 58 CYFSA, s. 295(1)
- 59 CYFSA, s. 295(4)
- 60 CYFSA, s. 295(2)
- 61 CYFSA, s. 295(3)
- 62 CYFSA, s. 298. Note that you can rely on a consent given before Part X comes into force, as long as it meets the requirements of Part X (s. 295(6)). However, you may wish to obtain new consents given the new requirements of the *CYFSA*, including that a verbal consent be recorded and the individual know the purposes for which the information can be used/disclosed.
- 63 CYFSA, s. 331(4)
- 64 CYFSA, s. 297
- 65 CYFSA, s. 296
- 66 CYFSA, s. 281
- 67 CYFSA, s. 300(2)
- 68 CYFSA, s. 300(1)
- 69 CYFSA, s. 304(2). This section also requires you to provide the incapable person with prescribed information, while section 304(1) requires you to make determinations of incapacity in accordance with any prescribed requirements and restrictions. Nothing is currently prescribed under either of these subsections.
- 70 CYFSA, s. 304(3), O. Reg 191/18, s. 7
- 71 CYFSA, s. 303(1)
- 72 CYFSA, s. 301(4); *PHIPA* s. 26
- 73 Specifically, this refers to a substitute decision-maker within the meaning of sections 9, 39 and 56 of the *Health Care Consent Act*, if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a treatment under Part II, admission to a care facility under Part III, or a personal assistance service under Part IV of the *Health Care Consent Act*, respectively.
- 74 CYFSA, s. 305(1-2). Incapable individuals 16 years of age and older can apply to the Board to appoint a representative to consent on their behalf or a prospective representative can themselves make an application to the Board. Such applications cannot be made if the individual already has a guardian of the person or of property, or an attorney for personal care or for property.
- 75 If a society is entitled to consent in the place of the parent, this paragraph does not include the parent. If the incapable person has a child who is over 16, the child is also included in this paragraph.
- 76 CYFSA, s. 301(4); *PHIPA*, s. 26(4). Note that the Public Guardian and Trustee may make the decision to consent if no other person meets the requirements.
- 77 The exception to this age restriction is where an individual's substitute decision-maker is their parent, in which case the parent could be under 16 and still be a substitute decision-maker. Substitute decision-makers must not be prohibited by court order or separation agreement from having access to the individual or from giving or refusing consent on their behalf (CYFSA, s. 301(4); *PHIPA*, s. 26(2)).
- 78 CYFSA, s. 301(2-3)
- 79 CYFSA, s. 301(3)
- 80 CYFSA, s. 301(1)

- 81 *CYFSA*, s. 302(1). If the individual is capable, this refers to the wishes, values and beliefs the substitute decision-maker knows the individual holds and believes would want reflected in decisions about their personal information. If the individual is incapable or deceased, this refers to the wishes, values and beliefs they know the individual held when capable or alive, and believe would want reflected in decisions about that individual's personal information.
- 82 *CYFSA*, s. 302(2)
- 83 *CYFSA*, ss. 307 and 308(1)
- 84 *CYFSA*, s. 308(2); O. Reg. 191/18, s. 8
- 85 While this guide provides a simplified summary, you should review the full list of criteria set out in section 9 of O. Reg. 191/18, to determine whether a specific privacy breach should be reported to the IPC and minister.
- 86 *CYFSA*, s. 309(1); O. Reg. 191/18, s. 10
- 87 These requirements are found in O. Reg. 191/18, s. 10. In developing retention policies, service providers should familiarize themselves with the requirements of subsections 10 (5-7) of this regulation.
- 88 For example, O. Reg. 156/18 under the *CYFSA*, s. 93(2), includes retention requirements for certain records maintained by licensees who operate children's residences.
- 89 O. Reg. 191/18, s. 10(3)
- 90 The IPC offers guidance on the topic of secure disposal of records, including electronic records, available at www.ipc.on.ca.
- 91 *CYFSA*, s. 311
- 92 *CYFSA*, s. 281
- 93 *CYFSA*, s. 311(2). Note that you would be required to notify the individual at the first reasonable opportunity, unless they do not have a right of access to the record under s. 312.
- 94 In determining whether granting access could result in a risk of serious harm, service providers may consult with a member of the College of Physicians and Surgeons of Ontario, the College of Psychologists of Ontario or the Ontario College of Social Workers and Social Service Workers (*CYFSA*, s. 312(4)).
- 95 *CYFSA*, s. 312(2). The individual has a right to access personal information that can "reasonably" be severed from the part of the record to which they do not have a right of access. The IPC has considered this question under other privacy legislation and found that personal information that would comprise only disconnected or meaningless snippets is not considered reasonably severable (see, for instance, IPC Orders PO-1663 and *PHIPA Decision 73*).
- 96 *CYFSA*, s. 314(6). Guidance about what constitutes a "frivolous or vexatious" request is available at www.ipc.on.ca.
- 97 The IPC has not yet had occasion to consider this question under Part X of the *CYFSA*. Several IPC decisions under *PHIPA*, including *PHIPA Decision 17*, consider a similar provision in that act.
- 98 *CYFSA*, ss. 312(5) and 313. An individual making a verbal or informal request may only be granted access to a record of personal information to which they have a right of access (i.e., where there is nothing in the law that prohibits the release of the information).
- 99 Please see the IPC's website for guidance about offering assistance in clarifying access requests.
- 100 *CYFSA*, s. 314(3)
- 101 *CYFSA*, s. 314(7)
- 102 *CYFSA*, s. 314(8)
- 103 *CYFSA*, s. 314(5)

- 104 *CYFSA*, s. 314(10) states that fees may not be charged for providing access except in prescribed circumstances. Nothing has been prescribed under this section, meaning there are no circumstances where fees may be charged.
- 105 *CYFSA*, s. 314(9)
- 106 For example, this response may be appropriate where confirming that a record exists, even without granting access to it, could reveal confidential information.
- 107 In determining whether granting access could result in a risk of serious harm, service providers may consult with a member of the College of Physicians and Surgeons of Ontario, the College of Psychologists of Ontario or the Ontario College of Social Workers and Social Service Workers (*CYFSA*, s. 312(4)).
- 108 *CYFSA*, s. 314(3)
- 109 *CYFSA*, s. 314(4)
- 110 *CYFSA*, s. 314(7)
- 111 *CYFSA*, s. 314(3)
- 112 *CYFSA*, s. 303. Note that this section permits a substitute decision-maker to make requests on behalf of an individual, and that this is not limited to access requests (for example, it would apply to correction requests as well).
- 113 *CYFSA*, s. 331(4)
- 114 *CYFSA*, s. 332(1)(b)
- 115 *CYFSA*, s. 301(3)
- 116 *CYFSA*, s. 315(2)
- 117 While you can choose to respond to verbal or informal correction requests, the request must be in writing in order for the procedural rules of Part X to apply (*CYFSA*, s. 315(3)).
- 118 *CYFSA*, s. 315(4)
- 119 *CYFSA*, s. 315(7)
- 120 *CYFSA*, s. 315(4)
- 121 *CYFSA*, s. 332
- 122 *CYFSA*, s. 331
- 123 *CYFSA*, s. 330
- 124 *CYFSA*, s. 316. Note that the IPC has the power to permit a complaint to be submitted after a longer period of time, if the IPC is satisfied that this will not result in prejudice to any person. More information about IPC processes under Part X is available on our website.
- 125 *CYFSA*, s. 325. If the Superior Court of Justice determines the harm was caused by a contravention that the defendants engaged in willfully or recklessly, the Court may include in its award of damages an award for mental anguish.
- 126 O. Reg. 191/18, s. 11

Part X of the *Child,
Youth and Family
Services Act*: A Guide
to Access and Privacy
for Service Providers



Information and Privacy
Commissioner of Ontario

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TAB 5



PRINCIPLE IV: THE SOCIAL WORK AND SOCIAL SERVICE WORK RECORD

The creation and maintenance of records by social workers and social service workers is an essential component of professional practice. The process of preparation and organization of material for the record provides a means to understanding the client and planning the social work and social service work intervention. The purpose of the social work and social service work record is to document services in a recognizable form in order to ensure the continuity and quality of service, to establish accountability for and evidence of the services rendered, to enable the evaluation of service quality, and to provide information to be used for research and education. College members ensure that records are current, accurate, contain relevant information about clients and are managed in a manner that protects client privacy and in accordance with any applicable privacy and other legislation.^{1,2}

Interpretation

4.1 Record Content and Format

- 4.1.1 Recorded information conforms with accepted service or intervention standards and protocols within the profession of social work and social service work, relevant to the services provided, and is in a format that facilitates the monitoring and evaluation of the effects of the service/intervention.³
- 4.1.2 College members do not make a statement in the record, or in reports based on the record, or issue or sign a certificate, report or other document in the course of practising either profession that the member knows or ought reasonably to know is false, misleading, inaccurate or otherwise improper.
- 4.1.3 College members keep systematic, dated, and legible records for each client or client system served.
- 4.1.4 The record reflects the service provided and the identity of the service provider. Members use the designation “RSW”, or one of the titles “Social Worker” or “Registered Social Worker”, in the case of a social worker, or the designation “RSSW”, or one of the titles “Social Service Worker” or “Registered Social Service Worker”, in the case of a social service worker, and comply with any requirements set out in any applicable legislation, in documentation used in connection with their practice of social work or social service work, as the case may be.^{3,1}



- 4.1.5 College members document their own actions. College members do not sign records or reports authored by any other person, except in accordance with Interpretation 4.1.5.1 or 4.1.5.2.
- 4.1.5.1 A College member may sign a record or report authored by another person where the College member co-signs that record or report, together with the author,
- (i) in the College member's capacity as a supervisor of the author of the record or report; or
 - (ii) in the College member's capacity as an authorized signing officer of a professional corporation, where the author of the record or report is an employee, shareholder, officer or director of that professional corporation; or
 - (iii) in College member's capacity as a member of a multi-disciplinary team that participated in providing the observations and recommendations contained in the record or report, where the author of the record or report is also a member of that multi-disciplinary team.
- 4.1.5.2 A College member may sign a record or report authored by another person where the author is unable to sign the record or report due to illness, disability, absence or other good cause, provided that:
- (i) the content of the record or report is within the member's scope of practice;
 - (ii) the author expressly authorizes the member to sign the record or report on the author's behalf or, if such authorization is not reasonably available, the member takes steps to ensure the currency and accuracy of the information and recommendations contained in the record or report;⁴ and
 - (iii) the member clearly indicates the capacity in which he or she is signing the record or report.⁵
- 4.1.6 Information is recorded when the event occurs or as soon as possible thereafter.
- 4.1.7 College members may use documentation by exception system provided that the system permits the total record to capture the minimum content as set out in Footnote 3.



4.2 Record Maintenance

- 4.2.1 College members comply with the requirements regarding record retention, storage, preservation and security set out in any applicable privacy and other legislation. College members employed by an organization acquire and maintain a thorough understanding of the organization's policies with regard to the retention, storage, preservation and security of records. Self-employed College members and College members who are responsible for complying with privacy legislation establish clear policies relating to record retention, storage, preservation and security.⁶
- 4.2.2 College members take necessary steps to protect the confidentiality and security of paper records, faxes, electronic records and other communications.⁷
- 4.2.3 College members ensure that each client record is stored and preserved in a secure location for at least seven years from the date of the last entry or, if the client was less than eighteen years of age at the date of the last entry, at least seven years from the day the client became or would have become eighteen. Different periods of storage time may be required by law. Longer periods of storage time may be defined by the policies of a member's employing organization or by the policies of a self-employed member or a member who is responsible for complying with privacy legislation.⁸ Such policies should be developed with a view to the potential future need for the record.⁹
- 4.2.4 Self-employed College members, and College members who are responsible for complying with privacy legislation¹⁰, who cease practice may (i) maintain their client records in accordance with Interpretation 4.2.3, or (ii) make arrangements to transfer the records to another College member or other regulated professional who first agrees in writing to comply with Principle IV and the Interpretations set out in Principle IV and make reasonable efforts to give notice to their clients of the future location of their records, unless they are required, under any applicable privacy or other legislation, to obtain their clients' consent to such transfer, in which case they obtain their clients' consent. College members comply with the requirements regarding transfer of records set out in any applicable privacy and other legislation. The College member to whom such records have been transferred complies with the principles regarding retention, storage, preservation and security with respect to the transferred records.
- 4.2.5 Client records may be destroyed following the time frames outlined in Interpretation 4.2.3. College members dispose of record contents in such a way that ensures that the confidentiality of the information is not compromised.



4.3 Access and Correction of a Record

- 4.3.1 College members comply with the requirements regarding access to and correction of client information including personal information in a record as set out in applicable privacy and other legislation.¹¹ College members employed by an organization acquire and maintain an understanding of the organization's policies regarding access to and correction of information in a record. Such policies pertain to access requests by the clients themselves. Self-employed College members and College members who are responsible for complying with privacy legislation¹² establish clear policies regarding access to and correction of information in a record.
- 4.3.2 College members inform clients of their policies regarding access to and correction of information in a record.
- 4.3.3 A College member provides the client or his or her authorized representative with access to the client's information contained in the record in accordance with any applicable privacy and other legislation, unless prohibited by law or the member is otherwise permitted to refuse access.¹³ In the absence of any applicable legislation, a College member provides the client or his or her authorized representative with reasonable, supervised access to the client's record or such part or parts of the record as is reasonable in the circumstances. The client has the right to receive appropriate explanations by the College member of the information about the client in the record.
- 4.3.4 Where a member is prohibited by law from providing access to information in a record or is otherwise permitted to refuse access to information in a record, the College member complies with the requirements regarding a refusal to provide access set out in applicable privacy and other legislation. In the absence of any applicable legislation, the College member informs the client of the reason for refusal of access and of the recourse available to the client if he or she disagrees. When the record includes information that pertains to more than one client, and providing access to a record could therefore mean disclosing information about another person, a College member provides access to information that pertains only to the individual who has requested access unless the other person(s) has consented to the disclosure of information about the person.
- 4.3.5 College members preserve the integrity of client records. If a client disagrees with the accuracy or completeness of information in a record and wishes the record amended, the member shall comply with the requirements of any applicable privacy and other legislation with respect to the correction of the record. In the absence of any applicable legislation, if a client disagrees with the accuracy or completeness of a record and wishes the record amended, the member may incorporate into the record a signed statement by the client specifying the disagreement and the client's correction. The member shall not obliterate any incorrect information in the record.



4.4 Disclosure of Information from a Record

- 4.4.1 College members inform clients early in their relationship of any limits of client confidentiality including with respect to the client record. When clients or their authorized representatives consent in writing, College members disclose information from the record to third parties within a reasonable time. The consent must specify, (i) the information that is to be disclosed, for example a partial record, the entire record, or a summary of the member's contact with the client, (ii) the party or parties to whom the information is to be disclosed and (iii) the term of validity of the consent. If, in the member's professional judgement, disclosure of information from the record to a third party could result in harm to the client, College members make a reasonable effort to inform the client of the possible consequences and seek to clarify the client's consent to such disclosure. Members may disclose information from the record to third parties without the client's consent only if disclosure is required or allowed by law. (See also Interpretations 5.3.5 and 5.3.6)
- 4.4.2 When College members receive a request from a third party to disclose information from a record that pertains to more than one client, for example a couple, family, group, community agency, government department, or other organization/business, College members obtain consent to the disclosure of information from all of the clients before information from such record is disclosed to the third party. When College members receive a request from a client to disclose information from a record that pertains to more than one client, College members provide access to information that pertains only to the client who has requested access (see Interpretation 4.3.3) and, before disclosing information that pertains to any other client, obtain consent to the disclosure from each of them.
- 4.4.3 College members who are served with a formal notice or subpoena to produce client records before a court and who are of the opinion that disclosure would be detrimental to the client, should themselves, or through legal counsel, advocate for non-disclosure to the court.¹⁴
- 4.4.4 College members comply with the requirements regarding use or disclosure of information for research or educational purposes set out in any applicable privacy and other legislation. In the absence of any applicable legislation, College members may permit client records to be used for the purpose of research or education, provided that any identifying information has been removed and clients' anonymity is protected.¹⁵ (See also Interpretation 5.6)
- 4.4.5 A College member or other regulated professional to whom another College member's client records have been transferred, complies with the aforementioned standards regarding access and disclosure with respect to the transferred records.¹⁶



FOOTNOTES

1. Social work and social service work records include any or all of the following: reports (handwritten, typed, or electronic); progress notes; checklists; correspondence; minutes; process logs; journals or appointment records; films and audio or video tapes. The tools or data used by the College member in developing a professional opinion may be or need not be included in the record. Such tools may be personal notes, memos or messages, test results, sociograms, genograms, etc. Once placed in the record, however, they become an integral part of that record. If they are kept separate from the record, the College member observes the same standards with respect to confidentiality, security and destruction as with the social work and social service work record.
2. An accurate record will:
 - (a) document the client's situation/problem exactly and contain only information that is appropriate and useful to the understanding of the situation and the management of the case;
 - (b) report impartially and objectively the factors relevant to the client's situation. The record clearly distinguishes the College member's observations and opinions from the information reported by the client;
 - (c) be easily understandable, avoiding vague, unclear or obscure language and symbols;
 - (d) identify corrections;
 - (e) be free of prejudice and discriminatory remarks;
 - (f) identify sources of data.
3. Information in the social work and social service work record with respect to each client includes the following:
 - (a) Identifying information regarding the recipient of services (individual, family, couple, group, agency, organization, community);
Depending on the nature of the services provided, identifying information may include:
 - i) name, address, telephone number of each client(s);
 - ii) date of birth of each client(s);
 - iii) where indicated in risk situations, name, address, and telephone number of a person(s) to be contacted in case of emergency;
 - iv) name, address, telephone number(s) of the main contact person or position, if different from i); and
 - v) sponsors, funders, accountability.
 - (b) The date, initiator, purpose of the social work or social service work referral, where relevant, and, if significant, the setting of the first professional encounter with the client;
 - (c) Where applicable, the key elements of the contract or working agreement, namely: client, contracted services, provider of services, fee, reimbursement schedule, and time period for completion of services;
 - (d) The time period of involvement if not specified in (c);
 - (e) The date of completion/termination, where relevant, and if significantly different from (c), an explanation for the difference;
 - (f) Particulars of the social work or social service work process, as applicable:
 - i) the history obtained by the member;
 - ii) assessment, diagnosis, formulation and plan;
 - iii) treatment and other interventions, e.g. facilitation, advocacy, transfer of skills, development of action plans;
 - iv) outcome or results, mutual review and evaluation;
 - v) referrals made by the member;
 - vi) recommendations; and
 - vii) other services, e.g. verbal and/or written reports/briefs/analyses, research studies and/or their individual components, presentations/speeches/lectures, management related services, stakeholder consultations and professional opinions.
 - (g) Consents, releases or authorizations pertaining to the intervention or the communication of information about the client;
 - (h) Fees and charges administered, if any.



- 3.1 For example, the *Social Work and Social Service Work Act*, 1998 sets out the conditions that must be met in order for a member of the College who holds an earned doctorate in social work, as defined in subsection 47.3(2) of the *Social Work and Social Service Work Act* 1998, to use the title "doctor", a variation, abbreviation or an equivalent in another language (See also Footnotes 1 and 1.1 of Principle VII)

- 4. Where the member signs the record or report with the author's express authorization, the member shall sign the author's name (in quotation marks) to the record or report, followed by the member's name, and a statement indicating that the member is signing the record or report on behalf of the author, as follows:
["author's name"] by [member's name], on behalf of [author's name].
Where such express authorization is not reasonably available and the member has therefore taken steps to ensure the currency and accuracy of the information and recommendations contained in the record or report, the member shall sign his or her own name to the record or report.

- 5. See Footnote 4, above. By signing the report in his or her own name, the member is effectively endorsing the currency and accuracy of the information and recommendations in the record or report. In contrast, by signing the report in the author's name, with the author's express authorization, the member is not endorsing the currency and accuracy of the information and recommendations in the record or report, but is only signing on behalf of the author.

- 6. See Footnote 3 of Principle V for a discussion of "College members who are responsible for complying with privacy legislation".

- 7. Client records, whether they are paper files or electronic files such as computer diskettes, are kept in an area that is not accessible to persons who have no legitimate interest in the records, and where the privacy of the records may be secured by lock and key.

When sending faxes that contain client information, the College member ensures that the information is marked confidential and that the information has been received by the people for whom it was intended.

An electronic system containing social work and social service work records has the following security features:

- (a) In the event of a shared system, the College member has a private access code or password that provides reasonable protection against unauthorized access;
 - (b) The system maintains an audit trail that:
 - i) records the date and time of each entry of information for each client;
 - ii) indicates any changes in the recorded information; and
 - iii) preserves the original content of the recorded information when changed or updated;
 - (c) The system allows for the recovery of files, or otherwise provides reasonable protection against loss of, damage to, and inaccessibility of information;
 - (d) The system provides for a paper printout of the record.
-
- 8. See Footnote 3 of Principle V for a discussion of "College members who are responsible for complying with privacy legislation".

 - 9. Examples of situations in which records may be retained for longer periods include cases such as sexual abuse, accidents involving minors and situations where litigation may be ongoing or may arise in the future.

 - 10. See Footnote 3 of Principle V for a discussion of "College members who are responsible for complying with privacy legislation".

 - 11. Privacy legislation, such as the federal *Personal Information Protection and Electronic Documents Act* and the *Ontario Personal Health Information Protection Act*, 2004, sets out rules respecting the collection, use and disclosure of personal information or personal health information and an individual's right of access to personal information or personal health information about the individual.

 - 12. See Footnote 3 of Principle V for a discussion of "College members who are responsible for complying with privacy legislation".



13. Determining whether a person is a client's authorized representative may depend on the governing legislation and the particular circumstances. For example, under the Personal Health Information Protection Act, 2004 ("PHIPA") determining whether a person is authorized to exercise powers on someone else's behalf depends on the circumstances: whether the individual is capable and at least sixteen, whether the individual is deceased, whether the individual is mentally incapable of making decisions, whether the individual is a child under the age of sixteen, or whether an Act (provincial or federal) authorizes a person to act on behalf of another person. PHIPA provides rules on who is authorized to exercise powers on someone else's behalf in each of these circumstances.
14. College members comply with any specific requirements for disclosure of a record or other information pursuant to a summons, order, direction or similar requirement that are set out in legislation, such as the *Mental Health Act*, *Long-Term Care Act*, 1994, *Child and Family Services Act* and the Criminal Code.
15. 'Identifying information' means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual.
16. Before a College member is permitted to transfer his or her client records to another regulated professional, the regulated professional must first agree in writing to comply with Principle IV and the Interpretations set out in Principle IV. See Interpretation 4.2.4

TAB 6

Social Work and Social Service Work Act, 1998

S.O. 1998, CHAPTER 31

Consolidation Period: From December 30, 2017 to the [e-Laws currency date](#).

Last amendment: 2010, c. 15, s. 244.

Legislative History: 2000, c. 42, Sched., s. 41-44; 2001, c. 8, s. 234-238; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 19, Sched. E, s. 4; 2009, c. 24, s. 34; 2009, c. 26, s. 26; 2009, c. 33, Sched. 6, s. 86; 2009, c. 33, Sched. 8, s. 20; 2010, c. 15, s. 244.

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Definitions

1 In this Act,

"by-laws" means the by-laws made under this Act; ("règlements administratifs")

"certificate of authorization" means a certificate of authorization issued under this Act authorizing the corporation named in it to practise social work or social service work; ("certificat d'autorisation")

"College" means the Ontario College of Social Workers and Social Service Workers; ("Ordre")

“Council” means the Council of the College, elected and appointed under section 4; (“conseil”)

“Minister” means the Minister of Community and Social Services; (“ministre”)

“professional corporation” means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under this Act; (“société professionnelle”)

“regulations” means the regulations made under this Act. (“règlements”) 1998, c. 31, s. 1; 2000, c. 42, Sched., s. 41.

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

2000, c. 42, Sched., s. 41 - 01/11/2001

**PART I
COLLEGE**

College established

2 (1) The Ontario College of Social Workers and Social Service Workers is established. 1998, c. 31, s. 2 (1).

Body corporate

(2) The College is a body corporate without share capital and with all the powers of a natural person. 1998, c. 31, s. 2 (2).

Non-application of certain Acts

(3) The *Corporations Act* and *Corporations Information Act* do not apply to the College. 1998, c. 31, s. 2 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “The *Corporations Act*” at the beginning and substituting “The *Not-for-Profit Corporations Act, 2010*”. See: 2010, c. 15, ss. 244, 249.

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

2010, c. 15, s. 244 - not in force

Duty and objects

Duty to protect public interest

3 (1) In carrying out its objects, the College’s primary duty is to serve and protect the public interest. 1998, c. 31, s. 3 (1).

Objects

(2) The College has the following objects:

1. To regulate the practice of social work and the practice of social service work and to govern its members.
2. To develop, establish and maintain qualifications for membership in the College.
3. To approve professional education programs offered by educational institutions for the purpose of applications for membership in the College.
4. To approve ongoing education programs for the purpose of continuing education for members of the College.
5. To provide for the ongoing education of members of the College.
6. To issue certificates of registration to members of the College and to renew, amend, suspend, cancel, revoke and reinstate those certificates.
7. To establish and enforce professional standards and ethical standards applicable to members of the College.
8. To receive and investigate complaints against members of the College and to deal with issues of discipline, professional misconduct, incompetency and incapacity.
9. To promote high standards and quality assurance with respect to social work and social service work and to communicate with the public on behalf of the members.
10. To perform the additional functions prescribed by the regulations. 1998, c. 31, s. 3 (2).

Council: Registrar’s role; remuneration

Council

4 (1) The College shall have a Council that shall be its governing body and board of directors and that shall manage and administer its affairs. 1998, c. 31, s. 4 (1).

Composition of Council

- (2) The Council shall be composed of,
- (a) seven social workers who are members of the College and who are elected by the members of the College in accordance with the by-laws;
 - (b) seven social service workers who are members of the College and who are elected by the members of the College in accordance with the by-laws; and
 - (c) seven persons who are appointed by the Lieutenant Governor in Council. 1998, c. 31, s. 4 (2).

Role of Registrar

- (3) The Registrar shall serve as secretary to the Council and has all the rights of participation at meetings of the Council that a Council member has, other than the right to vote. 1998, c. 31, s. 4 (3).

Expenses and remuneration

- (4) The Minister shall pay to Council members appointed by the Lieutenant Governor in Council the expenses and remuneration determined by the Lieutenant Governor in Council. 1998, c. 31, s. 4 (4).

Term of office

- 5 (1) No term of an elected Council member shall exceed three years. 1998, c. 31, s. 5 (1).

Multiple terms

- (2) A person may be a Council member for more than one term but no person may be a Council member for more than 10 consecutive years. 1998, c. 31, s. 5 (2).

Qualifications to vote

- 6 (1) Subject to the by-laws, every member of the College who is in good standing is entitled to vote at an election of members of the Council. 1998, c. 31, s. 6 (1).

Member in good standing

- (2) A member of the College is in good standing for the purposes of this section if,
- (a) the member is not in default of payment of a membership fee prescribed by the by-laws; and
 - (b) the member's certificate of registration is not suspended. 1998, c. 31, s. 6 (2).

Quorum

- 7 A majority of the members of Council constitute a quorum. 1998, c. 31, s. 7.

Vacancies in Council

- 7.1 If one or more vacancies occur in the membership of the Council, the members remaining on the Council constitute the Council so long as their number is not fewer than the quorum established by section 7. 2006, c. 19, Sched. E, s. 4.

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

2006, c. 19, Sched. E, s. 4 - 22/06/2006

Meetings open to public

- 8 (1) Subject to subsections (2) and (3), the meetings of the Council shall be open to the public and reasonable notice shall be given to the members of the College and to the public. 1998, c. 31, s. 8 (1).

Exceptions

- (2) The Council may exclude the public, including members of the College, from a meeting or any part of a meeting if it is satisfied that,
- (a) financial or personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that the meetings be open to the public;
 - (b) a person involved in a civil or criminal proceeding may be prejudiced;
 - (c) the safety of a person may be jeopardized;
 - (d) personnel matters or property transactions will be discussed; or

- (e) litigation affecting the College will be discussed or instructions will be given to or opinions received from solicitors for the College. 1998, c. 31, s. 8 (2).

Same

- (3) The Council may also exclude the public, including members of the College, from a meeting or any part of a meeting in which it will deliberate whether to exclude the public from a meeting or part of a meeting. 1998, c. 31, s. 8 (3).

Employees and officers

- 9** (1) The Council may employ the persons it considers advisable and shall have the officers provided for by the by-laws. 1998, c. 31, s. 9 (1).

Registrar appointed

- (2) The Council shall appoint one of its employees as the Registrar. 1998, c. 31, s. 9 (2).

Deputy registrars

- (3) The Council may appoint one or more deputy registrars who shall have the powers of the Registrar as set out in the by-laws. 1998, c. 31, s. 9 (3).

Chief executive officer

- (4) The Registrar shall be the chief executive officer of the College. 1998, c. 31, s. 9 (4).

Annual report

- 10** (1) The Council shall report annually to the Minister on the activities and financial affairs of the College. 1998, c. 31, s. 10 (1).

Same

- (2) The report shall include an audited financial statement. 1998, c. 31, s. 10 (2).

Minister's powers and duties

- 11** (1) The Minister may,

- (a) review the activities of the Council and require the Council to provide reports and information;
- (b) require the Council to do anything that the Minister believes is necessary or advisable to carry out the objects of the College;
- (c) require the Council to make, amend or revoke a regulation under section 36. 1998, c. 31, s. 11 (1).

Council to comply

- (2) If the Minister requires the Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report to the Minister respecting the compliance. 1998, c. 31, s. 11 (2).

Regulations

- (3) If the Minister requires the Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within 60 days, the Lieutenant Governor in Council may, by regulation, make, amend or revoke the regulation. 1998, c. 31, s. 11 (3).

Annual meeting of members

- 12** The College shall hold an annual meeting of the members of the College not more than 15 months after the holding of the last preceding annual meeting of members. 1998, c. 31, s. 12.

Membership in College

- 13** (1) Every person who holds a certificate of registration is a member of the College, subject to any term, condition or limitation to which the certificate is subject. 1998, c. 31, s. 13 (1).

Resignation of membership

- (2) A member of the College may resign his or her membership by filing a resignation in writing with the Registrar and when the member does so and upon acceptance of the resignation by the Registrar, the certificate of registration is cancelled. 2009, c. 33, Sched. 8, s. 20 (1).

Continuing jurisdiction: revocation, cancellation

(3) A person whose certificate of registration is revoked or cancelled or expires continues to be subject to the jurisdiction of the College for professional misconduct, incompetence or incapacity referable to any time during which the person held a certificate of registration under this Act and may be investigated under sections 24 and 32. 1998, c. 31, s. 13 (3); 2009, c. 33, Sched. 8, s. 20 (2).

Suspended members

(4) A person whose certificate of registration is suspended is not a member. 2009, c. 33, Sched. 8, s. 20 (3).

Continuing jurisdiction: suspension

(5) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for professional misconduct, incompetence or incapacity referable to any time during which the person was a member or to the period of the suspension and may be investigated under sections 24 and 32. 2009, c. 33, Sched. 8, s. 20 (3).

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

2009, c. 33, Sched. 8, s. 20 (1-3) - 15/12/2009

Committees of Council

14 (1) The Council shall establish the following committees:

1. Executive Committee.
2. Registration Appeals Committee.
3. Complaints Committee.
4. Discipline Committee.
5. Fitness to Practise Committee. 1998, c. 31, s. 14 (1).

Same

(2) In appointing persons to each committee, the Council shall ensure that,

- (a) each committee has at least one member who was elected to the Council as a social worker, at least one member who was elected to the Council as a social service worker and at least one member who was appointed to the Council;
- (b) at least one-half of the members of each committee are persons elected to the Council;
- (c) at least one-third of the members of each committee are persons appointed to the Council;
- (d) no person who is a member of the Complaints Committee is also a member of the Discipline Committee or the Fitness to Practise Committee; and
- (e) the appointments are made in accordance with the by-laws. 1998, c. 31, s. 14 (2).

Chair

(3) The Council shall appoint one of the members of each committee referred to in subsection (1) as the Chair of that committee. 1998, c. 31, s. 14 (3).

Panel appointed

(4) The chair of a committee may appoint panels from among the committee's members and authorize them to exercise the committee's powers or perform its duties, including powers or duties to conduct reviews, to consider and investigate written complaints, to consider investigation reports, to make orders and to hold hearings. 2009, c. 33, Sched. 8, s. 20 (4).

Same

(5) Each panel appointed under subsection (4) shall be composed of at least three persons and at least one-third of the members of each panel shall be persons appointed to the Council. 1998, c. 31, s. 14 (5).

Same

(6) A decision of a panel appointed under subsection (4) shall be deemed to be the decision of the committee from which it was appointed. 1998, c. 31, s. 14 (6).

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

2009, c. 33, Sched. 8, s. 20 (4) - 15/12/2009

Other committees

15 The Council may establish other committees that the Council from time to time considers necessary. 1998, c. 31, s. 15.

Vacancies in committees

16 If one or more vacancies occur in the membership of a committee of the Council, the members remaining on the committee constitute the committee so long as their number is not fewer than the quorum established in the by-laws. 1998, c. 31, s. 16.

Member ceasing to be a member during a hearing

16.1 If, after a committee commences a hearing into a matter, a person who was a member of the committee ceases to be a member of the committee, the person is deemed, for the purposes of dealing with the matter, to remain a member of the committee until the final disposition of the matter. 2009, c. 33, Sched. 8, s. 20 (5).

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

2009, c. 33, Sched. 8, s. 20 (5) - 15/12/2009

Incapacity of member during hearing

16.2 If, after a committee commences a hearing into a matter, a member of the committee becomes incapacitated, the remaining members of the committee may continue to hear the matter and to render a decision with respect to it. 2009, c. 33, Sched. 8, s. 20 (5).

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

2009, c. 33, Sched. 8, s. 20 (5) - 15/12/2009

Delegation of Council's powers

17 The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council other than the power to make, amend or revoke a regulation or by-law. 1998, c. 31, s. 17.

PART II REGISTRATION

Issuing or refusing to issue certificate of registration

Approval of application for registration

18 (1) The Registrar shall issue a certificate of registration for social work to an applicant if the applicant,

- (a) applies for it in accordance with the regulations and the by-laws;
- (b) meets the registration requirements prescribed by the regulations; and
- (c) has paid the fees prescribed by the by-laws. 2009, c. 24, s. 34 (1).

Same

(2) The Registrar shall issue a certificate of registration for social service work to an applicant if the applicant,

- (a) applies for it in accordance with the regulations and the by-laws;
- (b) meets the registration requirements prescribed by the regulations; and
- (c) has paid the fees prescribed by the by-laws. 2009, c. 24, s. 34 (1).

Grounds for refusal

(3) The Registrar may refuse to issue a certificate of registration for social work or social service work if the Registrar has reasonable grounds to believe that,

- (a) the past conduct or actions of the applicant afford grounds for belief that the applicant will not perform his or her duties as a social worker or social service worker, as the case may be, in accordance with the law, including but not limited to this Act, the regulations and the by-laws; or
- (b) the applicant does not fulfil the requirements of this Act, the regulations or the by-laws for the issuance of the certificate. 1998, c. 31, s. 18 (3); 2009, c. 24, s. 34 (2).

Same

(4) Except as otherwise directed under this Act, the Registrar shall refuse to issue a certificate of registration for social work or social service work to an applicant who previously held such a certificate of registration that was revoked as a result of a decision of the Discipline Committee or the Fitness to Practise Committee and that was not reinstated under section 29 or 30. 1998, c. 31, s. 18 (4).

Terms, etc.

(5) If the Registrar believes that a certificate of registration should be issued to an applicant with terms, conditions or limitations, the Registrar may impose those terms, conditions or limitations. 1998, c. 31, s. 18 (5).

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

2009, c. 24, s. 34 (1, 2) - 15/12/2009

Disclosure of application file

19 (1) The Registrar shall give an applicant for a certificate of registration, at the applicant's request, a copy of each document the College has that is relevant to the application. 1998, c. 31, s. 19 (1).

Exception

(2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person. 1998, c. 31, s. 19 (2).

Notice of proposal to refuse to issue, etc.

20 (1) If the Registrar proposes to do one of the following, the Registrar shall first serve notice of the proposal, with written reasons for it, on the applicant:

1. Refuse to issue a certificate of registration.
2. Impose terms, conditions or limitations to which the applicant has not consented on a certificate of registration to be issued. 1998, c. 31, s. 20 (1).

Exception

(2) Subsection (1) does not apply if the Registrar refuses to issue a certificate under subsection 18 (4). 1998, c. 31, s. 20 (2).

Contents of notice

(3) A notice under subsection (1) shall state that the applicant may request a review by the Registration Appeals Committee in accordance with subsection (4). 1998, c. 31, s. 20 (3).

Request for review

(4) The request for review shall be in writing and shall be served on the Registrar within 60 days after the notice under subsection (1) is served on the applicant. 1998, c. 31, s. 20 (4).

Submissions

(5) The request for review may be accompanied by written submissions. 1998, c. 31, s. 20 (5).

Power of Registrar if no request

(6) If an applicant does not request a review in accordance with subsection (4), the Registrar shall carry out the proposal stated in the notice under subsection (1). 1998, c. 31, s. 20 (6).

Duties of Registration Appeals Committee

21 (1) If an applicant requests a review in accordance with subsection 20 (4), the Registration Appeals Committee shall conduct the review. 1998, c. 31, s. 21 (1).

Exception

(2) Despite subsection (1), the Committee shall refuse to conduct a review if, in its opinion, the request for review is frivolous, vexatious or an abuse of process. 1998, c. 31, s. 21 (2).

Extension of time for requesting review

(3) The Committee may extend the time for requesting a review under subsection 20 (4) if it is satisfied that there are apparent grounds for granting relief on the review and that there are reasonable grounds for applying for the extension. 1998, c. 31, s. 21 (3).

Examination of documents, submissions

(4) The Committee shall ensure that the person requesting the review is given an opportunity to examine and make written submissions on any documents that the Committee intends to consider in making its decision on the review. 1998, c. 31, s. 21 (4).

No hearing

(5) Except as provided by section 20 and this section, the Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before making a decision or giving a direction under this part. 1998, c. 31, s. 21 (5).

Order

(6) After considering the request for review, the submissions and any document that the Committee considers relevant, the Committee may make an order doing one or more of the following:

1. Directing the Registrar to issue the appropriate certificate of registration.
2. Directing the Registrar to issue the appropriate certificate of registration and to make it subject to specified terms, conditions or limitations.
3. Directing the Registrar to vary specified terms, conditions or limitations in the Registrar's proposal.
4. Directing the Registrar to refuse to issue a certificate of registration. 1998, c. 31, s. 21 (6).

Service of decision on parties

(7) The Committee shall give its decision under this section in writing to the Registrar, with reasons, within 60 days after considering the request for review and shall serve the person who requested the review with a copy. 1998, c. 31, s. 21 (7).

Register

22 (1) The Registrar shall maintain a register. 1998, c. 31, s. 22 (1).

Contents

- (2) Subject to any by-law respecting the removal of information from the register, the register shall contain,
- (a) the name of each member of the College and the class of certificate of registration that the member holds;
 - (b) any terms, conditions and limitations imposed on the member's certificate of registration;
 - (c) a notation of every revocation, cancellation and suspension of a member's certificate of registration;
 - (c.1) the name of every professional corporation issued a certificate of authorization under this Act;
 - (c.2) a notation of every revocation or suspension of a certificate of authorization;
 - (d) information that a committee required by subsection 14 (1) directs shall be included; and
 - (e) information that the by-laws prescribe as information to be kept in the register. 1998, c. 31, s. 22 (2); 2000, c. 42, Sched., s. 42.

Inspection

(3) Any person has the right, during normal business hours, to inspect the register. 1998, c. 31, s. 22 (3).

Copies

(4) The Registrar shall provide to any person, on payment of a reasonable charge, a copy of any part of the register. 1998, c. 31, s. 22 (4).

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

2000, c. 42, Sched., s. 42 - 01/11/2001

Suspension: failure to pay fees, provide information

23 (1) The Registrar may suspend the certificate of registration of a member of the College for,

- (a) failure to pay a fee or penalty prescribed by the by-laws; or
- (b) failure to provide information required by the by-laws. 1998, c. 31, s. 23 (1).

Same

(2) The Registrar shall not suspend a member's certificate of registration without first giving the member two-months notice of the default and intention to suspend. 1998, c. 31, s. 23 (2).

Reinstatement

(3) Subject to subsection (4), a person whose certificate of registration has been suspended under subsection (1) is entitled to have the suspension removed on payment of the fees and penalties prescribed by the by-laws or on provision of the information required by the by-laws, as the case may be. 1998, c. 31, s. 23 (3); 2009, c. 33, Sched. 8, s. 20 (6).

Revocation

(4) The Registrar may revoke the certificate of registration of a person whose certificate of registration has been suspended under subsection (1), if the suspension remains in effect for a period of time prescribed by the regulations. 2009, c. 33, Sched. 8, s. 20 (7).

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

2009, c. 33, Sched. 8, s. 20 (6, 7) - 15/12/2009

Professional corporations

23.1 Subject to the by-laws, a member or two or more members practising social work or social service work as individuals or as a partnership may establish a professional corporation for the purpose of practising social work or social service work, and the provisions of the *Business Corporations Act* that apply to professional corporations within the meaning of that Act apply to such a corporation. 2000, c. 42, Sched., s. 43.

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

2000, c. 42, Sched., s. 43 - 01/11/2001

Notice of change of shareholder

23.2 A professional corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation. 2000, c. 42, Sched., s. 43.

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

2000, c. 42, Sched., s. 43 - 01/11/2001

Application of Act, etc.

23.3 This Act, the regulations and the by-laws apply to a member despite the fact that the member practises social work or social service work through a professional corporation. 2000, c. 42, Sched., s. 43.

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

2000, c. 42, Sched., s. 43 - 01/11/2001

Professional, fiduciary and ethical obligations to clients

23.4 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising social work or social service work,

- (a) are not diminished by the fact that the member is practising through a professional corporation; and
- (b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 43; 2001, c. 8, s. 234 (1).

Complaint, etc.

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a professional corporation is the subject of one of the following:

1. A complaint.
2. A mandatory report.
3. An allegation of professional misconduct, incompetence or incapacity.
4. An investigation, inspection or review.
5. A hearing. 2001, c. 8, s. 234 (2).

Powers when complaint, etc.

(3) In the circumstances described in subsection (2), any power that may be exercised in respect of the member may be exercised in respect of the professional corporation. 2001, c. 8, s. 234 (2).

Liability when complaint, etc.

(4) In the circumstances described in subsection (2), the professional corporation is jointly and severally liable with the member for all fines and costs that the member is ordered to pay. 2001, c. 8, s. 234 (2).

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

2000, c. 42, Sched., s. 43 - 01/11/2001

2001, c. 8, s. 234 (1, 2) - 01/11/2001

Conflict in duties

23.4.1 If there is a conflict between a member's duty to a client, the College or the public and the member's duty to a professional corporation as a director or officer of the corporation, the duty to the client, the College or the public prevails. 2001, c. 8, s. 235.

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

2001, c. 8, s. 235 - 01/11/2001

Restrictions apply to corporation's certificate

23.5 A term, condition or limitation imposed on the certificate of registration of a member practising social work or social service work through a corporation applies to the certificate of authorization of the corporation in relation to the practice of social work or social service work through the member. 2000, c. 42, Sched., s. 43.

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

2000, c. 42, Sched., s. 43 - 01/11/2001

Prohibitions, professional corporation

23.6 (1) In the course of practising social work or social service work, a professional corporation shall not do, or fail to do, something that would constitute professional misconduct if a member did, or failed to do, it. 2001, c. 8, s. 235.

Prohibition, contraventions

(2) A professional corporation shall not contravene any provision of this Act, the regulations or the by-laws. 2001, c. 8, s. 235.

Same

(3) A professional corporation shall not contravene a term, condition or limitation imposed on its certificate of authorization. 2001, c. 8, s. 235.

Prohibition, corporate matters

(4) A professional corporation shall not practise social work or social service work when it does not satisfy the requirements for a professional corporation under this Act and under subsection 3.2 (2) of the *Business Corporations Act*. 2001, c. 8, s. 235.

Same

(5) A professional corporation shall not permit shares to be voted in contravention of subsection 3.2 (4) of the *Business Corporations Act*. 2001, c. 8, s. 235.

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

2001, c. 8, s. 235 - 01/11/2001

PART III

COMPLAINTS COMMITTEE, DISCIPLINE COMMITTEE AND FITNESS TO PRACTISE COMMITTEE

Duties of Complaints Committee

24 (1) The Complaints Committee shall consider and investigate written complaints regarding the conduct or actions of members of the College. 1998, c. 31, s. 24 (1).

Same

(2) Despite subsection (1), the Complaints Committee shall refuse to consider and investigate a written complaint if, in its opinion,

- (a) the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member of the College; or
- (b) the complaint is frivolous, vexatious or an abuse of process. 1998, c. 31, s. 24 (2).

Same

(3) No action shall be taken by the Complaints Committee under subsection (5) unless,

- (a) a complaint in a form prescribed by the by-laws has been filed with the Registrar;
- (b) the member of the College whose conduct or actions are being investigated has been notified of the complaint and given at least 30 days in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and
- (c) the Committee has examined all the information and documents that the College has that are relevant to the complaint. 1998, c. 31, s. 24 (3).

Same

(4) Notice of a complaint under clause (3) (b) shall include reasonable information about any allegations contained in the complaint. 1998, c. 31, s. 24 (4).

Alternative dispute resolution

(4.1) If the Complaints Committee considers it appropriate to do so and the complainant and the member agree, the Committee may refer the matter for alternative dispute resolution. 2009, c. 33, Sched. 8, s. 20 (8).

Same

(4.2) If the complainant and the member reach a resolution of a matter that has been referred to alternative dispute resolution, they shall advise the Committee and the Committee may,

- (a) adopt the proposed resolution and cease its investigation of the complaint; or
- (b) continue with its investigation of the complaint. 2009, c. 33, Sched. 8, s. 20 (8).

Same

(4.3) If there is a failure to resolve a matter that has been referred to alternative dispute resolution, it shall be referred back to the Committee and the Committee shall continue with its investigation of the complaint. 2009, c. 33, Sched. 8, s. 20 (8).

Same

(5) The Complaints Committee in accordance with the information it receives shall,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee;
- (b) direct that the matter not be referred under clause (a);
- (c) require the person complained against to appear before the Complaints Committee to be cautioned; or
- (d) REPEALED: 2009, c. 33, Sched. 8, s. 20 (9).
- (e) take any action it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws. 1998, c. 31, s. 24 (5); 2009, c. 33, Sched. 8, s. 20 (9).

Decision and reasons

(6) The Complaints Committee shall give its decision in writing to the Registrar and, except in the case of a decision made under clause (5) (a), its reasons for the decision. 1998, c. 31, s. 24 (6).

Notice

(7) The Registrar shall provide the complainant and the person complained against with a copy of the written decision made by the Complaints Committee and its reasons for the decision, if any. 1998, c. 31, s. 24 (7).

No hearing

(8) Except as provided by this section, the Complaints Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1998, c. 31, s. 24 (8).

Timely disposal

(9) The Complaints Committee shall use its best efforts to dispose of a complaint within 120 days of its being filed with the Registrar. 1998, c. 31, s. 24 (9).

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

2009, c. 33, Sched. 8, s. 20 (8, 9) - 15/12/2009

Reference to certain committees; interim suspensions**Reference by Council or Executive Committee**

25 (1) The Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the College. 1998, c. 31, s. 25 (1).

Same

(2) The Council or the Executive Committee may direct the Fitness to Practise Committee to hold a hearing and determine any allegation of incapacity on the part of a member of the College. 1998, c. 31, s. 25 (2).

Interim suspension

(3) The Council or the Executive Committee may make an interim order directing the Registrar to suspend the certificate of registration of a member of the College or impose terms, conditions or limitations on a member's certificate of registration if,

- (a) an allegation respecting the member has been referred to the Discipline Committee or to the Fitness to Practise Committee; and
- (b) the Council or the Executive Committee believes that the actions or conduct of the member in the course of his or her practice exposes or is likely to expose a person or persons to harm or injury. 1998, c. 31, s. 25 (3).

Restriction

(4) No order shall be made under subsection (3) unless the member has been given,

- (a) notice of the Council's or the Executive Committee's intention to make the order; and
- (b) at least 14 days to make written submissions to the Council or the Executive Committee. 1998, c. 31, s. 25 (4).

Same

(5) Clause (4) (b) does not apply if the Council or the Executive Committee believes that the delay would be inappropriate in view of the risk of harm or injury to a person or persons. 1998, c. 31, s. 25 (5).

No hearing

(6) Except as provided by this section, the Council or the Executive Committee need not hold a hearing or afford any person an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1998, c. 31, s. 25 (6).

Procedure following order

(7) If an order is made under subsection (3) in relation to a matter referred to the Discipline Committee or to the Fitness to Practise Committee,

- (a) the College shall prosecute the matter expeditiously; and
- (b) the committee shall give precedence to the matter. 1998, c. 31, s. 25 (7).

Duration of order

(8) An order under subsection (3) continues in force until the matter is disposed of by the Discipline Committee or the Fitness to Practise Committee. 1998, c. 31, s. 25 (8).

Discipline Committee

26 (1) The Discipline Committee shall,

- (a) hear and determine matters directed or referred to it under sections 24, 25 and 29; and

(b) perform any other duties assigned to it by the Council. 1998, c. 31, s. 26 (1).

Professional misconduct

(2) The Discipline Committee may find a member of the College guilty of professional misconduct if, after a hearing, the Committee believes that the member has engaged in conduct that,

- (a) contravenes this Act, the regulations or the by-laws;
- (b) contravenes an order of the Discipline Committee, the Complaints Committee, the Council or the Registrar; or
- (c) is defined as being professional misconduct in the regulations. 1998, c. 31, s. 26 (2).

Incompetence

(3) The Discipline Committee may, after a hearing, find a member of the College to be incompetent if, in its opinion, the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a person or persons of a nature or extent that demonstrates that the member is unfit to continue to carry out his or her professional responsibilities or that a certificate of registration held by the member under this Act should be made subject to terms, conditions or limitations. 1998, c. 31, s. 26 (3).

Powers of Discipline Committee

(4) If the Discipline Committee finds a member guilty of professional misconduct or to be incompetent, it shall make an order doing one or more of the following:

1. Directing the Registrar to revoke any certificate of registration held by the member under this Act.
2. Directing the Registrar to suspend any certificate of registration held by the member under this Act for a specified period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on any certificate of registration held by the member under this Act.
4. Directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period. 1998, c. 31, s. 26 (4).

Same

(5) If the Discipline Committee finds a member guilty of professional misconduct, it may, in addition to exercising its powers under subsection (4), make an order doing one or more of the following:

1. Requiring that the member be reprimanded, admonished or counselled by the Committee or its delegate and, if considered warranted, directing that the fact of the reprimand, admonishment or counselling be recorded on the register for a specified or an unlimited period.
2. Imposing a fine in an amount that the Committee considers appropriate, to a maximum of \$5,000, to be paid by the member to the Minister of Finance for payment into the Consolidated Revenue Fund.
3. Directing that the finding and the order of the Committee be published, in detail or in summary, with or without the name of the member, in the official publication of the College and in any other manner or medium that the Committee considers appropriate in the particular case.
4. Fixing costs to be paid by the member. 1998, c. 31, s. 26 (5).

Same

(6) In making an order under paragraph 4 of subsection (4), the Committee may specify the terms that it considers appropriate, including but not limited to terms requiring the successful completion by the member of specified courses of study. 1998, c. 31, s. 26 (6).

Same

(7) In making an order revoking or suspending a certificate of registration or imposing terms, conditions or limitations on a certificate of registration, the Committee may fix a period during which the member may not apply under section 29. 1998, c. 31, s. 26 (7).

Publication on request

(8) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in the official publication of the College, on the request of the member against whom the allegation was made. 1998, c. 31, s. 26 (8).

Costs

(9) If the Discipline Committee believes that the commencement of the proceeding was unwarranted, the Committee may order that the College reimburse the member of the College for his or her costs or the portion of them fixed by the Discipline Committee. 1998, c. 31, s. 26 (9).

Fitness to Practise Committee

27 (1) The Fitness to Practise Committee shall,

- (a) hear and determine matters directed or referred to it under sections 24, 25 or 29; and
- (b) perform any other duties assigned to it by the Council. 1998, c. 31, s. 27 (1).

Incapacity

(2) The Fitness to Practise Committee may, after a hearing, find a member of the College to be incapacitated if, in its opinion, the member is suffering from a physical or mental condition or disorder such that,

- (a) the member is unfit to continue to carry out his or her professional responsibilities; or
- (b) a certificate of registration held by the member under this Act should be made subject to terms, conditions or limitations. 1998, c. 31, s. 27 (2).

Powers of Fitness to Practise Committee

(3) If the Fitness to Practise Committee finds a member to be incapacitated, it shall make an order doing one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on the member's certificate of registration.
4. Directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period. 1998, c. 31, s. 27 (3).

Same

(4) In making an order under paragraph 4 of subsection (3), the Committee may specify the terms that it considers appropriate, including but not limited to terms requiring the production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been resolved. 1998, c. 31, s. 27 (4).

Same

(5) In making an order revoking or suspending a certificate of registration or imposing terms, conditions or limitations on a certificate of registration, the Committee may fix a period during which the member may not apply under section 29. 1998, c. 31, s. 27 (5).

Publication on request

(6) The Fitness to Practise Committee shall cause a determination by the Committee that an allegation of incapacity was unfounded to be published in the official publication of the College, on the request of the member against whom the allegation was made. 1998, c. 31, s. 27 (6).

Costs

(7) If the Fitness to Practise Committee believes that the commencement of the proceeding was unwarranted, the Committee may order that the College reimburse the member for his or her costs or the portion of them fixed by the Committee. 1998, c. 31, s. 27 (7).

Procedure on hearings

28 (1) This section applies to hearings of the Discipline Committee under section 26 and to hearings of the Fitness to Practise Committee under section 27. 1998, c. 31, s. 28 (1).

Parties

(2) The College and the member of the College whose conduct or actions are being investigated are parties to the hearing. 1998, c. 31, s. 28 (2).

Examination of documentary evidence

(3) A party to the hearing shall be given an opportunity to examine before the hearing any documents that will be given in evidence at the hearing. 1998, c. 31, s. 28 (3).

Members holding hearing not to have taken part in investigation

(4) Members of the Discipline Committee or Fitness to Practise Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing, other than as a member of the Council or Executive Committee considering the referral of the matter to the Discipline Committee or Fitness to Practise Committee, and shall not communicate directly or indirectly about the subject-matter of the hearing with any person or with any party or representative of a party except on notice to and opportunity for all parties to participate. 1998, c. 31, s. 28 (4).

Same

(5) Despite subsection (4), the Discipline Committee or Fitness to Practise Committee may seek legal advice from an adviser independent from the parties and, in that case, the nature of the advice shall be made known to the parties so that they may make submissions as to the law. 1998, c. 31, s. 28 (5).

Discipline Committee hearings to be public

(6) A hearing of the Discipline Committee shall, subject to subsections (7) and (8), be open to the public. 1998, c. 31, s. 28 (6).

Exceptions

(7) The Discipline Committee may make an order that the public, including members of the College, be excluded from a hearing or any part of a hearing if the Committee is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a civil or criminal proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized. 1998, c. 31, s. 28 (7).

Same

(8) The Discipline Committee may also make an order that the public, including members of the College, be excluded from any part of a hearing in which it will deliberate whether to exclude them from a hearing or a part of a hearing. 1998, c. 31, s. 28 (8).

Fitness to Practise Committee hearings to be closed

(9) A hearing of the Fitness to Practise Committee shall, subject to subsection (10), be closed to the public, including members of the College. 1998, c. 31, s. 28 (9).

Open on request of member in some cases

(10) A hearing of the Fitness to Practise Committee shall be open to the public, including members of the College, if the person who is alleged to be incapacitated requests it in a written notice received by the Registrar before the day the hearing commences, unless the Fitness to Practise Committee is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of acceding to the request of the person who is alleged to be incapacitated;
- (c) a person involved in a civil or criminal proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized. 1998, c. 31, s. 28 (10).

Same

(11) The Fitness to Practise Committee may also make an order that the public, including members of the College, be excluded from any part of a hearing in which it will deliberate whether to exclude them from a hearing or a part of a hearing. 1998, c. 31, s. 28 (11).

Recording of evidence

(12) The oral evidence taken before the Discipline Committee or Fitness to Practise Committee shall be recorded and, if requested by a party, copies of a transcript shall be provided to the party at the party's expense. 1998, c. 31, s. 28 (12).

Only members at hearing to participate in decision

(13) No member of the Discipline Committee or Fitness to Practise Committee shall participate in a decision of the committee following a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties. 1998, c. 31, s. 28 (13).

Release of documentary evidence

(14) Documents and things put in evidence at a hearing shall, on the request of the party who produced them, be returned by the Discipline Committee or Fitness to Practise Committee within a reasonable time after the matter in issue has been finally determined. 1998, c. 31, s. 28 (14).

Service of decision, reasons

(15) Subject to subsection (16), the committee shall give its decision in writing with reasons and serve it,

(a) on the parties; and

(b) if the matter was referred to the Discipline Committee as a result of a complaint under subsection 24 (1), on the complainant. 1998, c. 31, s. 28 (15).

Same

(16) If the hearing was closed, the Discipline Committee or Fitness to Practise Committee may, in its discretion, withhold reasons when it serves its decision on the complainant. 1998, c. 31, s. 28 (16).

**PART IV
REINSTATEMENT AND VARIATION**

Reinstatement or variation after disciplinary proceedings**Reinstatement after disciplinary proceedings**

29 (1) A person who has had a certificate of registration revoked or suspended as a result of a proceeding before the Discipline Committee may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1998, c. 31, s. 29 (1).

Variation after disciplinary proceedings

(2) A person who has a certificate of registration that is subject to terms, conditions or limitations as a result of a proceeding before the Discipline Committee may apply in writing to the Registrar for the removal or modification of the terms, conditions or limitations. 1998, c. 31, s. 29 (2).

Time of application

(3) An application under subsection (1) or (2) shall not be made before the expiry of the period fixed for the purpose by the Discipline Committee under subsection 26 (7) or under paragraph 6 of subsection (6), as the case may be. 1998, c. 31, s. 29 (3).

Same

(4) If the Discipline Committee did not fix a period under subsection 26 (7) or under paragraph 6 of subsection (6), an application under subsection (1) or (2) shall not be made earlier than one year from the date of the order under section 26 or the date of the last order made under this section, as the case may be. 1998, c. 31, s. 29 (4).

Referral to Discipline Committee

(5) The Registrar shall refer an application under subsection (1) or (2) to the Discipline Committee. 1998, c. 31, s. 29 (5).

Order

(6) The Discipline Committee may, after a hearing, make an order doing one or more of the following:

1. Refusing the application.
2. Directing the Registrar to issue a certificate of registration to the applicant.
3. Directing the Registrar to remove the suspension of the applicant's certificate of registration.

4. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration.
5. Directing the Registrar to remove any term, condition or limitation on the applicant's certificate of registration.
6. Fixing a period during which the applicant may not apply under this section. 1998, c. 31, s. 29 (6).

Parties

(7) The College and the applicant are parties to the hearing under this section. 1998, c. 31, s. 29 (7).

Examination of documentary evidence

(8) A party to the hearing shall be given an opportunity to examine before the hearing any documents that will be given in evidence at the hearing. 1998, c. 31, s. 29 (8).

Closed hearings

(9) Hearings of the Discipline Committee under this section shall be closed to the public, including members of the College. 1998, c. 31, s. 29 (9).

Recording of evidence

(10) If requested by a party, the oral evidence taken before the Discipline Committee under this section shall be recorded and, if requested by a party, copies of a transcript shall be provided to the party at the party's expense. 1998, c. 31, s. 29 (10).

Only members at hearing to participate in decision

(11) No member of the Discipline Committee shall participate in a decision of the Committee under this section unless he or she was present throughout the hearing and heard the evidence and the argument of the parties. 1998, c. 31, s. 29 (11).

Release of documentary evidence

(12) Documents and things put in evidence at a hearing under this section shall, on the request of the party who produced them, be returned by the Discipline Committee within a reasonable time after the matter in issue has been finally determined. 1998, c. 31, s. 29 (12).

Service of decision on parties

(13) The Discipline Committee shall give its decision under this section in writing, with reasons, and shall serve each party with a copy of the decision. 1998, c. 31, s. 29 (13).

Fitness to Practise Committee

- (14) Subsections (1) to (13) apply with necessary modifications to the Fitness to Practise Committee and, for the purpose,
- (a) a reference to the Discipline Committee shall be deemed to be a reference to the Fitness to Practise Committee; and
 - (b) a reference to subsection 26 (7) shall be deemed to be a reference to subsection 27 (5). 1998, c. 31, s. 29 (14).

Reinstatement: no hearing

30 The Council or Executive Committee may, without a hearing, with respect to a person who has had a certificate suspended or revoked for any reason under this Act, make an order doing one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the person.
2. Directing the Registrar to remove the suspension of the person's certificate of registration. 1998, c. 31, s. 30.

PART V APPEALS TO COURT

Appeal to court

31 (1) A party to a proceeding before the Registration Appeals Committee, the Discipline Committee or the Fitness to Practise Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee. 1998, c. 31, s. 31 (1).

Same

(2) For purposes of this section, a person who requests a review under section 20 is a party to the review by the Registration Appeals Committee. 1998, c. 31, s. 31 (2).

Certified copy of record

(3) On the request of a party desiring to appeal to the Divisional Court and on payment of the fee prescribed by the by-laws for the purpose, the Registrar shall give the party a certified copy of the record of the proceeding, including any documents received in evidence and the decision or order appealed from. 1998, c. 31, s. 31 (3).

Powers of court on appeal

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and that the court considers appropriate and, for the purpose, the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with any directions the court considers appropriate. 1998, c. 31, s. 31 (4).

Effect of appeal

(5) An appeal from a decision or order of a committee mentioned in subsection (1) does not operate as a stay of that decision or order. 1998, c. 31, s. 31 (5).

PART VI REGISTRAR'S POWERS OF INVESTIGATION

Registrar's investigation

32 (1) If the Registrar believes on reasonable and probable grounds,

- (a) that a member of the College has committed an act of professional misconduct or is incompetent or incapacitated;
- (b) that there is cause to refuse to issue a certificate applied for under this Act;
- (c) that there is cause to suspend or revoke a certificate issued under this Act; or
- (d) that there is cause to impose terms, conditions or limitations on a certificate applied for or issued under this Act,

the Registrar may appoint one or more investigators to investigate whether such act has occurred, such incompetence or incapacity exists or there is such cause. 1998, c. 31, s. 32 (1).

Approval of Executive Committee

(2) The Registrar shall not make an appointment under subsection (1) without the approval of the Executive Committee. 1998, c. 31, s. 32 (2).

Powers of investigator

(3) The investigator may inquire into and examine the conduct or actions of the member to be investigated as the conduct or actions relate to the matter the Registrar sought to be investigated in appointing the investigator. 1998, c. 31, s. 32 (3).

Application of *Public Inquiries Act, 2009*

(4) Section 33 of the *Public Inquiries Act, 2009* applies to the investigation. 2009, c. 33, Sched. 6, s. 86.

Same

(5) The investigator may, on production of his or her appointment, enter at any reasonable time the place of work of the member or the premises of the member's employer and may examine anything found there that is relevant to the investigation. 1998, c. 31, s. 32 (5).

Obstruction of investigator

(6) No person shall obstruct an investigator in the course of his or her duties or withhold or conceal from him or her or destroy anything that is relevant to the investigation. 1998, c. 31, s. 32 (6).

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

2009, c. 33, Sched. 6, s. 86 - 01/06/2011

Entries and searches

33 (1) A justice of the peace may, on the application of an investigator, issue a warrant authorizing the investigator to enter and search a place and examine anything that is relevant to the investigation if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds for believing that,

- (a) the member being investigated has committed an act of professional misconduct or is incompetent or incapacitated; and

(b) there is something relevant to the investigation at the place. 1998, c. 31, s. 33 (1).

Searches by day unless stated

(2) A warrant issued under subsection (1) does not authorize an entry or search after sunset or before sunrise unless it is expressly stated in the warrant. 1998, c. 31, s. 33 (2).

Assistance and entry by force

(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force. 1998, c. 31, s. 33 (3).

Investigator to show identification

(4) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification, on request, to any person at the place. 1998, c. 31, s. 33 (4).

Documents and objects

Copying of documents and objects

34 (1) An investigator may copy, at the College's expense, a document or object that an investigator may examine under section 32 or under the authority of a warrant issued under section 33. 1998, c. 31, s. 34 (1).

Removal of documents and objects

(2) An investigator may remove a document or object described in subsection (1) if,

- (a) it is not practicable to copy it in the place where it is examined; or
- (b) a copy of it is not sufficient for the purposes of the investigation. 1998, c. 31, s. 34 (2).

Return of documents and objects or copies

(3) If it is practicable to copy a document or object removed under subsection (2), the investigator shall,

- (a) if it was removed under clause (2) (a), return the document or object within a reasonable time; or
- (b) if it was removed under clause (2) (b), provide the person who was in possession of the document or object with a copy of it within a reasonable time. 1998, c. 31, s. 34 (3).

Copy as evidence

(4) A copy of a document or object certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document or object itself. 1998, c. 31, s. 34 (4).

Report of investigation

35 The Registrar shall report the results of an investigation to one or more of the Executive Committee, the Registration Appeals Committee, the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee, as the Registrar considers appropriate. 1998, c. 31, s. 35.

Incapacitated member

Report by Registrar

35.1 (1) If the Registrar believes that a member of the College may be incapacitated, the Registrar may report the matter to the Executive Committee. 2009, c. 33, Sched. 8, s. 20 (10).

Inquiries by Executive Committee

(2) If the Registrar reports a matter under subsection (1), the Executive Committee shall make the inquiries that it considers appropriate. 2009, c. 33, Sched. 8, s. 20 (10).

Physical or mental examinations

(3) If the Executive Committee has reasonable and probable grounds to believe that the member is incapacitated, it may,

- (a) require the member to submit to a physical or mental examination, or to both, which shall be conducted or ordered by a qualified professional specified by the Committee; and
- (b) make an order, subject to subsection (5), directing the Registrar to suspend the member's certificate of registration until he or she submits to the examinations. 2009, c. 33, Sched. 8, s. 20 (10).

Report of examinations to member, etc.

(4) The Executive Committee shall give a copy of any report of any examinations required under subsection (3) to the member and may give a copy of the report to one or more of the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee, as it considers appropriate. 2009, c. 33, Sched. 8, s. 20 (10).

Notice

(5) No order shall be made under subsection (3), unless the member has been given,

- (a) notice of the Executive Committee's intention to make the order; and
- (b) at least 14 days after the notice was given to make written submissions in respect of it to the Executive Committee. 2009, c. 33, Sched. 8, s. 20 (10).

Same, exception

(6) Clause (5) (b) does not apply if the Executive Committee believes that the delay would be inappropriate in view of the risk of harm or injury to a person or persons. 2009, c. 33, Sched. 8, s. 20 (10).

No right to hearing

(7) Except as provided by this section, the Executive Committee need not hold a hearing or afford a person an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 2009, c. 33, Sched. 8, s. 20 (10).

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

2009, c. 33, Sched. 8, s. 20 (10) - 15/12/2009

PART VII REGULATIONS AND BY-LAWS

Regulations of College, subject to approval

36 (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

1. prescribing classes of certificates of registration and imposing terms, conditions and limitations on the certificates of registration as a class;
2. respecting applications for certificates of registration or classes of them and the issuing, suspension, revocation and expiration of the certificates or classes of them;
3. REPEALED: 2009, c. 24, s. 34 (3).
4. prescribing standards, qualifications and other requirements for the issue of certificates of registration, including, without limiting the generality of the foregoing, prescribing combinations of academic qualifications and practical experience sufficient for membership;
- 4.1 prescribing, in connection with requirements for the issue of certificates of registration, programs that are equivalent to the standard social work program required by the regulations and programs that are equivalent to the standard social service work program required by the regulations, or authorizing the Council, a committee of the College, the Registrar or any other body specified in the regulations to determine whether other programs are equivalent;
5. defining specialties in the professions, providing for certificates relating to those specialties and the qualifications for and suspension and revocation of those certificates and governing the use of prescribed terms, titles or designations by members of the College indicating a specialization in the professions;
6. prescribing ongoing education requirements for members of the College;
7. requiring and providing for the inspection and examination of premises used in connection with the practice of the profession and of equipment, books, accounts, reports and records of members of the College relating to their practices;
8. prescribing what constitutes a conflict of interest in the practice of social work and regulating or prohibiting the practice of social work in cases where there is a conflict of interest;
9. prescribing what constitutes a conflict of interest in the practice of social service work and regulating or prohibiting the practice of social service work in cases where there is a conflict of interest;

10. defining professional misconduct for the purposes of clause 26 (2) (c);
11. respecting the promotion or advertising of the practice of the professions;
12. respecting the reporting and publication of decisions of committees;
13. requiring members of the College to keep records in respect of their practice and prescribing the contents of those records;
14. regulating or prohibiting the use of terms, titles and designations by members of the College in respect of their practices;
15. respecting the giving of notice of meetings and hearings that are to be open to the public;
16. providing for the exemption of any member or class of members of the College from any of the regulations made under this section;
17. prescribing conditions to be met before the Registrar issues certificates of registration under subsection 63 (1) or (2);
18. prescribing anything that is referred to in this Act as being prescribed by the regulations. 1998, c. 31, s. 36 (1); 2009, c. 24, s. 34 (3, 4).

Examinations permitted

(2) A regulation made under paragraph 4 of subsection (1) may authorize the Registrar to assess the qualifications or competency of potential members by examinations or other means. 1998, c. 31, s. 36 (2).

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

2009, c. 24, s. 34 (3, 4) - 15/12/2009

By-laws

37 (1) The Council may make by-laws relating to the administrative and domestic affairs of the College including, but not limited to, by-laws,

1. adopting a seal for the College;
2. providing for the execution of documents by the College;
3. respecting banking and finance;
4. fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
5. respecting the election of Council members, including the requirements for members of the College to be able to vote, electoral districts and election recounts;
6. respecting the qualification of Council members who are elected;
7. prescribing conditions disqualifying elected members of the Council from sitting on the Council and governing the removal of disqualified Council members;
8. prescribing positions of officers of the College, providing for the election or appointment of officers and prescribing the duties of officers;
9. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
10. respecting the calling, holding and conducting of meetings of the members of the College;
11. respecting conflict of interest rules for members of the Council, for members of committees and for officers and employees of the College;
12. providing for the remuneration of members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and for the payment of the expenses of the Council and committees in the conduct of their business;
13. respecting the filling of vacancies on the Council or on committees;
14. respecting the membership and practices and procedures of the committees required by subsection 14 (1), including,
 - i. the number of members to be appointed to each committee,
 - ii. the terms of office of those members,

- iii. the conditions disqualifying members of the College from sitting on those committees,
 - iv. the removal of disqualified committee members, and
 - v. the quorum of those committees;
15. respecting the membership, powers, duties and practices and procedures of committees other than those required by subsection 14 (1), including,
 - i. the number of members to be appointed to each committee,
 - ii. the terms of office of those members,
 - iii. the conditions disqualifying members of the College from sitting on those committees,
 - iv. the removal of disqualified committee members, and
 - v. the quorum for those committees;
 16. respecting the composition, practices and procedures of and quorum for panels of committees;
 17. delegating to the Executive Committee powers and duties of the Council, other than the power to make, amend or revoke regulations or by-laws;
 - 17.1 governing the practice of social work and social service work through professional corporations, including, without limiting the generality of the foregoing, requiring the certification of those corporations, governing the issuance, renewal, suspension and revocation of certificates of authorization, governing the terms, conditions or limitations that may be imposed on certificates requiring the payment of application fees and fees for the issuance or renewal of a certificate and specifying the amount of the fees and governing the names of those corporations and the notification of a change in the shareholders of those corporations;
 18. prescribing a code of ethics and standards of practice for members or classes of members of the College;
 19. providing for the appointment of investigators;
 20. respecting the keeping of a register of members of the College, including, but not limited to, prescribing the information that must be kept in the register and information that may be removed from the register;
 21. requiring members of the College to provide the College with information necessary for establishing and maintaining the register and for establishing and maintaining records necessary for the proper functioning of the College;
 22. respecting the duties and office of the Registrar and the powers and duties of deputy registrars;
 23. prescribing procedures for making, amending and revoking by-laws;
 24. prescribing forms and providing for their use;
 25. respecting the management of property of the College;
 26. respecting membership of the College in a national organization of bodies with similar functions, the payment of annual assessments and representation at meetings;
 27. authorizing the making of grants to advance knowledge or the education of persons wishing to practise social work or social service work, to maintain or improve the standards of practice of social work and social service work or to provide public information about, and encourage interest in, the past and present role of social work and social service work in society;
 28. requiring members of the College to pay annual fees, fees upon registration, fees for election recounts and continuing education programs and fees for anything the Registrar or a committee of the College is required or authorized to do with respect to members, requiring members to pay penalties for the late payment of any fee and specifying the amount of any such fee or penalty;
 29. requiring persons to pay fees, set by the Registrar or by-law, for applying for a certificate and anything the Registrar is required or authorized to do with respect to persons who are not members;
 30. authorizing the College to make arrangements for the indemnity of members of the College against professional liability and providing levies to be paid by members;
 31. requiring members of the College to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;

32. respecting the designation of life or honorary members of the College and prescribing their rights and privileges;
33. exempting any member or class of member of the College from a by-law made under this section;
34. respecting indemnification by the College of members of the Council, of members of committees and of officers and employees of the College;
35. respecting service of documents and giving of documents. 1998, c. 31, s. 37 (1); 2000, c. 42, Sched., s. 44; 2001, c. 8, s. 236.

Meetings by telecommunications, etc.

(2) A by-law made under paragraph 9 or 10 of subsection (1) may provide for the meetings to be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously. 1998, c. 31, s. 37 (2).

Unanimous by-laws

(3) A by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council called, constituted and held for the purpose. 1998, c. 31, s. 37 (3).

Copies of by-laws

(4) The Council shall ensure that a copy of each by-law is given to the Minister. 1998, c. 31, s. 37 (4).

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

2000, c. 42, Sched., s. 44 - 01/11/2001

2001, c. 8, s. 236 - 01/11/2001

Regulations by L. G. in C.

38 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing additional functions of the College for the purposes of paragraph 10 of subsection 3 (2);
- (b) respecting the appointment of persons to the Council under clause 4 (2) (c), including but not limited to regulations specifying how different interests are to be represented on the Council;
- (c) providing for any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with the establishment of the College or the assumption of powers and duties by the College;
- (d) providing for any other matters the Lieutenant Governor in Council considers necessary or advisable in connection with the College. 1998, c. 31, s. 38 (1).

Conflict

(2) In the event of a conflict between a regulation made under clause (1) (c) and this Act, the regulation prevails. 1998, c. 31, s. 38 (2).

Regulations and by-laws: general or specific

39 (1) A regulation or by-law made under this Act may be general or specific. 1998, c. 31, s. 39 (1).

Same

(2) Without limiting the generality of subsection (1), a regulation or by-law may be limited in its application to any class of members of the College, certificates or qualifications. 1998, c. 31, s. 39 (2).

Copies of regulations, by-laws

40 (1) The Council shall ensure that a copy of each regulation and by-law made under this Act is available for public inspection in the office of the College. 1998, c. 31, s. 40 (1).

Same

(2) The Registrar shall provide to any person on payment of a reasonable charge, a copy of any regulation or by-law made under this Act. 1998, c. 31, s. 40 (2).

PART VIII
REPORTS TO COLLEGE CONCERNING MEMBERS' CONDUCT

Employer's report, termination for misconduct, etc.

41 (1) A person who, for reasons of professional misconduct, incompetence or incapacity of a member of the College, terminates the employment of the member shall file with the Registrar within 30 days after the termination, a written report setting out the reasons. 1998, c. 31, s. 41 (1).

Report to College, intention to terminate for misconduct, etc.

(2) If a person intended to terminate the employment of a member for reasons of professional misconduct, incompetence or incapacity but the person did not do so because the member resigned, the person shall file with the Registrar within 30 days after the resignation a written report setting out the reasons upon which the person intended to act. 1998, c. 31, s. 41 (2).

Reports where member convicted of offence

Employer's report, member convicted of offence

42 (1) A person shall promptly notify the College in writing if the person becomes aware that a member of the College who is or has been employed by the person has been convicted of an offence under the *Criminal Code* (Canada) involving sexual conduct. 1998, c. 31, s. 42 (1).

Member's report, member convicted of offence

(2) A member of the College shall promptly notify the College in writing if he or she is convicted of an offence under the *Criminal Code* (Canada) involving sexual conduct. 1998, c. 31, s. 42 (2).

Member's report, sexual abuse by another member

43 (1) A member of the College shall file a report to the College in accordance with section 44 if, in the course of his or her practice, the member obtains reasonable grounds to believe that another member has sexually abused a client. 1998, c. 31, s. 43 (1).

Exception

(2) A member is not required to file a report under subsection (1) if the member does not have information to identify the member who would be the subject of the report. 1998, c. 31, s. 43 (2).

Information from client

(3) If a member is required to file a report because of reasonable grounds obtained from one of the member's clients, the member shall use his or her best efforts to advise the client of the requirement to file the report before doing so. 1998, c. 31, s. 43 (3).

Definition

(4) In this section and section 44,

“sexual abuse”, with respect to a client by a member of the College means,

- (a) sexual intercourse or another form of physical sexual relations between the member and the client,
- (b) touching, of a sexual nature, of the client by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the client, other than behaviour or remarks of a clinical nature appropriate to the service provided. 1998, c. 31, s. 43 (4).

Report under s. 43

44 (1) A report under section 43 shall be filed,

- (a) forthwith, if the person who is required to file the report has reasonable grounds to believe that the member will continue to sexually abuse the client or will sexually abuse other clients; or
- (b) within 30 days after the obligation to report arose, otherwise. 1998, c. 31, s. 44 (1).

Contents of report

(2) The report shall include,

- (a) the name of the person filing the report;
- (b) the name of the member who is the subject of the report;

- (c) an explanation of the alleged sexual abuse;
- (d) if the grounds of the person filing the report are related to a particular client of the member who is the subject of the report, the name of that client, subject to subsection (3). 1998, c. 31, s. 44 (2).

Consent required re name

(3) The name of a client who may have been sexually abused shall not be included in a report unless the client, or if the client is incapable, the client's representative, consents in writing to the inclusion of the client's name. 1998, c. 31, s. 44 (3).

No proceeding against person reporting

45 No proceeding shall be instituted against a person for filing a report in good faith under this Part. 1998, c. 31, s. 45.

PART IX MISCELLANEOUS

Use of title, social worker

46 (1) No person except a registered social worker shall use the English title "social worker" or "registered social worker" or the French title "travailleur social" or "travailleur social inscrit" or an abbreviation of any of those titles to represent expressly or by implication that he or she is a social worker or registered social worker. 1998, c. 31, s. 46 (1).

Same

(2) No person except a registered social worker shall represent or hold out expressly or by implication that he or she is a social worker or a registered social worker. 1998, c. 31, s. 46 (2).

Use of title, social service worker

47 (1) No person except a registered social service worker shall use the English title "social service worker" or "registered social service worker" or the French title "technicien en travail social" or "technicien en travail social inscrit" or an abbreviation of any of those titles to represent expressly or by implication that he or she is a social service worker or registered social service worker. 1998, c. 31, s. 47 (1).

Same

(2) No person except a registered social service worker shall represent or hold out expressly or by implication that he or she is a social service worker or a registered social service worker. 1998, c. 31, s. 47 (2).

Professional corporations: representations

Representations by professional corporation

47.1 (1) A professional corporation shall not represent or hold out expressly or by implication that it is a professional corporation under this Act unless the corporation holds a valid certificate of authorization to practise social work or social service work. 2001, c. 8, s. 237.

Representations by shareholders, etc.

(2) A person shall not represent or hold out expressly or by implication that the person is a shareholder, director, officer, employee or agent of a corporation that is a professional corporation under this Act unless the corporation holds a valid certificate of authorization to practise social work or social service work. 2001, c. 8, s. 237.

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

2001, c. 8, s. 237 - 01/11/2001

Psychotherapist title

47.2 Despite section 8 of the *Psychotherapy Act, 2007*, a member of the College who is authorized to perform the controlled act of psychotherapy may use the title "psychotherapist" if the member complies with the following conditions, as applicable:

1. When describing himself or herself orally as a psychotherapist, the member must also mention that he or she is a member of the Ontario College of Social Workers and Social Service Workers, or identify himself or herself using the title restricted to him or her as a member of the College.
2. When identifying himself or herself in writing as a psychotherapist on a name tag, business card or any document, the member must set out his or her full name, immediately followed by at least one of the following, followed in turn by "psychotherapist":
 - i. Ontario College of Social Workers and Social Service Workers,

- ii. the title that the member may use under this Act.
3. The member may only use the title “psychotherapist” in compliance with this Act, the regulations and the by-laws. 2009, c. 26, s. 26 (1).

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

2009, c. 26, s. 26 (1) - 30/12/2017

“Doctor” title

47.3 (1) Despite subsection 33 (1) of the *Regulated Health Professions Act, 1991*, a person who is a member of the College and holds an earned doctorate may use the title “doctor”, a variation, abbreviation or an equivalent in another language if he or she complies with the following conditions:

1. The member may only use the title “doctor” in compliance with the requirements under this Act, the regulations and the by-laws.
2. When describing himself or herself orally using the title “doctor”, the member must also mention that he or she is a member of the Ontario College of Social Workers and Social Service Workers, or identify himself or herself using the title restricted to him or her as a member of the College.
3. When identifying himself or herself in writing using the title “doctor” on a name tag, business card or any document, the member must set out his or her full name after the title, immediately followed by at least one of the following:
 - i. Ontario College of Social Workers and Social Service Workers,
 - ii. the title that the member may use under this Act. 2009, c. 26, s. 26 (2).

Definition

(2) In this section,

“earned doctorate” means a doctoral degree in social work that is,

- (a) granted by a post-secondary educational institution authorized in Ontario to grant the degree under an Act of the Assembly, including a person that is authorized to grant the degree pursuant to the consent of the Minister of Training, Colleges and Universities under the *Post-secondary Education Choice and Excellence Act, 2000*,
- (b) granted by a post-secondary educational institution in a Canadian province or territory other than Ontario and that is considered by the College to be equivalent to a doctoral degree described in clause (a), or
- (c) granted by a post-secondary educational institution located in a country other than Canada that is considered by the College to be equivalent to a doctoral degree described in clause (a). 2009, c. 26, s. 26 (2).

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

2009, c. 26, s. 26 (2) - 01/10/2010

Right to use French

48 (1) A person has the right to use French in all dealings with the College. 1998, c. 31, s. 48 (1).

Same

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College. 1998, c. 31, s. 48 (2).

Limitation

(3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances. 1998, c. 31, s. 48 (3).

Definition

(4) In this section,

“dealings” means any practice or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1998, c. 31, s. 48 (4).

Immunity of College

49 No proceeding for damages shall be instituted against the College, the Council, a committee of the College, a member of the Council or a committee of the College, or an officer, employee, agent or appointee of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of the duty or power. 1998, c. 31, s. 49.

Confidentiality

50 (1) Every person engaged in the administration of this Act, including an investigator appointed under section 32, shall preserve secrecy with respect to all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any of those matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceeding under this Act or the regulations or by-laws;
- (b) to his or her counsel;
- (c) with the consent of the person to whom the information relates;
- (d) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result; or
- (e) to the extent that the information is available to the public under this Act. 1998, c. 31, s. 50 (1).

Definition

(2) In clause (1) (d),

“law enforcement proceeding” means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 31, s. 50 (2).

Limitation

(3) No person described in subsection (1) shall disclose, under clause (1) (d), any information with respect to a person other than a member. 1998, c. 31, s. 50 (3).

No requirement

(4) Nothing in clause (1) (d) shall require a person described in subsection (1) to disclose information to a police officer unless the information is required to be produced under a warrant. 1998, c. 31, s. 50 (4).

Persons not compellable

(5) No person to whom subsection (1) applies shall be compelled to give testimony in any civil proceeding, other than a proceeding under this Act or an appeal or a judicial review relating to a proceeding under this Act, with regard to information obtained in the course of his or her duties. 1998, c. 31, s. 50 (5).

Documents not admissible

(6) No record of a proceeding under this Act and no document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in any civil proceeding, other than a proceeding under this Act or an appeal or judicial review relating to a proceeding under this Act. 1998, c. 31, s. 50 (6).

Service of notice or document

51 (1) A notice or document to be given or served under this Act is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by mail; or
- (c) given or served in accordance with by-laws respecting service. 1998, c. 31, s. 51 (1).

Same

(2) If a notice or document is sent by mail addressed to a person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing. 1998, c. 31, s. 51 (2).

Registrar's certificate as evidence

52 A statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the College, is admissible in evidence in a court of law as proof, in the absence of evidence to the contrary, of the facts stated in it, without proof of the appointment or signature of the Registrar and without proof of the seal. 1998, c. 31, s. 52.

Statutory Powers Procedure Act

53 If there is a conflict between this Act, the regulations or the by-laws and the *Statutory Powers Procedure Act*, the provisions of this Act, the regulations and the by-laws prevail. 1998, c. 31, s. 53.

Compliance order

54 If it appears to the College that a person does not comply with this Act or the regulations or the by-laws, despite the imposition of a penalty in respect of that non-compliance and in addition to any other rights it may have, the College may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and the judge may make the order or any other order the judge thinks fit. 1998, c. 31, s. 54; 2006, c. 19, Sched. C, s. 1 (1).

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

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Offences

Offence, use of title

55 (1) Every person who contravenes subsection 46 (1) or (2), 47 (1) or (2) or 47.1 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for a subsequent offence. 1998, c. 31, s. 55 (1); 2001, c. 8, s. 238.

Offence, obstruct investigator

(2) Every person who contravenes subsection 32 (6) (obstruction of investigator) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 31, s. 55 (2).

Offence, false representation

(3) Every person who makes a representation, knowing it to be false, for the purpose of having a certificate issued under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 31, s. 55 (3).

Offence, assist in false representation

(4) Every person who knowingly assists a person in committing an offence under subsection (3) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 31, s. 55 (4).

Offence, reports by employers, members

(5) Every person who contravenes section 41 (Employer's report, termination for misconduct, etc.), section 42 (Employer's report, member convicted of offence) or section 43 (Member's Report, sexual abuse by another member) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 1998, c. 31, s. 55 (5).

Offence re preserving secrecy

(6) A person who contravenes subsection 50 (1) (Confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 1998, c. 31, s. 55 (6).

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

2001, c. 8, s. 238 - 01/11/2001

Review by Minister

56 (1) The Minister shall conduct a review of this Act within five years after this section comes into force. 1998, c. 31, s. 56 (1).

Same

(2) The Minister shall,

- (a) inform the public when a review under this section begins; and
- (b) prepare a written report respecting the review and make that report available to the public. 1998, c. 31, s. 56 (2).

**PART X
TRANSITIONAL PROVISIONS**

Appointment of transitional Council

57 (1) Despite any other provision of this Act, the Minister shall, on the terms determined by the Minister, appoint a transitional Council of the College to act as a transitional Council of the College until the first meeting of the first duly elected and appointed Council. 1998, c. 31, s. 57 (1).

Composition

(2) The transitional Council shall be composed of an equal number of social workers and social service workers and such other persons as the Minister considers appropriate. 1998, c. 31, s. 57 (2).

Registrar

(3) The transitional Council shall appoint a Registrar who shall act for the period beginning on the day set out in his or her appointment and ending when the first duly elected and appointed Council appoints a Registrar. 1998, c. 31, s. 57 (3).

Powers and duties of transitional Council

(4) During the period mentioned in subsection (1), this Act and the Regulations and by-laws apply with respect to the transitional Council as if it were the Council. 1998, c. 31, s. 57 (4).

Committees of transitional Council

58 The transitional Council may establish any committees that it from time to time considers necessary. 1998, c. 31, s. 58.

Initial certificate

59 (1) The Registrar appointed by the transitional Council or the Registrar appointed under subsection 9 (2), as the case may be, shall issue a certificate of registration for social work to an applicant if,

- (a) his or her application and the fees prescribed by the by-laws are received by the College before the day that is two years after the day subsection 57 (1) is proclaimed in force; and
- (b) the applicant has obtained a degree in social work from a social work program accredited by the Canadian Association of Schools of Social Work, a degree from a social work program or an equivalent program approved by a body prescribed by the regulations or a degree from a social work program or an equivalent program prescribed by the regulations. 1998, c. 31, s. 59 (1).

Same

(2) The Registrar appointed by the transitional Council or the Registrar appointed under subsection 9 (2), shall issue a certificate of registration for social service work to an applicant if,

- (a) his or her application and the fees prescribed by the by-laws are received by the College before the day that is two years after the day subsection 57 (1) is proclaimed in force; and
- (b) the applicant has obtained a diploma in social service work from a social service work program or an equivalent program, as prescribed by the regulations. 1998, c. 31, s. 59 (2).

Defer application

(3) The Registrar appointed by the transitional Council may defer an application under this section for a certificate of registration until a Registrar is appointed under subsection 9 (2) if, based on the past conduct or actions of the applicant, the Registrar has reasonable grounds to believe that the applicant will not perform his or her duties as a social worker or a social service worker, as the case may be, in accordance with the law, including, but not limited to, this Act, the regulations and the by-laws. 1998, c. 31, s. 59 (3).

Same

(4) Before deferring an application under subsection (3), the Registrar shall give the applicant,

- (a) notice of his or her intention to defer the application; and
- (b) at least 14 days to make written submissions to the Registrar as to why that action should not be taken. 1998, c. 31, s. 59 (4).

Same

(5) The Registrar need not hold a hearing or afford any person an opportunity to make oral or written submissions, other than as provided in this section, before deferring an application under this section. 1998, c. 31, s. 59 (5).

Revoke certificate

60 (1) The Registrar appointed by the transitional Council may revoke a certificate of registration issued under section 59 if he or she has reasonable grounds to believe that the past conduct or actions of the member in the course of his or her practice exposes or is likely to expose a person or persons to harm or injury. 1998, c. 31, s. 60 (1).

Same

- (2) Before revoking a certificate under subsection (1), the Registrar shall give the member,
- (a) notice of his or her intention to revoke the certificate; and
 - (b) at least 14 days to make written submissions to the Registrar as to why that action should not be taken. 1998, c. 31, s. 60 (2).

Same

(3) Clause (2) (b) does not apply with respect to the revocation of a certificate of registration if the Registrar believes that the delay would be inappropriate in view of the risk of harm or injury to a person or persons. 1998, c. 31, s. 60 (3).

Same

(4) The Registrar need not hold a hearing or afford any person an opportunity to make oral or written submissions, other than as provided in this section, before revoking a certificate of registration under this section. 1998, c. 31, s. 60 (4).

First election of Council

61 The transitional Council shall hold the election for the elected members of the first duly elected and appointed Council within one year after the transitional Council is appointed. 1998, c. 31, s. 61.

First annual meeting of members

62 The College shall hold the first annual meeting of the members of the College not more than 15 months after the first duly elected and appointed Council takes office. 1998, c. 31, s. 62.

63 REPEALED: 2009, c. 24, s. 34 (5).

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

2009, c. 24, s. 34 (5) - 15/12/2009

64 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1998, c. 31, s. 64.

65 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1998, c. 31, s. 65.

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TAB 7

Social Work and Social Service Work Act, 1998

ONTARIO REGULATION 384/00 PROFESSIONAL MISCONDUCT

Consolidation Period: From August 1, 2017 to the [e-Laws currency date](#).

Last amendment: 320/17.

Legislative History: 320/17.

This is the English version of a bilingual regulation.

1. In this Regulation,

“member” means a member of the College; (“membre”)

“profession” means the profession of social work or the profession of social service work. (“profession”) O. Reg. 384/00, s. 1.

2. The following are acts of professional misconduct for the purposes of clause 26 (2) (c) of the Act:

THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, CLIENTS

1. Contravening a term, condition or limitation imposed on the member’s certificate of registration.
2. Failing to meet the standards of the profession.
3. Doing anything to a client in the course of practising the profession in a situation in which consent is required by law, without such a consent.
4. Failing to supervise adequately a person who is under the professional responsibility of the member and who is providing a social work service or a social service work service.
5. Abusing a client physically, sexually, verbally, psychologically or emotionally, including sexually abusing a client within the meaning of subsection 43 (4) of the Act.
6. Using information obtained during a professional relationship with a client or using one’s professional position of authority to coerce, improperly influence, harass or exploit a client or former client.
7. Practising the profession,
 - i. while under the influence of any substance, or
 - ii. while suffering from illness or dysfunction,which the member knows or ought reasonably to know impairs the member’s ability to practise.
8. Discontinuing professional services that are needed unless,
 - i. the client requests the discontinuation,
 - ii. the client withdraws from the service,
 - iii. reasonable efforts are made to arrange alternative or replacement services,
 - iv. the client is given a reasonable opportunity to arrange alternative or replacement services, or
 - v. continuing to provide the services would place the member at serious risk of harm,and, in the circumstances described in subparagraph i, ii, iii or iv, the member makes reasonable efforts to hold a termination session with the client.
9. Providing a service that the member knows or ought reasonably to know is not likely to benefit the client.
10. Providing a professional service while the member is in a conflict of interest.
11. Giving information about a client to a person other than the client or his or her authorized representative except,
 - i. with the consent of the client or his or her authorized representative,
 - ii. as required or allowed by law, or

- iii. in a review, investigation or proceeding under the Act in which the professional conduct, competency or capacity of the member is in issue and only to the extent reasonably required by the member or the College for the purposes of the review, investigation or proceeding.
- 12. Breaching a term of an agreement with a client relating to,
 - i. the fees for professional services, or
 - ii. professional services for the client.
- 13. Failing to provide a truthful and appropriate explanation of the nature of a professional service following a client's request for an explanation.
- 14. Failing, without reasonable cause, to provide access to the client or his or her authorized representative to the client's record or such part or parts of the client's record as is reasonable in the circumstances.

REPRESENTATIONS ABOUT MEMBERS AND THEIR QUALIFICATIONS

- 15. Inappropriately using a term, title or designation in respect of the member's practice.
- 16. Failing to identify oneself as a social worker or social service worker to a client when providing social work or social service work services.
- 17. Failing to advise the College promptly of a change in the name used by the member in providing or offering to provide social work or social service work services.
- 18. Using a name other than the member's name as set out in the register in the course of practising the profession except where the use of another name is necessary for personal safety, the member's employer and the College have been made aware of the pseudonym and the pseudonym is distinctive.

RECORD KEEPING AND REPORTS

- 19. Falsifying a record relating to the member's practice.
- 20. Failing to keep records as required by the regulations and standards of the profession.
- 21. Making a record, or issuing or signing a certificate, report or other document in the course of practising the profession that the member knows or ought reasonably to know is false, misleading or otherwise improper.
- 22. Failing, without reasonable cause, to provide a report or certificate relating to a service performed by the member, within a reasonable time, to the client or his or her authorized representative after a client or his or her authorized representative has made a written request for such a report or certificate.

BUSINESS PRACTICES

- 23. Failing to inform the client, before or at the commencement of a service, of the fees and charges to be levied for the service, and for late cancellations or missed appointments.
- 24. Submitting an account or charge for services that the member knows is false or misleading.
- 25. Charging a fee that is excessive in relation to the service performed.
- 26. Receiving or conferring a rebate, fee or other benefit by reason of the referral of a client to or from another person.
- 27. Failing to provide an itemized account of professional services within a reasonable time, if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services.

MISCELLANEOUS MATTERS

- 28. Contravening the Act or regulations or by-laws.
- 29. Contravening a federal, provincial or territorial law or a municipal by-law if,
 - i. the purpose of the law or by-law is to protect public health, or
 - ii. the contravention is relevant to the member's suitability to practise.
- 30. Influencing a client to change his or her will or other testamentary instrument.
- 31. Failing to comply with an order of a panel of the Complaints Committee, Discipline Committee or Fitness to Practise Committee of the College.
- 32. Failing to comply with a written undertaking given to the College or to carry out an agreement entered into with the College.
- 33. Failing to co-operate in a College investigation.
- 34. Failing to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner where a member is required to provide information to the College pursuant to the Act, regulations or by-laws.

35. In the case of a member whose certificate of registration is suspended, engaging in the practice of social work or social service work while the certificate is suspended.
36. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. O. Reg. 384/00, s. 2.
3. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 384/00, s. 3.

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