

Anishinabek Nation

Child Welfare Law

DRAFT



Anishinabek

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ANISHINABEK NATION CHILD WELFARE LAW

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JURISDICTION

1. The Anishinabek First Nations have exclusive jurisdiction over child welfare involving Anishinabek children. The First Nation retains exclusive jurisdiction notwithstanding the residence or domicile of the child.

INTERPRETATION

Definitions

2. In this Law,

"abuse" means neglect or emotional, psychological, physical or sexual abuse;

"apprehended" means apprehended under this Law;

"assistant Director" means an assistant Director appointed under section 163;

"authorized person" means a person authorized by the Director under section 168;

"child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years;

"Child and Family Services Committee" means a Child and Family Services Committee established by a community agreement;

"child care facility" means a child care facility approved by the Director under section 186;

"Child Protection Worker" means a Child Protection Worker appointed under section 166;

"community" means First Nation or an aboriginal population living within a municipality that identifies itself as a community;

"community agreement" means an agreement made under sections 172 and 175;

"community standards" means community standards established under section 180 by a community that is a party to a community agreement;

"Director" means the Director of Child and Family Services appointed under section 160;

"foster home" means a foster home approved by the Director under section 188;

"parent" is a person who has lawful custody of a child;

"plan of care agreement" means a plan of care agreement made by a plan of care committee;

"plan of care committee" means a plan of care committee established by a Child Protection Worker under sections 32 or 36 or by a Child and Family Services Committee under section 56;

"youth" means a person who has attained the age of 16 years but has not attained the age of majority.

Principles Governing Law

3. This Law will be administered and interpreted in accordance with the following principles:
 - a) families are entitled to receive services in a manner that respects their Anishinabek cultural, spiritual and linguistic heritage;
 - b) communities and families have a right to be involved in child welfare issues affecting them;
 - c) the Law provides the legislative framework for the tripartite agreements and for the creation of Anishinabek child and family services agencies;
 - d) the Law places restrictions on adoptions outside the Anishinabek Nation;
 - e) Anishinabek cultural, spiritual and linguistic heritage is included within the concept of the "best interests" of the child, and agencies are compelled to respect the Anishinabek cultural and linguistic heritage of the families and children they serve;
 - f) children are entitled to protection from abuse and harm and from the threat of abuse and harm;
 - g) measures taken for the protection and well-being of children should, as far as possible, promote family and community integrity and continuity;
 - h) children, where appropriate, and parents should participate in decisions affecting them;
 - i) children, where appropriate, parents, and adult members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their own interests are being made;
 - j) there should be no unreasonable delay in making or carrying out a decision affecting a child;
 - k) services to children and their families should cause the least amount of disruption to the family and should promote the early reunification of the child with the family;
 - l) children should be supported within the context of their family and extended family to the greatest extent possible;
 - m) children removed from their family should be provided with a level of care adequate to meet their needs, within available resources, and consistent with community standards;

Role of family

4. The family of a child has the primary responsibility for the care, upbringing and development of the child.
5. In fulfilling that responsibility, the family may bring up the child in any language or tradition and foster in the child any cultural or spiritual values.
6. A child may be removed from the child's family only if there is no other reasonable way to

safeguard the wellbeing of the child.

7. As far as practicable, and consistent with section 10, if a child is removed from the child's family:
 - a) contact between the child and the family should be encouraged and supported; and,
 - b) the child should eventually be returned to the family.

Treating Child with Respect

8. Each child is a valued member of his community and is entitled to be treated in a way that respects the child's dignity and privacy.
9. Decisions involving a child should be made:
 - a) promptly having regard to the child's circumstances; and
 - b) in a way that is consistent with the cultural or spiritual values and traditions relevant to the child; and
 - c) with the informed participation of the child, the child's family and other people who are significant in the child's life.

Best Interests of the Child

10. Where there is a reference in this Law to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child including the following factors, with a recognition that Anishinabek cultural and spiritual values and practices must be respected in making that determination:
 - a) the child's safety;
 - b) the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs;
 - c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
 - d) the importance for the child's development of a positive relationship with his or her parent, a secure place as a wanted and needed member of the family, and a stable environment;
 - e) the nature of the child's relationship with the child's family and other persons who are significant in the child's life;
 - f) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
 - g) the risk that the child may suffer harm through being removed from, kept away from, returned to, or allowed to remain in, the care of a parent;
 - h) the merits of any proposed plan of care for the child;
 - i) the child's views and preferences, if they can be reasonably ascertained;
 - j) the effects on the child of a delay in making a decision;
 - k) the capacity and willingness of the child's parents or other family members to care for the child.

Child Participation in Decision-Making

11. When a decision involving a child is made, the child:

- a) should be given adequate information and explanation in a way that the child can understand;
- b) should be given the opportunity to respond to the proposed decision;
- c) should be given the opportunity to express the child's wishes and views freely;
- d) should be given assistance in expressing those wishes and views; and those wishes and views should be taken into account, having regard to the child's maturity and understanding.

PART I

PROTECTION OF CHILDREN AND YOUTH

Definitions

12. In this Part,

"court" means a court of competent jurisdiction in the community;

"investigation" means an investigation under subsection 9(1) or paragraph 11(3)(a);

"investigation report" means a report prepared under subsection 13(1) on an investigation;

"order" means an order made under section 28;

"report" means a report made under subsection 8(1).

Voluntary Support Services and Agreements

13. The Director may enter into a written agreement with a person who has lawful custody of a child to provide services or to assist others in providing services, or to assist that person's family in obtaining services, to support and assist that person's family to care for the child.

Consent and Signature of Child

14. Where a child referred to in section 13 has attained the age of 12 years,

- a) before entering into an agreement under section 13, the Director will interview the child in order to ascertain the child's views on the services to support and assist the family to care for the child; and
- b) the child may consent to and sign the agreement referred to in section 13 but the agreement is valid whether or not the child consents to or signs the agreement.

Voluntary Support Services

15. The services to support and assist the family of a person who has lawful custody of a child referred to in section 13 may include:

- a) counselling;
- b) in-home support;
- c) respite care;
- d) parenting programs;
- e) services for improving the family's financial situation;
- f) services for improving the family's housing;
- g) drug or alcohol treatment and rehabilitation;
- h) mediation of disputes;
- i) services to assist the family to deal with the illness of a child or a family member; and
- j) any other services agreed to by the Director and the person who has lawful custody of the child.

Term of Agreement

16. The initial term of an agreement referred to in subsection (1) must not exceed 6 months, and an agreement may be extended for one or more terms not exceeding 6 months each.

Support services and agreements for youth

17. Where the Director is satisfied that a youth cannot reside with his or her parents and needs assistance to provide for himself or herself, or is living in circumstances of a child who needs protection, the Director may enter into a written agreement with the youth to provide services or to assist others in providing services, or to assist that youth in obtaining services, to support and assist that youth to care for himself or herself.

Support services

18. The services to support and assist a youth referred to in section 17 may include:
- a) counselling;
 - b) parenting programs;
 - c) services for improving the youth's financial situation;
 - d) services for improving the youth's housing;
 - e) drug or alcohol treatment and rehabilitation;
 - f) mediation of disputes; and,
 - g) any other services agreed to by the Director and the youth.

Support Services – Housing

19. Services to be provided under subsection 18 d) may include placement of the youth in a foster home or child care facility or such other accommodation as may best meet the needs of the youth.

Agreements with Third Parties

20. The Director may enter into an agreement with a third party for the provision of services to a youth pursuant to an agreement under section 17 or pursuant to an order under section 29.5.

Term of Agreement

21. The initial term of an agreement referred to in section 17 must not exceed 6 months, and an agreement may be extended for one or more terms not exceeding 6 months each until the youth attains the age of majority.

Child Who Needs Protection

"parent" Defined

22. In this section, "parent" include:

- a) a person who has lawful custody of a child, other than the Director; and
- b) except in paragraph 24(m), a person having charge of a child.

Interpretation

23. Section 24 will be interpreted with a recognition that differing cultural values and practices must be respect and in accordance with community standards.

Child Who Needs Protection

24. A child needs protection where:

- a) the child has suffered physical harm inflicted by the child's parent or caused by the parent's unwillingness or inability to care and provide for or supervise and protect the child adequately;
- b) there is a substantial risk that the child will suffer physical harm inflicted by the child's parent or caused by the parent's unwillingness or inability to care and provide for or supervise and protect the child adequately;
- c) the child has been sexually molested or sexually exploited by the child's parent or by another person where the child's parent knew or should have known of the possibility of sexual molestation or sexual exploitation and was unwilling or unable to protect the child;
- d) there is a substantial risk that the child will be sexually molested or sexually exploited by the child's parent or by another person where the child's parent knows or should know of the possibility of sexual molestation or sexual exploitation and is unwilling or unable to protect the child;
- e) the child has demonstrated severe anxiety, depression, withdrawal, self-destructive behaviour, or aggressive behaviour towards others or any other severe behaviour that is consistent with the child having suffered emotional harm, and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to remedy or alleviate the harm;
- f) there is a substantial risk that the child will suffer emotional harm of the kind described in paragraph e) and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to prevent the harm;
- g) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, services, treatment or healing processes to remedy or alleviate the condition;

- h) the child's health or emotional or mental well-being has been harmed by the child's use of alcohol, drugs, solvents or similar substances and the child's parent is unavailable, unable or unwilling to properly care for the child;
- i) there is a substantial risk that the child's health or emotional or mental well-being will be harmed by the child's use of alcohol, drugs, solvents or similar substances and the child's parent is unavailable, unable or unwilling to properly care for the child;
- j) the child requires medical treatment to cure, prevent or alleviate serious physical harm or serious physical suffering and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, the treatment;
- k) the child suffers from malnutrition of a degree that, if not immediately remedied, could seriously impair the child's growth or development or result in permanent injury or death;
- l) the child has been abandoned by the child's parent without the child's parent having made adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;
- m) the child's parents have died without making adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;
- n) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care; or
- o) the child is less than 12 years of age and has killed or seriously injured another person or has persisted in injuring others or causing damage to the property of others, and services, treatment or healing processes are necessary to prevent a recurrence and the child's parent does not provide, or refuses or is unavailable or unable to consent to the provision of, the services, treatment or healing processes.

Duty to Report and Investigation of Report

Duty to report child needing protection

25. A person who has information of the need of protection of a child will, without delay, report the matter
- a) to a Child Protection Worker; or
 - b) if a Child Protection Worker is not available, to a peace officer or an authorized person.

Confidentiality and privilege

26. Section 25 applies notwithstanding that the information reported is confidential or privileged.

Civil liability

27. No Action will be commenced against a person for reporting information in accordance with this section unless it is done maliciously.

Solicitor and client privilege

28. The duty to report will abrogate any privilege that may exist between a solicitor and the solicitor's client.

Offence and Punishment

29. Every person who contravenes section 25 is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding six months or to both.

Assessment and Investigation

30. A person to whom a report is made will assess the report and, where the person considers it advisable; investigate the child's need for protection.

Where No Investigation

31. Where, after assessing a report, the person to whom the report was made does not investigate the child's need for protection, he or she will, in accordance with any guidelines under this Law, prepare a report setting out the reason for not investigating the child's need for protection and provide a copy of the report to the Director.

Action by Child Protection Worker

32. Where a report is made to a Child Protection Worker and during or as a result of an investigation the Child Protection Worker has reasonable grounds to believe that the child needs protection, the Child Protection Worker:
- a) may apprehend the child if the Child Protection Worker has reasonable grounds to believe that the child's health or safety is in danger and the child has not already been apprehended under section 33 a);
 - b) may offer the services referred to in section 13 to the family of the person who has lawful custody of the child without entering into an agreement under that section until a plan of care agreement commences or a court makes an order; and
 - c) will within 8 days after the report is made or the matter is referred; endeavour to establish a plan of care committee, whether or not the child has been apprehended.

Action by Peace Officer or Authorized Person

33. Where a report is made to a peace officer or an authorized person and during or as a result of an investigation he or she has reasonable grounds to believe that the child needs protection, the peace officer or authorized person:
- a) may apprehend the child if the peace officer or authorized person has reasonable grounds to believe that the child's health or safety is in danger; and
 - b) will, without delay, refer the matter to a Child Protection Worker, whether or not the child has been apprehended.

Apprehension of Child where No Report

34. A Child Protection Worker, a peace officer or an authorized person may apprehend a child where he or she has reasonable grounds to believe that:
- a) the child needs protection; and
 - b) the child's health or safety is in danger.

Referral to Child Protection Worker

35. Where a child has been apprehended under section 33 by a peace officer or an authorized person, he or she will, without delay, notify a Child Protection Worker of the apprehension and refer the matter to the Child Protection Worker.

Action following Apprehension

36. Where a Child Protection Worker apprehends a child under section 34 or a matter is referred to the Child Protection Worker under section 35, the Child Protection Worker:
- a) will investigate the child's need for protection;
 - b) may offer the services referred to in section 13 to the family of the person who has lawful custody of the child without entering into an agreement under that section until a plan of care agreement commences or a court makes an order; and
 - c) will, within 8 days after the Child Protection Worker apprehends the child or the matter is referred to the Child Protection Worker, endeavour to establish a plan of care committee.

Return of Child Apprehended

Return of child to parent

37. Where a child has been apprehended under subsection 32 b) or 33 b) or section 34 and the child is returned within 72 hours after the apprehension to his or her parent or the person having actual care of the child at the time of the apprehension, a Child Protection Worker will not establish a plan of care committee unless the child has been returned pursuant to a decision of the Director in accordance with this Law that the child will live with the child's parent or that person.

Return to person having lawful custody

38. For the purpose of section 37, the child will not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Investigation Report

39. After an investigation is completed, a Child Protection Worker will, in accordance with any guidelines of the Director, prepare a report on the investigation of the facts of the case including a description of any measures taken to protect the child, and provide a copy of the report to the Director.

Action where child does not need protection

40. Notwithstanding any other provision of this Law, where an investigation is completed and, based on the investigation, a Child Protection Worker is of the opinion that the child who is the subject of the investigation does not need protection,
- a) a plan of care committee will not be established and if it has been established, it will be dissolved and any plan of care agreement will be deemed to have terminated;
 - b) where a Child Protection Worker has applied to a court for a declaration that the child needs protection and for an order, the Child Protection Worker will withdraw the application; and
 - c) where the child has been apprehended, the child will be returned to his or her parent or the person having actual care of the child at the time of the apprehension.

Return to person having lawful custody

41. For the purpose of subsection 40 c), the child will not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Plan of Care Committee and Agreement

Notice of Procedures

42. Where a child has not been apprehended, the Child Protection Worker will, before establishing a plan of care committee,
- a) notify the person who has lawful custody of the child and the child, where the child has attained the age of 12 years, that the person or the child has a right to make an election under section 62 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order; and
 - b) provide, together with the notice under subsection 42 a), information prepared by the Director explaining the procedure under this Law for making a plan of care agreement and for making an application to a court for a declaration that a child needs protection and for an order, whichever is applicable.

Notice when child turns 12

43. Where a child who is to be the subject of a plan of care agreement attains the age of 12 years after a plan of care committee is established, the Child Protection Worker will notify the child of his or her right to make an election under section 62 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order and provide the child with the information referred to in section 42 b).

Method of Notice

44. Notice under section 42 a) and section 43 may be by any method and may be oral or in writing, but where oral notice is given it must be followed by written notice as soon as is reasonably practicable.

Validity of Action or Proceeding

45. The validity of any Action taken or proceeding commenced under this Law is not affected where a Child Protection Worker is unable, after making a reasonable effort, to give notice in accordance with sections 42 or 43.

"child's community" Defined

46. In this section and section 54, "child's community" means the community in which a child is ordinarily resident at the time a report is made in respect of the child or the child is apprehended.

Plan of Care Committee

47. A plan of care committee will be composed of:
- a) at least one person who has lawful custody of the child;
 - b) the child, where the child has attained the age of 12 years and wishes to sit as a member;
 - c) one member of the Child and Family Services Committee, where there is a Child and Family Services Committee in the child's community; and

- d) one Child Protection Worker.

Substitution of Members

48. Where a member listed in section 47 c) or d) is unable or unwilling to continue to sit as a member, the Child and Family Services Committee or the Child Protection Worker, as the case may be, will invite another person of the same category as that member to sit as a member.

Additional Members

49. A majority of the members of a plan of care committee listed in section 47:
- a) will, if there is a member of the child's extended family who lives in the child's community and who the majority considers suitable, invite a member of the child's extended family to become a member of the committee; and
 - b) may agree to invite one or more additional persons to become members of the committee where they believe such persons may be of assistance in developing and entering into a plan of care agreement.

Chairperson

50. The members of a plan of care committee will, at their first meeting, select a member to serve as chairperson.

Procedure

51. A plan of care committee will conduct its meetings and exercise its powers and perform its duties in accordance with the procedures set out in the regulations to this Law.

Powers and Duties

52. A plan of care committee:
- a) will endeavour to develop a plan of care in respect of a child;
 - b) will enter into a plan of care agreement in accordance with section 66 to give effect to any plan of care agreed to by the plan of care committee; and
 - c) may exercise its powers and will perform its duties under this Law and the regulations in relation to a plan of care agreement.

Term

53. A plan of care committee terminates:
- a) where there is only one member of the category listed in section 47 a) and he or she has become unable or unwilling to sit as a member, and the Child and Family Services Committee or the Child Protection Worker, as the case may be,
 - i) is not required under the regulations to invite another person to sit as a member, or
 - ii) is required under the regulations to invite another person to sit as a member but is unable to substitute another person for that member;
 - b) where the Child and Family Services Committee or the Child Protection Worker, as the case may be, is unable to substitute another person for a member listed in subsections 47 c) or d) who has become unable or unwilling to sit as a member;
 - c) on the expiration of the time referred to in section 54 or 57 for making a plan of care agreement; or

- d) where a plan of care agreement is made, on the expiration or termination of the plan of care agreement.

Where committee not formed or plan not agreed to

54. Where a person listed in section 47 a), c) or d) is unable or unwilling to sit as a member of a plan of care committee and a plan of care committee is not established or if it is established, is terminated as a result, or a Child Protection Worker establishes a plan of care committee and, at the expiration of 15 days after the relevant day referred to in section 55, the plan of care committee has not made a plan of care agreement in respect of the child, the Child Protection Worker will, without delay,
- a) where there is a Child and Family Services Committee in the child's community, refer the matter to the Child and Family Services Committee; or
 - b) where there is no Child and Family Services Committee in the child's community, apply to a court for a declaration that the child needs protection and for an order.

Relevant Day

55. For the purpose of section 54, the relevant day is the day, whichever day is later, on which
- a) a report was made to a Child Protection Worker in respect of the child;
 - b) the matter was referred to a Child Protection Worker under paragraph 10(2)(b) or subsection 11(2); or
 - c) the child was apprehended by a Child Protection Worker under subsection 11(1).

Child and Family Services Committee

56. Subject to section 62, a Child and Family Services Committee will endeavour to establish a plan of care committee within 8 days after the day on which a Child Protection Worker refers the matter to it, whether or not the child has been apprehended.

Where committee not formed or plan not agreed to

57. A Child Protection Worker will, without delay, apply to a court for a declaration that the child needs protection and for an order where
- a) a person listed in section 47a), c) or d) is unable or unwilling to sit as a member of a plan of care committee and a plan of care committee is not established or if it is established, is terminated as a result; or
 - b) the Child and Family Services Committee establishes a plan of care committee and, at the expiration of 15 days after the day on which the Child Protection Worker referred the matter to the Child and Family Services Committee, the plan of care committee has not made a plan of care agreement in respect of the child.

Person ineligible to serve on plan of care committee

58. A person who is or is to be a member of a plan of care committee is ineligible to sit as a member of the plan of care committee if he or she is a subject of a report or investigation concerning another matter that is being dealt with under this Law or in respect of which a plan of care agreement or order is in effect.

Deemed resignation

59. Where a person who is a member of a plan of care committee becomes ineligible to sit as a member of a plan of care committee, he or she is deemed to have resigned from the plan of care committee.

Substitution of Member

60. Where a person referred to in section 59 is or is to be a member of a plan of care committee, the Child and Family Services Committee or the Child Protection Worker, as the case may be, will invite another person of the same category as that member to sit as a member.

Exception

61. This section does not apply where the person referred to in section 58 is a child who is a member of the plan of care committee.

Election to Proceed to Court

62. A person who has lawful custody of a child who is to be the subject of a plan of care agreement or the child, where the child has attained the age of 12 years, may at any time before a plan of care agreement commences elect in writing not to have a plan of care committee established or, if it has been established, to have the plan of care committee dissolved, and to have a Child Protection Worker apply to a court of competent jurisdiction for a declaration that the child needs protection and for an order.

Assistance of Child Protection Worker

63. On the request of a person or child referred to in section 62, a Child Protection Worker will assist the person or child in preparing an election under section 62.

Provision of Election to Child Protection Worker

64. The person or child making an election under section 62 will provide it to the Child Protection Worker and it is effective on the day on which it is received by the Child Protection Worker.

Action by Child Protection Worker

65. On receipt of an election under section 62, the Child Protection Worker will apply to a court of competent jurisdiction for a declaration that the child needs protection and for an order.

Plan of Care Agreement

66. A plan of care agreement for a child may include provision for:

- a) where and with whom the child will live;
- b) support services to make the child's home safe for the child;
- c) counselling;
- d) access to the child by a parent where the child will not be living with the parent;
- e) the child's education;
- f) the child's social and recreational activities;
- g) the responsibilities of any of the persons who are part of the plan of care committee;
- h) a person named in the agreement to have the rights and responsibilities of a parent in respect of the person of the child that are set out in the agreement during the term of the agreement; and

- i) any other matter or thing that the plan of care committee considers necessary and in the best interests of the child.

Rights and Responsibilities of Person Named in Agreement

67. A person who is named in a plan of care agreement under subsection 66 h) as having the rights and responsibilities of a parent in respect of the person of the child who is the subject of the plan of care agreement has those rights and responsibilities set out in the agreement until
- a) the agreement is modified to provide otherwise; or
 - b) the agreement is terminated or expires.

Form of Plan of Care Agreement

68. A plan of care agreement must be in writing and signed by a majority of the members of the plan of care committee.

Required Consents

69. The majority of members signing the plan of care agreement, referred to in section 68, must include the following members:
- a) every person who has lawful custody of the child and who is a member;
 - b) the Child Protection Worker.

Consent of Child

70. A child who is the subject of the plan of care agreement and who has attained the age of 12 years may consent to and sign a plan of care agreement and any extension or modification of it.

Initial Term of Plan of Care Agreement

71. The initial term of a plan of care agreement must not exceed 12 months.

Maximum Term

72. The term of a plan of care agreement, together with any extensions of the term of the agreement, must not exceed 24 months.

Monitoring Plan of Care Agreement

73. A Child Protection Worker will monitor a plan of care agreement to ensure that it is implemented according to its terms.

Request for Review of Plan of Care Agreement

74. Any person who has signed a plan of care agreement may, on 10 days written notice to all members of the plan of care committee, request the plan of care committee to review the agreement and, on review, the term of the agreement may be extended and any term or condition modified with the consent of a majority of the members of the plan of care committee.

Mandatory Review of Plan of Care Agreement

75. Where the term of a plan of care agreement is extended beyond 12 months, the plan of care committee will review the agreement every three months and, on review, the term of the agreement may be extended and any term or condition modified with the consent of a majority of the members of the plan of care committee.

Required Consents

76. The majority of members consenting to an extension or modification, referred to in sections 74 and 75, must include the following members:

- a) every person who has lawful custody of the child and who is a member; and
- b) the Child Protection Worker.

Deemed extension of plan of care agreement after expiration of agreement

77. A plan of care agreement will be deemed not to have expired where, within a reasonable period of time after the expiration of the agreement, a majority of the members of the plan of care committee agree in writing that it is in the best interests of the child to extend the agreement for a specified term.

Required Consents

78. The majority of members agreeing to an extension, referred to in section 77, must include the following members:

- a) every person who has lawful custody of the child and who is a member; and
- b) the Child Protection Worker.

Power of Director and Others

79. A plan of care agreement does not limit the power of the Director, a Child Protection Worker, a peace officer or an authorized person to take any Action under sections 32 to 34 and 117 in respect of a child who is the subject of a plan of care agreement.

Termination of Plan of Care Agreement

80. A member of a plan of care committee who is the Child Protection Worker or a person who has lawful custody of the child who is the subject of the plan of care agreement may terminate the plan of care agreement on 10 days written notice to the other.

Action by Child Protection Worker

81. Where a Child Protection Worker is of the opinion that terminating a plan of care agreement will result in the child who is the subject of the agreement needing protection, the Child Protection Worker will, without delay after giving or receiving the notice referred to in section 80, apply to a court for a declaration that the child needs protection and for an order.

Reliance on Original Grounds

82. Where a Child Protection Worker applies to a court under section 81, the application may be made on the grounds that a Child Protection Worker, a peace officer or an authorized person had to believe under sections 32, 33 or 34 that the child needed protection at the time he or she acted under those sections.

Deemed Termination of Plan of Care Agreement

83. Notwithstanding section 80, a plan of care agreement will be deemed to have terminated on the day on which:
- a) the child who is the subject of the plan of care agreement is apprehended where, on the commencement of the agreement, the child had not already been apprehended; or
 - b) the court makes an order where, on the commencement of the agreement, the child had already been apprehended.

Plan of Care

Development of plan of care

84. Where a Child Protection Worker applies or is in a position to apply to a court for a declaration that a child needs protection and for an order, the Child Protection Worker will develop a plan of care in respect of the child.

Contents of Plan of Care

85. A plan of care for a child may include provision for:
- a) where and with whom the child will live;
 - b) support services to make the child's home safe for the child;
 - c) counselling;
 - d) visits with the child by a parent where the child will not be living with the parent;
 - e) the child's education;
 - f) the child's social, cultural and recreational activities; and
 - g) any other matter or thing that the Child Protection Worker considers necessary and in the best interests of the child.

Hearing

Application for declaration and order

86. An application to a court for a declaration that a child needs protection and for an order must be made within 45 days after the day, whichever day is later, on which,
- a) a report was made to a Child Protection Worker in respect of the child
 - b) the matter was referred to a Child Protection Worker under subsection 33 b) or section 35;
 - c) the child was apprehended by a Child Protection Worker under section 32; or
 - d) a Child Protection Worker received an election under section 62.

Service of originating notice

87. A Child Protection Worker must serve a copy of the originating notice commencing an application for a declaration that a child needs protection and for an order and an affidavit in support of the application on:
- a) the following persons, if their identities and whereabouts are known:
 - i) the child's parents,
 - ii) the person having actual care of the child at the time an investigation commenced, where the child was not apprehended,
 - iii) the person having actual care of the child at the time the child was apprehended, where the child was apprehended;

- b) the child, where the child has attained the age of 12 years;
- c) the members of the plan of care committee not otherwise served under this section or, where a plan of care committee was not established and there is a Child and Family Services Committee in the child's community, the chairperson of the Child and Family Services Committee; and
- d) the child's First Nation; and,
- e) the parent's First Nation, if it is not the same as the child's First Nation.

Time for hearing after first appearance

88. A hearing must be held not later than 3 months after the first appearance unless a court orders otherwise.

Determination of whether child needs protection

89. On hearing an application for a declaration that a child needs protection and for an order, the court will determine, in accordance with section 24, whether or not the child who is the subject of the hearing needs protection.

Declaration that child needs protection

90. Where a court determines that a child needs protection, the court will make declaration to that effect and, before making an order, will

- a) invite and consider representations on a plan of care for the child by:
 - i) the Child Protection Worker,
 - ii) the child's parents,
 - iii) the person having actual care of the child at the time the declaration is made, where the child was not apprehended,
 - iv) the person having actual care of the child at the time the child was apprehended, where the child was apprehended, and
 - v) the child, where the child has attained the age of 12 years; and
- b) consider any terms and conditions recommended by the Child Protection Worker to implement a plan of care for the child.

Order

91. A court may make one of the following orders that is, in the opinion of the court, in the best interests of the child who is the subject of the hearing:

- a) the child remain with or be returned to his or her parent or the person having actual care of the child
 - i) at the time the declaration was made under section 90, where the child was not apprehended, or,
 - ii) at the time the child was apprehended, where the child was apprehended;
- b) the child remain with or be returned to his or her parent or the person having actual care of the child
 - i) at the time the declaration was made under section 90, where the child was not apprehended, or
 - ii) at the time the child was apprehended, where the child was apprehended, subject to supervision by a Child Protection Worker and to any terms and conditions that the court considers necessary and proper, for a specified period not exceeding 12 months;

- c) the child be placed in the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order:
 - i) any terms and conditions that the court considers necessary and proper, and
 - ii) that the child's parent or person having actual care of the child
 - a) at the time the declaration was made under section 90,, where the child was not apprehended, or
 - b) at the time the child was apprehended, where the child was apprehended, be granted access to the child on the terms and conditions that the court considers appropriate;
- d) the child be placed in the permanent custody of the Director, and the court may specify in the order
 - i) any terms and conditions that the court considers necessary and proper, and
 - ii) that the child's parent or person having actual care of the child
 - a) at the time the declaration was made under section 90, where the child was not apprehended, or
 - b) at the time the child was apprehended, where the child was apprehended, be granted access to the child on the terms and conditions that the court considers appropriate.

Access

92. Where a court in an order made under section 91 grants a person access to the child, the court will set out in the order the terms and conditions of access including
- a) when and where the child and the person granted access to the child may visit the other;
 - b) the right, if any, of the person granted access to the child to make inquiries and to be given information as to the health, education and welfare of the child; and
 - c) any other term or condition that the court considers necessary and proper and in the best interests of the child.

Placement of Child

93. Where a court makes an order under subsections 91 c) or d), the court may not make an order respecting the placement of the child.

Consent for Medical Treatment

94. Where a court makes an order under section 91, the order may provide that the child's parent will retain any right that the parent may have to give or refuse consent for medical care or treatment for the child.

Maintenance of Child

95. Where a court makes an order under section 91, the order may provide that the child's parent or a person who stands in the place of the child's parent will make a financial contribution specified in the order towards the costs incurred by the Director in maintaining and supervising the child during the term of the order.

Further Order

96. Where a court makes an order under section 91, a Child Protection Worker, on serving notice on the persons mentioned in section 87, may bring the matter again before a court and the court may
- a) extend the order for one or more periods;
 - b) vary the order or make any further order under section 91 that the court considers necessary and proper; or
 - c) discharge the order.

Limitation on Further Order

97. A court may not make or extend an order under 96 that would result in a child being in the temporary custody of the Director for a continuous period exceeding 24 months.

Certified Copy of Order

98. After an order is made, the Child Protection Worker will obtain a certified copy of the order from the court and send it to each of the following persons:
- a) the Director;
 - b) the child's parents if the identities and whereabouts of the child's parents are known;
 - c) either of the following persons, if the child is to remain with or be returned to that person:
 - i) the person having actual care of the child at the time the declaration was made under section 90, where the child was not apprehended,
 - ii) the person having actual care of the child at the time the child was apprehended, where the child was apprehended.

Youth Who Needs Protection

Declaration that youth needs protection

99. The Director may apply to the court for a declaration that a youth needs protection and for an order where the Director has reason to believe that a youth
- a) cannot reside with his or her parents; and
 - i) is unable to care for and protect himself or herself, and
 - ii) is unable or unwilling to enter into an agreement with the Director under section 17 due to developmental, behavioural, emotional, mental or physical incapacity or disorder, or the effects of the use of alcohol, drugs, solvents or other similar substances, or
 - b) is living in circumstances of a child who needs protection under section 24.

Service of Originating Notice

100. The Director must serve a copy of the originating notice commencing an application under section 99 and an affidavit in support of the application on
- a) the youth; and
 - b) the youth's parents, if their identities and whereabouts are known.

Application by Interested Person

101. An interested person may make an application under section 99 by serving an originating notice of the application and an affidavit in support of the application on the youth and on the Director.

Determination of whether youth needs protection

102. On hearing an application under section 99, the court will determine whether or not the youth who is the subject of the hearing needs protection.

Declaration that youth needs protection

103. Where a court determines that a youth is in need of protection, the court will make a declaration to that effect, and before making an order will invite and consider representations on a plan of care for the youth by

- a) the Director;
- b) the youth; and
- c) the youth's parents, if their identities and whereabouts are known, and the court considers it in the interests of the youth to hear from one or both of the youth's parents.

Plan of care for youth

104. A plan of care in respect of a youth will be based on services that may be provided pursuant to an agreement under section 18.

Order

105. On making a declaration that a youth is in need of protection under section 103, the court may make one of the following orders that is, in the opinion of the court, in the best interests of the youth who is the subject of the hearing:

- a) the youth be placed in the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order
 - i) any terms and conditions that the court considers necessary and proper, and
 - ii) that the youth's parent or person having actual care of the youth at the time the declaration was made under section 103 be granted access to the youth on the terms and conditions that the court considers appropriate;
- b) the youth be placed in the permanent custody of the Director, and the court may specify in the order
 - i) any terms and conditions that the court considers necessary and proper, and
 - ii) that the youth's parent or person having actual care of the youth at the time the declaration was made under section 103 be granted access to the youth on the terms and conditions that the court considers appropriate.

Maintenance of Youth

106. Where a court makes an order under section 105 the order may provide that the youth's parent or a person who stands in the place of the youth's parent will make a financial contribution specified in the order towards the costs incurred by the Director in maintaining and supervising the youth during the term of the order.

Further Order

107. Where a court makes an order under section 105, the Director, on serving notice on the persons mentioned in section 100, may bring the matter again before a court and the court may

- a) extend the order for one or more periods;

- b) vary the order or make any further order under section 105 that the court considers necessary and proper; or
- c) discharge the order.

Copy of Order to Youth

108. The Director will provide a certified copy of any declaration made under sections 105 and 107 to the youth who is the subject of the declaration or order.

Placement of youth and implementation of plan of care

109. Where a youth is placed in the temporary or permanent custody of the Director pursuant to an order under section 105, a Child Protection Worker will
- a) on behalf of the Director, make arrangements as soon as possible to place the youth in such accommodations as are specified in the order or the plan of care to best meet the needs of the youth; and
 - b) monitor the plan of care to ensure that it is implemented according to its terms.

Apprehension – General

Method of Apprehension

110. A person who is authorized to apprehend a child under this Part may, without a warrant, enter a place by day or night, using force if necessary to affect entry, to apprehend the child.
111. Where an apprehension occurs in a First Nation community, the person who is authorized to apprehend a child under this Part must respect the local First Nation protocol for apprehensions and provide notice the proper First Nation authorities of such apprehension.

Notice of Apprehension

112. Where a child has been apprehended, a Child Protection Worker will, without delay, notify the child's parents and the person having actual care of the child at the time the child was apprehended, if the identities and whereabouts of the child's parents and the person are known, and the child, where the child has attained the age of 12 years, that the child has been apprehended and the reasons for the apprehension and, where applicable, that
- a) a Child and Family Services Committee or the Child Protection Worker will endeavour to establish a plan of care committee by the date specified in the notice;
 - b) the Child Protection Worker intends to apply to a court for a declaration that the child needs protection and for an order; or
 - c) the person who has lawful custody of the child or the child, where the child has attained the age of 12 years, has a right to make an election under section 62 to have the Child Protection Worker apply to a court for a declaration that the child needs protection and for an order.

Information on procedures under Law

113. A Child Protection Worker will provide, together with the notice under section 112, information prepared by the Director explaining the procedure under this Law for making a plan of care agreement and for making an application to a court for a declaration that a child needs protection and for an order, whichever is applicable.

Method of Notice

114. Notice under section 112 may be by any method and may be oral or in writing.

Validity of Action or Proceeding

115. The validity of any action taken or proceeding commenced under this Law is not affected where the Child Protection Worker is unable, after making a reasonable effort, to give notice in accordance with section 112.

Rights and Responsibilities of Director

116. Where a child has been apprehended, the Director has the rights and responsibilities of a parent in respect of the person of the child from the time of the apprehension until one of the following occurs:

- a) the child is returned under section 12 to his or her parent or the person having actual care of the child at the time of the apprehension;
- b) a plan of care agreement commences;
- c) an order is made;
- d) where no plan of care agreement or order has been made, the child attains the age of 16 years.

Limitation on Rights of Director

117. For the purposes of section 112, the rights of a parent in respect of the person of the child means only those rights in relation to the following:

- a) where and with whom the child will live;
- b) consent to the examination of the child by a health care professional and, except where a child has been apprehended by reason of any refusal described in section 24 j), consent for medical care or treatment for the child if, in the opinion of the Director, the care or treatment should be provided;
- c) the child's education;
- d) the child's social and recreational activities.

Return to person having lawful custody

118. The child will not be returned to a person who does not have lawful custody of the child unless the person had the actual care of the child at the time the child was apprehended.

Where child lives with parent

119. Where the Director decides that a child will live with a parent of the child or person having actual care of the child at the time the child was apprehended, the Director may impose any terms and conditions that the Director considers advisable including supervision by a Child Protection Worker.

Where child lives with other person

120. Where the Director decides that a child will live with someone other than a parent of the child, the Director may allow the child's parents or person having actual care of the child at the time the child was apprehended access to the child on any terms and conditions that the Director considers appropriate.

PART II

PERMANENT CUSTODY FOR PURPOSE OF ADOPTION

Delivery of Child for Adoption

121. Where a parent of a child delivers the child to a Child Protection Worker for the purpose of adoption and the consents required by this Part have been provided to the Director or a Child Protection Worker, the Child Protection Worker will apply to a court for an order that the child be placed in the permanent custody of the Director.

Service of notice

122. The Child Protection Worker must serve a copy of the originating notice commencing the application under section 121 and an affidavit of the Child Protection Worker in support of the application on the child's parents, the First Nation that the child belongs to and the First Nation(s) that the child's parents each belong to, if different than that of the child.

Rights and Responsibilities of Director

123. Where a child has been delivered to a Child Protection Worker for the purpose of adoption, the Director has the rights and responsibilities of a parent in respect of the person of the child from the time of the delivery until an order is made.

Limitation on Rights of Director

124. For the purposes of section 123, until the consents required by this Part have been provided to the Director or a Child Protection Worker, the rights of a parent in respect of the person of the child means only those rights in relation to the following:

- a) where and with whom the child will live;
- b) consent to the examination of the child by a health care professional and consent for medical care or treatment for the child if, in the opinion of the Director, the care or treatment should be provided;

- c) the child's education;
- d) the child's social, cultural and recreational activities.

Delegation to Assistant Director

125. The Director may, in writing, delegate to an assistant Director any of the Director's rights or responsibilities of a parent in respect of the person of the child during the period referred to in section 123.

Child Protection Worker

126. A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under section 124, in respect of any right or responsibility of a parent in respect of the person of the child where authorized to do so by the Director or the assistant Director.

Order

127. On hearing an application for an order that a child be placed in the permanent custody of the Director, the court will make an order placing the child in the permanent custody of the Director where, in the opinion of the court, it is in the best interests of the child to do so, and the court may specify in the order:

- a) any terms and conditions that the court considers necessary and proper; and
- b) that the child's parent be granted access to the child on the terms and conditions that the court considers appropriate.

Access

128. Where a court in its order grants a child's parent access to the child, the court will set out in the order the terms and conditions of access including

- a) when and where the child and the parent may visit the other;
- b) the right, if any, of the parent to make inquiries and to be given information as to the health, education and welfare of the child; and
- c) any other term or condition that the court considers necessary and proper and in the best interests of the child.

Certified Copy of Order

129. After an order is made, the Child Protection Worker will obtain from the court and send to each of the following persons, a certified copy of the order:

- a) the Director;
- b) the child's parents; and
- c) each First Nation that received notice of the application under section 122.

Consent to Order

Consent of Parent to Order

130. Except as provided in section 139, no order will be made without the consent of the parents of the child.

Parent under Age of Majority

131. A parent who has not attained the age of majority may consent to the placing of his or her child in the permanent custody of the Director for the purpose of adoption.

Time for Parent's Consent

132. A parent may not consent to the placing of his or her child in the permanent custody of the Director for the purpose of adoption until the expiration of 10 days after the child has been delivered to a Child Protection Worker under section 121.

Consultation before Consent

133. Before a parent consents to the placing of his or her child in the permanent custody of the Director for the purpose of adoption, a Child Protection Worker will

- a) provide information prepared by the Director to the parent on the services available to the parent and to the child if the child remains with the parent or an order is made respecting the child;
- b) explain the effect of an order, and when a consent may be given or revoked; and
- c) advise the parent to obtain independent legal advice before giving his or her consent.

Provision of Consent to Director

134. A parent will provide his or her consent to the Director.

Receipt of Consent

135. A Child Protection Worker may receive the consent of a parent on behalf of the Director.

Revocation of Consent by Parent

136. A parent may revoke his or her consent at any time before an order is made and will, without delay, provide the revocation to the Director.

Assistance of Child Protection Worker

137. On the request of a parent, a Child Protection Worker will assist the parent in preparing a revocation under section 136.

Return of Child to Parent

138. Where a parent revokes his or her consent under section 136 the Child Protection Worker will return the child as soon as possible to the parent having actual care of the child immediately before the child was delivered to the Child Protection Worker under section 121.

Dispensing with Consent of Parent

139. Where the consent of a parent is not produced at the hearing of an application for an order, the judge may order notice of the application and affidavit of the Child Protection Worker in support of the application to be served on the parent and the judge may dispense with the consent of the parent in the following circumstances where, in the opinion of the judge, it is in the best interests of the child to do so:

- a) the parent fails to appear at the time and place stated in the notice;
- b) the parent appears and objects to giving consent on grounds that the judge considers insufficient; or
- c) the judge, for reasons that appear to be sufficient to the judge, considers it necessary or desirable to dispense with the consent of the parent.

Form of Consent

140. A consent must be:

- a) in writing and in a form that complies with the regulations; and
- b) accompanied by an affidavit of execution.

Consent or Revocation from a First Nation

141. A consent or a revocation of a consent of a First Nation to the placing the child in the permanent custody of the Director for the purpose of adoption is a valid consent or revocation if the consent or revocation complies with the laws of the jurisdiction in which the parent resides when the consent was given or the revocation was made, and is admissible in evidence as if it were a consent or revocation given or made under this Law.

Dispensing with Consent of a First Nation

142. Where the consent of a First Nation is not produced at the hearing of an application for an order, the judge may dispense with the consent of the First Nation in the following circumstances where, in the opinion of the judge, it is in the best interests of the child to do so:

- a) the First Nation fails to appear at the time and place stated in the notice;
- b) the First Nation appears and objects to giving consent on grounds that the judge considers insufficient; or,
- c) the judge, for reasons that appear to be sufficient to the judge, considers it necessary or desirable to dispense with the consent of the First Nation.

PART III

TEMPORARY AND PERMANENT CUSTODY

Placement and Plan of Care

Placement of Child and Implementation of Plan of Care

143. Where a court places a child in the temporary or permanent custody of the Director, a Child Protection Worker will:
- a) on behalf of the Director, make arrangements as soon as possible to place the child in a child care facility or a foster home, unless the child is to be placed for adoption under the Anishinabek Adoption Law; and
 - b) monitor the plan of care to ensure that it is implemented according to its terms.

Temporary Custody

144. Where a child has been placed in the temporary custody of the Director, the Director has the rights and responsibilities of a parent in respect of the person of the child until:
- a) the period of custody set out in the order expires; or
 - b) a court discharges the order placing the child in the temporary custody of the Director.

Limitation on Rights of Director

145. For the purposes of section 144, the rights of a parent in respect of the person of the child means only those rights in relation to the following:
- a) where and with whom the child will live;
 - b) consent for medical care or treatment for the child;
 - c) the child's education;
 - d) the child's social, cultural and recreational activities.

Extension of Temporary Custody

146. Where, on application, the court is of the opinion that it is in the best interests of a child who has been placed in the temporary custody of the Director to do so, the court may make an order providing that the Director continue to have custody of the child for the period that the court considers necessary and proper but not beyond the day on which the child attains the age of majority, but the court may not make an order that would result in the child being in the temporary custody of the Director for a continuous period exceeding 24 months.

Who May Make Application

147. An application under section 146 may be made by the Director, a child who has been placed in the temporary custody of the Director, or an interested person or First Nation on serving notice of the application and an affidavit in support of the application on the others.

Delegation to Assistant Director

148. The Director may, in writing, delegate to an assistant Director any of the Director's rights and responsibilities of a parent in respect of the person of the child during the period referred to in section 146.

Child Protection Worker

149. A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation under section 148, in respect of any matter where authorized to do so by the Director or the assistant Director

Permanent Custody

150. Subject to the Anishinabek Adoption Act, where a child has been placed in the permanent custody of the Director, the Director has the rights and responsibilities of a parent in respect of the person of the child until

- a) the child attains the age of 16 years;
- b) the child is adopted under the Adoption Law; or
- c) a court, under section 157, discharges the order placing the child in the permanent custody of the Director.

Provision of Information

151. The Director will provide information regarding a child who is in the permanent custody of the Director, including information respecting the placement, education or health of the child, to a person who had lawful custody of the child immediately before the child was placed in the permanent custody of the Director, unless the Director considers it is not in the best interests of the child to do so.

Extension of Permanent Custody

152. Where, on application, the court is of the opinion that it is in the best interests of a child who has been placed in the permanent custody of the Director to do so, the court may make an order providing that the Director continue to have custody of the child for the period that the court considers necessary and proper beyond the day on which the child attains the age of 16 years, but not beyond the day on which the child attains the age of majority.

Who May Make Application

153. An application under section 152 may be made by the Director, a child who has been placed in the permanent custody of the Director or an interested person or First Nation on serving notice of the application and an affidavit in support of the application on the others.

Termination of Extended Permanent Custody

154. Where an order is made under section 152, subject to the Anishinabek Adoption Law, the Director has the rights and responsibilities of a parent in respect of the person of the child until
- a) the period of custody set out in the order expires;
 - b) the child attains the age of majority;
 - c) the child is adopted under the Adoption Law; or
 - d) a court, under section 157, discharges the order placing the child in the permanent custody of the Director.

Delegation to Assistant Director

155. The Director may, in writing, delegate to an assistant Director any of the Director's rights and responsibilities of a parent in respect of the person of the child during the period referred to in sections 146 and 152.

Child Protection Worker

156. A Child Protection Worker may act on behalf of the Director or an assistant Director, where the Director has made a delegation, in respect of any right or responsibility of a parent in respect of the person of the child where authorized to do so by the Director or the assistant Director.

Discharging Permanent Custody Order

Application to Discharge Order

157. Where a child has been placed in the permanent custody of the Director, the Director, the child's parent or, where the child has attained the age of 12 years, the child or the child's or parents' First Nation may apply to the court that made the original order to make an order discharging that order.

Order

158. Where, in the opinion of the court to which an application is made under section 157 it is in the best interests of the child to do so, the court may make an order discharging the order placing the child in the permanent custody of the Director and may impose any terms and conditions that the court considers necessary and proper.

PART IV

GENERAL

Administration

Appointment of the Children's Commissioner

159. The Anishinabek First Nation Chiefs in Assembly will appoint a Children's Commissioner to administer this Law.

Directions and guidelines

160. The Children's Commissioner may do all things necessary or convenient to be done for the performance of the Commissioner's functions and may issue the directions and guidelines referred to in this Law.

Children's Commissioner Independence

161. Except as otherwise provided by in this Law, the Children's Commissioner is not subject to the direction of anyone in relation to:

- a) the way in which the functions of the Children's Commissioner are performed, or
- b) the order of priority the Commissioner gives to investigations.

Appointment of Director

162. The Children's Commissioner, on approval from the Chiefs in Assembly, will appoint a Director of Child and Family Services.

Duties of Director

163. The Director will

- a) perform the duties imposed on the Director by this Law and the regulations;
- b) ensure that the provisions of this Law and the regulations are carried out;
- c) prepare the information required to be prepared by the Director in this Law;
- d) in accordance with the directions and guidelines of the Children's Commissioner, visit, or direct a Child Protection Worker or an authorized person to visit, any child placed under a plan of care agreement or otherwise under this Law;
- e) in accordance with the directions and guidelines of the Children's Commissioner, inspect, or direct a Child Protection Worker or an authorized person to inspect, any child care facility, foster home or other place where a child is placed under a plan of care agreement or otherwise under this Law; and
- f) prepare and submit an annual report to the Children's Commissioner in accordance with the regulations.

Powers of Director

164. The Director may
- a) exercise any power that is conferred on the Director by this Law; or
 - b) the regulations and by any other Law;
 - c) in writing, delegate to an assistant Director any of the Director's powers and duties under this Law or the regulations or under any other Law in respect of the community for which the assistant Director is appointed;
 - d) in writing, authorize a Child Protection Worker to assist the Director or assistant Director in the exercise of any of the Director's powers and the performance of any of the Director's duties under this Law or the regulations;
 - e) provide direction to an authorized person in the exercise of any power or in the performance of any duty of an authorized person under this Law; and
 - f) exercise any power and perform any duty conferred or imposed on a Child Protection Worker by this Law or the regulations.

Assistant Directors

165. The Director may appoint an assistant Director for one or more communities.

Delegated powers and duties

166. An assistant Director may exercise the powers and will perform the duties of the Director that the Director has delegated to the assistant Director in respect of the community for which the assistant Director is appointed.

Powers and duties of Child Protection Worker

167. An assistant Director may exercise any power and perform any duty conferred or imposed on a Child Protection Worker by this Law or the regulations.

Child Protection Workers

168. The Director may appoint employees of the First Nations as Child Protection Workers under this Law.

Powers and duties

169. A Child Protection Worker:
- a) has the powers conferred and duties imposed on a Child Protection Worker by this Law and the regulations; and
 - b) will assist the Director and the assistant Director in the exercise of any powers and the performance of any duties of the Director that the Director has authorized the Child Protection Worker to exercise or perform in respect of a community or communities for which the Child Protection Worker is appointed.

Authorized Person

170. The Director may, in writing, authorize a person to exercise any of the powers and perform any of the duties of an authorized person under this Law.

Chairperson of a Child and Family Services Committee

171. The Director, in writing, will authorize a chairperson of a Child and Family Services Committee to exercise any other power and perform any other duty of an authorized person under this Law.

Direction of Director

172. An authorized person is subject to the direction of the Director in the exercise of any power or in the performance of any duty of an authorized person under this Law.

Community Agreements

Definitions

173. In sections 172 to 185,

"community" means, in respect of a community agreement made under section 172, any community;

"community council" means the elected or selected council of a community;

"corporate body" means a not for profit corporate body whose members are First Nations or aboriginal persons or both.

Community Agreement

174. A community council may, by by-law or resolution, enter into a community agreement with the Children's Commissioner:
- a) delegating to the Children's Commissioner the authority and responsibility for any matter set out in this Law;
 - b) establishing a Child and Family Services Committee and defining its role in the community, in addition to its powers and duties under this Law, and establishing the term of office of its members and the procedures by which the Child and Family Services Committee will conduct its meetings and exercise its powers and perform its duties under this Law; and
 - c) setting out the procedure for establishing and amending community standards and making the members of the community aware of community standards.

Child and Family Services Committee

175. A Child and Family Services Committee is a committee of the community council and will exercise its powers and perform its duties in accordance with this Law, the regulations and the community agreement.

Appointment of Members

176. The members of a Child and Family Services Committee will be appointed by the community council for the term set out in the community agreement.

Community Agreement

177. A board of directors of a corporate body may authorize the corporate body to enter into a community agreement with the Children's Commissioner:

- a) delegating to the corporate body the authority and responsibility for any matter set out in this Law;
- b) specifying the community or communities in which the corporate body may act;
- c) specifying the aboriginal children for whom the corporate body may act; and
- d) establishing a Child and Family Services Committee and defining its role in the community or communities in which it may act, in addition to its powers and duties under this Law, and establishing the term of office of its members and the procedures by which the Child and Family Services Committee will conduct its meetings and exercise its powers and perform its duties under this Law.

Limitation

178. Delegation to a corporate body under section 175 may be made only in respect of aboriginal children represented by the aboriginal organization referred to in the definition "corporate body" in section 171.

Powers and Duties of Corporate Body

179. A corporate body has, subject to the terms and conditions of a community agreement, the power and will perform the duties delegated to the corporate body by the community agreement.

Child and Family Services Committee

180. A Child and Family Services Committee is a committee of the board of directors of the corporate body and will exercise its powers and perform its duties in accordance with this Law, the regulations and the community agreement.

Appointment of Members

181. The members of a Child and Family Services Committee will be appointed by the board of directors for the term set out in the community agreement.

Community Standards

182. A community that is a party to a community agreement may establish community standards to be used in determining:
- a) the level of care adequate to meet a child's needs under subsection 3 m); and
 - b) whether or not a child needs protection under section 24.

Minimum Community Standards

183. Community standards must include the minimum community standards established by the regulations.

Additional Community Standards

184. A community corporation that is a party to a community agreement may establish community standards in addition to the minimum community standards established by the regulations in accordance with the procedure set out in the community agreement, but any additional community standards will not abrogate or derogate from the minimum community standards established by the regulations.

Duty to Inform Community of Community Standards

185. A community corporation that is a party to a community agreement will make the members of the community aware of the community standards in accordance with the procedure set out in the community agreement.

Visiting and Inspection

Persons Entrusted with Care of Child

186. Every person entrusted with the care of a child under this Law will permit the Director, a Child Protection Worker or an authorized person:
- a) to visit the child at any time, without notice; and
 - b) on the request of the Director, a Child Protection Worker or an authorized person, to inspect the place where the child has been placed for the purpose of determining that the place conforms to the standards of living accommodation established by the regulations and that the plan of care for the child, if any, is being implemented according to its terms as it relates to the responsibilities of that person.

Child Care Facilities and Foster Homes

187. Every person who operates a child care facility or foster home will permit the Director, a Child Protection Worker or an authorized person:
- a) to visit the children in its care at any time, without notice; and

- b) on the request of the Director, a Child Protection Worker or an authorized person, to inspect all parts of the premises and buildings used in connection with the child care facility or foster home for the purpose of determining that the child care facility or foster home conforms to the standards of living accommodation established by the regulations and that every plan of care for a child is being implemented according to its terms as it relates to the responsibilities of the child care facility or foster home.

Child Care Facilities and Foster Homes

Approval of Child Care Facilities

188. Subject to section 187, the Director may approve a group home or other facility as a child care facility for the purpose of the placement of children under this Law other than for the purpose of adoption.

Exception

189. The Director may not approve as a child care facility a place or facility that is a place of temporary detention or a place of custody for the purposes of the Youth Criminal Justice Act (Canada).

Approval of Foster Homes

190. The Director may approve a private home as a foster home for the purpose of the placement of children under this Law other than for the purpose of adoption.

Agreements

191. The Director may enter into a written agreement with a person who operates a child care facility or a foster home respecting the placement of children under this Law.

Duties of Child Care Facility and Foster Home

192. Every person who operates a child care facility or foster home will:
- a) ensure that the child care facility or foster home complies with all the requirements of this Law and the regulations respecting child care facilities and foster homes;
 - b) ensure that the child care facility or foster home conforms to the standards of living accommodation established by the regulations;
 - c) implement the plan of care for each child in its care according to its terms as it relates to the responsibilities of the child care facility or foster home; and
 - d) on the request of the Director, a Child Protection Worker or an authorized person,
 - i) provide the Director, Child Protection Worker or authorized person with full information and particulars concerning every child in its care, and

- ii) permit the Director, Child Protection Worker or authorized person to have access to and inspect all books and records of the child care facility or foster home dealing with the care of the children in its care.

Investigation Respecting Child Care Facility or Foster Home

193. The Children's Commissioner may appoint one or more persons to investigate and report to the Children's Commissioner on the management and operation of a child care facility or foster home, and may direct the manner of conducting the investigation, where it appears to the Children's Commissioner that the management or operation of the child care facility or foster home is not in the best interests of the children in its care.

Scope of Investigation

194. An investigation and report under section 191 may be in relation to matters that have happened before or that happen after the coming into force of this Law.

Miscellaneous

Temporary accommodation of child

195. No child who is held or brought before a court for a hearing under this Law will be placed or allowed to remain with a young person or an adult prisoner in a lock-up or police cell.

Infants under the age of one year

196. Unless authorized by the Director, no foster parent will retain or receive for care apart from their parents more than three infants under the age of one year for a period exceeding 24 hours.

Obligation to support child

197. Nothing in this Law relieves any person who has an obligation to support a child from that obligation, and the fact that support is being provided does not deprive the Director or a Child Protection Worker of any power or right conferred on the Director or a Child Protection Worker by this Law or the regulations.

Liability

198. The Director, assistant Directors, Child Protection Workers, authorized persons and any other person having powers or duties under this Law or the regulations will not be liable for anything done or not done by him or her in good faith in the performance of his or her duties or in the exercise of his or her powers.

Confidentiality and Disclosure

Confidentiality

199. Any information or record of information relating to a child or his or her parent is confidential where it is received, obtained or retained by any person
- a) under this Law or the regulations;
 - b) in the exercise of his or her powers or in the performance of his or her duties under this Law or the regulations;
 - c) who operates a child care facility or foster home respecting a child in the care of the child care facility or foster home; or
 - d) who is employed by or retained on contract to provide services to a child care facility or foster home respecting a child in the care of the child care facility or foster home.

Prohibition on disclosure and communication of information

200. No person referred to in section 133 will disclose or communicate any information or record of information described in section 133 to any person except
- a) where necessary or appropriate in the exercise of his or her powers or in the performance of his or her duties under this Law or the regulations;
 - b) with the written consent of the person to whom the information or record relates;
 - c) where giving evidence in court;
 - d) on the order of a court;
 - e) to a person appointed to conduct an investigation under this Law;
 - f) to the Children's Commissioner, the Director, an assistant Director, a Child Protection Worker or an authorized person, at their request;
 - g) to a peace officer, if the person believes on reasonable grounds that
 - i) failure to disclose the information or record of information is likely to cause physical or emotional harm to a person or serious damage to property, and
 - ii) the need for disclosure is urgent;
 - h) where a disclosure or communication is required for the purposes of this Law or to protect a child;
 - i) where necessary for the provision of care, counselling or education to the child;
 - j) where, in the opinion of the Children's Commissioner, the benefit of the release of the information would clearly outweigh any invasion of privacy that could result from the release; or
 - k) where it is required for the purposes of this Law.

Use of Information

201. Any information or record of information disclosed under section 134 will be used only for the purpose for which it was disclosed and will not be disclosed further.

Exception

202. Section 136 does not apply to a child who is a member of a plan of care committee and the subject of the plan of care agreement.

Exchange of Information

203. Notwithstanding sections 133 to 136, the Director may, in accordance with the regulations, disclose information or a record of information in his or her possession relating to any person in connection with this Law to a person who or agency that in a First Nation, province or territory performs substantially the same functions as the Director where that information or record of information is reasonably required by that person or agency in order to provide services to the person who is the subject of the information or to protect a child.

Hearings

204. All proceedings under this Law will be heard by a court in private and no persons will be present at the hearing other than

- a) the officers of the court;
- b) the parties and their counsel; and
- c) any other person whom the court in its discretion expressly permits.

Where child may be present

205. A child who is the subject of the hearing and has attained the age of 12 years may be present at the hearing unless, in the opinion of the court, it is not in the best interests of the child to be present, in which case the court will exclude the child from the room in which the hearing is being held.

Exclusion of child

206. Except where, in the opinion of the court, it is necessary for a child who is the subject of the hearing and has not attained the age of 12 years, or another child to be present at the hearing in order to be identified or to give evidence, the court will exclude the child from the room in which the hearing is being held.

Place of hearing where child present

207. Where a child is brought before a court, the court will hold the hearing in premises other than the ordinary court premises unless it is impractical to do so, in which case the court will hold the hearing in the ordinary court premises separate from the other business of the court.

Adult accompanying parents or child

208. At a meeting of a plan of care committee or at a hearing under this Law, the child who is to be the subject of the plan of care agreement or is the subject of the hearing and each

parent of the child is entitled to choose and be accompanied by an adult who may assist the child or the parent in expressing his or her views to the plan of care committee or to the court.

Status of adult

209. An adult referred to in section 137 is not a representative of or an advocate for the child or the parent.

Counsel for Child or Youth

210. The court will ensure that a child or youth who is the subject of a hearing before the court is represented by counsel independent of his or her parents where it appears to the court that

- a) the interests of the child or youth and the child's or youth's parents are in conflict; or
- b) it would be in the best interests of the child or youth to be represented by his or her own counsel.

Identity of child

211. No person will publish or make public information that has the effect of identifying

- a) a child who is
 - i) the subject of the proceedings of a plan of care committee or a hearing under this Law, or
 - ii) a witness at a hearing; or
- b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.

Offence and Punishment

Prohibitions

212. No person will

- a) induce or attempt to induce a child to abscond from a child care facility, foster home or a person entrusted with the care of the child under this Law;
- b) remove or attempt to remove a child unlawfully from the care, custody, control or charge of the Director, assistant Director or a Child Protection Worker;
- c) detain or knowingly harbour an absconding child placed in the temporary or permanent custody of the Director;
- d) having the care, custody, control or charge of a child, abandon the child, without having made adequate provision for the child's care and custody, or abuse or harm the child, or procure the abandonment, abuse or harm of the child; or
- e) omit to perform a duty imposed on him or her by or under this Law.

Offence and Punishment

213. Every person who contravenes a provision of this Law for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, to imprisonment for a term not exceeding 12 months or to both.

Regulations

214. The Children's Commissioner, on the recommendation of the Director, may make Regulations

- a) for the purposes of the definition of "community" in section 2, prescribing as a community a populated area that is a separate area, part of a municipality or settlement or an area that includes part of a municipality or settlement;
- b) respecting the establishment of plan of care committees including the selection of a person to sit as the member listed in subsection 47. c) or d);
- c) respecting the procedures by which a plan of care committee will conduct its meetings and exercise its powers and perform its duties under this Law and the regulations;
- d) respecting the selection of a person to be invited under section 49 to sit as the member of a plan of care committee;
- e) where a person is or is to be a member of a plan of care committee listed in section 47 a) and is ineligible to sit as a member under section 58, respecting the circumstances in which the Child and Family Services Committee or the Child Protection Worker, as the case may be, will invite another person of the same category to sit as a member;
- f) where a member of a plan of care committee listed in section 47 a) is unable or unwilling to continue to sit as a member, respecting the circumstances in which the Child and Family Services Committee or the Child Protection Worker, as the case may be, will invite another person of the same category to sit as a member;
- g) respecting the removal of a member of a plan of care committee;
- h) respecting plan of care committees;
- i) respecting the applicable aboriginal organizations that must be served with a copy of an originating notice and affidavit under section 25;
- j) respecting the form of a consent to placing a child in the permanent custody of the Director for the purpose of adoption;
- k) respecting additional powers and duties of the Director;
- l) respecting the minimum community standards that must be included in the community standards established by a community corporation, as defined in section 56, that is a party to a community agreement;
- m) respecting standards of living accommodation to be maintained by child care facilities, foster homes and persons entrusted with the care of a child under this Law, including different standards for different categories of child care facilities and foster homes or to take into account cultural differences;
- n) respecting child care facilities and foster homes;
- o) respecting the procedure for the disclosure of information by the Director under section 203;

- p) respecting the procedure to be used in proceedings and applications under this Law and providing that certain portions or provisions of the rules of courts of competent jurisdiction do or do not apply to these proceedings and applications; and
- q) respecting any other matter that, in the opinion of the Children's Commissioner, is necessary for carrying out the purposes and provisions of this Law.