

## Chapter 15

### AN ACT TO AMEND THE CHILD AND FAMILY SERVICES ACT

(Assented to June 9, 2011)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

- 1. This Act amends the *Child and Family Services Act*.**
- 2. Section 1 is amended by adding the following definitions in alphabetical order:**

"child protection order" means a child protection order made under section 28;  
(*ordonnance de protection de l'enfant*)

"interim order" means an interim child protection order made under section 26.1;  
(*ordonnance provisoire*)

- 3. Section 4 is amended by repealing the definition "order".**
- 4. The heading preceding section 24 and section 24 are repealed and the following is substituted:**

#### Child Protection Hearings

Application where child apprehended

**24.** (1) Where a child is apprehended under paragraphs 10(1)(a) or (2)(a) or subsection 11(1), an application to a court for a declaration that a child needs protection and for a child protection order must be made within four days after the day on which the child is apprehended.

Application where child not apprehended

(2) Where during or as a result of an investigation of a report under section 8 or a referral under paragraph 10(2)(b), a Child Protection Worker has reasonable grounds to believe that a child needs protection, an application to a court for a declaration that the child needs protection and for a child protection order must be made within 20 days after the day on which the report was made or the matter was referred to the Child Protection Worker.

Application in case of election

(3) Where an election is made under subsection 18(1), the Child Protection Worker who receives the election under subsection 18(3) shall apply to a court for a declaration that the child needs protection and for a child protection order within 20 days after the day on which the election is received.

**5. Paragraph 25(c) is repealed and the following is substituted:**

- (c) if the child is an Inuk child, whichever of the following Inuit organizations the child, or the mother or father of the child, is or is eligible to be a member:
  - (i) Kitikmeot Inuit Association;
  - (ii) Kivalliq Inuit Association;
  - (iii) Qikiqtani Inuit Association.

**6. Section 26 is repealed and the following is substituted:**

Date for initial hearing – apprehension cases

- 26.** (1) An initial hearing of an application under subsection 24(1)
- (a) must be held not later than nine days after the day on which it is filed; and
  - (b) subject to subsection (3), may be adjourned by the court from time to time.

Date for hearing – non-apprehension cases

- (2) A hearing of an application under subsection 24(2) or (3)
- (a) must be held not later than 20 days after the day on which it is filed; and
  - (b) may be adjourned by the court from time to time.

Completion of initial hearing

- (3) Where an application is made under subsection 24(1), an initial hearing must be completed within 20 days after the day on which the child was apprehended, and at the conclusion of the hearing the court may take one of the following actions:
- (a) make an interim order under subsection 26.1(1);
  - (b) make a child protection order under section 28; or
  - (c) dismiss the application and direct that the child be returned to the person who had lawful custody of the child when the child was apprehended.

**7. The Act is amended by adding the following after section 26:**

Interim order

- 26.1.** (1) On an initial hearing of an application under subsection 24(1), the court may make an interim order that the child remain in the care of the Director, where the court determines that
- (a) there are reasonable grounds to believe that the child needs protection; and
  - (b) the person who apprehended the child had, at the time of the apprehension, reasonable grounds to believe that the child's health or safety would be in danger if the child were returned to a person

having lawful custody of the child at the time the child was apprehended.

#### Terms and conditions

(2) An interim order under subsection (1) may include terms and conditions that the court considers appropriate in respect of any person's right of access to the child.

#### Dismissal

(3) The court shall dismiss the application if it determines that the grounds referred to in paragraphs (1)(a) and (b) have not been established.

#### Withdrawal of application

(4) Where, at any time after an application is filed under subsections 24(1) or (2) and before a child protection order is made under section 28, a plan of care agreement is entered into that the Director considers adequate to protect the child, the Director may withdraw the application and place the child in the care of the person designated in the plan of care agreement to have custody of the child.

#### Discharge of interim order

(5) Where a plan of care agreement is entered into regarding a child who is the subject of an interim order, the Director may, on serving the persons referred to in section 25 with four days' notice, bring the matter again before a court and the court may discharge the interim order and discontinue the application for a child protection order.

#### Interim order in effect

**26.2.** An interim order remains in effect until one of the following events occurs:

- (a) the order is discharged by the court;
- (b) the order is replaced by a child protection order made under section 28;
- (c) the Director withdraws the application, under subsection 26.1(4);  
or
- (d) the Director fails to issue a notice of motion for a hearing on the application for a child protection order within 30 days after the interim order is made.

### **8. Subsection 27(1) is repealed and the following is substituted:**

#### Determination of whether child needs protection

**27.** (1) On the hearing of an application under section 24, the court shall determine, in accordance with section 7, whether or not the child who is the subject of the hearing needs protection.

### **9. (1) Subsections 31(1) and (2) are repealed and the following is substituted:**

Apprehension where medical care or treatment refused

- 31.** (1) Where the Director has reasonable grounds to believe that a child needs protection by reason of any refusal described in paragraph 7(3)(j), the Director shall
- (a) direct a Child Protection Worker, a peace officer or an authorized person to apprehend the child, if the child has not already been apprehended; and
  - (b) without delay, make an application to the court for a declaration that the child needs protection and for an order authorizing the medical care or treatment.

**(2) Subsection 31(4) is amended by repealing paragraph (c) and substituting the following:**

- (c) that the Director intends to make an application to the court for an order under this section.

**(3) The following is added after subsection 31(6):**

Time for making application

(6.1) An application under paragraph (1)(b) must be filed with a court within four days after the day on which the child was apprehended, and a hearing must be held within nine days after the day on which the application is filed.

Adjournment

(6.2) The court may adjourn a hearing from time to time and shall make an order continuing the apprehension during any adjourned period if the court is satisfied that there are reasonable grounds to believe that

- (a) the child needs protection by reason of a refusal described in paragraph 7(3)(j); and
- (b) provision of the medical care or treatment is in the best interests of the child.

**(4) The following is added after subsection 31(7):**

Dispensing with service

(7.1) The court may dispense with the requirement for service of the originating notice or notice of application prior to the hearing of the application or make any other order the court considers necessary where, in the opinion of the judge,

- (a) it is in the best interests of the child; and
- (b) the persons entitled to service under subsection (7), if their identities and whereabouts are known, are otherwise aware of the application and of the time and place of the hearing, and have an opportunity to participate in the proceedings.

**10. (1) Paragraphs 34(1)(a) to (c) are repealed and the following is substituted:**

- (a) the Child Protection Worker will apply to a court for a declaration that the child needs protection and for a child protection order;
- (b) a Child and Family Services Committee or the Child Protection Worker shall endeavour to establish a plan of care committee by the date specified in the notice; and
- (c) if a plan of care or plan of care committee is established, the person who has lawful custody of the child or the child, where the child has attained the age of 12 years, has a right to make an election under section 18 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for a child protection order.

**(2) Subsection 34(2) is repealed and the following is substituted:**

Information on procedures under Act

(2) A Child Protection Worker shall provide, together with the notice under subsection (1), the applicable information prepared by the Director explaining the procedures under this Act for

- (a) making an application to a court for a declaration that a child needs protection and for a child protection order; and
- (b) establishing a plan of care committee and a plan of care agreement.

**11. Subsection 35(1) is amended by:**

**(a) adding the following after paragraph (a):**

- (a.1) an interim order under subsection 26.1(1) expires or the application for a child protection order is withdrawn or dismissed;

**(b) adding the following after paragraph (c):**

- (c.1) an interim order or a child protection order is discharged by a court;

**12. Section 82 is repealed and the following is substituted:**

Originating notice respecting apprehensions

**82.** (1) Where a child is apprehended and an application is made under subsection 24(1) or paragraph 31(1)(b), a copy of the originating notice and any affidavit to be relied on that has not already been served, must be served four days before the day named in the notice for the initial hearing of the application.

Service in other matters

(2) Where any other application is made under this Act, or in any subsequent proceedings concerning an application under subsection 24(1) or paragraph 31(1)(b), a

copy of the originating notice or notice of motion, and any affidavit to be relied on that has not already been served, must be served 10 days before the day named in the notice for the hearing of the application or the return date of the motion, as the case may be.

**13. Section 83 is re-numbered as subsection 83(1) and the following is added after subsection 83(1):**

Time less than 10 days

(2) Where any notice is to be given or any action is to be taken under this Act in a time period of less than 10 days, Saturdays and holidays shall be excluded in determining the number of days.

**14. Section 84 is amended by adding the following after subsection 84(4):**

Oral hearing

(5) A court, on hearing an application under section 24 or paragraph 31(1)(b), may permit evidence to be given orally by telephone or by an audio-visual method approved by the Court.

**15. Section 91 is amended by striking out paragraph (d).**

**16. Each provision listed in Column 1 of Schedule A of this Act is amended by striking out the words set out in the same row of Column 2 and substituting the words set out in the same row of Column 3.**

**CONSEQUENTIAL AMENDMENTS**

*Child and Family Services Regulations*

**17. (1) The *Child and Family Services Regulations, R-142-98*, are amended by this section.**

**(2) The heading preceding section 41 and section 41 are repealed.**

**(3) Schedule B is repealed.**

**SCHEDULE A**

*(Section 16)*

<b>Provisions Amended</b>	<b>Word or Words Struck Out</b>	<b>Word or Words Substituted</b>
<ul style="list-style-type: none"> <li>• Paragraph 10(1)(b)</li> <li>• Paragraph 11(3)(b)</li> <li>• Paragraphs 14(1)(a) and (b)</li> <li>• Subsection 14(2)</li> <li>• Subsection 16(4), preceding paragraph (a)</li> <li>• Subsection 18(1)</li> <li>• Subsection 18(4)</li> <li>• Subsection 22(2)</li> <li>• Paragraph 23(1)(b)</li> <li>• Subsection 23.1(1)</li> <li>• Section 25, preceding paragraph (a)</li> <li>• Subsection 27(2), preceding paragraph (a)</li> <li>• Subsection 28(2)</li> <li>• Subsection 28(5), preceding paragraph (a)</li> <li>• Subsection 28(9), preceding paragraph (a)</li> <li>• Paragraph 35(1)(c)</li> </ul>	<p>"an order"</p>	<p>"a child protection order".</p>
<ul style="list-style-type: none"> <li>• Paragraph 16(1)(b)</li> </ul>	<p>"an order"</p>	<p>"a child protection order, if such application has not yet been made"</p>
<ul style="list-style-type: none"> <li>• Subsection 17(1)</li> </ul>	<p>"or order"</p>	<p>", an interim order or a child protection order"</p>
<ul style="list-style-type: none"> <li>• Subsection 28(1), preceding paragraph (a)</li> </ul>	<p>"orders"</p>	<p>"child protection orders"</p>
<ul style="list-style-type: none"> <li>• Subsection 28(6)</li> </ul>	<p>"an order under paragraph (1)(c) or (d)"</p>	<p>"an interim order under subsection 26.1(1) or a child protection order under paragraph (1)(c) or (d)"</p>
<ul style="list-style-type: none"> <li>• Subsections 28 (7) and (8)</li> </ul>	<p>"an order"</p>	<p>"an interim order under subsection 26.1(1) or a child protection order"</p>

• <b>Section 29, preceding paragraph (a)</b>	"an order"	"an interim order or a child protection order"
• <b>Subsection 31(3)</b>	"under paragraph (1)(a) or (2)(a)"	"under paragraph (1)(a)"
• <b>Subsection 31(4), preceding paragraph (a)</b>	"under paragraph (1)(a) or (2)(a)"	"in accordance with a direction given under paragraph (1)(a)"
• <b>Subsection 31(6)</b>	"paragraph (1)(a) or "	
• <b>Subsection 31(7)</b>	"Where the Director proceeds under subsection (2), the Director must"	"The Director must"
• <b>The French version of paragraph 31(9)(c)</b>	« enjoignant les parents, la personne qui assumait effectivement la charge de l'enfant au moment où il a été appréhendé ou toute autre personne »	« enjoignant aux parents, à la personne qui assumait effectivement la charge de l'enfant au moment où il a été appréhendé ou à toute autre personne »
• <b>Subsection 34(5)</b> • <b>Subsection 35(8)</b>	"under subsection 31(2)"	"in accordance with a direction given under paragraph 31(1)(a)"
• <b>Paragraph 35(1)(d)</b>	"or order"	" , interim order or child protection order"
• <b>The French version of section 43</b>	«à l'audience de la requête»	« lors de l'audition de la requête »
• <b>Paragraph 47(1)(a)</b>	"the order"	"the child protection order or any extension of the order under subsection (3)"
• <b>Paragraph 47(1)(b)</b>	"the order"	"the child protection order"
• <b>Section 52</b>	"section 31 or 32"	"paragraph 31(1)(a), section 32"
• <b>Section 56, in the definition "corporate body"</b>	"aboriginal organization"	"Inuit organization identified in paragraph 25(c)"
• <b>Subsection 58.1(2)</b>	"aboriginal organization"	"Inuit organization"
• <b>Paragraph 58.1(1)(c)</b> • <b>Subsection 58.1(2)</b>	"aboriginal children"	"Inuit children"
• <b>Section 79, wherever it appears</b>	"made under section 28 or subsection 38(1)"	"made under section 26.1, 28 or 29.5, or subsection 38(1)"