

CONSOLIDATION OF CHILD DAY CARE ACT
R.S.N.W.T. 1988,c.C-5

(Current to: September 11, 2011)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1991-92,c.17

S.N.W.T. 1997,c.8

S.N.W.T. 1998,c.17

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2010,c.14,s.1

s.1 in force June 10, 2010

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 2011

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CHILD DAY CARE ACT

INTERPRETATION

Definitions

1. In this Act,

"child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 12 years; (*enfant*)

"child day care facility" means an establishment where care, instruction or supervision is provided to five or more children, in the absence of the persons who have lawful custody of those children, by a person who is not a relative of a majority of the children; (*garderie*)

"designated person" means a person or persons designated by the Minister under section 21 to hear an appeal under subsection 20(1); (*personne désignée*)

"Director" means the Director of Child Day Care Services appointed under section 3; (*directeur*)

"licence" means a licence to operate a child day care facility issued under section 12; (*permis*)

"operator" means a person who is the holder of a licence; (*exploitant*)

"relative" means a grandparent, brother, sister, aunt, uncle or first cousin of a child. (*parent*)

S.N.W.T. 1998,c.17,s.5(2).

APPLICATION

Where Act does not apply

2. This Act does not apply where care, instruction or supervision is provided to a child

- (a) under a casual and irregular babysitting arrangement;
- (b) by a school operated under the *Education Act*;
- (c) by a hospital, health facility or nursing station;
- (d) by a religious congregation during the conduct of religious services or training;
- (e) under the *Child and Family Services Act*; or
- (f) by a charitable organization during the conduct of recreational or leadership programs.

S.N.W.T. 1998,c.17,s.5(3).

DIRECTOR

Appointment of Director

- 3.** The Minister may appoint a Director of Child Day Care Services.

Direction of Minister

- 4.** The Director shall perform his or her duties and exercise his or her powers under the direction of the Minister.

Power to delegate

- 5.** The Director may delegate, in writing, any of his or her duties or powers under this Act or the regulations.

Duty to establish registry

- 6.** The Director shall establish and maintain a registry of child day care facilities in accordance with the regulations.

Duty to inspect

- 7.** (1) The Director shall inspect each child day care facility at least once a year.

Inspection

(2) The Director may, at all reasonable times, inspect a child day care facility including the equipment, the services provided and books or records relating to the operation of the child day care facility.

Order for entry

(3) Where an operator refuses to allow the Director to enter a child day care facility for the purpose of an inspection, the Director may make an application *ex parte* to a justice for an order to enter the child day care facility.

Order

(4) A justice, on application by the Director under subsection (3), may make an order *ex parte* permitting the Director to enter the child day care facility specified in the order to carry out an inspection of the child day care facility.

Investigation

8. (1) Where the Director, on reasonable and probable grounds, believes that a premises is being used as a child day care facility, the Director may apply to a justice for an order to enter the premises to investigate whether the premises is being used as a child day care facility.

Application

(2) An application made under subsection (1) may be made *ex parte*.

Order

(3) A justice, on application by the Director under subsection (1), may make an order *ex parte* permitting the Director to enter and inspect the premises specified in the order. S.N.W.T. 1997,c.8,s.3.

Application injunction

9. (1) Where the Director, after conducting an investigation under section 8, is of the opinion that a premises is being used as a child day care facility without a licence, the Director may apply to the Court in accordance with the Rules of the Nunavut Court of Justice for an order enjoining the owner or person in charge of the premises from acting in contravention of this Act.

Injunction

(2) The Court, on application by the Director under subsection (1), may make an order enjoining any person from acting in contravention of this Act, whether or not any punishment has been imposed for the contravention and, on application by any person, may vary or discharge the order. S.Nu. 2010,c.14,s.1.

LICENSING

Application for licence

10. A person who wishes to operate a child day care facility shall apply to the Director for a licence in accordance with the regulations and pay the prescribed fee. S.Nu. 2010,c.14,s.1.

Duty of Director

11. On receipt of an application for a licence, the Director shall

- (a) review the application; and
- (b) inspect the proposed child day care facility for compliance with the regulations.

Licence

12. The Director may, within 30 days, issue a licence to an applicant in accordance with the regulations.

Restrictions

13. Every licence is subject to this Act and the regulations that apply to the licence.

Validity of licence

14. A licence is valid for the period stated on the licence unless suspended or revoked.

Notice of refusal of licence

15. Where the Director refuses to issue a licence on an application made under section 10, the Director shall, without delay, give notice of the refusal, in writing, to the applicant and specify the reasons for the refusal.

Suspension of licence

16. (1) Where the Director believes on reasonable and probable grounds that the health, safety or well being of a child attending a child day care facility is endangered, the Director may suspend the licence of the operator of that day care facility.

Order to comply

(2) Where the Director believes on reasonable and probable grounds that the operator of a child day care facility or an employee or agent of the operator has contravened this Act or the regulations, the Director may

- (a) order, in writing, the operator to take the measures that the Director considers necessary within a specified time to remedy the non-compliance; and
- (b) serve a copy of the order referred to in paragraph (a) on the operator.

Suspension of licence

(3) Where an operator does not comply with an order made under subsection (2), the Director may suspend the licence of the operator.

Notice of suspension

(4) The Director shall notify, in writing, an operator of the suspension of the licence of the operator and specify in the notice

- (a) the reasons for the suspension; and
- (b) the period of time within which the operator may apply for a reinstatement of the licence.

Further particulars of notice

(5) Where a licence is suspended under subsection (1), the Director shall, unless he or she considers it inappropriate in the circumstances, specify in the notice given under subsection (4) the measures to be taken by the operator to ensure that the health, safety or well-being of a child attending the child day care facility is not endangered.

Idem

(6) Where a licence is suspended under subsection (3), the Director shall specify in the notice given under subsection (4) the measures to be taken by the operator to remedy the non-compliance. S.N.W.T. 1991-92,c.17,s.2.

Application for reinstatement

17. (1) Where the licence of an operator has been suspended, the operator may apply to the Director to have his or her licence reinstated within the time stated in the notice of suspension.

Reinstatement

(2) On receipt of an application under subsection (1), the Director may reinstate the licence

- (a) in the case of a suspension under subsection 16(1), where the Director is of the opinion that the health, safety or well-being of a child is no longer endangered; and
- (b) in the case of a suspension under subsection 16(3), where the Director is of the opinion that the operator is in compliance with this Act and the regulations.

Reinstatement without application

(3) Despite subsection (2), the Director may reinstate a licence suspended pursuant to subsection 16(1), without an application in that regard, where the Director is of the opinion that the grounds for the suspension no longer exist and that it is appropriate in the circumstances to do so. S.N.W.T. 1991-92,c.17,s.3; S.Nu. 2010,c.14,s.1.

Revocation of licence

- 18.** (1) The Director may revoke the licence of an operator where the operator
- (a) has not applied for the reinstatement of a licence that has been suspended within the time stated in the notice of suspension;
 - (b) has applied for the reinstatement of a licence that has been suspended and the Director has refused to reinstate the licence; or
 - (c) has persistently contravened this Act or the regulations.

Notice of revocation

- (2) The Director shall
- (a) notify, in writing, an operator of the revocation of the licence of the operator; and
 - (b) specify the reasons for the revocation.

Where operator to close

19. An operator whose licence is suspended or revoked shall, without delay, close the child day care facility.

APPEALS

Appeal

20. (1) A person who has been refused a licence or an operator whose licence has been suspended or revoked may appeal the decision of the Director to a person or persons designated by the Minister under section 21.

Time to appeal

(2) A person or operator may, within 30 days after the receipt of the notice of the refusal of a licence or the suspension or revocation of his or her licence, file with the Minister a notice of appeal and state in the notice the reasons for the appeal.

Designation of persons to hear appeal

21. On receipt of a notice of appeal, the Minister shall, without delay, designate a person or persons who do not work in the department of the Government of Nunavut that administers this Act to hear the appeal. S.Nu. 2010,c.14,s.1.

Time and place of hearing

22. (1) On being notified of the designation referred to in section 21, a designated person shall, without delay,

- (a) set a time and place for the hearing of the appeal; and
- (b) notify the appellant and the Director of the time and place of the hearing of the appeal.

Natural justice

(2) A designated person is bound by the rules of natural justice when hearing the appeal.

Hearing

(3) The hearing of an appeal must be in accordance with the regulations.

Decision

23. (1) Within 15 days after the hearing of an appeal, a designated person may

- (a) on an appeal of a refusal of a licence, confirm the decision or direct the Director to issue the licence in accordance with the regulations;
- or
- (b) on an appeal of a suspension or revocation of a licence, confirm, vary or quash the decision and direct the Director accordingly.

Notice of decision

(2) A designated person shall notify, in writing, the appellant and the Director of his or her decision and specify the reasons for the decision.

Review by Minister

24. (1) An appellant or the Director may appeal the decision of a designated person to the Minister.

Time to appeal

(2) An appellant or the Director may, within 30 days after the receipt of the decision of a designated person, file with the Minister a notice of appeal and state in the notice the reasons for the appeal.

Transmission of appeal file

25. Where a notice of appeal is filed under section 24, the designated person shall, without delay, transmit to the Minister the appeal file.

Review of appeal file

26. (1) Within 14 days after the receipt of the appeal file and after review of the appeal file, the Minister may confirm, vary or quash the decision of the designated person and direct the Director accordingly.

Notice of decision

(2) The Minister shall give notice of the decision under subsection (1), in writing, to the appellant and Director.

Decision of Minister

(3) The decision of the Minister is final.

OPERATORS

Programs and services

27. An operator shall provide the prescribed programs and services to the children attending the child day care facility.

Staff

28. No operator shall employ a person who does not meet the prescribed qualifications to provide care, instruction or supervision to the children attending the child day care facility.

Posting of licence and notice

29. An operator shall post in a conspicuous place in the child day care facility

- (a) the licence, the terms and conditions imposed on the licence and any exemptions obtained under subsection 38(3);
- (b) any order issued under subsection 16(2) in respect of that facility; and
- (c) any notice of the suspension or revocation of the licence.

S.N.W.T. 1991-92,c.17,s.4.

Records, returns and reports

30. The Director may require an operator

- (a) to keep records in the form and manner approved by the Director; and
- (b) to file returns and reports in a form and manner approved by the Director and within the time specified by the Director.

Requirement for parental involvement

31. An operator shall provide for parental involvement in the operation or management of the child day care facility to the extent required by the regulations.

Access to child

32. (1) An operator shall ensure that a person who has lawful custody of a child attending the child day care facility

- (a) has access to the child at any time; and
- (b) may remove the child from the facility at any time.

Access to records

(2) An operator shall ensure that a person who has lawful custody of a child or who is entitled to access to a child has access to the records of the child kept by the child day care facility, unless a court otherwise orders. S.N.W.T. 1998,c.17,s.5(4),(5).

Duty to notify

33. An operator shall notify the Director, in writing, of

- (a) the intention of the operator to close the child day care facility;
- (b) any proposed alterations to the child day care facility;
- (c) any proposed increase or decrease in the capacity of the child day care facility; and
- (d) any proposed change of location of the child day care facility or a part of it.

AGREEMENTS

Agreements

34. The Commissioner and the Minister may enter into agreements with the Government of Canada respecting the implementation of this Act or the regulations.

OFFENCES AND PUNISHMENT

Requirement for licence

35. No person shall operate a child day care facility without a licence.

False representations

36. No person shall advertise or lead the public to believe that he or she is operating a child day care facility unless he or she is licensed.

Offence and punishment

37. Every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction

- (a) to a fine not exceeding \$5,000 or, in default of payment, to imprisonment for a term not exceeding six months; and
- (b) if the person is an operator, to suspension or revocation of his or her licence.

REGULATIONS

Regulations

38. (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing additional duties of the Director;
- (b) respecting a registry of child day care facilities;
- (c) respecting applications for licences;
- (d) prescribing an application fee;
- (e) respecting requirements and equipment of a child day care facility;
- (f) respecting standards of care, programs of instruction, supervision and services to be given to a child attending a child day care facility;
- (g) respecting the issuing of licences;
- (h) establishing classes of licences and the terms and conditions of a licence;
- (i) respecting the duration of a licence;
- (j) respecting the qualifications of the staff of a child day care facility;
- (k) respecting the hearing of an appeal;
- (l) establishing the extent of parental involvement required in a child day care facility;
- (m) prescribing any matter or thing that by this Act may or is to be prescribed; and
- (n) respecting any other matter that the Commissioner considers necessary or advisable for carrying out the provisions of this Act.

Adoption of code of rules or standards

(2) Where a code of rules or standards concerning the subject-matter of this Act

- (a) has been promulgated by any person or association, and
- (b) is available in printed form,

the Commissioner, on the recommendation of the Minister, may adopt the code by regulation in whole or in part or with such variations as may be set out in the regulation.

Exemption

(3) The Minister may, by order, exempt any person or group of persons in a community from compliance with provisions of this Act or the regulations where an exemption does not endanger the health, safety and well-being of the children attending or that will be attending a child day care facility.