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SNL2018 CHAPTER C-12.3

CHILDREN, YOUTH AND FAMILIES ACT
[To be Proclaimed]

Amended:

CHAPTER C-12.3

AN ACT RESPECTING CHILDREN, YOUTH AND FAMILIES

(Assented to May 31, 2018)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Children, Youth and Families Act* .

[2018 cC-12.3 s1](#)

PART I INTERPRETATION

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Interpretation

2. (1) In this Act

- (a) "agency licence" means a licence issued under paragraph 71(1)(a);
- (b) "alternate dispute resolution" means a process for resolving disputes, other than litigation, that is approved by a provincial director;
- (c) "care" means the physical daily care and nurturing of a child or youth;
- (d) "child" means a person actually or apparently under 16 years of age;
- (e) "court" means the Supreme Court - Family Division or the Provincial Court ;
- (f) "cultural connection plan" means a description of the arrangements made or being made to foster an Indigenous child's or Indigenous youth's connection with his or her culture, heritage, traditions, community, language and spirituality to preserve the Indigenous child's or Indigenous youth's cultural identity;
- (g) "custody" means the rights and responsibilities of a parent in respect of a child or youth;
- (h) "department" means the department presided over by the minister;
- (i) "facility" means a residence owned or operated by a licensee where a child or youth placed with that licensee resides;
- (j) "family-based placement provider licence" means a licence issued under paragraph 71(1)(b);

- (k) "family group conference" means a formal planning and decision making meeting, facilitated by an independent co-ordinator, which brings together the parent, family or other person significant to the child, social workers and other service providers to develop a plan for a child's safety, permanency and well-being;
- (l) "foster care placement" means placement of a child or youth who is in the care or custody of a manager
 - (i) with a foster parent,
 - (ii) in a residential placement,
 - (iii) with a family-based placement provider licensee, or
 - (iv) with a residential placement provider licensee;
- (m) "foster parent" means a person with whom a child or youth, who is in the care or custody of a manager is placed and by agreement with a manager, has assumed responsibility for the daily care and supervision of the child or youth in a family environment, and includes kin but does not include the parent;
- (n) "Indigenous child" means
 - (i) an Inuit child,
 - (ii) a Métis child,
 - (iii) an Innu, Mi'kmaq or other First Nations child,
 - (iv) a child who has a parent who considers the child to be Indigenous, or
 - (v) a person who is at least 12 years of age but under the age of 16 and who considers himself or herself to be Indigenous;
- (o) "Indigenous government or organization" means the entities prescribed in the Schedule;
- (p) "Indigenous representative" means a person designated by an Indigenous government or organization;
- (q) "Indigenous youth" means
 - (i) an Inuit youth,
 - (ii) a Métis youth,
 - (iii) an Innu, Mi'kmaq or other First Nations youth, or
 - (iv) a youth who considers himself or herself to be Indigenous;
- (r) "judge" means a judge of the court;
- (s) "kin" means family and other persons who are significant to a child or youth or with whom a child or youth has a connection;
- (t) "licence" means
 - (i) an agency licence,
 - (ii) a family-based placement provider licence, or
 - (iii) a residential placement provider licence;

- (u) "manager" means a manager appointed under section 4;
- (v) "mediation" means a voluntary process in which a mediator assists the parent, family, other person significant to the child, social workers, lawyers and other service providers to discuss and resolve the referred issues;
- (w) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (x) "parent" means
 - (i) the custodial mother of a child or youth,
 - (ii) the custodial father of a child or youth,
 - (iii) a custodial step-mother of a child or youth,
 - (iv) a custodial step-father of a child or youth,
 - (v) a non-custodial mother of a child or youth who regularly exercises or attempts to exercise rights of access,
 - (vi) a non-custodial father of a child or youth who regularly exercises or attempts to exercise rights of access,
 - (vii) a person to whom custody of a child or youth has been granted by a written agreement or by a court order, or
 - (viii) a person who is responsible for the child's or youth's care and with whom the child or youth resides, except a foster parent;
- (y) "peace officer" means a member of the Royal Newfoundland Constabulary, a member of the Royal Canadian Mounted Police and a person approved by the Attorney General to perform the duties of a peace officer;
- (z) "provincial director" means a provincial director appointed under section 6;
- (aa) "public body" means public body as defined in the *Access to Information and Protection of Privacy Act, 2015* ;
- (bb) "qualified health practitioner" means a physician, nurse, nurse practitioner, licensed practical nurse, dentist or dental hygienist;
- (cc) "residential placement" means a residence for children and youth in the care or custody of a manager in which staff provide daily care and supervision;
- (dd) "residential placement provider licence" means a licence issued under paragraph 71(1)(c);
- (ee) "social worker" means a person
 - (i) registered under the *Social Workers Act* , and
 - (ii) employed by the department; and
- (ff) "youth" means a person who is at least 16 years of age but under 18 years of age.

(2) Notwithstanding paragraph (1)(r), in the expanded service area referred to in subsection 43.5(5) of the *Judicature Act*, "judge" means a Provincial Court judge.

(3) For the purpose of sections 20 and 22, in the judicial area referred to in subsection 43.5(4) of the *Judicature Act*, "judge" means a judge of the Supreme Court - Family Division or a Provincial Court judge.

[2018 cC-12.3 s2](#)

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Labrador Inuit rights

3. This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

[2018 cC-12.3 s3](#)

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Managers

4. (1) The minister shall appoint one or more managers who shall exercise the powers and perform the duties that are conferred or imposed upon them by this Act and the regulations.

(2) An appointment under subsection (1) shall be in writing and may include those terms and conditions the minister considers advisable.

(3) A manager appointed under subsection (1) may designate a person who is a social worker as an acting manager to exercise the powers and perform the duties of that manager where the manager is absent or unable to act.

(4) A person appointed as a manager under subsection (1) shall be a social worker.

[2018 cC-12.3 s4](#)

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Social worker not available

5. Where a social worker is not available, the minister may authorize another person to perform the duties or exercise the powers of a social worker under this Act and the regulations for a specified period and subject to the terms and conditions the minister considers advisable.

[2018 cC-12.3 s5](#)

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Provincial directors

6. (1) The minister shall appoint one or more provincial directors who shall perform the duties and exercise the powers that are conferred or imposed upon them by this Act and the regulations.

(2) A provincial director shall be responsible for

(a) establishing province-wide policies, programs and standards;

(b) evaluating and monitoring adherence to the established policies, programs and standards; and

(c) advising and reporting to the minister on matters related to this Act and the regulations.

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Protection from liability

7. A manager, social worker, provincial director or other person, except a licensee or a director, officer, employee, consultant or agent of a licensee, is not personally liable for anything done or omitted in good faith in the exercise or performance, or intended exercise or performance, of

- (a) a power, duty or function conferred upon him or her by this Act or the regulations; or
- (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred by this Act or the regulations,

or for the costs in connection with an action or proceeding.

[2018 cC-12.3 s7](#)

PART II PURPOSE AND GENERAL PRINCIPLE

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Purpose

8. The purpose of this Act is to promote the safety and well-being of children and youth who are in need of protective intervention by offering, where available and appropriate, services that are designed to maintain, support and preserve the family where it is in the best interests of children and youth.

[2018 cC-12.3 s8](#)

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General principle

9. (1) This Act shall be interpreted and administered in accordance with the principle that the overriding and paramount consideration in a decision made under this Act shall be the best interests of the child or youth.

(2) In determining a child's or youth's best interests, all relevant factors shall be considered, including

- (a) the child's or youth's safety, health and well-being;
- (b) the child's or youth's physical, emotional and developmental needs;
- (c) the child's or youth's relationship with family or a person significant to the child or youth;
- (d) the child's or youth's opinion regarding his or her care and custody or the provision of services;
- (e) the child's or youth's identity and cultural and community connections;
- (f) the importance of preserving an Indigenous child's or Indigenous youth's unique cultural identity;
- (g) the importance of stability and permanency in the context of the child's or youth's care; and

(h) the importance of family as the preferred environment for the care and upbringing of a child or youth.

(3) Where there is a conflict between paragraphs (2)(a) and (h), paragraph (2)(a) shall prevail.

[2018 cC-12.3 s9](#)

PART III PROTECTIVE INTERVENTION

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Definition of child in need of protective intervention

10. (1) A child is in need of protective intervention where the child

- (a) is being, or is at risk of being, physically harmed by the action or lack of appropriate action by the child's parent;
- (b) is being, or is at risk of being, sexually abused or exploited by the child's parent;
- (c) is being, or is at risk of being, emotionally harmed by the parent's conduct and there are reasonable grounds to believe that the emotional harm suffered by the child, or that may be suffered by the child, results from the actions, failure to act or pattern of neglect on the part of the child's parent;
- (d) is being, or is at risk of being, physically harmed by a person and the child's parent does not protect the child;
- (e) is being, or is at risk of being, sexually abused or exploited by a person and the child's parent does not protect the child;
- (f) is being, or is at risk of being, emotionally harmed by a person and the child's parent does not protect the child;
- (g) is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;
- (h) is abandoned;
- (i) has no living parent and no adequate provision has been made for the child's care;
- (j) has no parent available to care for the child and the parent has not made adequate provision for the child's care;
- (k) has no parent able or willing to care for the child;
- (l) is living in a situation where there is violence or is living in a situation where there is a risk of violence;
- (m) is living with a parent whose actions show a propensity to violence or who has allegedly killed or seriously injured another person;
- (n) has a parent who exercises access whose actions show a propensity to violence or who has allegedly killed or seriously injured another person;
- (o) has been left without adequate supervision appropriate to the child's developmental level; or

(p) is actually or apparently under 12 years of age and has

- (i) allegedly killed or seriously injured another person or has caused serious damage to another person's property, or
- (ii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation.

(2) For the purposes of paragraphs (1)(c) and (f), the indicators of emotional harm exhibited or demonstrated by a child may include

- (a) depression;
- (b) significant anxiety;
- (c) significant withdrawal;
- (d) self-destructive behaviour;
- (e) aggressive behaviour; or
- (f) delayed development.

(3) For the purposes of paragraph (1)(c), parental conduct or living situations that may lead to emotional harm or risk of emotional harm to the child may include

- (a) rejection;
- (b) social deprivation;
- (c) deprivation of affection;
- (d) deprivation of cognitive stimulation;
- (e) subjecting the child to inappropriate criticism, threats, humiliation, accusations or expectations;
- (f) living in a situation where the mental or emotional health of a parent is negatively affecting the child;
- (g) living in a situation where a parent is an abuser of alcohol or drugs; or
- (h) living in a situation where there is violence.

[2018 cC-12.3 s10](#)

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Duty to report

11. (1) Where a person has information that a child or youth is or may be in need of protective intervention, the person shall immediately report the information to a manager, social worker or peace officer.

(2) For the purposes of this section, a youth is in need of protective intervention if the youth meets one or more of the criteria set out in section 10.

(3) Where a person makes a report under subsection (1), the person shall report all the information of which he or she has knowledge.

(4) Where a report is made to a peace officer under subsection (1), the peace officer shall, as soon as possible after receiving the report, inform a manager or social worker.

(5) This section applies, notwithstanding the provisions of another Act, to a person referred to in subsection (6) who, in the course of his or her professional duties, has information that a child or youth is or may be in need of protective intervention.

(6) Subsection (5) applies to every person who performs professional or official duties with respect to a child or youth, including

- (a) a health care professional;
- (b) a teacher, educational psychologist, guidance counsellor, school principal, social worker, family counsellor, member of the clergy or religious leader, persons involved in operating or providing a child care service or agency, a youth worker and a recreation worker;
- (c) a peace officer; and
- (d) a solicitor.

(7) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.

(8) A person shall not interfere with or harass a person who gives information under this section.

(9) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

(10) Notwithstanding section 7 of the *Provincial Offences Act*, an information or complaint under this section may be laid or made within 3 years from the day when the matter of the information or complaint arose.

[2018 cC-12.3 s11](#)

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Determining need for protective intervention

12. (1) Where a manager or social worker receives information in the form of

- (a) a request for protective intervention services with respect to a child;
- (b) a report under section 11 with respect to a child; or
- (c) other evidence that a child may be in need of protective intervention,

the manager or social worker shall investigate whether the child is in need of protective intervention unless, upon assessment, the manager or social worker is satisfied that the information provided was without merit or without reasonable grounds.

(2) Where, after an investigation referred to in subsection (1), the manager or social worker has determined that the child is in need of protective intervention, the manager or social worker shall

- (a) enter into a written agreement with the parent outlining the plan for the child and the child's parent with respect to the required services; or
- (b) where the manager or social worker is not satisfied that the child's need for protective intervention can be met under paragraph (a), take whatever action under this Act or the

regulations that the manager or social worker considers appropriate.

- (3) Where,
 - (a) upon assessing information received under subsection (1), a manager or social worker is satisfied that the information provided was without merit or without reasonable grounds; or
 - (b) after an investigation referred to in subsection (1), a manager or social worker has determined that the child is not in need of protective intervention,

the manager or social worker may, where appropriate, refer the child or the child's parent to health care, social, legal or other services which may assist the child or the child's parent and may, in exceptional circumstances, enter into a written agreement outlining the plan for the child and the child's parent with respect to the required services.

- (4) Where a manager or social worker receives information in the form of
 - (a) a request for protective intervention services with respect to a youth;
 - (b) a report under section 11 with respect to a youth; or
 - (c) other evidence that a youth may be in need of protective intervention,

the manager or social worker shall attempt to engage the youth to assess the youth's need for protective intervention and may enter into an agreement for services with the youth in accordance with section 88.

(5) Where a manager or social worker has information that the youth may be unable to protect himself or herself due to a lack of mental capacity, the manager or social worker shall assess whether the youth is in need of protective intervention unless, upon assessment, the manager or social worker is satisfied that the information provided was without merit or without reasonable grounds.

(6) For the purposes of this section, a youth is in need of protective intervention if the youth meets one or more of the criteria set out in section 10.

(7) An agreement under this section shall set out the responsibilities of each party to the agreement.

[2018 cC-12.3 s12](#)

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Family group conference and alternate dispute resolution

13. (1) A manager or social worker may use a family group conference, mediation or another form of alternate dispute resolution to establish, replace or amend the plan referred to in section 12.

(2) Where a family group conference, mediation or another form of alternate dispute resolution is agreed upon, the parties shall enter into a written agreement to participate in the process.

(3) An issue with respect to a plan referred to in section 12 may be included in a family group conference, mediation or another form of alternate dispute resolution, other than the determination by a manager or social worker that the child is in need of protective intervention and the factors that led to that determination.

[2018 cC-12.3 s13](#)

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Interview of child

14. (1) Where a person has custody, care or supervision of a child and that child is the subject of an investigation under this Act or has been determined to be in need of protective intervention, that person shall when requested by a manager or a social worker

- (a) identify the child; and
- (b) permit the child to be visited, observed and interviewed by a manager or social worker, in private where in the opinion of the manager or social worker it is appropriate, at a place where the child is located.

(2) A manager or social worker shall, before or after an interview under subsection (1), notify the parent of the interview.

[2018 cC-12.3 s14](#)

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Manager denied access to child

15. (1) Where a manager or social worker is denied access to a child and he or she believes that access to the child is necessary to determine if the child is in need of protective intervention, the manager or social worker may, without notice, apply to a judge for an order and the judge may make an order

- (a) that a person disclose the location of the child;
- (b) that a person permit the manager or social worker or another person to interview or visually examine the child;
- (c) authorizing the manager or social worker to remove the child from the place where the child is located for an interview or medical examination; and
- (d) authorizing a qualified health practitioner to examine the child.

(2) The judge may attach those conditions to an order under this section that the judge considers appropriate.

(3) Where a child is removed from the place where the child was located for an interview or medical examination, a manager or social worker shall return the child to the parent or other person from whom the child was removed unless the manager or social worker proceeds under section 20.

(4) At the request of a manager or social worker, a peace officer shall assist in enforcing an order made under this section.

[2018 cC-12.3 s15](#)

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Location of child not disclosed

16. (1) Where a person does not comply with an order under section 15, a judge may issue a warrant for the person's arrest to bring him or her before the judge to explain why the order should not be enforced.

(2) Where a person referred to in subsection (1) appears before a judge and the judge believes that the person's reasons for being unable or unwilling to comply with the order are not valid, the judge may order that the person be imprisoned for 30 days or until the person complies with the order, whichever is the shorter period of time.

[2018 cC-12.3 s16](#)

Order to produce record

17. (1) Where a manager or social worker files an application with the court, a judge may order a person or public body to produce information that is written, photographed, recorded or stored by other means for inspection by the manager or social worker where

- (a) the requirements of paragraphs 96(1)(a) and (b) are met or there are reasonable grounds to believe that the information is necessary for determining whether a child is or remains in need of protective intervention;
- (b) there are reasonable grounds to believe that the person or public body has possession or control of the information; and
- (c) the person or public body has neglected or refused, upon request of the manager or social worker, to produce the information.

(2) Not later than 2 days before the date set for hearing an application under subsection (1), notice of the date, time and place of the hearing shall be served on the person or public body against whom the order is sought.

(3) Notwithstanding subsection (2), where a manager or social worker believes on reasonable grounds that the information may be destroyed if notice is given, application may be made under subsection (1) without notice.

[2018 cC-12.3 s17](#)

Order to prohibit contact

18. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, a manager or social worker may file an application with the court for an order to prohibit contact between the child and that person.

(2) The date set for hearing the application under subsection (1) shall be not later than 2 days after the application is filed, and notice of the hearing shall be served on the day the application is filed.

(3) Notice of the date, time and place of the hearing shall be served on

- (a) the person against whom the order is sought;
- (b) a parent; and
- (c) the child, where the child is 12 years of age or older.

(4) When a person against whom an order is sought or a parent is served with notice under subsection (3), that person shall also be served with a copy of the application.

(5) Where a hearing under this section has not been concluded and it is in the best interests of the child, the judge may do one or more of the following:

- (a) prohibit the person against whom the order is sought from contacting or interfering with, or trying to contact or interfere with, the child, or from entering a place where the child is located, until the conclusion of the hearing under this section;
- (b) prohibit the person against whom the order is sought from residing with the child, or entering premises where the child resides including premises that the person owns or has

a right to occupy, until the conclusion of the hearing under this section; and

- (c) impose those conditions that the judge considers appropriate for implementing the order and protecting the child.

(6) Where a judge is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the judge may do one or more of the following:

- (a) prohibit the person against whom the order is sought from contacting or interfering with, or trying to contact or interfere with, the child, or from entering a place where the child is located, for a period of up to 6 months;
- (b) prohibit the person against whom the order is sought from residing with the child, or entering premises where the child resides, including premises that the person owns or has a right to occupy, for a period of up to 6 months; and
- (c) impose those conditions that the judge considers appropriate for implementing the order and protecting the child.

(7) Before an order to prohibit contact between a child and another person expires, a manager, social worker or person named in the order may file an application with the court and the judge may

- (a) make another order;
- (b) vary the order; or
- (c) rescind the order.

(8) Where a person is subject to an order to prohibit contact and an application for a subsequent order to prohibit contact is filed but not heard before the expiration of the existing order, the person shall remain subject to the order until the application is heard and decided.

(9) At the request of a manager or social worker, a peace officer shall assist in enforcing an order made under this section.

(10) An order under this section may be made at any time, including before, during or after another hearing.

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Short term care in home

19. (1) Where a manager or social worker believes a child is without adequate supervision when premises are entered under this Act, the manager or social worker may arrange for short term care in the home to be provided until other supervision considered adequate by the manager or social worker is available for the child, but the period of care shall not exceed 72 hours.

(2) Where short term care is provided under subsection (1), a person approved by the manager or social worker may enter the premises where the child is located and care for the child.

(3) A manager or social worker shall make all reasonable efforts to notify a parent of an action taken by the manager or social worker under this section.

[2018 cC-12.3 s19](#)

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Removal of child

20. (1) A manager or social worker shall apply to the court for a warrant to remove a child where he or she believes

- (a) that the child is in need of protective intervention; and
- (b) a less intrusive course of action that would adequately protect the child is not available.

(2) A judge may issue a warrant authorizing a manager or social worker to enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child where he or she is satisfied on the basis of a manager's or social worker's sworn information that there are reasonable grounds to believe that

- (a) the child is in need of protective intervention; and
- (b) a less intrusive course of action that would adequately protect the child is not available.

(3) Notwithstanding subsection (1), where a manager or social worker has reasonable grounds to believe there would be an immediate risk to the child's health and safety if no action were taken during the time required to obtain a warrant, the manager or social worker may enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child without a warrant.

(4) At the request of a manager or social worker, a peace officer shall assist in enforcing a warrant issued under subsection (2), or if a warrant is not obtained, the peace officer shall assist a manager or social worker under subsection (3).

(5) A warrant issued under subsection (2) need not describe the child by name or specify a particular premises.

(6) Notwithstanding subsection (1), a warrant is not required for the removal of a child where the child is in the care of a manager under an agreement between a manager and a parent entered into under section 12, and the agreement expires or is about to expire or is repudiated or is about to be repudiated by the parent, and a manager or social worker believes the child is in need of protective intervention.

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Removal of youth

21. (1) A manager or social worker may remove a youth where he or she determines that

- (a) the youth is in need of protective intervention;
- (b) a less intrusive course of action that will adequately protect the youth is not available;
and
- (c) the youth is unable to protect himself or herself due to a lack of mental capacity.

(2) For the purposes of this section, a youth is in need of protective intervention if the youth meets one or more of the criteria set out in section 10.

(3) Where a youth is removed under this section, Part V and the provisions of this Act that apply to the removal of a child and determining the need for protective intervention, except section 33, apply as if that youth were a child.

[2018 cC-12.3 s21](#)

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Telewarrants

22. (1) Where, in the opinion of a manager or social worker it would not be practical to appear in person before a judge to apply for a warrant, the manager or social worker may make the application by telephone or other means of telecommunication.

(2) Where a manager or social worker removes a child under the authority of a warrant obtained under this section, the manager or social worker shall provide the person from whom the child was removed with a facsimile of the warrant.

(3) In subsection (2), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

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Notice of removal of child

23. (1) Where a child is removed, with or without a warrant, from the care of a parent or other person, a manager or social worker shall serve written notice of the removal on the parent, and the child, where the child is 12 years of age or older, within 24 hours after the removal stating the reason why the child was removed.

(2) A parent who is given a notice under subsection (1) shall be informed that he or she may be represented by legal counsel.

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Interim care of child after removal

24. (1) Where a child is removed under section 20, a manager has interim care of the child until

(a) the child is returned under section 48 to the parent from whom the child was removed;
or

(b) a judge makes an order at a presentation hearing under section 31.

(2) While the manager has interim care of the child, the manager or a social worker may

(a) authorize a qualified health practitioner to examine the child; and

(b) consent to necessary health care for the child where the parent cannot be contacted if, in the opinion of a qualified health practitioner, the health care should be provided without delay.

(3) On consenting to necessary health care for the child, a manager or social worker shall notify the parent from whom the child was removed.

(4) Where a child is removed, while hospitalized, from his or her parent by a manager or social worker, the hospital administration and the attending physician shall be advised that the child has been removed from the parent and that the manager has interim care of the child.

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Where child is not removed

25. (1) Where a manager or social worker believes on reasonable grounds that

- (a) a child is in need of protective intervention;
- (b) the child's safety
 - (i) could be assured without removing the child with the provision of protective intervention services, or
 - (ii) could not be assured without removing the child and a warrant under section 20 has been denied; and
- (c) a parent is unwilling to accept protective intervention services for the child,

the manager or social worker shall file an application with the court for a protective intervention hearing and an order that the child is in need of protective intervention.

(2) A hearing under this section shall be held within 10 days of the filing of the application under subsection (1).

(3) Notice of the time and place of a hearing under this section shall be served not later than 3 days after the date for the hearing is obtained on

- (a) a parent;
- (b) the child, where the child is 12 years of age or older; and
- (c) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child.

(4) When a parent is served with a notice under subsection (3), that parent shall also be served with a copy of the application.

(5) Where an application is made under this section, a judge may make an order under section 32.

[2018 cC-12.3 s25](#)

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Where child has been removed

26. Where a child has been removed, the manager or social worker shall, within 24 hours after the removal of the child, file an application with the court for a protective intervention hearing, which shall be held not later than 30 days after the child's removal, and for an order that the child is in need of protective intervention.

[2018 cC-12.3 s26](#)

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Notice of hearings where child removed

27. (1) Where a child has been removed and a manager or social worker applies for a protective intervention hearing, he or she shall at the same time be given a date for a presentation hearing, which shall be held not later than 10 days after the date on which the application is filed.

(2) Notice of the time and place of a presentation hearing and a protective intervention hearing shall be served not later than 3 days after the dates for the hearings are obtained on

- (a) a parent;
- (b) the child, where the child is 12 years of age or older; and
- (c) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child.

(3) When a parent is served with a notice under subsection (2), that parent shall also be served with

- (a) a copy of the application;
- (b) a written report of the circumstances that led to the removal of the child; and
- (c) the manager's or social worker's plan for the child until the protective intervention hearing.

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When sixteenth birthday intervenes

28. (1) An order for supervision, interim custody or temporary custody ceases to have effect on the child's sixteenth birthday.

(2) Notwithstanding subsection (1), where an application for an order of continuous custody has been filed before the child's sixteenth birthday, the order for supervision, interim custody or temporary custody has effect until that application is heard and decided.

(3) Notwithstanding another provision of this Act, where a person was a child when an application for an order of continuous custody was filed, the court may hear and determine the matter as if the person were still a child even though the person has had his or her sixteenth birthday before the order was made.

(4) Where the court hears a matter referred to in subsection (3), the judge shall order that

- (a) the child be placed in the continuous custody of a manager;
- (b) custody of the child be permanently transferred to a person other than a parent from whom the child was removed with the consent of that person; or
- (c) the child be returned to the parent from whom the child was removed.

(5) An order made under paragraph (4)(a) may contain reasonable conditions.

(6) An order made under paragraph (4)(b) may contain reasonable conditions that apply to the person to whom custody of the child is permanently transferred but shall not contain conditions that apply to a manager, a social worker or the department.

(7) An order made under paragraph (4)(c) shall not contain conditions.

(8) A continuous custody order made before a child's sixteenth birthday shall continue in effect until terminated in accordance with section 42 and any provisions of this Act which apply to the order shall apply to him or her as if he or she were a child.

[2018 cC-12.3 s28](#)

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Plan for child

29. (1) A manager or social worker shall file with the court, not later than noon on the day before the presentation hearing or a hearing referred to in section 25 is scheduled, a plan for the child and provide a copy to those persons who have been served with a copy of the application.

(2) A person who has received a plan under subsection (1) may respond to the plan by filing an alternate plan with the court and, in that case, shall provide a copy of that alternate plan to the manager or the social worker.

(3) A plan filed under subsection (1) shall include

(a) a description of the services required to address the situation or issues on the basis of which the child was determined to be in need of protective intervention;

(b) a description of the indicators by which the manager or social worker will determine when custody or supervision may no longer be required;

(c) an estimate of the time required to achieve the purpose of the intervention;

(d) information respecting previous involvement with the child, or a parent, under this or a predecessor Act, that is relevant to the plan;

(e) where the child has been removed from a parent's care,

(i) an explanation of why the child cannot be adequately protected while in the parent's care and a description of past efforts to do so,

(ii) an explanation of the efforts planned to maintain the child's contact with the parent, family or other person significant to the child,

(iii) a description of the arrangements made or being made for the child's stability and permanency, and

(iv) a description of the arrangements made or being made to recognize the importance of the child's identity and cultural and community connections, or, where the child is an Indigenous child, a cultural connection plan.

(4) A revised plan may be filed before the conclusion of the protective intervention hearing.

[2018 cC-12.3 s29](#)

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Order for medical treatment

30. (1) Where a manager or social worker believes a child is in need of protective intervention because of his or her parent's refusal or failure to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended for the child by a qualified health practitioner, the manager or social worker may file an application with the court for an order authorizing the treatment.

(2) A parent and the child, where he or she is 12 years of age or older, shall be served with notice of the time and place of a hearing under this section which shall be held within one day after filing the application.

(3) A judge may

(a) hear the application at any time or place;

(b) receive evidence by telephone or other means of telecommunication; and

(c) administer an oath or affirmation by telephone or other means of telecommunication.

(4) Where a judge finds that a child is in need of protective intervention for a reason referred to in subsection (1), the judge may so declare and make an order authorizing the treatment recommended by a qualified health practitioner.

(5) Where a child's treatment is authorized by an order under this section, no liability attaches to the person treating the child by reason only that the parent did not consent to the treatment.

[2018 cC-12.3 s30](#)

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Presentation hearing

31. (1) A presentation hearing

- (a) may be conducted by a judge in an informal manner; and
 - (b) shall be concluded within one day, unless extended by the judge.
- (2) At the conclusion of a presentation hearing, a judge may
- (a) dismiss the application for a protective intervention hearing;
 - (b) order that the child be returned to or remain with the parent under the supervision of a manager until the conclusion of the protective intervention hearing;
 - (c) order that the child be placed in the custody of a parent, other than the parent from whom the child was removed, under the supervision of a manager until the conclusion of the protective intervention hearing;
 - (d) order that the child be placed in the care of the child's family or a person significant to the child, other than the parent from whom the child was removed, under the supervision of a manager until the conclusion of the protective intervention hearing;
 - (e) order that the child be placed in the custody of a manager until the conclusion of the protective intervention hearing; or
 - (f) make a declaration that the child is in need of protective intervention and make an order under subsection 32(2).

(3) Where a judge makes an order under paragraphs (2)(a) to (e), the judge may attach reasonable conditions to that order, including conditions with respect to

- (a) the child's contact with a parent, unless the judge is satisfied that continued contact with the parent would not be in the best interests of the child;
- (b) the child's contact with a person significant to the child; and
- (c) the assessment, treatment or services to be obtained by the child or the child's parent,

but an order shall not contain conditions with respect to the type or the geographic location of the placement for the child.

[2018 cC-12.3 s31](#)

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Protective intervention hearing

32. (1) At a protective intervention hearing, a judge shall determine whether a child is in need of protective intervention.

(2) Where a judge finds that a child is in need of protective intervention, the judge shall so declare and order that

- (a) the child be returned to or remain with the parent and under a manager's supervision for a specified period of up to 6 months;
- (b) the child be placed in the temporary custody of the child's family or a person significant to the child, other than the parent from whom the child was removed, with the consent of that person and under a manager's supervision, for a specified period in accordance with section 33;
- (c) the child be placed in the temporary custody of a manager for a specified period in accordance with section 33;
- (d) the child be placed in the continuous custody of a manager; or
- (e) custody of the child be permanently transferred to a person, other than the parent from whom the child was removed, where
 - (i) the person to whom custody is to be permanently transferred consents,
 - (ii) the child consents, where the child is 12 years of age or older, and
 - (iii) the child has been residing with the person to whom custody is to be permanently transferred for a period of 6 consecutive months immediately before the application for the protective intervention hearing is filed.

(3) Where a judge makes an order for supervision under paragraph (2)(a), the judge may attach reasonable conditions to that order, including conditions with respect to the assessment, treatment or services to be obtained by the child or the child's parent.

(4) Where a judge makes an order for temporary custody under paragraph (2)(b) or (c), the judge may attach reasonable conditions to that order, including conditions with respect to

- (a) the child's contact with a parent, unless the judge is satisfied that continued contact with the parent would not be in the best interests of the child;
- (b) the child's contact with a person significant to the child; and
- (c) the assessment, treatment or services to be obtained by the child or the child's parent.

(5) Notwithstanding subsection (4), an order under paragraph (2)(c) shall not contain conditions with respect to the type or geographical location of the placement of the child.

(6) Where a judge makes an order for continuous custody under paragraph (2)(d),

- (a) the judge may attach reasonable conditions to that order; and
- (b) the manager has custody of the child and has all the rights and responsibilities of a parent for the child's care and future planning.

(7) Where a judge makes an order for a permanent transfer of custody under paragraph (2)(e), the order may contain reasonable conditions that apply to the person to whom custody of the child is permanently transferred but shall not contain conditions that apply to a manager, a social worker or the department.

(8) Where the judge finds that the child is not in need of protective intervention, the judge shall so declare and shall make an order that the child remain with or be returned to the parent from whom the child was removed and the order shall not contain conditions.

(9) Where a judge makes an order for supervision under paragraph (2)(a) or an order for temporary custody under paragraph 2(b) and a person fails to comply with the order, the manager or social worker may make an application to the court to vary the conditions of the order or request another order under paragraphs (2)(a) to (e).

(10) The date set for the hearing of the application under subsection (9) shall be not later than 5 days after the application is made.

(11) Notice of the time and place of the hearing under subsection (9) shall be served on the day the application is filed on all persons who were served with notice of the protective intervention hearing at which the order was made.

(12) When a parent is served with a notice under subsection (11), that parent shall also be served with a copy of the application.

(13) Where a manager or social worker makes an application under subsection (9), a judge may

- (a) vary the conditions of the order issued under paragraph (2)(a) or (b); or
- (b) make another order under paragraphs (2)(a) to (e).

[2018 cC-12.3 s32](#)

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Time limits for temporary custody orders

33. (1) Where a judge makes an order for temporary custody under paragraph 32(2)(b) or (c), the term of the order shall not exceed

- (a) 6 months for a first order;
- (b) 3 months for a second order where the child who is the subject of the order is under 6 years of age when that order is made; and
- (c) 6 months for a second order where the child who is the subject of the order is 6 years of age or older when that order is made,

with a maximum of 2 orders in total during the child's life.

- (2) Notwithstanding subsection (1), a third order may be made where
 - (a) there are exceptional circumstances that in the opinion of the judge warrant exceeding the lifetime maximum of 2 orders; and
 - (b) the parent has demonstrated that he or she may reasonably be expected to resume the custody of the child within a reasonable period,

but the term of a third order shall not exceed

- (c) 3 months where the child who is the subject of the order is under 6 years of age when that order is made; or
- (d) 6 months where the child who is the subject of the order is 6 years of age or older when that order is made.

[2018 cC-12.3 s33](#)

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Adjournment

34. (1) A judge may adjourn a proceeding under this Act one or more times, for a total period of up to 3 months, to allow

- (a) a judicial case conference, family group conference, mediation or another form of alternate dispute resolution to proceed; or
- (b) an assessment to be completed, where that assessment is considered necessary by a judge, manager or social worker.

(2) Where a proceeding is adjourned under subsection (1) a time limit applicable to the proceeding is suspended.

(3) Where, as a result of a family group conference or mediation, a written agreement is made, a manager or social worker shall file the agreement with the court.

[2018 cC-12.3 s34](#)

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When time limits expire

35. (1) Where all of the time limits contained in section 33 have expired, a judge shall order that

- (a) the child be placed in the continuous custody of a manager;
- (b) custody of the child be permanently transferred to a person, other than a parent from whom the child was removed; or
- (c) the child be returned to the parent from whom the child was removed.

(2) An order made under paragraph (1)(a) may contain reasonable conditions.

(3) An order made under paragraph (1)(b) may contain reasonable conditions that apply to the person to whom custody of the child is permanently transferred but shall not contain conditions that apply to a manager, a social worker or the department.

(4) An order made under paragraph (1)(c) shall not contain conditions.

[2018 cC-12.3 s35](#)

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Subsequent order

36. (1) Before an order for supervision or an order for temporary custody expires, a manager or social worker may file an application with the court for another order under subsection 32(2).

(2) The manager's or social worker's plan for the child shall include the content required for a plan under subsection 29(3) and shall be attached to an application under subsection (1).

(3) Notice of the time and place of a hearing with respect to an application under subsection (1) shall be served not later than 10 days before the hearing on

- (a) a parent;
- (b) the child, where the child is 12 years of age or older; and
- (c) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child.

(4) When a parent is served with a notice under subsection (3), that parent shall also be served with a copy of the application and the manager's or social worker's plan for the child.

(5) At least 3 days before the date set for a hearing, a parent who received a copy of a plan under subsection (4) may respond to the manager's or social worker's plan for the child by filing an alternate plan with the court and providing a copy to the manager or social worker.

[2018 cC-12.3 s36](#)

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Bridging provision

37. Where a child is under the supervision of a manager under an order for supervision, or is in the custody of a manager or another person under an order for temporary custody, and an application for another order is filed but not heard before the expiration of the order for supervision or order for temporary custody, the child shall remain under the supervision of a manager under the order for supervision, or in the custody of a manager or other person to whom custody was granted under the order for temporary custody, until the application is heard and decided.

[2018 cC-12.3 s37](#)

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Effect of interim custody order

38. Where an order for custody is made under paragraph 31(2)(e),

- (a) the manager has custody of the child until the conclusion of the protective intervention hearing and the manager or a social worker has the right to make all decisions regarding the child until the conclusion of the protective intervention hearing; and
- (b) the manager or a social worker may consent to necessary health care for the child as recommended by a qualified health practitioner, where the child's parent is unavailable or refuses to consent to the health care.

[2018 cC-12.3 s38](#)

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Effect of temporary custody order

39. Where an order for temporary custody is made under paragraph 32(2)(c),

- (a) the manager has custody of the child for the specified period and the manager or a social worker has the right to make all decisions regarding the child during the specified period;
- (b) the manager or a social worker may consent to necessary health care for the child as recommended by a qualified health practitioner, where the child's parent is unavailable or refuses to consent to the health care; and
- (c) the manager shall not consent to an adoption of the child under the *Adoption Act, 2013* without the consent of the parent from whom the child was removed.

[2018 cC-12.3 s39](#)

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Effect of continuous custody order

40. (1) Where an order for continuous custody is made under paragraph 32(2)(d),

- (a) the manager becomes the sole custodian of the child and has the right to make all decisions regarding the child;

(b) the manager or a social worker may consent to the provision of health care for the child; and

(c) the manager may consent to the adoption of the child under the *Adoption Act, 2013*.

(2) An order for continuous custody of a child does not affect the child's rights respecting inheritance or succession to property.

(3) At least 30 days before consenting to the adoption of the child under the *Adoption Act, 2013*, the manager or a social worker shall inform a person who, as a condition of an order for continuous custody under paragraph 32(2)(d), was granted access with the child or youth, of the manager's intention to consent to the adoption.

(4) An application for custody of or access to a child under the *Children's Law Act* shall not be made with respect to a child who is the subject of a continuous custody order made under this Act.

[2018 cC-12.3 s40](#)

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Financial responsibility

41. (1) Where a child or youth is in the interim, temporary or continuous custody of a manager, upon application by a manager or social worker, a judge may order that the obligation of the parents to provide support to the child or youth shall continue subject to Part III of the *Family Law Act*.

(2) An order under subsection (1) shall be for the benefit of the Crown or some other person on the conditions and for the period the judge considers appropriate.

[2018 cC-12.3 s41](#)

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When continuous custody order ceases to have effect

42. An order for continuous custody ceases to have effect when

(a) the youth reaches 18 years of age;

(b) the youth marries;

(c) custody of the child or youth is permanently transferred to another person, other than to another manager under section 46, in accordance with an order issued under subsection 43(5); or

(d) the court rescinds the order.

[2018 cC-12.3 s42](#)

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Permanent transfer of custody after continuous custody order

43. (1) Where a manager or social worker believes it is in the best interests of a child or youth and the child or youth is in the custody of a manager under a continuous custody order, the manager or social worker may file an application with the court for an order to permanently transfer custody of the child or youth to a person other than a parent from whom the child or youth was removed.

(2) An application under subsection (1) shall not be filed unless

(a) all appeals related to the continuous custody order have been heard and the continuous custody order has been upheld; and

(b) the child or youth has been residing with the person to whom custody is to be permanently transferred for at least 6 consecutive months immediately before the application.

(3) A hearing under this section shall be held within 30 days of the filing of the application under subsection (1).

(4) Notice of the time and place of a hearing under this section shall be served not later than 3 days after the filing of the application under subsection (1) on

(a) a person to whom custody is to be permanently transferred;

(b) the child, where the child is 12 years of age or older, or the youth;

(c) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child or the youth is an Indigenous youth; and

(d) a person who, under an order for continuous custody under paragraph 32(2)(d), has been granted access with the child or youth.

(5) A judge may make an order permanently transferring custody of the child or youth from a manager to a person where

(a) the person to whom custody is to be permanently transferred consents;

(b) the child, where the child is 12 years of age or older, or the youth consents; and

(c) he or she believes it is in the best interests of the child or youth to do so.

(6) Where a judge makes an order permanently transferring custody under subsection (5), the order may contain reasonable conditions that apply to the person to whom custody of the child or youth is permanently transferred but shall not contain conditions that apply to a manager, a social worker or the department.

[2018 cC-12.3 s43](#)

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Effect of permanent transfer of custody order

44. (1) Where an order permanently transferring custody of a child or youth is made under paragraph 28(4)(b), 32(2)(e) or 35(1)(b) or subsection 43(5), the person to whom custody is transferred becomes the sole custodian and guardian of the child or youth and has the right to make all decisions regarding the child or youth.

(2) Notwithstanding subsection (1), the child's or youth's rights respecting inheritance or succession to property are not affected.

(3) An order permanently transferring custody of a child or youth ceases to have effect when the youth reaches 18 years of age.

[2018 cC-12.3 s44](#)

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Rescinding continuous custody order

45. (1) With the leave of a judge, and where

- (a) the circumstances have changed significantly since the time an order for continuous custody was made; and
- (b) a manager has not consented to the adoption of the child or youth under the *Adoption Act, 2013*,

a party to a hearing at which the order was made may file an application with the court for the rescission of the order.

(2) Where a judge grants leave under subsection (1), notice of the time and place of a hearing under this section shall be served not later than 10 days before the hearing on

- (a) the manager;
- (b) a parent;
- (c) a child, where the child is 12 years of age or older, or a youth;
- (d) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child or the youth is an Indigenous youth; and
- (e) any other party to the continuous custody application.

(3) When a manager, a parent or another party to the continuous custody application is served notice under subsection (2) he or she shall also be served with a copy of the application.

(4) The judge may make an order to rescind an order for continuous custody where he or she believes it is in the best interests of the child or youth to do so.

[2018 cC-12.3 s45](#)

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Transfer of care, supervision or custody between managers

46. (1) A manager who has care, supervision or custody of a child or youth may transfer care, supervision or custody to another manager.

(2) Where the care, supervision or custody of a child or youth is transferred from one manager to another manager,

- (a) the other manager has care, supervision or custody of the child or youth with the same rights and responsibilities as the manager who made the transfer; and
- (b) the manager who made the transfer ceases to have care, supervision or custody of the child or youth.

(3) The transfer of care, supervision or custody is effective upon the filing of an amended order with the court which made the original order.

[2018 cC-12.3 s46](#)

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Child returned any time

47. A child may be returned to the parent from whom the child was removed where

- (a) the circumstances have changed so that the child in the opinion of a manager or social worker is no longer in need of protective intervention; or

- (b) the parent enters into a written agreement that is considered by a manager or social worker to be adequate to protect the child.

[2018 cC-12.3 s47](#)

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Child returned within 72 hours

48. Where a child is returned to the parent from whom the child was removed within 72 hours of removal and an application has been filed with the court for a protective intervention hearing, a manager or social worker shall

- (a) file a notice of discontinuance with the court;
- (b) provide notice of the discontinuance to the persons who received notice of the application for a protective intervention hearing; and
- (c) file with the court and provide to a parent who received notice of the discontinuance, a written explanation of the change of circumstances referred to in paragraph 47(a) or a copy of the agreement referred to in paragraph 47(b).

[2018 cC-12.3 s48](#)

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Child returned after 72 hours

49. (1) Where a child is returned to the parent from whom the child was removed 72 hours or more after removal but before the protective intervention hearing, a manager or social worker shall

- (a) seek leave of a judge to withdraw the application for a protective intervention hearing;
- (b) provide notice of the intention to seek leave to withdraw the application to the persons who received notice of the application for a protective intervention hearing; and
- (c) file with the court, and provide to a parent who received notice, a written explanation of the circumstances referred to in paragraph 47(a) or a copy of the agreement referred to in paragraph 47(b).

(2) Where leave of a judge is sought under this section, the matter shall be heard no later than the date set for the protective intervention hearing and the judge may rescind an outstanding order made in relation to the child.

[2018 cC-12.3 s49](#)

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Child returned after protective intervention hearing

50. (1) Where a child is returned to the parent from whom the child was removed after a protective intervention hearing but before the expiration of an order for temporary custody made under section 32, a manager or social worker shall file an application with the court to rescind or vary an outstanding order made in relation to the child and shall

- (a) not later than 10 days before the date set for a hearing, provide notice of the application to
 - (i) a parent,
 - (ii) the child, where the child is 12 years of age or older, and

- (iii) the Indigenous representative of the appropriate Indigenous government or organization, where a manager or social worker believes the child is an Indigenous child; and
- (b) file with the court, and provide to a parent who received notice, a written explanation of the circumstances referred to in paragraph 47(a) or a copy of the agreement referred to in paragraph 47(b).

(2) Where an application is made under this section, the judge may rescind or vary an outstanding order made with respect to the child.

[2018 cC-12.3 s50](#)

PART V GENERAL COURT MATTERS

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Proceedings and evidence

51. (1) A proceeding under this Act

- (a) is civil in nature;
 - (b) may be as informal as a judge may allow; and
 - (c) shall be held in private, unless otherwise ordered by the judge.
- (2) In a proceeding under this Act, a judge may admit and act upon
- (a) the evidence, including hearsay, that the judge considers relevant and reliable in the circumstances;
 - (b) an oral statement which has been video-taped;
 - (c) a written statement;
 - (d) the notes and other documentation made in a departmental file in relation to a child, a youth, his or her family or placement;
 - (e) a report the judge considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding; and
 - (f) evidence taken and a declaration made at a prior proceeding under this Act or under a similar statute.

[2018 cC-12.3 s51](#)

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Method of proceeding

52. A proceeding under this Act may be conducted by means of teleconference, videoconference or other means of telecommunication.

[2018 cC-12.3 s52](#)

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Appearance in court

53. A manager or social worker may appear in court in respect of a matter arising under this Act.

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Application to be heard

54. The following persons may apply to be heard at a proceeding under this Act:

- (a) a person significant to a child; and
- (b) an Indigenous representative of the appropriate Indigenous government or organization.

[2018 cC-12.3 s54](#)

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Publication ban

55. A person shall not, with respect to a proceeding under this Act, publish or make public information that has the effect of identifying

- (a) a child who is a witness at or a participant in a proceeding or who is the subject of a proceeding;
- (b) a parent or foster parent; or
- (c) a member of the child's family.

[2018 cC-12.3 s55](#)

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Participation by child

56. Where a child who is the subject of a proceeding under this Act requests that his or her views be known at the proceeding, a judge shall

- (a) meet with the child with or without the other parties and their legal counsel;
- (b) permit the child to testify at the proceeding;
- (c) consider written material submitted by the child; or
- (d) allow the child to express his or her views in some other way.

[2018 cC-12.3 s56](#)

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Variation of notice requirements

57. A judge may

- (a) shorten the time period to serve a notice under this Act; or
- (b) dispense with a requirement to serve notice of a proceeding under this Act.

[2018 cC-12.3 s57](#)

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Service of documents

58. (1) Where a manager, social worker or another person is required under this Act to serve a document, service shall be made by personally serving a copy of the original document on the person to be served.

(2) Where it is impractical to personally serve a document on a person, the document may be served in another manner permitted by the *Rules of the Supreme Court, 1986* or the rules of the Provincial Court .

(3) Personal service under subsection (1) may be proved by a written or oral statement under oath by the person who served the document.

[2018 cC-12.3 s58](#)

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Disclosure to parties in court proceedings

59. (1) A party to a proceeding under this Act, including a parent, shall disclose in a timely manner all the information relevant to the proceeding in his or her possession where requested to do so by another party to the proceeding.

(2) Information identifying a person who has provided information under section 11 with respect to a child or youth shall not be disclosed unless the person who provided the information consents or a judge orders its disclosure.

(3) Subsection (2) does not apply to information identifying parties to a proceeding.

[2018 cC-12.3 s59](#)

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Confidentiality of information

60. A person shall not disclose, or be compelled to disclose, at a proceeding under this Act, information obtained in a formal process under section 13 or subsection 34(1), except

- (a) with the consent of all persons who participated in the process;
- (b) to the extent necessary to make or implement a plan with respect to a child;
- (c) where the information is disclosed in an agreement filed with the court under subsection 34(3); or
- (d) where the disclosure is necessary for a child's safety or is required under section 11.

[2018 cC-12.3 s60](#)

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Court order with consent

61. (1) Where a parent consents to an order made under this Act, a judge shall be satisfied that

- (a) the opinion of the child has been considered; and
- (b) the parent consenting to the order has been informed that he or she may be represented by legal counsel and understands the nature and consequences of the consent.

(2) A consent by a parent under this Act is not an admission by the parent of a ground for protective intervention alleged by a manager or social worker.

[2018 cC-12.3 s61](#)

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Matters heard together or consolidated

62. (1) Where a proceeding under this Act is taking place at the same time as custody of a child is being determined under another Act, a party may apply to have the 2 matters heard together or consolidated, whether the different proceedings are heard by the Provincial Court or the Supreme Court.

(2) Notwithstanding subsection (1), where a matter relates to an application made under the *Divorce Act* (Canada), the consolidated matter or the 2 matters shall only be heard by the Supreme Court.

(3) Where a judge makes an order to have 2 matters heard together under subsection (1), the judge shall make an order setting out the information to be disclosed to each party in each matter.

[2018 cC-12.3 s62](#)

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Variation of order

63. Where an order has been made under this Act, a judge may, upon application accompanied by evidence to the satisfaction of the judge that the circumstances relating to the child have changed since the original order was given, vary the order.

[2018 cC-12.3 s63](#)

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Effect of out of province order

64. Where an order has been made by a judge in another province under legislative provisions similar in effect to the provisions of this Act, the order has the same effect in this province as if it were an order made under this Act, unless the judge otherwise orders.

[2018 cC-12.3 s64](#)

PART VI PLACEMENT OF CHILDREN AND YOUTH

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Placement considerations

65. (1) The placement of a child or youth shall be conducted in a manner which is least disruptive to the child or youth and recognizes the importance of placement with his or her siblings and contact with his or her parents and kin.

(2) A manager or social worker shall first consider placement of a child or youth with kin and, where that is not in the best interests of the child or youth, the manager or social worker shall place the child in a foster care placement.

(3) Notwithstanding subsection (2), where a child is an Indigenous child or a youth is an Indigenous youth, a manager or social worker shall first consider placing the Indigenous child or Indigenous youth with kin within his or her community or where that is not in the best interests of the Indigenous child or Indigenous youth, consider placing him or her

(a) with a non-relative foster parent with the same cultural background within the Indigenous child's or Indigenous youth's community; or

(b) with kin outside the Indigenous child's or Indigenous youth's community.

(4) Where a manager or social worker is satisfied that an Indigenous child or an Indigenous youth cannot be placed in accordance with subsection (3), the Indigenous child or Indigenous youth shall be placed in a foster care placement that supports the Indigenous child's or Indigenous youth's connection with his or her culture, heritage, traditions, community, language and spirituality.

[2018 cC-12.3 s65](#)

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Persons who provide care

66. A person who provides care under this Part shall be

- (a) approved by
 - (i) a manager,
 - (ii) a social worker, or
 - (iii) an agency licensed under paragraph 71(1)(a); or
- (b) operating under a licence issued under paragraph 71(1)(b) or (c).

[2018 cC-12.3 s66](#)

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Agreement for services

67. (1) A manager or social worker may make an agreement for services, including financial support, with a person with whom a child or youth has been placed for care.

(2) Where an agreement is made under subsection (1) with a non-custodial mother or non-custodial father, the non-custodial mother or non-custodial father is not entitled to financial support.

- (3) A person who enters into an agreement under this section shall be approved by
 - (a) a manager;
 - (b) a social worker; or
 - (c) an agency licensed under paragraph 71(1)(a).

[2018 cC-12.3 s67](#)

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Information re child's or youth's care

68. (1) A manager or social worker shall provide information relevant to the care of a child or youth to a person with whom a child or youth has been placed for care.

(2) A manager or social worker shall provide relevant information concerning the foster care placement of a child or youth to the child or youth and the parent of the child or youth, but may withhold information where, in the opinion of the manager or social worker, doing so is in the best interests of the child or youth.

[2018 cC-12.3 s68](#)

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Change of placement of child or youth without notice

69. A manager or social worker may move a child or youth from a foster care placement with whom the manager or social worker has placed the child or youth, without notice, where necessary for the safety of the child or youth.

[2018 cC-12.3 s69](#)

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Counselling for child or youth after removal

70. A child or youth shall be entitled to counselling where he or she is

- (a) removed from his or her parents; or
- (b) moved from a foster care placement.

[2018 cC-12.3 s70](#)

PART VII LICENCES

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Issuance of licences

71. (1) A provincial director may issue the following licences:

- (a) agency licence;
 - (b) family-based placement provider licence; and
 - (c) residential placement provider licence.
- (2) An agency licence authorizes a person to
- (a) recruit and assess potential foster parents;
 - (b) provide training to potential foster parents; and
 - (c) approve foster parents for the placement of children or youth in the care or custody of a manager.
- (3) A family-based placement provider licence authorizes a person to
- (a) establish and operate one or more homes where daily care and supervision is provided in a family-based environment to a child or youth who is in the care or custody of a manager;
 - (b) recruit and assess caregivers to provide care and supervision to children or youth in the home;
 - (c) provide training, support and services to caregivers; and
 - (d) monitor and assess the day to day operations of the home.
- (4) A residential placement provider licence authorizes a person to
- (a) establish and operate one or more residences where 24 hour care and supervision is provided by employees of the licensee to children or youth who are in the care or custody of a manager;

- (b) hire and train employees to provide care and supervision to children or youth in the residences; and
 - (c) monitor and assess the day to day operations of the residences.
- (5) An applicant may be issued a licence where the applicant
- (a) submits an application in writing in the prescribed form to a provincial director, including the documents and other information prescribed in the regulations;
 - (b) pays the required fee; and
 - (c) satisfies the other requirements for the licence prescribed in the regulations.
- (6) A provincial director may attach terms and conditions to a licence.

[2018 cC-12.3 s71](#)

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Renewal and variation

72. (1) A licensee shall apply in writing in the prescribed form to a provincial director to renew or vary a licence under this Act before the licence expires.

(2) Where an application to renew a licence is made at least 60 days before the day the licence expires, the existing licence is considered to be valid until the licensee receives the decision of a provincial director on the licensee's application for renewal.

[2018 cC-12.3 s72](#)

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Refusal to issue, renew or vary

73. (1) A provincial director may refuse to issue, renew or vary a licence where

- (a) the applicant does not meet the requirements for the issuance of a licence prescribed in this Act or the regulations;
- (b) the applicant fails to provide the documents and other information required by this Act and the regulations;
- (c) the applicant was previously issued a licence that was later revoked;
- (d) the provincial director is satisfied that the applicant made one or more false or misleading statements in the application or in the information provided in support of the application; or
- (e) the provincial director is satisfied that it would not be appropriate to issue, renew or vary a licence.

(2) Where a provincial director refuses to issue, renew or vary a licence, he or she shall provide written reasons for the refusal to the applicant.

[2018 cC-12.3 s73](#)

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Licences generally

74. (1) A licence shall set out

- (a) the name of the licensee;
- (b) the type of licence;
- (c) the commencement and expiration dates of the licence;
- (d) the terms and conditions of the licence; and
- (e) other information prescribed in the regulations.

(2) In addition to the requirements under subsection (1), a family-based placement provider licence and a residential placement provider licence shall set out

- (a) the maximum number of children or youth permitted in each home or residence; and
 - (b) the minimum and maximum age of the children or youth in each home or residence.
- (3) Licences are not transferable or assignable.

[2018 cC-12.3 s74](#)

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Duties of licensee

75. A licensee shall

- (a) keep all personal information confidential, except where information is required to be disclosed under this Act, the regulations or by a provincial director, manager or social worker;
- (b) maintain insurance coverage in accordance with the regulations;
- (c) prepare, maintain and keep documentation, books and records in accordance with this Act and the regulations; and
- (d) comply with this Act, the regulations and any terms or conditions of the licence.

[2018 cC-12.3 s75](#)

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Variation, suspension or revocation

76. (1) A provincial director may vary, suspend or revoke a licence where he or she is satisfied

- (a) that the licensee violated this Act, the regulations or a term or condition of the licence;
- (b) a person recruited or hired by the licensee is not providing proper care to a child or youth; or
- (c) the licensee made one or more false or misleading statements in the application, the information provided in support of the application or to an inspector.

(2) A provincial director shall not suspend a licence for more than 30 days.

(3) Where a licence is suspended and the terms and conditions necessary to lift the suspension are met in the time set by a provincial director and to the satisfaction of a provincial director, the provincial director shall reinstate the licence with or without terms or conditions.

(4) Where a licence is suspended and the terms and conditions necessary to lift the suspension are not met in the time set by a provincial director and to the satisfaction of a provincial

director, the provincial director shall revoke the licence.

(5) Where a licence is varied, suspended or revoked, a provincial director shall serve a notice of variation, suspension or revocation and written reasons for the decision on the licensee.

(6) A licensee whose licence is varied, suspended or revoked may request a review of the suspension or revocation.

(7) A request for review under subsection (6) shall be in writing and made to the minister within 30 days from the date the licensee receives written reasons for the variation, suspension or revocation.

(8) A review shall be performed within 60 days of the receipt of the written request and a written decision including reasons shall be sent to the person who requested the review within 5 business days of being decided.

(9) An appeal lies from the decision of the minister to a judge of the Supreme Court.

[2018 cC-12.3 s76](#)

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Consequences of suspension or revocation

77. (1) Where a licence is suspended or revoked the licensee shall cease operations.

(2) Where a licence is revoked, the licensee shall immediately return the licence to a provincial director.

[2018 cC-12.3 s77](#)

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Payments to licensee

78. The department shall compensate a licensee in accordance with the regulations.

[2018 cC-12.3 s78](#)

PART VIII INSPECTIONS, INVESTIGATIONS AND VIOLATION ORDERS

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Inspectors

79. (1) The minister shall appoint one or more inspectors who shall exercise the powers and perform the duties and functions that are conferred or imposed on them by this Act and the regulations.

(2) A manager or social worker may be appointed as an inspector under this Act.

(3) Inspectors appointed under this Act may be accompanied by one or more persons when exercising the powers or performing the duties or functions conferred or imposed on inspectors by this Act and the regulations and those other persons shall have the rights and powers given to an inspector under this Act while accompanying the inspector.

(4) Nothing in this Act or the regulations limits inspectors appointed under other Acts and regulations from exercising powers or carrying out duties or functions conferred or imposed on them by other Acts and regulations.

[2018 cC-12.3 s79](#)

Investigations

80. (1) Where a manager or social worker receives information that a child or youth was or may have been maltreated or harmed while in the care of a licensed family-based placement provider or a licensed residential placement provider, an inspector shall investigate the allegation and provide a report to the manager.

(2) Where a manager or social worker receives information under subsection (1), a provincial director may, to ensure the safety and best interests of the child or youth during the course of the investigation, add terms and conditions to the licensee's licence.

(3) The terms and conditions referred to in subsection (2) shall remain in place until removed by the provincial director.

(4) A licensee, owner or operator of a facility or premises and their employees, caregivers, students and volunteers shall not obstruct an inspector while the inspector is investigating an allegation under this section.

[2018 cC-12.3 s80](#)

Inspections

81. (1) An inspector appointed under this Act may, at all reasonable times and without a warrant, for a purpose related to the administration or enforcement of this Act or the regulations, inspect or examine the facilities, premises, processes, books and records of a licensee or a person the inspector may consider relevant for the purpose of determining compliance with this Act or the regulations and the inspector may do one or more of the following:

- (a) enter
 - (i) a facility,
 - (ii) premises where property, books or records relating to a licensee are or may be kept, or
 - (iii) premises where anything is done or is suspected of being done in connection with a requirement of this Act or the regulations;
- (b) make copies, extracts, photographs or videos the inspector considers necessary; or
- (c) require a licensee, caregiver, owner of a facility or premises or their employees, students or volunteers to
 - (i) give the inspector all reasonable assistance, including the production of books and records as requested by the inspector and to answer all questions relating to the administration or enforcement of this Act or the regulations and, for that purpose, require a person to attend at a facility or premises with the inspector, and
 - (ii) make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector appointed under this Act shall not enter a dwelling-house, other than a facility, without the consent of the occupant except under the authority of a warrant.

(3) A person shall not knowingly make a false or misleading statement, either orally or in writing, to the inspector while he or she is exercising powers or carrying out duties or functions under this Act or the regulations.

[2018 cC-12.3 s81](#)

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Warrants

82. (1) Where an inspector appointed under this Act

- (a) is denied entry to a facility, premises or dwelling-house to carry out an inspection; or
- (b) believes on reasonable and probable grounds that there has been a contravention of this Act or the regulations,

the inspector may file an application with the Provincial Court for a warrant.

(2) Where a Provincial Court judge is satisfied on the basis of an inspector's sworn information that there are reasonable grounds to believe that the inspector has been denied entry to a facility, premises or dwelling-house to carry out an inspection or there has been a contravention of this Act or the regulations, the judge may issue a warrant authorizing the inspector to do one or both of the following:

- (a) enter the facility, premises or dwelling-house and carry out an inspection under this Act;
or
- (b) seize or remove any of the books or records that may be required as evidence of contravention and may retain those documents until the time they are required in a court proceeding.

(3) A Provincial Court judge may receive and consider an application for a warrant or extension of warrant without notice to the licensee or the owner of the facility, premises or dwelling-house.

(4) A licensee, an owner or operator of a facility, premises and their employees, students and volunteers or an occupant of a dwelling-house shall not obstruct an inspector while the inspector is exercising the powers and performing the duties and functions as authorized by the warrant.

(5) At the request of an inspector, a peace officer shall assist in enforcing a warrant.

[2018 cC-12.3 s82](#)

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Telewarrants

83. (1) Where, in the opinion of an inspector, it would not be practical to appear in person before a Provincial Court judge to apply for a warrant, the inspector may make the application by telephone or other means of telecommunication.

(2) Where an inspector acts under the authority of a warrant obtained under this section, the inspector shall provide a facsimile of the warrant to an employee of the licensee, to the owner, operator or an employee of the facility or premises or an occupant of the dwelling-house present at the time the warrant is carried out.

(3) In subsection (2), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

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Inspection report

84. An inspector appointed under this Act shall prepare a written report of each inspection within 30 days of the inspection and provide it to

- (a) a manager; and
- (b) the licensee who was the subject of the inspection.

[2018 cC-12.3 s84](#)

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Consequences of non-compliance

85. (1) Where a licensee fails to comply with this Act or the regulations, a manager may

- (a) issue a written violation order against the licensee requiring the licensee to comply with this Act and the regulations; or
- (b) recommend that a provincial director vary, suspend or revoke the licence.

(2) Where a violation order was issued under subsection (1) and the licensee fails to comply with the order in the time period required under the order, the manager may recommend that a provincial director vary, suspend or revoke the licence.

[2018 cC-12.3 s85](#)

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Requirements of violation orders

86. A violation order shall

- (a) include the name of the licensee;
- (b) describe the violation of this Act or the regulations;
- (c) where applicable, set out the time within which the licensee is required to comply with this Act or the regulations;
- (d) include the date it was issued;
- (e) state that where a licensee fails to comply with the order in the required time period the licence may be varied, suspended or revoked;
- (f) be signed by the manager who issued it;
- (g) be served on the licensee; and
- (h) include the other requirements prescribed in the regulations.

[2018 cC-12.3 s86](#)

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Review of violation orders

87. (1) A licensee who receives a violation order may request a review of the violation order.

(2) A request for review under subsection (1) shall be in writing and made to the minister within 30 days from the date the licensee receives the violation order.

(3) A review shall be performed within 60 days of the receipt of the written request and a written decision including reasons shall be sent to the person who requested the review within 5 business days of being decided.

(4) An appeal lies from the decision of the minister to a judge of the Supreme Court.

[2018 cC-12.3 s87](#)

PART IX YOUTH SERVICES AGREEMENT

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Youth services agreement

88. (1) A manager or social worker may enter into a written agreement for services with a youth who, in the opinion of the manager or social worker, is in need of protective intervention.

(2) Before an agreement under this section is signed, the manager or social worker shall ensure that the effect of the agreement is explained to the youth.

(3) Where the youth is engaged in a plan approved by a manager or social worker, an agreement under this section may be extended until the youth reaches the age of 21.

(4) Where a youth is provided with services, the cost of those services may be recovered and an action or other proceeding for the recovery of the cost may be commenced.

[2018 cC-12.3 s88](#)

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Effect of agreement

89. Where a manager or social worker enters into an agreement with a youth under this Act, the agreement is binding on the youth and enforceable against him or her notwithstanding he or she is less than 19 years of age.

[2018 cC-12.3 s89](#)

PART X CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

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Access to Information and Protection of Privacy Act, 2015 does not apply

90. Notwithstanding the *Access to Information and Protection of Privacy Act, 2015*, the collection of, use of, disclosure of and access to information in records pertaining to the care and protection of children and youth obtained under this Act, regardless of where the information or records are located, shall be governed by this Act.

[2018 cC-12.3 s90](#)

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Definition

91. In this Part, "information" means personal information obtained under this Act or a predecessor Act which is held in government records by, or is in the custody of or under the control

of, the department, and includes information that is written, photographed, recorded or stored in any manner.

[2018 cC-12.3 s91](#)

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Persons who may obtain information

92. (1) A person over 12 years of age has the right to and shall, on request, be given information relating to himself or herself.

(2) A person over 12 years of age who is, or has been, in the care or custody of a manager has the right to and shall, on request, be given information relating to himself or herself including

- (a) information relating to his or her birth family that the minister determines is appropriate to release;
- (b) the reasons why he or she was removed from his or her parent and information relating to the continuation of a court order relating to him or her; and
- (c) the identity of a former foster parent, family-based caregiver or the name of a former residential placement.

(3) A person who has custody of a child has the right to and shall, on request, be given information about himself or herself and the child.

(4) A person who had custody of a child has the right to and shall, on request, be given information about himself or herself and the child, but only for the period of time that the person had custody.

(5) Where information excepted from disclosure under section 93 can reasonably be severed, a person who is otherwise permitted to receive information under this section shall be given the remainder of the information.

[2018 cC-12.3 s92](#)

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Information not to be disclosed

93. Notwithstanding section 92,

(a) a provincial director or a manager shall not disclose information where

- (i) the disclosure is prohibited under the *Adoption Act, 2013*, the *Young Persons Offences Act* or the *Youth Criminal Justice Act (Canada)*,
- (ii) there are reasonable grounds to believe that the disclosure might result in physical or emotional harm to that person or to another person,
- (iii) the disclosure would identify a person who made a report under section 11, or
- (iv) the disclosure could reasonably be expected to jeopardize an investigation under this Act or a criminal investigation; and

(b) a provincial director or a manager may refuse to disclose information that is a transitory record as defined in the *Management of Information Act*.

[2018 cC-12.3 s93](#)

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Disclosure without consent

94. A provincial director or a manager may, without the consent of another person, authorize the disclosure of information obtained under this Act or the regulations where the disclosure is

- (a) in the best interests of a child or youth;
- (b) provided to persons with whom a child or youth has been placed for care;
- (c) for case planning or integrated service delivery purposes, including disclosure for these purposes to Indigenous representatives;
- (d) for research or evaluation purposes and the person to whom that information is disclosed has signed an agreement to comply with conditions set by the minister;
- (e) for a criminal proceeding or an investigation by the Chief Medical Examiner or the Child Death Review Committee under the *Fatalities Investigation Act* and the person to whom that information is disclosed has signed an agreement to comply with conditions set by the minister;
- (f) for a review or investigation of a matter relating to a child or youth by the Child and Youth Advocate under the *Child and Youth Advocate Act* and the person to whom that information is disclosed has signed an agreement to comply with conditions set by the minister; or
- (g) necessary for the administration of this Act.

[2018 cC-12.3 s94](#)

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Information sharing agreements

95. The minister may enter into an agreement with an Indigenous government or organization with respect to the access to or disclosure of information under this Act.

[2018 cC-12.3 s95](#)

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Right to information

96. (1) A manager or social worker has the right to information where that information

- (a) relates to
 - (i) a child,
 - (ii) a youth, or
 - (iii) a parent;
- (b) is necessary to enable the manager or social worker to exercise his or her powers or perform his or her duties or functions under this Act or the regulations, including powers, duties or functions relating to investigations, assessments or determining whether a child is or remains in need of protective intervention; and
- (c) is in the custody or under the control of
 - (i) a person, or
 - (ii) a public body.

(2) A public body or a person referred to in subsection (1) that has custody or control of information to which a manager or social worker is entitled under subsection (1) shall disclose that information to the manager or social worker.

(3) Notwithstanding subsections (1) and (2), information that is subject to solicitor-client privilege is not required to be disclosed unless the information is required to be disclosed under section 11.

(4) Notwithstanding subsections (1) and (2), a peace officer may refuse to disclose information where

(a) the disclosure would be an offence under an Act of Parliament; or

(b) the disclosure would be harmful to law enforcement or could reasonably be expected to interfere with public safety, unless the information is required to be disclosed under section 11.

[2018 cC-12.3 s96](#)

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Internal review

97. (1) The minister shall appoint a person to perform an internal review of a matter referred to in subsection (2).

(2) A person who requests information under section 92 and who is not given the information requested may apply to a person appointed under subsection (1) for an internal review of the refusal to give that information.

(3) An application under subsection (2) shall be made in writing no later than 30 days after the person is notified that he or she will not be given the information requested.

(4) An internal review shall be performed within 30 days of the receipt of the written application, and the results of an internal review shall be provided to the person who requested the review, in writing, within 5 business days of being decided.

(5) An appeal lies from the decision of the person conducting the internal review to a judge of the Supreme Court.

[2018 cC-12.3 s97](#)

PART XI OFFENCES AGAINST CHILDREN

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General offence

98. A person who by commission or omission wilfully contributes to a child being a child in need of protective intervention is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

[2018 cC-12.3 s98](#)

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Contributing to offence

99. A person who sells, gives or causes to come into the possession of a child

- (a) a drug which is or, in quantity, may be, harmful to the child;
- (b) an obscene book or other printed material, copies or written obscene matter;
- (c) an obscene picture, photograph, or pornographic material, model or pornographic material available through electronic means; or
- (d) another obscene object,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

[2018 cC-12.3 s99](#)

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Offence to remove child or youth from manager

100. A person shall not remove or attempt to remove a child or youth, or entice a child or youth to leave, the care or custody of a manager, or harbour a child who has left the care or custody of a manager.

[2018 cC-12.3 s100](#)

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Liability for offence

101. Unless specifically stated otherwise, a person who

- (a) fails to comply with or otherwise contravenes a provision of this Act or the regulations for which a penalty has not been specifically provided; or
- (b) fails to comply with an order made under section 17 or 18 of this Act,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 months, or to both a fine and imprisonment.

[2018 cC-12.3 s101](#)

PART XII ACCOUNTABILITY PROVISIONS

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Statutory review

102. (1) The minister shall, every 5 years, conduct a review of this Act and the principles on which it is based and consider the areas which may be improved.

- (2) A review conducted under subsection (1) shall include public consultations.

[2018 cC-12.3 s102](#)

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Monitoring plans

103. There shall be a process to regularly monitor plans for children who are under the supervision or in the care or custody of a manager.

[2018 cC-12.3 s103](#)

Appeals

104. An appeal lies from a decision of a judge under this Act to

- (a) the Supreme Court where the order, decision or judgment under appeal was made by a Provincial Court judge and the provisions of the *Judicature Act* and the applicable rules of that court shall govern the proceedings on the appeal; or
- (b) the Court of Appeal where the order, decision or judgment under appeal was made by a judge of the Supreme Court, and the provisions of the *Court of Appeal Act* and the applicable rules of that court shall govern the proceedings on the appeal.

[2018 cC-12.3 s104](#)

PART XIII DELEGATION

Delegation

105. (1) The minister may negotiate an agreement with an Indigenous government or organization who satisfies the eligibility requirements prescribed in the regulations for the provision of services or the administration of all or a part of this Act by the Indigenous government or organization.

(2) With the approval of the Lieutenant-Governor in Council the minister may enter into an agreement negotiated under subsection (1).

(3) An Indigenous government or organization that enters into an agreement under subsection (1) is responsible for the services it provides and for the administration of those parts of the Act the Indigenous government or organization is delegated under the agreement.

(4) An agreement entered into under this section shall include

- (a) the term of the agreement;
- (b) the powers, duties and functions delegated to the Indigenous government or organization;
- (c) a requirement that the Indigenous government or organization report to the minister when required by the minister and in the form, manner and time period directed by the minister;
- (d) a requirement that the Indigenous government or organization submit an annual report to the minister in the form, manner and time period prescribed in the regulations;
- (e) a requirement that the Indigenous government or organization carry insurance coverage satisfactory to the minister;
- (f) a requirement that the Indigenous government or organization comply with the monitoring and auditing requirements set by the minister;
- (g) a requirement that the Indigenous government or organization comply with the access to information and protection of privacy requirements set by the minister;
- (h) a requirement that the persons performing the powers, duties and functions delegated to the Indigenous government or organization satisfy the minimum qualifications set by the minister;

- (i) a requirement that an Indigenous government or organization use and maintain financial and information management systems satisfactory to the minister;
- (j) a requirement that an Indigenous government or organization use and maintain documentation standards and system requirements satisfactory to the minister;
- (k) the terms and conditions that are to be imposed on the Indigenous government or organization;
- (l) mechanisms for the settlement of disputes arising from the agreement;
- (m) funding arrangements;
- (n) the obligations of the parties if the agreement is terminated; and
- (o) other provisions prescribed in the regulations.

(5) An agreement entered into under subsection (1) may be renewed or amended in the form, manner and time period prescribed in the regulations.

(6) Notwithstanding the terms of an agreement entered into under subsection (1) or anything in this Act, the regulations or another Act, the minister may terminate an agreement or a part of an agreement entered into under subsection (1) in the form, manner and time period prescribed in the regulations where, in the opinion of the minister, it is in the public interest to terminate the agreement or a part of the agreement.

(7) The minister may, in accordance with the regulations, enter into those agreements that are necessary to give effect to an agreement under this section.

[2018 cC-12.3 s105](#)

PART XIV GENERAL

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Collection of overpayment

106. Where the department makes an overpayment to a person, the department may collect the amount of the overpayment from the person by either or both of the following methods:

- (a) one or more payments from the person to the department; or
- (b) reducing the amount of future payments from the department to the person.

[2018 cC-12.3 s106](#)

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Ministerial regulations

107. The minister may make regulations

- (a) prescribing the powers and duties of provincial directors, managers, social workers and inspectors under this Act;
- (b) respecting provincial directors, managers, social workers and inspectors appointed under this Act including the qualifications, experience and other requirements of those persons;
- (c) respecting the designation of Indigenous representatives by Indigenous governments or organizations;

- (d) respecting the placement of children and youth in foster care placements;
- (e) respecting applications for licences;
- (f) respecting licences, including the requirements that shall be met before a licence is issued, the information that shall be included in a licence and the terms and conditions of a licence;
- (g) respecting the variation, suspension and revocation of licences;
- (h) prescribing the qualifications, experience, training and other requirements of licensees as well as employees, students, volunteers and caregivers of licensees;
- (i) respecting requirements for programming and services provided by licensed family-based placement providers and licensed residential placement providers;
- (j) respecting the maximum number of children or youth that may be placed in each type of foster care placement;
- (k) prescribing the furnishings, materials and equipment required in a facility;
- (l) prescribing requirements for the supervision, health, safety, and nutrition for children and youth in a foster care placement;
- (m) prescribing the method of discipline and crisis intervention for children and youth in a foster care placement;
- (n) prescribing when managers and social workers shall be notified of information regarding children and youth residing in a foster care placement;
- (o) prescribing restrictions on licensees in relation to advertising and promotional materials;
- (p) respecting the insurance coverage that shall be carried by licensees;
- (q) respecting violation orders, including when violation orders are issued, the terms and conditions of violation orders and what information shall be included in a violation order;
- (r) prescribing the documentation, books and records that shall be kept by licensees, the manner in which they shall be kept and in what circumstances they shall be disclosed to a provincial director, manager, social worker or inspector;
- (s) respecting the information, documents and reports licensees are required to submit to a provincial director, manager, social worker or inspector, the frequency of the submission of information, documents, reports and the assessment of the information, documents and reports by a provincial director, manager, social worker or inspector;
- (t) respecting the processes for investigations and inspections;
- (u) exempting a licensee from a part of the Act or the regulations and prescribing the terms and conditions of the exemption;
- (v) respecting financial compensation for licensees, including
 - (i) method, time and manner of payments,
 - (ii) terms and conditions to be met for payment, and
 - (iii) suspension or withholding of payments;
- (w) defining a word or phrase used but not defined in this Act; and

(x) generally to give effect to the purpose of this Act.

[2018 cC-12.3 s107](#)

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Lieutenant-Governor in Council regulations

108. The Lieutenant-Governor in Council may make regulations

- (a) prescribing eligibility requirements that an Indigenous government or organization is required to satisfy in order for the minister to negotiate an agreement with them under section 105;
- (b) prescribing additional requirements of an agreement under section 105; and
- (c) respecting the renewal, amendment and termination of an agreement under section 105.

[2018 cC-12.3 s108](#)

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Schedule

109. (1) The Lieutenant-Governor in Council may, by order, add or remove an Indigenous government or organization to or from the Schedule.

(2) An order made under subsection (1) is subordinate legislation for the purpose of the *Statutes and Subordinate Legislation Act* .

[2018 cC-12.3 s109](#)

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Fees and forms

110. The minister may set fees and establish forms for the purpose and administration of this Act and the regulations.

[2018 cC-12.3 s110](#)

PART XV TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

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Transitional provisions

111. An order made and a proceeding commenced under the *Children and Youth Care and Protection Act* shall, on the coming into force of this Act, be considered to be an order made and a proceeding commenced under this Act.

[2018 cC-12.3 s111](#)

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SNL2015 cA-1.2 Amdt.

112. Paragraph (d) of Schedule A of the *Access to Information and Protection of Privacy Act, 2015* is repealed and the following substituted:

- (d) sections 90 to 96 of the *Children, Youth and Families Act* ;

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RSNL1990 cA-2 Amdt.

113. Subsection 33(3) of the *Accident and Sickness Insurance Act* is repealed and the following substituted:

(3) An order is not necessary for payment into court under subsection (1), but the public trustee shall receive the money upon the insurer filing with him or her an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon that payment being made the insurer shall notify the provincial director appointed under the *Children, Youth and Families Act* of the province and deliver to him or her a copy of the affidavit.

[2018 cC-12.3 s113](#)

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SNL2013 cA-3.1 Amdt.

114. (1) Paragraph 2(m) of the *Adoption Act, 2013* is repealed and the following substituted:

(m) "manager" means a manager appointed under the *Children, Youth and Families Act* ;

(2) Subsection 6(1) of the Act is repealed and the following substituted:

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Managers

6. (1) A manager appointed under the *Children, Youth and Families Act* shall exercise the powers and perform the duties that are conferred or imposed upon a manager by this Act and the regulations.

[2018 cC-12.3 s114](#)

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SNL2011 cA-4.01 Amdt.

115. (1) Paragraph 2(b) of the *Adult Protection Act* is repealed and the following substituted:

(b) "adult" means a person who is not a child or youth within the meaning of the *Children, Youth and Families Act* ;

(2) Subsection 4(1) of the Act is repealed and the following substituted:

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Application

4. (1) This Act applies to every person who is not a child or youth as defined in the *Children, Youth and Families Act* , including a person who is a patient or resident in

(a) a facility operated by an authority established under paragraph 6(1)(b) of the *Regional Health Authorities Act* ;

(b) a personal care home as defined in the *Personal Care Home Regulations* ;

(c) a long term care home;

(d) a community care facility; and

(e) an assisted living facility.

[2018 cC-12.3 s115](#)

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SNL2001 cC-12.01 Amdt.

116. (1) Subparagraph 2(g)(i) of the *Child and Youth Advocate Act* is repealed and the following substituted:

(i) in care or custody under the *Children, Youth and Families Act* ,

(2) Paragraph 21(1.3)(a) of the Act is repealed and the following substituted:

(a) information that could reasonably be expected to reveal the identity of a person who has made a report under section 11 of the *Children, Youth and Families Act* ; and

[2018 cC-12.3 s116](#)

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SNL2014 cC-11.01 Amdt.

117. Subparagraph 2(n)(iii) of the *Child Care Act* is repealed and the following substituted:

(iii) a foster parent as defined in the *Children, Youth and Families Act* , and

[2018 cC-12.3 s117](#)

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RSNL1990 cC-13 Amdt.

118. (1) Subsection 27(2) of the *Children's Law Act* is repealed and the following substituted:

(2) Notwithstanding subsection (1), an application respecting custody of or access to a child may not be made under this Act where the child is the subject of an order for continuous custody under the *Children, Youth and Families Act*.

(2) Section 40 of the Act is repealed and the following substituted:

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Supervision of custody or access

40. (1) Where an order is made for custody of or access to a child, a court may give the directions that it considers appropriate for the supervision of the custody or access by a person or a manager appointed under the *Children, Youth and Families Act* .

(2) A court shall not direct a person or a manager appointed under the *Children, Youth and Families Act* to supervise custody or access as mentioned in subsection (1) unless the person or manager has consented to act as supervisor.

(3) A manager appointed under the *Children, Youth and Families Act* may designate a social worker to carry out the directions of the court in subsection (1) where the manager consents to act as a supervisor.

[2018 cC-12.3 s118](#)

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RSNL1990 cF-2 Amdt.

119. Subsection 69(1) of the *Family Law Act* is repealed and the following substituted:

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Paternity agreements

69. (1) Where 2 persons who are not spouses enter into an agreement for

- (a) the payment of the expenses of a child's prenatal care and birth;
- (b) support of a child; or
- (c) funeral expenses of the child or mother,

on the application of a party, or a manager appointed under the *Children, Youth and Families Act* , to the court, the court may incorporate the agreement in an order, and Part III applies to the order in the same manner as if it were an order made under that Part.

[2018 cC-12.3 s119](#)

SNL2005 cF-3.1 Amdt.

120. (1) Subsection 13(1) of the *Family Violence Protection Act* is repealed and the following substituted:

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Effect of emergency protection order

13. (1) An emergency protection order prevails over

- (a) a prior, subsisting order respecting custody of or access to a child, including an order made under the *Divorce Act* (Canada) or Part III of the *Children's Law Act* ; and
- (b) a provision of a subsisting agreement made under Part IV of the *Family Law Act* respecting the custody of or access to a child,

(1.1) An emergency protection order does not prevail over

- (a) a prior, subsisting order under the *Children, Youth and Families Act* that places a child in the care or custody of a manager appointed under that Act or a person other than the parent from whom the child was removed; or
- (b) a prior, subsisting order under the *Adult Protection Act* that places an adult in the care and custody of the provincial director appointed under that Act or another person.

(2) Section 19 of the Act is repealed and the following substituted:

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Duty to report continued

19. Nothing in this Act affects a duty set out in section 11 of the *Children, Youth and Families Act* or section 12 of the *Adult Protection Act* .

[2018 cC-12.3 s120](#)

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SNL1995 cF-6.1 Amdt.

121. Paragraph 7(c) of the *Fatalities Investigations Act* is repealed and the following substituted:

(c) while in the custody of a manager under the *Children, Youth and Families Act* ; or

[2018 cC-12.3 s121](#)

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RSNL1990 cJ-4 Amdt.

122. Paragraph 43.9(1)(l) of the *Judicature Act* is repealed and the following substituted:

(l) protective intervention matters relating to children under the *Children, Youth and Families Act* ;

[2018 cC-12.3 s122](#)

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RSNL1990 cL-14 Amdt.

123. Subsection 52(3) of the *Life Insurance Act* is repealed and the following substituted:

(3) An order is not necessary for payment into court under subsection (1), but the public trustee shall receive the money upon the insurer filing with him or her an affidavit showing the amount payable and the name, date of birth and residence of the minor and upon the payment being made the insurer shall immediately notify a provincial director appointed under the *Children, Youth and Families Act* and deliver to him or her a copy of the affidavit.

[2018 cC-12.3 s123](#)

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SNL2009 cM-1.02 Amdt.

124. Paragraph 19(1)(c) of the *Marriage Act* is repealed and the following substituted:

(c) a manager of child, youth and family services under the *Children, Youth and Families Act* , where the party is a person in the continuous care and custody of that manager,

[2018 cC-12.3 s124](#)

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SNL2008 cP-7.01 Amdt.

125. (1) Section 9 of the *Personal Health Information Act* is repealed and the following substituted:

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Act does not apply

9. This Act does not apply to a record created or information held by a person under or for the purpose of the *Children, Youth and Families Act* or the *Adoption Act, 2013* notwithstanding that the information would otherwise be considered to be personal health information or the person would otherwise be considered to be a custodian within the meaning of this Act.

(2) Subsection 42(1) of the Act is repealed and the following substituted:

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Disclosure for enforcement purposes

42. (1) A custodian shall disclose personal health information, including information relating to a person providing health care, without the consent of the individual who is the subject of the information to a person carrying out an inspection, investigation or similar procedure that

is authorized by or under this Act, the *Children, Youth and Families Act* , another Act or an Act of Canada for the purpose of facilitating the inspection, investigation or similar procedure.

[2018 cC-12.3 s125](#)

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SNL2009 cP-46.1 Amdt.

126. Paragraph 4(2)(f) of the *Public Trustee Act, 2009* is repealed and the following substituted:

- (f) act as guardian of the estate of a minor who is in the continuous custody of a manager under the *Children, Youth and Families Act* ;

[2018 cC-12.3 s126](#)

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SNL2016 cS-12.3 Amdt.

127. (1) Paragraph 2(1)(g) of the *Secure Withdrawal Management Act* is repealed and the following substituted:

- (g) "guardian" means a person, including a manager appointed under the *Children, Youth and Families Act* , to whom custody of the young person has been granted by a court of competent jurisdiction or by an agreement;

(2) Subsection 3(3) of the Act is repealed and the following substituted:

(3) The rights and obligations of a parent or guardian with respect to a young person under the common law, the *Children, Youth and Families Act* or under another Act of the Legislature are not affected by the coming into force of this Act, except as specifically provided in it.

[2018 cC-12.3 s127](#)

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SNL2009 cV-6.01 Amdt.

128. (1) Subsection 13(3) of the *Vital Statistics Act, 2009* is repealed and the following substituted:

(3) The registrar general shall, upon registering a birth under this section, immediately send to the appropriate manager appointed under the *Children, Youth and Families Act* a copy of all documents respecting the registration of a child filed under this section.

(2) Paragraph 30(2)(e) of the Act is repealed and the following substituted:

- (e) a person or agency who or which requires it to comply with the *Adoption Act, 2013* or the *Children, Youth and Families Act* ; or

[2018 cC-12.3 s128](#)

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NLR 39/17 Amdt.

129. Subsection 49(2) of the *Child Care Regulations* under the *Child Care Act* is repealed and the following substituted:

(2) Where a child care service is operated in a family home, an administrator shall notify the minister and a parent of every child registered in the child care service in writing when an

investigation is started under the *Children, Youth and Families Act* or by a member of the Royal Newfoundland Constabulary or the Royal Canadian Mounted Police into a matter involving both a child registered in the child care service and a child care service provider, employee, student, volunteer or other person who assists or provides services in the operation of the child care service or a resident of the family home, unless directed otherwise by the investigating authority.

[2018 cC-12.3 s129](#)

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NLR 28/07 Amdt.

130. Paragraph 1.02(1)(c) of the *Provincial Court Family Rules, 2007* under the *Provincial Court Act, 1991* is repealed and the following substituted:

(c) *Children, Youth and Families Act* ;

[2018 cC-12.3 s130](#)

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SNL1986 c42 Schedule D Amdt.

131. (1) Rule F8.03(4) of the *Rules of the Supreme Court, 1986* under the *Judicature Act* is repealed and the following substituted:

(4) To personally serve a document on a manager, as defined in the *Children, Youth and Families Act* , a copy of the document must be hand-delivered to the manager subject to rule F8.13.

(2) Rule F14.02(2)(a) of the rules is repealed and the following substituted:

(a) the proceeding has been brought under the *Children, Youth and Families Act* ;

(3) Rule F17.08 of the rules is repealed and the following substituted:

Where rule does not apply

F17.08 This rule does not apply to warrants under the *Children, Youth and Families Act*.

(4) Rules F37.01 and F37.02 of the rules are repealed and the following substituted:

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Proceedings

F37.01 (1) To the extent that the procedure or time limits in this Part are inconsistent with the *Children, Youth and Families Act* , the provisions of the *Children, Youth and Families Act* will apply.

(2) Any hearing under the *Children, Youth and Families Act* must be

(a) held as informally as the circumstances of the case permit;

(b) scheduled as expeditiously as the schedule of the Court allows and as fairness to the parties and affected persons requires; and

(c) held in private unless the judge hearing the matter determines that the proper administration of justice or the interests of a child require otherwise.

(3) A judge may make any order under rule F14.07 ("Powers of case management judge") not inconsistent with the *Children, Youth and Families Act* that may assist in focusing a child protection hearing on the matters in dispute.

(4) An application for a protective intervention order and any other application under the *Children, Youth and Families Act* must be started by presenting the original and one copy of an application to the Court.

(5) An application for another order relating to children in respect of whom a protective intervention order has already been sought or in respect of other children in the same family must be given the same file number as the original application where the application is made in the same judicial centre.

Summary judgment

F37.02 (1) Upon completion of a presentation hearing as required by section 31 of the *Children, Youth and Families Act* and an order being made directing that a protective intervention hearing is to take place, a party may make an application for a summary judgment for a final order without a trial on all or part of any claim made or defence to be presented in the proceeding.

(2) The procedure set out in rule F28 ("Summary Judgment") applies to applications for summary judgment under this rule.

(5) Rule F37.03(2) of the rules is repealed and the following substituted:

(2) A judicial case conference may only occur at some time after the conclusion of the presentation hearing as required by section 31 of the *Children, Youth and Families Act* and before a full hearing occurs.

[2018 cC-12.3 s131](#)

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Repeal

132. The *Children and Youth Care and Protection Act* is repealed.

[2018 cC-12.3 s132](#)

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Commencement

133. This Act comes into force on a day or days to be proclaimed by the Lieutenant-Governor in Council.

[2018 cC-12.3 s133](#)

Schedule

Miawpukek First Nation

Mushuau Innu First Nation

Nunatsiavut Government

Sheshatshiu Innu First Nation

[2018 cC-12.3 sch](#)