The Law Society of Manitoba

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FAMILY LAW

Chapter 9

Child Protection and Guardianship

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A. CHILD PROTECTION

1. Child Protection Proceedings

Child protection legislation and proceedings in Manitoba, and within Canada in general, are a means by which to ensure the safety, security and rights of children while seeking to balance a parent's right to raise their children in a manner consistent with their beliefs and background.

While there is ancillary legislation that plays a role in child protection proceedings (*The King's Bench Act* and Rules, *The Child and Family Services Authorities Act*, *The Family Law Act* and *The Adoption Act*, among others) the main legislative authority for child protection proceedings is found in one provincial and one federal Act, *The Child and Family Services Act* of Manitoba and *An Act respecting First Nations, Inuit and Métis children, youth and families* (sometimes still referred to as Bill C-92). Counsel involved in child protection proceedings should be familiar with both these statutes and their accompanying regulations.

2. Provincial Legislation

Child protection legislation in Manitoba, *The Child and Family Services Act* (the Act), enables the state to intervene in families to protect children from neglect and abuse, to provide care to children when their parents are unable or unwilling to do so, and to assist families to better care for their children.

The Act was proclaimed in force effective March 1, 1986. Prior to that time there was a succession of child welfare acts with substantially the same type of legislative provisions. On March 15, 1999, amendments came into effect that removed the adoption provisions from *The Child and Family Services Act* and created *The Adoption Act.* All provinces and territories in Canada have similar child protection legislation.

In August of 2000, the province began working together with the Manitoba Métis Federation, the Assembly of Manitoba Chiefs and Manitoba Keewatinowi Okimakanak (MKO) (now, Manitoba Keewatinook Ininew Okimowin), to develop a plan to restructure the child and family services system to give First Nations and Métis people the right to control and deliver their own child and family services. This was a key recommendation of the Aboriginal Justice Inquiry (AJI).

As a result, *The Child and Family Services Authorities Act* and eleven related regulations came into force on November 24, 2003. Under the current structure, responsibility for the delivery of child and family services rests with the following four authorities:

- The Métis Child and Family Services Authority;
- The First Nations of Southern Manitoba Child and Family Services Authority;
- The First Nations of Northern Manitoba Child and Family Services Authority;
- The General Child and Family Services Authority.

The Child and Family Services Authority Act includes provisions which:

- establish the general responsibilities of the authorities:
  - the respective roles of the Director of Child and Family Services authorities;
  - the duties of an authority (including the duty to provide joint intake and emergency services);
- outline the minister's responsibilities and powers;
- establish a leadership council to discuss issues relating to child and family services;
- establish a standing committee to serve as an advisory body to the authorities.

Very recent amendments to *The Child and Family Services Act* have been made to align the CFS Act with the federal Act. This means that the national standards established in the federal CFS Act apply to all children, unless of special importance to Indigenous children (for example, national standards that speak to community connections for Indigenous children). It is important to note that while certain changes have an immediate effect, others will only come into force upon proclamation. The importance of the recent amendments are to support the changes to the provincial system and to also recognize the inherent jurisdiction of Indigenous governments.

Child protection proceedings are governed by Part III of *The Child and Family Services Act*. There are, however, many other parts of the Act that are relevant to child protection proceedings. Counsel should familiarize themselves with the whole Act. In particular, the Act begins with a declaration of principles. This declaration of principles is also to be read in conjunction with those outlined in the newer federal Act as discussed below.

Counsel defending child protection cases should not overlook the possibility of comparing an agency's management of the particular case and a worker's behaviour therein to the ideals set forth in the declaration of principles. These comparisons can sometimes be useful at trial.

The Director of Child and Family Services works within the Child Protection Branch of the Department of Family Services and Housing.

The *Child and Family Services Authorities Regulation* (M.R. 183/2003) Part 3 sets out the respective powers and duties of the Director of Child and Family Services and the authorities under *The Child and Family Services Act* section by section. The director retains powers and duties under *The Child and Family Services Act* unless dealt with in this regulation.

Generally speaking, the director sets standards of services and practices and procedures while the authorities ensure their agencies follow these standards. The director retains the central functions in relation to the child abuse registry and disclosure of certain records.

3. An Act respecting First Nations, Inuit and Métis children, youth and families (Bill C-92)

a) Overview

An Act respecting First Nation, Inuit and Métis children, youth and families came into force on January 1, 2020. The Act does not replace or displace provincial legislation or change jurisdiction but adds to the relevant applicable law.

> It is a comprehensive reform of child and family services at the federal level which among other things, affirms the inherent right to self-government in relation to child and family services, including legislative authority and the right to administer and enforce these laws.
>
> This legislation governs proceedings along with *The Child and Family Services Act* in any proceeding involving an Indigenous child. The Act applies to all section 35 rights-bearing Indigenous groups, communities or peoples.

It is important to fully understand this legislation and it is helpful to review the background and history of its creation, implementation and long-term goals. This information is available through a variety of federal government publications, including the federal *Technical Information Package.*

As stated in part:

> *There is an urgent need to change the way that child and family services are provided to First Nations, Inuit and Métis children, who are severely over-represented in the foster care system. In 2016, Indigenous children represented 7.7% of all children living in Canada under the age of 15, but accounted for 52.2% of children in foster care in private homes. Too many children are being removed from their families and separated from their culture and communities, impacting not only the lives of the children, but the lives of future generations. The first five Calls to Action issued by the Truth and Reconciliation Commission in 2015 appeal*

to federal, provincial, territorial, and Indigenous governments to implement changes to the child and family services system. In response to these Calls to Action, the Government of Canada has been working in partnership with Indigenous peoples, Provinces and Territories to reform child and family services. The need for reform was also underlined by the Canadian Human Rights Tribunal, who in 2016 found Canada's First Nations Child and Family Services Program to be discriminatory and ordered Canada to amend the program.

The law establishes national principles including best interests of the child, cultural continuity, and substantive equality to guide the interpretation and administration of the Act. It contributes to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As of January 1, 2020, every service provider offering child and family services in relation to Indigenous children needs to follow the minimum standards found in the Act.

From January 1, 2020, until a community determines how it will exercise jurisdiction, existing agencies will continue to provide services to Indigenous children. As of January 1, 2020, agreements related to existing delegated agencies remain valid unless the parties decide otherwise.

The Act provides that agreements in relation to child and family services between Indigenous groups and federal, provincial, or territorial governments that predate the coming-into-force of the Act prevail in case of conflict. If Indigenous groups are at discussion tables to conclude agreements, they can still take advantage of the Act. Depending on their chosen service delivery model, Indigenous groups may take measures to end or renegotiate their contract with the delegated agency providing services to their children.

The purpose of the legislation is to change the way that child and family services are provided to Indigenous children, with the ultimate goal of reducing the number of Indigenous children in care.

The Act affirms the jurisdiction of First Nations, Inuit and Métis over child and family services, contributes to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and establishes national principles such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services in relation to Indigenous children.

The Act applies to child and family services provided in relation to all Indigenous children, regardless of where they reside in Canada.

The Act establishes minimum standards with respect to the provision of child and family services in relation to Indigenous children. Nothing precludes Indigenous groups or communities, as well as provincial and territorial governments, from offering greater protection through their child and family services legislation.

The Act also aims to:

- help shift the programming focus to prevention and early intervention;
- help Indigenous children stay with their families and communities;
- promote Indigenous children's connections to their culture;
- help ensure that Indigenous children receive culturally-appropriate services and grow up immersed in their communities and cultures;
- have the principle of the best interests of the child always applied in making decisions in the context of the provision of child and family services in relation to Indigenous children;
- provide a framework that Indigenous communities can use when exercising jurisdiction in relation to child and family services; and
- affirm that the inherent right of self-governance includes jurisdiction in relation to child and family services.

The federal Act requires that continual reassessment (even after a permanent order may sever parental rights) be completed by agencies on an ongoing basis to determine if a child may be returned to their parents, family or community. It also enforces the prioritization of placement of Indigenous children with family or community placements and focuses on preventative measures and early intervention. These provisions relate to indigenous children regardless of the provincial legislation under which they may be in care.

b) Best Interests

While *The Child and Family Services Act* is governed by the principle of best interests of a child, this principle and included list of factors is extended by the best interest factors contained and outlined in an *Act respecting First Nations, Inuit and Métis children, youth and families*. The chart that follows on the next page lists the provisions of both Acts as they relate to the overriding principle of best interests of a child in each legislation:

Child and Family Services Act	*Act respecting First Nations, Inuit and Métis children, youth and families*
2(1) The best interests of the child shall be the paramount consideration of the director, an authority, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection, and in determining best interests the child's safety and security shall be the primary considerations. After that, all other relevant matters shall be considered, including (a) the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure; (b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs; (c) the child's mental, emotional and physical stage of development; (d) the child's sense of continuity and need for permanency with the least possible disruption; (e) the merits and the risks of any plan proposed by the agency that would be caring for the child compared with the merits and the risks of the child returning to or remaining within the family; (f) the views and preferences of the child where they can reasonably be ascertained; (g) the effect upon the child of any delay in the final disposition of the proceedings; and (h) the child's cultural, linguistic, racial and religious heritage.	**10(1)** The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration. **Marginal note: Primary consideration** **(2)** When the factors referred to in subsection (3) are being considered, primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture. **Marginal note: Factors to be considered** **(3)** To determine the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including (a) the child's cultural, linguistic, religious and spiritual upbringing and heritage; (b) the child's needs, given the child's age and stage of development, such as the child's need for stability; (c) the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;

	(d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs; (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained; (f) any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs; (g) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and (h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child. **Marginal note: Consistency** **(4)** Subsections (1) to (3) are to be construed in relation to an Indigenous child, to the extent that it is possible to do so, in a manner that is consistent with a provision of a law of the Indigenous group, community or people to which the child belongs.

c) Priority

An *Act respecting First Nations, Inuit and Métis children, youth and families* also outlines the priority of placement for Indigenous Youth in the care of an agency.

> ***16(1)*** *The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:*
> *(a) with one of the child's parents;*
> *(b) with another adult member of the child's family;*
> *(c) with an adult who belongs to the same Indigenous group, community or people as the child;*
> *(d) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or*
> *(e) with any other adult.*
>
> ***Placement with or near other children***
> ***(2)*** *When the order of priority set out in subsection (1) is being applied, the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of the child's family, must be considered in the determination of whether a placement would be consistent with the best interests of the child.*
>
> ***Customs and traditions***
> ***(2.1)*** *The placement of a child under subsection (1) must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption.*
>
> ***Family unity***
> ***(3)*** *In the context of providing child and family services in relation to an Indigenous child, there must be a reassessment, conducted on an ongoing basis, of whether it would be appropriate to place the child with:*
> *(a) a person referred to in paragraph (1)(a), if the child does not reside with such a person; or*
> *(b) a person referred to in paragraph (1)(b), if the child does not reside with such a person and unless the child resides with a person referred to in paragraph (1)(a).*

Another highlight of the federal legislation is the requirement that notification of any significant measure taken with respect to an Indigenous child be provided to the child, family and Indigenous Governing Body. Courts will now require that service be effected on the Indigenous Governing Body appropriate for an indigenous youth over whom an agency is seeking an order of guardianship under *The Child and Family Services Act*. This responsibility extends to after court hearings and while a child remains in the care of an agency.

d) Creation of Self-Governing Child Welfare Systems

The federal Act also creates a process and procedure for the creation of child welfare systems to be governed by Indigenous communities and groups.

The legislation and supporting materials should be reviewed. The manner by which additional child welfare systems will come into place and how self-governing systems will be administered will continue to develop over time. Given the fairly recent nature of this legislation and the manner in which the onset of the Covid-19 pandemic may have slowed the initial implementation, the overall scheme of child protective services could change significantly over the coming years.

The process for the creation of self-governing child protection systems requires different levels of notice of intention of First Nations Communities, and entering into agreements with the appointed authorities. The specifics and detailed outline of the process can be found on the federal site provided above.

With respect to the filing of intention to provide child and family services under a format of self-governance, five Indigenous Governing Bodies in Manitoba (representing seventeen First Nations Communities and Manitoba Métis members) have requested a coordination agreement with the Minister of Indigenous Services as of July, 2022. One of these requests has resulted in a formalized agreement between the federal government and Peguis Child and Family Services servicing Peguis First Nation. Manitoba's first such legislation created under the federal Act, the *Honouring Our Children, Families and Nation Act*, came into force on January 21, 2022.

The Manitoba Métis Federation has made further requests for Coordination Agreements on behalf of its members living in B.C., Alberta, Saskatchewan and Ontario. A further six First Nation communities in Manitoba have provided notification to the federal government of its intention to exercise legislative authority in relation to child and family services as of the date of writing.

An updated list of the Notices of Intention received and the requests for Coordination Agreements may be found *here*.

It should be noted as well that Bill C32 in Manitoba includes provisions aimed at being responsive to Indigenous governments enacting (or who have enacted) their own child welfare system. These changes are meant to expand provincial legislation and court jurisdiction to assist in issues, information sharing and services related to groups who have enacted their own systems.

4. Structure

Child and family services agencies in Manitoba (with the exception of those governed by the Peguis First Nation authority) provide child welfare services throughout the province under the authority of their respective authorities. The *Agency Mandates Regulation* (M.R. 184/2003) sets out in schedules the child and family services agencies which are deemed to be

mandated to provide child and family services throughout Manitoba by the four authorities as follows:

Schedule A:	**First Nations Northern Authority**
Awasis Agency	Province wide
Cree Nation	Province wide
Island Lake	Province wide
Kinosao Sipi Minisowin	Province wide
Nisichawaysihk	Province wide
Opaskwayak	Province wide
Nikan Awasisak	Province wide
Schedule B:	**First Nations Southern Authority**
Animikii-Ozoson	Province wide
Anishinaabe	Province wide
Dakota Ojibway	Province wide
Intertribal	Province wide
Sagkeeng	Province wide
Sandy Bay	Province wide
Southeast	Province wide
West Region	Province wide
All Nations Coordinated Response Network	Winnipeg and the R.M.s of Headingley, East St. Paul and West St. Paul
Schedule C:	**Métis Authority**
Métis Child, Family and Community Services	Province wide
Michif	Specified jurisdiction in north of Winnipeg
Schedule D:	**General Authority**
Central	Central region
Western	Westman region
Churchill	Town of Churchill
Jewish CFS	Province wide
Winnipeg, Rural & Northern	Province wide except Central region, Westman region and the town of Churchill

The legislative scheme contemplates that an authority may enter into a service agreement with another authority to provide services through one of its agencies.

Under the *Joint Intake and Emergency Services by Designated Agencies Regulation* (M.R. 186/2003) the four authorities must designate agencies (designated agencies) to provide joint intake and emergency services within certain designated geographic regions of the province. These designated agencies are the primary first point of contact for most people in the child and family services system. Functions of designated agencies include:

- to provide intake and emergency services 24 hours each day;
- if another agency is already providing services, to notify the other agency and develop a plan;
- to advertise a central phone number within its geographic region;
- to provide child protection services;
- to assess the need for ongoing services;
- to determine the authority of service for an individual/family;
- to transfer cases to the appropriate agency of the individual's/family's authority of service.

As of February 3, 2007 all intake and emergency after-hours child welfare services in Winnipeg, Headingley, East St. Paul and West St. Paul are handled by the Child and Family All Nations Coordinated Response Network (ANCR), a Southern Authority agency. ANCR, which is staffed 24 hours per day, 365 days per year, serves as the beginning access point for Winnipeg child welfare services and the first contact for reports of child protection issues in Winnipeg. When ongoing longer-term services are needed, ANCR will determine the appropriate agency and transfer the case. ANCR's phone number is 204-944-4200.

The determination of the authority of service for an individual/family is a key feature of the structure. This process is set out in the *Child and Family Services Authorities Regulation* (M.R. 183/2003). It allows adult members of a family to choose either their culturally appropriate authority of service or another authority. It also has special provisions to deal with situations where adults will not or cannot chose an authority of service and where the client is a child in an independent living arrangement or a child who is a parent or expectant parent. It also deals with situations where a person or family requests to change their authority of service.

As stated, the *Joint Intake and Emergency Services by Designated Agencies Regulation* deals with the issue of transfer of cases to the appropriate agency of an individual's/family's authority of service. Section 28(2) of *The Child and Family Services Act* allows an agency, on application to the court, to transfer a case to another agency prior to the hearing.

The federal Act has highlighted and mandated the need to provide more in the way of early intervention and pre-natal services to address issues before child protection concerns and subsequent apprehensions are taken. While the federal Act applies technically to only Indigenous children, the expectation of the province is that best practices and the moral reasoning for the implementation of such provisions should be applied to all children.

> While the best interests of the child is the universally applied test in parenting contests between parents, it does not come into play in child protection proceedings until the agency has established that the child is in need of protection and thus that the state has a right to interfere in the parent-child relationship.

In *Winnipeg Child and Family Services (East Area) v. D.(K.A.),* (1995), 13 R.F.L. (4th) 357 (Man. C.A.) Twaddle J.A. commented at page 362:

> *By virtue of s. 2(1) of the Act, the court may not give paramount consideration to the best interests of the child in determining whether the child is in need of protection. This is because the state has not assumed the right to decide what is in the best interests of a child in a contest between the state and a custodial parent. This is not to say that the best interests of the child are not to be considered in a protection case. They are, but only after the court has determined that the child would be in need of protection if returned to the custodial parent or guardian and has moved on to the second step requiring it to consider which of these several orders it can make is most appropriate.*

The Supreme Court of Canada has also discussed the role of the state in child protection in the context of a *Charter* challenge to the Ontario *Child Welfare Act* provisions relating to apprehension for the purpose of medical treatment. For the first time, a majority of the court accepted that parental rights are protected under the *Charter*. In *B.(R.) v. Children's Aid Society of Metropolitan Toronto* (1995), 9 R.F.L. (4th) 157 (S.C.C.) at 200, La Forest J. stated:

> *...this appeal raises the more general question of the right of parents to rear their children without undue interference from the state...*

and at page 207:

> *our society is far from having repudiated the privileged role parents exercise in the upbringing of their children. This role translates into a protected sphere of parental decision-making which is rooted in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself. Moreover, individuals have a deep personal interest as parents in fostering the growth of their own children. This is not to say that the state cannot intervene when it considers it necessary to safeguard the child's autonomy or health. But such intervention must be justified. In other words, parental decision-making must receive the protection of the Charter in order for state interference to be properly monitored by the courts, and be permitted only when it conforms to the values underlying the Charter.*

In a widely publicized case, *Winnipeg Child & Family Services (Northwest Area) v. G. (D.F.)* (1997), 31 R.F.L. (4th) 165, the Supreme Court of Canada held that the role of the state, and the *parens patriae* jurisdiction of the court, does not extend to the detention and treatment of pregnant women for the purpose of preventing harm to the unborn child.

5. Voluntary Services/Placement

Under *The Child and Family Services Act*, agencies are also mandated to provide certain services of a voluntary nature. The details of these are found in Part II of the Act, "Services to Families."

> Voluntary services involve such things as homemakers, parent aides and day care. Financial contributions to these services may be required in accordance with special schedules developed to take into consideration family income and the number of children being provided for.
>
> In addition to those services under which the children remain in the family home or under the care of their parents, the Act allows for families to enter into a voluntary placement agreement with an agency (s. 14) or the voluntary surrender of guardianship of a child to an agency (s. 16).

A voluntary placement agreement provides that the agency is temporarily responsible for the care of the children, but that guardianship remains technically in the hands of the parents. These agreements are between parents/guardians and an agency and may be terminated by either party at any time. The Act outlines the necessary consents and considerations for such an agreement.

In addition, section 16 of the Act allows parents to voluntarily surrender the care of their children to an agency and effectively terminates parental rights and responsibilities. The Act outlines the consents, notice and other requirements necessary for such an agreement.

Similar to an agreement to place for adoption under *The Adoption Act*, a parent may not execute a voluntary surrender of guardianship until at least 48 hours after a child's birth and may be withdrawn within 21 days after it is signed, but not thereafter.

> Some of the amendments to the Act that will not take place until proclamation will change the face of voluntary services with an Agency. The current provisions will be repealed and replaced with legislation offering new types of supportive agreements for families. The new agreements (family support, customary care, kinship care and voluntary care) and changes related to them are not in force at this time. As a result, Voluntary Placement Agreements (VPAs) will remain available until the new agreements come into force.

The new agreement provisions (not yet in force) read as follows:

FAMILY SUPPORT AGREEMENTS

Purpose

13.1(1) *The purpose of a family support agreement is to establish the basis for planning and delivering supports that meet the needs of a child and their family.*

Family support agreement

13.1(2) *An agency may enter into a family support agreement with a parent, guardian or other person who has actual care and control of a child to make provision for one or more of the following:*

(a) a service described in section 9, 10, 12 or 13;
(b) financial assistance;
(c) an item or resource that would meet one or more of the child's needs;
(d) a service to support the child in their home;
(e) a service to prepare for and facilitate the child's return home while the child is in an out-of-home placement;
(f) a service to support the child and their family when the child has returned home from an out-of-home placement or from any other living arrangement.

KINSHIP CARE AGREEMENTS

Purpose

13.2(1) *The purpose of a kinship care agreement is to establish the basis for planning and delivering care to a child that is provided within the child's community with the participation of the child's family or persons who have significant relationships with the child or with the child's parent or guardian.*

Kinship care agreement

13.2(2) *An agency may enter into a kinship care agreement with a parent or guardian of a child to make provision for the child to reside with*

(a) an adult member of the child's family; or
(b) an adult who has a significant relationship with the child or with the child's parent or guardian.

Parties to kinship care agreement

13.2(3) *The following must be parties to a kinship care agreement:*

(a) the child's parent or guardian;
(b) the agency serving the child;
(c) the kinship caregiver.

Agreement may include other supports

13.2(4) *A kinship care agreement may make provision for one or more supports available under subsection 13.1(2).*

Content of kinship care agreement

13.2(5) *The terms of a kinship care agreement must set out the following:*

(a) the child's name and date of birth;

(b) the place where the child is to reside;

(c) the name of the kinship caregiver;

(d) a description of the kinship caregiver's role and responsibilities;

(e) a description of the role and responsibilities of the child's parent or guardian;

(f) the person or persons who are responsible for making decisions respecting the child;

(g) if a support available under subsection 13.1(2) is to be provided, the type of support;

(h) a description of the agency's role and responsibilities;

(i) the process for resolving issues or concerns arising under or in relation to the agreement;

(j) the duration of the agreement.

Views of child

13.2(6) *When entering into a kinship care agreement, the parties must consider the views and preferences of the child.*

CUSTOMARY CARE AGREEMENTS

Purpose

13.3(1) *The purpose of a customary care agreement is to establish the basis for planning and delivering care to an Indigenous child that recognizes the needs and the cultural identity of the child and reflects the unique customs of the Indigenous group, community or people to which the child belongs.*

Customary care agreement

13.3(2) *An agency may enter into a customary care agreement with a parent or guardian of an Indigenous child for the purpose of:*

(a) providing customary care for the child, including, if applicable, having the child reside in a customary care home; and

(b) recognizing the role of the child's Indigenous group, community or people in planning and providing customary care.

Parties to customary care agreement

13.3(3) *The following must be parties to a customary care agreement:*

(a) the Indigenous child's parent or guardian;

(b) the agency serving the child;

(c) if the agreement provides that the child is to reside with a customary caregiver, the caregiver.

Agreement may include other supports

13.3(4) *A customary care agreement may make provision for one or more supports available under subsection 13.1(2).*

Content of customary care agreement

13.3(5) *The terms of a customary care agreement must set out the following:*

(a) the child's name and date of birth;
(b) the place where the child is to reside;
(c) the name of the customary caregiver;
(d) a description of the customary caregiver's role and responsibilities;
(e) a description of the role and responsibilities of the child's parent or guardian;
(f) the person or persons who are responsible for making decisions respecting the child;
(g) if a support available under subsection 13.1(2) is to be provided, the type of support;
(h) a description of the agency's role and responsibilities;
(i) the process for resolving issues or concerns arising under or in relation to the agreement;
(j) the duration of the agreement.

Views of child

13.3(6) *When entering into a customary care agreement, the parties must consider the views and preferences of the child.*

VOLUNTARY CARE AGREEMENTS

Purpose

13.4(1) *The purpose of a voluntary care agreement is to establish the basis for planning and delivering care to a child outside the child's home.*

Voluntary care agreement

13.4(2) *An agency may enter into a voluntary care agreement with a parent, guardian or other person who has actual care and control of a child to make provision for the child to reside in a placement outside the child's home if*

(a) the parent, guardian or other person is unable to make adequate provision for the child; or
(b) the child is in need of protection.

Parties to voluntary care agreement

13.4(3) *The following must be parties to a voluntary care agreement:*

(a) the parent, guardian or other person who has care and control of the child;
(b) the agency serving the child.

Content of voluntary care agreement

13.4(4) *The terms of a voluntary care agreement must set out the following:*

(a) the child's name and date of birth;

(b) the place where the child is to reside;

(c) the person or persons who are responsible for making decisions respecting the child;

(d) a description of the agency's role and responsibilities;

(e) the process for resolving issues or concerns arising under or in relation to the agreement;

(f) the duration of the agreement.

Views of child

13.4(5) *When entering into a voluntary care agreement, the parties must consider the views and preferences of the child.*

COMMON REQUIREMENTS FOR AGREEMENTS

Application

13.5(1) *This section applies to the following agreements:*

(a) a family support agreement;

(b) a kinship care agreement;

(c) a customary care agreement;

(d) a voluntary care agreement.

Written agreements

13.5(2) *An agreement must be in writing.*

Copy of agreement to be given

13.5(3) *An agency must give a copy of an agreement to*

(a) each party to the agreement; and

(b) its mandating authority.

Review of agreement

13.5(4) *The agency must review an agreement with every party to the agreement*

(a) at least once every 365 days;

(b) if the agreement has a specified duration, at least 30 days before the agreement expires; and

(c) on request by a party to the agreement.

Ending an agreement

13.5(5) *An agreement or a renewal of an agreement may be ended at any time by a party to the agreement.*

End of agreement at age of majority
13.5(6) *An agreement ends on the day on which the child reaches the age of majority.*

Authority to be informed when agreement ends
13.5(7) *On the ending of an agreement, the agency must inform its mandating authority that the agreement has ended.*

Application of Part III
13.6 *The fact that a child is receiving supports and services under an agreement made under this Part does not prevent*

(a) a person authorized to do so from apprehending the child as provided in Part III; or

(b) a judge or master from finding the child to be in need of protection under Part III.

The Bill will remain available online and can be referred to for more detail on the agreements prior to them coming into force.

6. Apprehensions and Child Protection Orders

When informal or voluntary services do not resolve a family's issues, an agency's recourse in child protection cases is the apprehension of a child or children with or without parental consent. Section 21 of *The Child and Family Services Act* allows the director, the representative of an agency or a peace officer to apprehend or take a child from wherever that child may be found, to a place of safety (foster home, receiving home, etc.), if the person believes, on reasonable and probable grounds, that the child is in need of protection.

Section 17(2) of the Act lists examples of what constitutes a child in need of protection. This list is not intended to be exhaustive. Note that section 17(2)(c) includes a child who is abused or in danger of being abused as one illustration of a child in need of protection. Abuse is specifically defined in section 1 of the Act.

In Manitoba, the act of apprehension need not be accompanied by any judicial process such as a warrant, but may simply be a taking of the child into physical custody. In some senses it is akin to a police officer's arrest powers, but of course, the purpose is different.

The legislation also provides for entry into premises without warrant, by force, if necessary, to apprehend or protect a child. This latter power is limited to situations where the agency believes on reasonable and probable grounds that a child is in immediate danger or is unable to care for themselves and has been left without a responsible caregiver (see s. 21(2)).

Also, an appropriate judicial officer as mentioned in section 21(3) may issue a warrant for the apprehension of a child. Section 21(5) permits the director or representative of an agency to seek the assistance of a peace officer in apprehending a child and further obligates a peace officer to provide such assistance when it is requested.

In *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519, the Supreme Court of Canada confirmed the constitutional validity of an apprehension without a warrant, indicating that the requirement for a prompt post-apprehension hearing was sufficient to address a parent's rights. Both the King's Bench (Family Division) and the Provincial Court have established procedures for expedited hearings to challenge an apprehension, but to date these procedures have been seldom used.

> The agency is responsible for the child's care, maintenance, education and well-being while the child is under apprehension.

The agency may authorize medical examinations. It may also authorize the provision of medical or dental treatment where parental consent is needed, provided the treatment is recommended by a duly qualified medical practitioner or dentist and no parent or guardian is available to consent to the treatment. However, if the child is 16 years of age or older, an agency cannot authorize a medical examination or medical or dental treatment without the child's consent.

In the event that a child 16 years of age or older or the parents or guardians of a child of any age refuse to consent, the agency may seek an order authorizing the examination or treatment. The procedure for such applications is set out in section 25(3) and following, and includes provisions for court hearings on an urgent basis in certain circumstances, even hearing an application without the agency filing initiating documents (s. 25(6)) and hearing evidence by telephone or other means of telecommunication (s. 25(7)).

In *Child & Family Services of Central Manitoba v. L. (R.)* (1997), 34 R.F.L. (4th) 378, the Manitoba Court of Appeal found that section 25(3) of the Act only permits a court to authorize positive treatment; neither the consent of the patient's legal guardian nor a court order in lieu is required for a doctor to issue a do not resuscitate directive for a child under apprehension.

Apprehension is a relatively broad and sweeping power and ordinarily, once the child is apprehended, the child remains in the care and custody of the child and family services agency until the case is adjudicated or the agency agrees to return the child to the parents.

The Act does provide for deemed apprehensions, where the child may be left with or returned to their caregiver pending a court application (see s. 26), but these are relatively rare.

Accordingly, an agency's power to apprehend must be exercised with great care. From the point of view of counsel defending child protection cases, it usually means that throughout the case, the child will not be living in the home of a parent, but rather will be living in a foster home provided by the agency and subject to the care and control of the agency. However, current agency practice is that, where possible, children are placed with family or extended family who are then made foster parents. Notwithstanding this, cases still need to be handled with considerable expedition from a defense perspective.

The Act provides that an agency which apprehends a child must, within four judicial days after the day of apprehension, file an application known as a petition and notice of hearing in a court (s. 27(1)). This statutorily prescribed petition alleges that the child was in need of protection on a particular day and gives notice of the date when the matter will come before the court.

A court application must be returnable within 7 judicial days after the petition and notice of hearing is filed. However, if no sitting of the court in which the application is filed will be held within the 7 judicial days, the matter must be returnable on the date of the next sitting.

Both the Provincial Court and the Court of King's Bench (Family Division) allow all children apprehended to be named on one petition and notice of hearing, so long as they all share the same parents or guardians. The normal course is that Petitions are filed (and court pockets held) under the name of the mother and all children of that mother appear on the same Petition.

7. Notices

Section 30 of the legislation provides that notice must be given to the parents (biological or adoptive), legal guardians (appointed by court order), the child where 12 years of age or older, the person or persons in whose home a child was living at time of apprehension, and to the child caring agency serving the appropriate Indian band if there is reason to believe that the child is registered as an Indian pursuant to the provisions of the *Indian Act* of Canada.

As well, where a family member has assumed care and control of a child prior to the child's apprehension, section 46 gives that person the same rights as a guardian has under Part III of the Act. Under the federal legislation, notification to the Indigenous governing body of a significant measure is also required.

All of these persons are entitled to two clear days' notice of the hearing although they may waive the time limit or agree to a reduction in the number of days. The Act indicates that service is to be by way of personal service, except in the case of an agency serving an Indian Band, which may be served by registered mail. In appropriate cases, the court may abridge time for service or make orders either dispensing with service or allowing substitutional service.

8. Children

The Act treats children 12 years of age or older differently than younger children, affording them a greater opportunity to be heard and for their views to be considered. Section 2(2) requires that children who are 12 years of age or older be advised of proceedings in respect of them and the possible implications. It requires that they be given an opportunity to be heard.

The court may also consider the views and preferences of a child younger than 12, if satisfied the child can understand the proceedings and if the court is of the opinion that doing so would not be harmful to the child.

Section 30(1)(c) requires that children aged 12 and over be served with notice of a child protection proceeding which involves them; section 20(2)(d) requires these older children to be served with an agency application for a non-contact order. These children are ordinarily brought to court on an initial appearance so that their views in connection with the proceeding can be made known to the court and the issue of independent legal representation for the children can be addressed.

The factors to be considered by the court in deciding whether or not to make an order appointing counsel for a child include:

- any differences in the views or the interests of the child and those of the other parties to the hearing;
- the nature of the hearing, including the seriousness and complexity of the issues and whether the agency is asking that the child be removed from the home;
- the capacity of the child to express their own views to the court;
- the views of the child regarding separate representation, where such views can reasonably be ascertained (newly added in recent amendments); and
- the presence of parents or guardians at the hearing (s. 34(3)).

Section 34(2*)*, which allows a judge or master to order that legal counsel be appointed to represent the interests of a child of any age, also provides that, where the child is 12 or older, the court may order that the child have the right to instruct counsel.

Section 34(1.1) with respect to minor parents was added to the Act in 1993 after a Court of Appeal decision which required the appointment of litigation guardians for them. This section makes it clear that minor parents over the age of 12 have the right to retain and instruct counsel in respect of the hearing, without the appointment of a litigation guardian.

Formerly, section 33(2) required that a child age 12 or older be present in court in all protection proceedings unless a judge or master ordered otherwise on application. However, there could be circumstances in which the child's best interests would not be served by observing or participating in this process. Attending court hearings could be disturbing and distressing to children who are often already emotionally and psychologically damaged and fragile.

The recent changes to the Act now gives the court discretion not to require a child 12 or older to attend to court in person, if the judge or master is satisfied that independent counsel has explained the child's rights to them and is able to advise the court of the child's views and preferences.

This section now states:

> ***33(2)*** *In proceedings under this Part, the presence of a child 12 years of age or older is required unless a judge or master*
>
> *(a) is satisfied that independent legal counsel has explained the child's rights in the proceeding to the child and is able to advise the court respecting the child's views and preferences; or*
>
> *(b) on application, orders that the child not be present.*

A subcommittee comprised of representatives of the judiciary (King's Bench and Provincial Court), the masters, Family Conciliation (now known as Family Resolution Service), the private bar, Legal Aid, and counsel for child and family services agencies developed guidelines for the use of judges and masters in dealing with children in child protection court. A copy of these guidelines, **unofficially amended** to take into account the recent legislative changes, and which may be of assistance to others involved in the process, is included as an Appendix to this Chapter.

9. Interventions

By virtue of section 31 of the Act, persons who are not otherwise parties to the child protection proceedings may, upon giving appropriate notice, apply for an order to intervene in the case. Persons who are entitled to intervene pursuant to section 31 are those who have or have had a significant relationship with the child and can make a significant contribution to the hearing that will be in the child's best interests.

10. Orders

Under *The Child and Family Services Act* of Manitoba the most common orders sought are those dealing with an agency's request for guardianship of children, found under section 38 of the Act. Specifically, under that section, the court may grant the following orders:

> ***Orders of the judge***
> ***38(1)*** *Upon the completion of a hearing under this Part, a judge who finds that a child is in need of protection shall order*
> *(a) that the child be returned to the parents or guardian under the supervision of an agency and subject to the conditions and for the period the judge considers necessary; or*
> *(b) that the child be placed with such other person the judge considers best able to care for the child with or without transfer of guardianship and subject to the conditions and for the period the judge considers necessary; or*
> *(c) that the agency be appointed the temporary guardian of a child for a period not exceeding 24 months; or*
> *(d) and (e) [repealed]* S.M. 2023, c. 26, s. 36;
> *(f) that the agency be appointed the permanent guardian of the child.*

This section also allows for ancillary orders such as child support orders and variations of previous orders. The section specifically calls for the consent of any non-attending party who has been properly served in accordance with the service provisions contained within the Act to be deemed.

> In order for a judge or master to make any order under this section, it must first be proven by the agency, on a balance of probabilities, that a child was in need of protection at the time of apprehension and remains a child in need of protection at the date of the hearing. If no need of protection is found then the matter must be dismissed.

Once the court has determined that a child was and is in need of protection then they must consider what order is in the best interests of the child (keeping in mind the federal and the provincial factors in best interests as outlined above) and whether the plan of the agency meets those interests with the least amount of interference possible.

On a reconsideration of a previous order, the issue of whether a child was in need of protection at the time of apprehension is taken as already proven.

The Act formerly included different maximum periods of time for which an agency could seek temporary orders of guardianship (those time frames being age dependent). After the maximum period of temporary guardianship had expired, an agency had to be able to return the children safely to the care of the parents, transfer guardianship to a safe home under an

order of guardianship (either private or as contained in the Act), be able to return the child/children to the care of the parents under an order of supervision or seek a permanent order of guardianship.

> The recent amendments to *The Child and Family Services Act* removed the total maximum allowable time for temporary orders and now allows for temporary orders to be extended repeatedly with no maximum period of temporary guardianship so long as each order is for a maximum of 24 months at a time.

The Act states at section 41:

> ***Extension of temporary guardianship***
> ***41*** *A judge may extend an order of temporary guardianship for a period not exceeding 24 months. An order of temporary guardianship may be extended one or more times.*

Supervision orders and third-party placement orders may contain terms and conditions. These terms and conditions are normally requirements imposed upon parents in an effort to improve their parenting abilities and/or eliminate future risks to the child, but may also expressly or impliedly impose obligations upon the agency.

Once these terms and conditions are embodied in a court order, failure to follow through and comply would be difficult evidence for that party to deal with at a subsequent hearing. Such failure to follow through and comply may also place that party in contempt of a court order and make that party subject to contempt proceedings.

Orders of supervision or alternate placement also give rise to an automatic right for the agency to enter the home where the child is residing in order to provide guidance and counselling and to ascertain that the child is being properly cared for (s. 38(6)).

When a child has been the subject of a supervision order, third party placement order, or temporary order, the agency may apply at any time before the expiration of that order for an extension (s. 40(1)). At the further hearing, the agency may ask for any of the kinds of orders mentioned in section 38(1). Assuming the agency has filed its application before the expiration of the previous order, the previous order is deemed to continue in full force and effect notwithstanding its date of expiration, until the further hearing is completed and a judicial determination made (s. 40(2)).

In the event that a family has chosen to work with an agency that is not the culturally appropriate agency to service the child on a long-term basis (or in the event it is agreed to on a temporary basis) section 42 of the Act allows the court to pronounce an order of guardianship requested by one agency in the name of another.

Child in care of the agency appearing

42 *The judge or master making an order that an agency shall be a guardian shall appoint as guardian either the agency appearing at the hearing or another agency when the agency appearing files that other agency's consent.*

Further legislation under section 49 of the Act allows for the transfer of guardianship from one agency to another after the pronouncement of an order.

The Act also calls for the position of children 12 years of age and older to be considered by the court. All such children are served with the petition and notice of hearing (or reconsideration) and a judge or master will canvass the position of a child to the plan of the agency.

In the event a child has concerns, is opposed to the plan or the court determines for other reasons they should be represented by counsel, then counsel is appointed to act in the best interests of that child. Depending on the age of the child or other circumstances the court may also order that such counsel be appointed to take instructions from the child.

11. Jurisdiction

Jurisdiction for child protection proceedings in Manitoba is split between the Court of King's Bench and the Provincial Court of Manitoba. The court responsible for the hearing of child protection matters differs from jurisdiction to jurisdiction and it is important to be aware of which court in a particular area has that responsibility.

The Court of King's Bench (Family Division) has exclusive jurisdiction for child protection matters in Winnipeg, Brandon and Selkirk while the Court of King's Bench and the Provincial Court have concurrent jurisdiction throughout the remainder of the province.

In most cases, those jurisdictions with a permanent or rotational sitting of the Court of King's Bench will be heard by that court but there are exceptions to that general rule (for example Portage La Prairie) and many jurisdictions have their only regular sittings under the jurisdiction of the Provincial Court which reaches many more areas in rural Manitoba. The frequency of initial appearances on a child protection docket will vary depending on the size of population serviced and the particular resources of the courts.

12. Disclosure

Once an apprehension has occurred parents/guardians are entitled to disclosure from the agency. The agency must provide particulars as to the reasoning for apprehension to the parents or guardian at the time of apprehension. These are served with the petition and are referred to within the context of proceedings as "short form particulars."

At the time counsel is appointed for the parents, when parents acting on their own behalf request, when requested by counsel acting for the child or when requested by another involved party with standing (i.e., the public guardian and trustee), further and better particulars are to be provided by the agency. These are referred to as "long form particulars" and should provide details of the history of agency involvement, the issues leading to apprehension, the plan for the child during their requested time in care and the expectations of the parents or conditions to be met by them for reunification.

Counsel for the agency should also disclose to counsel for involved parties any additional pertinent information such as assessments, drug testing results etc. If insufficient information is provided, counsel for parents or guardians may bring a motion for further and better disclosure.

13. Format of Proceedings (for Child Protection Orders under Section 38 of *The Child and Family Services Act*)

The format of child protection proceedings may differ from jurisdiction to jurisdiction, particularly between those proceedings heard in the Court of King's Bench and the Provincial Court.

In Winnipeg, apprehensions are returnable on the master's court docket list (lists are scheduled weekly for different agencies on different days). Any transfers from ANCR or from an apprehending agency being transferred under section 28 to an Indigenous agency are done by desk motion and the matter is then sent to the appropriate docket.

Once a matter appears on a docket it may stay on that docket for the completion of services, planning, particulars to be provided by the agency, negotiation and possible settlement for a maximum of 60 days.

After the 60-day time frame or before, the matter is sent to an Intake Hearing before a Justice of the Court of King's Bench (Family Division) if it is not settled. If the matter is not settled with the assistance of a judge, then the matter is set for trial and a pre-trial conference is scheduled to take place prior to those trial dates. The court aims to have the matter make its way from intake hearing to trial in a 3-month period. Any pre-trial motions or consent orders may be dealt with at the pre-trial or scheduled for hearing by the pre-trial judge.

Some of the other jurisdictions where child protection is heard by the Court of King's Bench follow a similar procedure where resources permit.

In the Provincial Court, matters are similarly returnable on a docket, however these dockets are before a judge of the Provincial Court. Preliminary matters, section 28 transfers, issues related to disclosure of particulars and service are also dealt with on the docket and matters which are not settled are sent to pre-trial and trial dates. Where these pre-trials take place and when matters are set for trial differ from jurisdiction to jurisdiction depending on the resources of the court.

The Court of King's Bench has determined that summary judgment is a remedy available in a child protection proceeding. In rare cases, a matter may be referred by an intake or pre-trial judge for a summary judgment hearing on a motion by agency counsel or the court itself. There may be circumstances where the court will determine that there is simply no issue for trial and grant the agency a requested order at such a motion.

There is also an infrequent hearing which may be requested by parents' counsel in the event they do not believe the agency can prove a good faith basis for believing a child was in need of protection at the time of apprehension. These requested proceedings, referred to as "Watson Hearings" should be requested at the earliest opportunity and will proceed prior to the pre-trial process or shortly thereafter. Keep in mind that the agency need only show a good faith, reasonable basis for the belief and not the substantive issue of in need of protection which is later required.

The format will also differ in any Indigenous community that declares a self-governing child protection system under the federal legislation as noted above.

14. Setting Aside Permanent Orders

Once the court has made a permanent order under section 38 of the Act, that order may be terminated upon application by the parents or a parent of a child or by the agency. Section 45 states (in part):

> ***Termination of permanent guardianship on application***
> ***45(2)*** *The agency having permanent guardianship of a child may apply to court for an order that the guardianship be terminated.*
>
> ***Application by parents to terminate permanent guardianship***
> ***45(3)*** *The parents of a child with respect to whom an order of permanent guardianship has been made may apply to court for an order that the guardianship be terminated if*
> *(a) the child has not been placed for adoption; and*
> *(b) one year has elapsed since the expiry of the parents' right to appeal from the guardianship order or, if an appeal was taken, since the appeal was finally disposed of.*
>
> ***Order***
> ***45(4)*** *A judge hearing the application under subsection (2) or (3) may*
> *(a) terminate the permanent order and return the child to the parents; or*
> *(b) terminate the permanent order and make an order under clause 38(1)(a), (b), (c), (d) or (e); or*
> *(c) dismiss the application.*

While an agency may apply to have a permanent order set aside at any time, parents of a child subject to such an order must wait a year from the date the order is granted (or any appeal disposed of). Additionally, if such an application is made by a parent and is ultimately dismissed, the *Act* dictates that a further application by a parent cannot be made before the expiration of one year from the dismissal of the previous application.

No application may be made where a child has been placed for adoption in accordance with *The Adoption Act* of Manitoba. Similarly, no placement for adoption of a permanent ward may be made while an application to set aside the permanent order is outstanding.

15. Appeals

Pursuant to section 43(1), an order made by a master under Part III of the Act may be appealed to a judge of the Court of King's Bench (Family Division) within 21 days from the date on which the master signed the order appealed against. Such an appeal would proceed as a hearing *de novo.*

An order made by a judge pursuant to Part III may be appealed to the Court of Appeal within 21 days of the date on which the judge signed the order appealed against (s. 44(1)).

In each case there are provisions for extension of time in the legislation. Naturally, notice of an appeal must be served on all the appropriate parties but additionally, on the Director of Child and Family Services.

> A significant provision relating to appeals is that where a judge has found that a child is not in need of protection or has made an order returning the child to the parents on supervision or an order for third-party placement, the agency has 14 days in which it may retain custody and control of the child and in which to bring an application to a judge of the Court of Appeal in chambers, for an order staying the order pending appeal. If such an application is not brought or such an application for a stay is not granted, the agency must return the child within the 14 days.

Unlike a highway traffic accident or a contract dispute, the facts in a child protection case are not always in the past; rather the facts may be changing on a day-to-day basis as the child grows and the parent-child relationship evolves. As such, further evidence is often offered on appeal of a child protection decision.

Accordingly, the rules of court allow the Court of Appeal to receive new evidence on appeal. This is done by way of motion with an affidavit in support. Because there is an element of inherent unfairness to this, namely a lack of opportunity to cross-examine effectively, the Court of Appeal is very careful in screening such applications before admitting new evidence. See *Winnipeg Child and Family Services v. F.(J.M.)* (2000), 12 R.F.L. (5th) 458 (Man. C.A.).

16. Court Powers and Evidentiary Issues

a) Overview

In a child protection hearing for an order of guardianship it is the burden of the agency to prove on a balance of probabilities that the subject children were in need of protection at the time of apprehension and remain in need of protection at the time of the hearing.

While child protection proceedings are often seen as quasi-criminal in that agencies seeking an order are creations of the state, the proceedings are civil proceedings and subject to mostly the same evidentiary rules and burdens as other civil proceedings as called for in case law and within *The Court of King's Bench Act* and Rules. That being said, there are special exceptions to the rules of evidence that are allowable in the context of child protection hearings.

The general rule in litigation is that the parties to the litigation are *dominis litus*. That is, the parties control the litigation and the role of the judge is to act as an impartial arbitrator. This rule appears to be somewhat modified in child protection proceedings by virtue of certain statutory provisions. Section 36 provides that proceedings in child protection cases may be as informal as a judge or master may allow and that no order made under Part III shall be set aside because of any lack of formality at the hearing or for any other technical reason not affecting the merits of the case.

> ***Proceedings informal***
> ***36*** *Proceedings under this Part may be as informal as a judge or master may allow and no order under this Part shall be set aside because of any lack of formality at the hearing or for any other technical reason not affecting the merits of the case.*

Notwithstanding this, the technical rules of evidence tend to be used and applied strictly.

More importantly, section 37 allows a judge or master conducting a hearing under Part III of the Act:

> *(a) to compel, on his or her own motion, the attendance of witnesses and the production of documents and things;*
> *(b) to accept affidavit evidence; and*
> *(c) to accept the reports of certain experts without proof of the maker's signature.*

If satisfied that it is necessary in order to determine the best interests of the child, a judge or master may also make an order directing an investigation into any matter by a person who has had no previous connection with the parties. Refusal to cooperate in such an investigation allows the court to draw any inference it considers

appropriate. This inference has been included in the recent amendments to the Act. Section 37(3) states:

> ***Refusal to co-operate***
> ***37(3)*** Where the court directs an investigation pursuant to subsection (2) and a party refuses to co-operate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

In practice, these sections are seldom, if ever, relied upon by the courts in Manitoba. Courts seldom call witnesses and introduce evidence of any kind of their own motion. Generally, orders to direct independent investigations are only made upon motion by one of the parties, or by consent.

b) Cross Examination of Caregiver

Unlike criminal type proceedings, parents do not have the "right to remain silent" in relation to the agency's case. With proper notice given (14 days), the Act gives the agency the ability to call as a witness a parent or guardian, treat them as a hostile witness and proceed to cross-examine them, regardless of their intention to provide evidence at the hearing (s. 35).

> ***Cross-examination of parents***
> ***35*** *Notwithstanding any other provision of this or any other Act, an agency may, by serving notice of its intention to do so 14 days before a hearing under this Part, or such shorter period as the court may allow, call the parent or guardian or both of the child who is the subject of an application under this Part as a witness and any person so called shall be treated as a hostile witness.*

This provision is similar to the rules on calling adverse witnesses and reflects the fact that child protection proceedings are in the nature of civil litigation. Some have argued by analogy to criminal law that parents should not be compelled to give evidence. However, child protection proceedings have been characterized as civil litigation by appellate courts.

The certainty that parents will, at some point, have to explain the condition in which their children were found and apprehended means they may not be able to use a stonewall defense. This provision encourages parents to negotiate settlements and assists in resolving cases before trial.

c) Reports

The various provisions of section 37, empowering judges beyond normal judicial powers, have already been mentioned. Section 37(1)(c), however, indicates that evidence by way of report completed by a duly qualified medical practitioner, dentist,

psychologist or registered social worker may be accepted as evidence without proof of the signature or authority of the person signing it. This is an expansion of existing provisions of *The Manitoba Evidence Act* and is primarily important in Provincial Court. Such reports would be admissible in the Court of King's Bench, assuming the expertise of the author, pursuant to the rule on opinion evidence which applies there (see Rule 53.03).

In *Winnipeg Child and Family Services (East Area) v. J.F.A.W. and M.D.V.*, [2001] M.J. No. 210, the Manitoba Court of Appeal confirmed that, when the parents consent to the tendering of a report and waive the right to cross-examine, it is not necessary for the agency to call an expert to give oral evidence at trial; the court can consider and rely upon the expert's findings and opinion contained in a written report. The trial judge can ask for the expert to be produced if the judge has concerns about the report.

d) Opinion Evidence

Few trials grapple with as much opinion evidence as do child protection trials. Opinion evidence is frequently presented by medical doctors describing such things as the condition of children, the likely cause of the condition, and the mechanics of various injuries. Psychiatrists and psychologists deal with the mental or emotional health and functioning of children and parents. Social workers and others give opinion evidence on observations of ability to parent, bonding, and parent/child relationships.

> Any expert witness may face a *voir dire* before being allowed to testify and give opinion evidence. Counsel must be prepared, when either offering a witness or wishing to resist the evidence of a witness of this kind, to engage in an effective *voir dire* around the expertise of the witness and the parameters of any opinion the witness could render.

e) Business Records

Both section 49 of *The Manitoba Evidence Act* and the common law rule on business records made in the usual and ordinary course of business as articulated in *Ares v. Venner*, [1970] S.C.R. 608 apply to child protection proceedings. Such records are frequently offered as part of the evidence to be tendered by the agency. Business records may include medical, hospital and/or school records, and records from alcohol or drug treatment programs.

There are notice provisions in respect of all such records. Rather than dealing with such records for the first time at trial, the better practice is to obtain, where court rules permit, the records from a third party in advance so that all counsel can have an opportunity to review them, determine relevance and determine whether valid legal objections exist as to admissibility. This will expedite the trial and enhance

preparedness of counsel. This procedure was recommended in *The Winnipeg South Child and Family Services Agency v. R.S. and A.P.* (1986), 40 Man. R. (2d) 64 (K.B.).

The rules allow for such early production of third-party records. In Provincial Court such records may only be available on subpoena at trial, although even in Provincial Court counsel may be able to bring a motion, with notice to the parties and to the holder of the records, for an order that they be produced in advance of trial.

If the records are not available in advance of the trial, the usual process is to call the witness, prove the background and authenticity of the records, tender the records as exhibit A or B for identification, allowing all counsel during the course of the trial to examine them, and then at some point in the trial, move them in as exhibits proper, with counsel having an opportunity to argue about admissibility, etc.

f) Certified Copies of Judicial Documents

Under sections 22 and 38 of *The Manitoba Evidence Act* certified copies of certain documents of a judicial character may be admitted without further proof. Such documents are frequently used to prove various things in protection cases. Typical examples would be certified copies of informations, recognizances and probation orders from criminal cases. Also, transcripts of prior judicial proceedings can sometimes be used. See section 27(3) of *The Manitoba Evidence Act* and the Manitoba Court of Appeal's guidelines on the use of such transcripts in the case of *Serediuk v. Kogan*, [1976] 5 W.W.R. 571.

In order for transcripts to be admissible, there must be identity of parties, identity of issues, full opportunity to cross-examine at the time the evidence was originally given, and unavailability of witnesses to testify at present. Where what is intended to be proven, however, is a prior statement under oath by a party or witness in the proceeding, the transcript is admissible to prove the making of that prior statement as against the party or witness.

g) Evidence from Prior Judicial Proceedings

In addition to the transcripts referred to above, evidence from prior judicial proceedings can be useful in child protection cases. Domestic files arising from spousal disputes prior to the child protection case should be reviewed for possible use. For example, if there have been previous separations between the spouses who are now reconciled and presenting a joint front, any material on the family pocket and in particular, the affidavits filed against each other and the resulting orders, may be a source of information for child protection agencies.

Occasionally the contents of a civil pocket will also be relevant, but much less frequently so. One example is where a grandmother came forward in a child protection case claiming guardianship of her grandchildren. Her health and ability to care were at issue. It was known that she had previously sued some doctors and a transit company arising from injuries received in a motor vehicle accident and subsequently allegedly at the hands of a surgeon in the hospital. The statement of

claim when searched showed allegations of extensive disability with minute descriptions thereof. The agency was able to use these contradictions effectively in the protection proceeding.

h) Out of Court Statements by Children

The admissibility of out-of-court statements of a child who is the subject of the proceeding is often central to a child protection case. Ordinarily, the child is not being offered as a witness, and is not a party to the proceeding; therefore, such evidence would be hearsay and excluded by the hearsay rule.

This kind of evidence is often very important in child protection cases. Few people abuse and mistreat their children in the presence of witnesses. Few people talk to others about it, or subsequently acknowledge that abuse has occurred. Most deny it. Accordingly, there are often only two first-hand witnesses, the perpetrator and the child victim. Many of the children are not available as witnesses, either because they are too young to testify or because doing so would be traumatic for them.

In *R. v. Khan*, [1990] 2 S.C.R. 531, the Supreme Court of Canada, in the context of criminal proceedings, held that the hearsay evidence of children was admissible when the tests of reliability and necessity were met. In *Winnipeg Child and Family Services v. L.(L.)* (1994), 4 R.F.L. (4th) 10 (Man. C.A.), the Court of Appeal went one step further. It held that the reception of this evidence in child protection cases is not subject to the tests of reliability and necessity. Twaddle J.A. stated at page 28:

> *That does not mean, of course, that the court can place reliance on evidence that is suspect or that it can use such evidence when there is no need to do so. What it means is that the strict tests applicable in criminal cases are somewhat relaxed where the protection of a child is the issue rather than the guilt of a person.*

i) Miscellaneous

Child protection proceedings are often about proving events that occurred in the private circumstances of family living. Proof is necessarily frequently varied and often full of technical objections. Some of the types of evidence which counsel have to deal with in this area include the tendering into evidence of X-rays, photographs, various implements, tools and weapons. Witnesses with information could be any number of people; neighbours, friends, relatives, siblings, school teachers, public health nurses, bus drivers, corner store clerks, hotel clerks, hospital personnel, doctors, psychologists, and occupational therapists.

Counsel presenting these cases must be imaginative about the pursuit of evidence, and counsel defending these cases must be prepared to deal with evidence from a variety of sources.

17. Prosecution Strategies

The agency's obligation is to present as complete a case as possible in support of its position. This does not mean presenting all evidence available, whether tending to point in one direction or another, but almost always involves a presentation of evidence from diverse sources, some of which is helpful and some of which is less helpful.

One of the main prosecution strategies is to force the parents to address the issues of concern and section 35 (discussed above) is a key legislative provision in this regard.

With younger children the agency usually will be anxious to get on to trial and to have the matter adjudicated at an early date. Time in the life of a child is a very important commodity and the younger the child, the greater the importance.

> Evidence will be gathered both before and after the apprehension, up to and including the end of the trial, and will be presented. Protection cases involve an analysis of both the past custodial situation and parental relationships *vis à vis* the child(ren) as well as the continuing and ongoing relationships of parents and guardians (or guardianship applicants) to the child(ren).

18. Defending Child Protection Cases

Defending child protection cases is somewhat like defending criminal cases; the state is not always wrong and frequently has a case when it moves to either arrest an accused or to apprehend a child. Also, in child protection cases, there is usually a history of interaction and relationship between parents and an agency and the agency may have tried to help the parents deal with parenting issues before the apprehension. That being the case, the evidence available to the agency will generally be of a reasonable quality.

Many of these cases simply cannot be won from a conventional defense point of view. That does not mean to say that agencies do not make mistakes, such as accepting the truth of facts or allegations without checking them sufficiently, reaching wrong conclusions from the facts, or recommending the wrong solutions.

Generally speaking, however, the agency's witnesses will be professional more often than lay, will have notes of their past involvement in the situation, and will have access to collateral professionals and opinions of those professionals. Parents, on the other hand, will be relying on their memories and will frequently have less expertise and resources available to them. Indeed, most of the families in the child protection system suffer from a number of social problems and are disadvantaged in many ways.

These facts need to be understood and recognized by counsel defending these cases. You should anticipate a full and complete investigation and presentation of evidence by the agency and try to develop a theory for the defense based on that. This cannot be done

without spending a lot of time with the clients, getting to know them well and obtaining exhaustive social histories and information, even though you may have much information from the agency already. What the parents tell you may well lead you in directions of further enquiry that the agency has overlooked as unimportant or has not had information available to it to pursue.

From the point of view of the parents, there will be times when an early trial is critical and others when a delayed trial is critical. As with criminal law, rehabilitative remands or adjournments to allow time for defense assessments and completion of programs by parents should be explored. Once you have full and complete particulars and have interviewed clients and other potential witnesses exhaustively, you are in a position to make judgments about whether the better defense strategy is to push things along or to allow the court proceeding to progress at a more relaxed pace.

While there are many differences in the way various cases might be approached, there are three general defenses which tend to be presented in child protection cases.

a) Stonewall: Prove It

This defense presents the agency with a denial or silence in connection with its allegations of abuse, neglect or whatever and says to the agency, "we've done nothing wrong, prove that we have." This defense presupposes that the clients have not already made inculpatory statements to agency personnel or to others which the agency will discover and that they will not, between the time they see you and the trial starts, make statements which will harm this approach to the case.

Prior to the enactment of section 35 of the Act, this was a viable defense in some cases in an adversary system. With section 35, however, the agency can compel the parents or guardians to give evidence and make them talk about whatever it is that is at issue in the case. Accordingly, this strategy may often be of limited value.

In addition, it carries the downside that a judge may interpret the parents' approach in this area as a lack of cooperation and if the agency makes the case, the type of order which is likely to come about may be affected by this lack of cooperation. That is, the judge may see that lack of cooperation in the past means lack of cooperation in the future, and accordingly conclude that chances for rehabilitation are slim. Nonetheless, it is a defense that needs to be examined.

b) Admit and Avoid

This is probably the most frequently used defense and the defense most likely to succeed. This defense presupposes that the client is prepared to admit their shortcomings and has accepted your advice about rehabilitative and remedial efforts and that by the time of the trial, has moved some distance down the road towards repairing the deficits, whatever they are.

It usually requires the defense to call witnesses from the rehabilitative resources being used and some expert evidence on progress having been made by the client. It tends to be the kind of defense that is successful, because social workers like to see clients working on their problems and are frequently prepared to give them another chance when they see effort of this kind.

However, in many cases agencies will already have referred clients to resources in attempts to rehabilitate and improve skills, without success, and in such cases, the agency may be a hard sell on the reality of progress at a later stage.

Counsel should be sensitive to the very personal nature of the problems that parents are sometimes expected to acknowledge, particularly if the problems stem from the parent's own victimization as a child.

c) Third Party Application

In cases where counsel's analysis of the facts indicates that the defense is unlikely to succeed in preventing the agency from obtaining the order it seeks, it may be prudent to ask the client if there are other resources available for the children in order to forestall a wardship order in favour of an agency. Such other resources might be extended family members, friends or neighbours who would be prepared to come forward to intervene in the proceeding and to apply for and become a legal guardian. Also, look closely at the possibilities for an order of alternate placement under section 38(1)(b) of the Act.

These defenses have both positives and negatives to them. The positives are that if they are successfully used, the child may remain within a family circle and an opportunity to maintain a relationship with the family continues, particularly in permanent order cases. The possibility of parents being able to get the child back at a later date is also enhanced.

However, the presentation of such a defense involves the making of some admissions by the parents about their own inability to care. As with all admissions, serious present and future ramifications can arise. For example, there may be other children in the family who have not yet been apprehended and admissions of inability to care may have an effect on custody arrangements regarding those children.

In general, a high degree of preparation is necessary to defend child protection cases successfully. In addition, a well-rounded set of courtroom skills is necessary. Finally, as in all cases but perhaps more so in these types of cases, it is absolutely imperative that one impress upon clients that to the extent they have to speak to issues in the courtroom, they must tell the truth.

One of the most commonly successful events in a trial, from an agency point of view, is the parents' or guardians' failure to tell the whole truth. This failure to be truthful raises grave reservations and doubts in the mind of the judge about the whole of the parents' or guardians' evidence and begs the question why this person feels it is necessary to be untruthful.

19. Access to Children in Care

There are many aspects of the provincial legislation that deal with the treatment of children once they are in care and the subject to a guardianship order under section 38.

Among other issues that are addressed, the issue of access between a child and their parents is commonly raised. The Act provides legislative structure for seeking access both before a hearing on the matters of protection and after the granting of an order. As of the time of apprehension, the child ordinarily remains in the care and custody of the agency until judicial determination, and the matter of access between the child in care and the parents or guardian is an important issue.

Section 27(2) requires the agency to state in the petition itself what access it intends to allow the parents or guardian during the period of apprehension and before judicial determination. If the parent or guardian is unhappy with the access proposed by the agency, they may apply to the court for a hearing to determine what access provisions are appropriate in the circumstances (s. 27(3)).

In such a hearing, the agency carries the burden of proof that any limitation of access imposed by the agency is a reasonable one (s. 27(4)).

The federal Act states at section 17:

> ***Attachment and emotional ties***
> ***17*** *In the context of providing child and family services in relation to an Indigenous child, if the child is not placed with a member of his or her family in accordance with paragraph 16(1)(a) or (b), to the extent that doing so is consistent with the best interests of the child, the child's attachment and emotional ties to each such member of his or her family are to be promoted.*

It may be possible to use the access procedure for supplementary discovery purposes. In practice, in the Court of King's Bench, the parent applies for access by filing a notice of motion with affidavit(s) in support. The agency must file affidavit material in response justifying its position on access.

Under the rules, complete cross-examinations on affidavits are then possible. Generally, a fairly far-ranging cross-examination of agency personnel who make the affidavits is then available to counsel for the parents or guardian. This intensive discovery under oath at an early date may facilitate settlement and could be extremely valuable preparation for any trial.

Note that neither examinations for discovery nor discovery of documents in the traditional civil litigation sense are available in child protection proceedings (s. 32(3)).

Before commencing an access motion for discovery purposes, consider that the parent or guardian who filed the motion and the affidavit in support may also be exposed to pre-trial cross-examination on their own affidavit. Case law indicates that the cross-examination would not be limited to the content of the affidavit and could be a far-ranging cross-examination as well.

The legislation also makes provision for access to children in care pursuant to temporary orders and in some cases, permanent orders. Section 39(1) provides that during the term of a third-party placement order or a temporary order, the parent or guardian shall have reasonable access to the child.

Section 39 goes on to set out a procedure for a further hearing in cases where there is a dispute about what constitutes reasonable access in a particular case. Section 39(3) provides that in cases of permanent orders, the agency has complete discretion as to what access, if any, parents or guardians shall have. Parents or guardians, however, have the right to a hearing pursuant to section 39(4) if they are unhappy with the agency's decision on access. Where a child has been placed for adoption, no application for post-permanent order access is possible (s. 39(6)).

Additionally, there are provisions under the federal legislation which dictate actions relating to the treatment of children in the care of agencies. Most notably, the federal legislation calls for a reassessment on an ongoing or annual basis of the family of Indigenous children towards a goal or reunification (as outlined above). Despite the granting of a permanent order in favour of an agency, the federal legislation means that agencies have an ongoing assessment responsibility to continue to work towards reunification of a child with their biological family.

20. Child Abuse Registry

Within the Provincial legislation there are provisions related to the mandatory reporting of suspected child abuse, the investigation of suspected abuse and the creation and maintenance of a Provincial Child Abuse Registry for those found to have committed abuse of a child.

The Director of Child and Family Services maintains the Child Abuse Registry pursuant to section 19.1(1) of the Act. The purpose of the registry is to provide specific persons or groups with information on child abusers.

The registry contains the names of persons who are found guilty of, or pleaded guilty to, an offence involving child abuse, and the names of persons found to have committed abuse, in

proceedings under the Act. It also includes the names of persons an agency abuse committee has determined are abusers. Entry on the registry can include both adults as well as youth.

The *Child Abuse Regulation* deals with relaying matters of suspected child abuse to the child abuse committees and for subsequent registration. The regulation calls for a specific process to be followed in relation to suspected matters of child abuse. Specifically, child abuse is defined under section 1(1) of *The Child and Family Services Act*:

> ***1(1)*** *In this Act*
> *"abuse" means an act or omission by any person where the act or omission results in*
> *(a) physical injury to the child,*
> *(b) emotional disability of a permanent nature in the child or is likely to result in such a disability, or*
> *(c) sexual exploitation of the child with or without the child's consent.*

All matters of child abuse are to be investigated at the agency level and suspected or confirmed abuse is to be reported to the appropriate child abuse committee. That committee is to provide notice and an opportunity to the alleged offender to respond, and then make a determination if, in their view, child abuse occurred, and if the alleged offender should thereafter be registered.

Notification of a decision to register is to be provided and a process for challenging such a decision is heard through the jurisdiction of the Court of King's Bench. In the event that an alleged offender is notified of an impending registration of their name on the Child Abuse Registry, they may file an application with the Court of King's Bench to not be registered.

During such a proceeding there is really only one issue before the court – whether the alleged offender abused a child. If abuse is confirmed then registration is required and the court has no jurisdiction to use their discretion not to register despite an incident of abuse.

The *Child Abuse Regulation* has very specific time frames when it comes to the reporting of suspected abuse, referral to and consideration by a child abuse committee, notification for an opportunity to provide information etc. Case law within Manitoba has confirmed that these time frames are mandatory and violation of them cannot be rectified by the court during subsequent proceedings.

At the hearing of any application not to be registered on the abuse registry, the agency has the burden of proving on a balance of probabilities that abuse occurred; however, certain rules of evidence pertaining to the accusations of a child are relaxed (s.19(3.6)).

> ***Rules for hearing***
> ***19(3.6)****At a hearing,*
> *(a) the agency has the burden of proof on the balance of probabilities;*

(b) all parties may be represented by counsel and shall, subject to clauses (c) and (d), be given full opportunity to present evidence and to examine and cross-examine witnesses;

(c) the court is not bound by the rules of evidence in relation to the evidence of a child who the agency alleges was abused by the applicant and may receive the child's evidence through hearsay, by way of a recording, a written statement, or in any other form or manner that it considers advisable; and

(d) a child who the agency alleges was abused by the applicant shall not be compelled to testify.

Decisions of the court have found that the failure of a parent to report or stop abuse of which they become aware can be considered a form of abuse itself.

In circumstances where the abuse or exploitation of a child results in a plea or finding of guilt under certain provisions of the *Criminal Code* of Canada, registration on the Child Abuse Registry will be automatic and does not require the finding of a child abuse committee and an application not to be registered cannot be brought.

Due to the amount of time required for a criminal investigation, subsequent hearings to proceed and the specific time frames contained in the *Child Abuse Regulation*, it is not uncommon for proceedings awaiting a criminal disposition to be brought before the court on an application not to be registered which proceeding will usually only take place if required after the disposition of the criminal proceedings.

Child and Family Services agencies are able to seek access to the registry, if access is reasonably required to assess any person who provides work or services to the agency. Licensed adoption agencies can also seek access to the registry to assess potential employees or service providers, and both CFS agencies and licensed adoption agencies can access the registry to assess prospective adoptive parents.

Peace officers are also able to apply when access to the registry is reasonably required to assist them in carrying out their duties. Access by employers and others has also been expanded to assist in the screening of persons whose work, whether paid or unpaid, may involve the care, custody, control or charge of a child or may permit access to a child.

Recently, *The Child and Family Services Amendment Act* (assented to but not yet proclaimed) outlined above, also expands registry access to Indigenous service providers and allows for a process by which Indigenous Service providers may submit names for entry on the registry.

21. Disclosure of Records

Within the provincial legislation there is significant legislation dealing with privacy and confidentiality including the treatment of records of an agency, especially those records created in relation to Part III of the Act (child protection). Records held by an agency are deemed confidential except for allowable disclosure in specific circumstances. Section 76 outlines the provisions for confidentiality and disclosure and should be carefully reviewed.

Counsel acting for parents in the context of a child protection proceeding should review these provisions with their clients in respect of pre-trial disclosure and other information, and the potential consequences for dissemination of confidential information.

The agency may face applications for the disclosure of child protection records from families, previous children in care, counsel for those involved in family litigation (most commonly parenting/custody/access) or other related or relevant proceedings (for example, Residential Schools claims). Section 76 will govern all such applications for access to the confidential material and whether a court order will be required for same.

In June, 2022, amendments to *The Child and Family Services Act* were established under *The Child and Family Services Amendment Act* S.M. 2022 c. 30. This statute was enacted to facilitate collaboration and information sharing between agencies and others who administer the provisions of the Act and the Indigenous Governing Bodies and other Indigenous service providers who administer Indigenous laws respecting child and family services.

New provisions have been added, setting out new authority and rules respecting:

- The sharing of information contained in service-related records by the director, authorities, agencies, Indigenous governing bodies and Indigenous service providers;
- The disclosure of personal information and personal health information to Indigenous service providers by public bodies and trustees, when requested for the purpose of ensuring the safety, health or well-being of children;
- Access by Indigenous service providers to provincial electronic information systems and the child abuse registry, including entering information in the information systems and reporting names for entry in the registry; and
- Transferring the supervision of care and the guardianship of children in care to Indigenous service providers.

Existing provisions respecting access to the child abuse registry, the transfer of supervision of care and guardianship of children in care, the disclosure of information when planning for or providing services and access to closed records are also clarified.

22. Children's Advocate

The Act also provides disclosure exceptions in relation to the children's advocate. Under the Act, **"advocate"** means the advocate appointed under *The Advocate for Children and Youth Act*;

As self-described by the office for Manitoba Advocate for Children and Youth (MACY):

> *The Office of the Children's Advocate was established in 1992. The duties of the Children's Advocate included representing the rights, interests and views of children receiving or entitled to receive services under The Child and Family Services Act or The Adoption Act.*
>
> *On March 15, 2018, The Advocate for Children and Youth Act was proclaimed. The Child's Advocate became known as the Manitoba Advocate for Children and Youth (MACY) and the powers of the office were expanded.*
>
> *Under the new legislation, the MACY advocates, reviews, investigates, researches, and examines numerous child serving systems in Manitoba, including child welfare, adoption, disabilities, mental health, addictions, education, victim support and youth justice. MACY does not represent individual children in court proceedings.*
>
> *A child or any interested person on behalf of a child, including family, foster parents or agency staff, can ask MACY for assistance."*

23. Parallel Proceedings (Guardianship, Care and Control)

Child protection proceedings may also be accompanied by parallel proceedings which do not fall under the legislation noted, but which may be intertwined with the issues before the court. Proceedings related to private guardianship (not completed under section 38(1)(b) of *The Child and Family Services Act* and therefore requiring no determination on the issue of need of protection) and care and control may be the most common.

Sometimes (especially in the case of guardianship) the court may consolidate these proceedings for hearing. The outcome or determination of these types of proceedings may impact a child protection proceeding or may address the concerns that deal with the issues of protection.

This may alter how guardianship applications are incorporated into ongoing child protection proceedings and changes the legislative authority used to request such an order. However, such applications will continue to be a part of various child protection proceedings and will still be available to be plead under the child protection pockets in the Courts .

24. Miscellaneous Proceedings

Under the legislation there are other proceedings which may occur from time to time. There are sections relating to issues such as:

- medical treatment for children under apprehension;
- charges for those who refuse entry to a supervising Agency;

- no contact orders and charges against those who an Agency or Indigenous Governing Body believe cause a child to be in need of protection by virtue of their contact with them. (This was formerly found in s. 52 of *The Child and Family Services Act*, requiring Crown intervention to bring charges for this type of offense and applying only to children in care. That section has recently been replaced with provisions under s. 20 of the Act which is broader and allows agencies or Indigenous Governing Bodies the ability to apply directly to Court for the available relief.);
- charges for breach of the extensive confidentiality provisions; and
- provisions allowing for an agency to seek child support from a parent or parents.

Additionally, regulations relating to the rights and appeal provisions for foster parents who disagree with the position or actions of an agency in relation to a child or children in their care are outlined. While these issues do not arise frequently, counsel should be familiar with the types of further relief available under the Act.

25. General Public Obligations in the Protection of Children

In Manitoba, the welfare and protection of children is an obligation that extends to all members of society. To protect some of the most vulnerable in our society, we all have a responsibility to report where a belief of maltreatment, abuse and other circumstances affecting the safety of children exist.

Section 18 of the Act requires a person who has information that leads them to reasonably believe that a child is in need of protection, to report that to an agency or to a parent or guardian of the child. In some cases, obviously, that report needs to be made to an agency rather than the parent.

As of April 15, 2009 it is mandatory to report child pornography to *www.cybertip.ca*. Cybertip.ca was established by the Canadian Centre for Child Protection and reports of child pornography, internet luring, child prostitution and child sex tourism may be made either by filling out online forms or by calling toll-free at 1-866-658-9022.

The Child Sexual Exploitation and Human Trafficking Act came into effect on April 30, 2012. This Act allows a parent, legal guardian or appropriate child welfare agency to apply for a protection order on behalf of a child who is a victim of sexual exploitation. The typical person making an application under this act is a social worker who is trying to keep an exploitive individual away from a child in care.

B. APPENDIX – CHILD PROTECTION

1. Guidelines for Dealing with Children in Protection Court

[Unofficially amended] to take into account recent legislative changes

GUIDELINES FOR
DEALING WITH CHILDREN IN CHILD PROTECTION COURT

Frame of Reference:

At the Child Protection Committee meeting on October 10, 2002 a discussion took place around compliance with the provisions of *The Child and Family Services Act* relating to the requirement for children to attend court, the canvassing of their positions respecting the agency's plan, and the involvement of legal counsel in this process as well as the appointment of *amicus* to represent the child. A subcommittee comprised of representatives of the judiciary ([King's] Bench and Provincial Judges' Court), the masters, Family Conciliation [now known as Family Resolution Service], the private bar, Legal Aid and counsel for child and family services agencies was formed to consider these issues and to develop guidelines for the use of judges and masters. These guidelines may also be of assistance to others involved in the process, such as counsel and agency staff.

Legislative Frame of Reference:

Sections 33 and 34 of *The Child and Family Services Act*, SM 1985-86, c.C80 and amendments make specific provisions respecting the involvement of children in the court proceedings.

("child" being defined in s. 1 as "a person under the age of majority").

These sections are reproduced in ***Appendix A***, attached.

Objectives and Purpose of these Guidelines:

The objectives of sections 33 and 34 are summarized as follows:

- a child 12 years of age or older is required to attend court;
  a child under 12 years of age may be required to attend court;
- the court is required to advise the child attending court of their right to legal representation;
- the court must ascertain the child's position respecting the agency's plan;
- the court must ascertain whether counsel should be appointed to represent the child, either with the right to instruct counsel, or to represent the interests of the child *(amicus).*

The primary focus of these guidelines is the child protection docket, but the underlying principles and considerations will apply equally to child protection pre-trials or trials.

Problems Identified:

Children attending court are often intimidated by the surroundings, the process, and the legal terminology used. They may also feel pressured by the presence of their parents and other factors.

Recommendations:

1. PHYSICAL SETTING

The objective should be to conduct these proceedings in the least stressful physical setting: one that is most conducive to discerning an accurate sense of the child's wishes or "position" respecting the agency's application.

This can be achieved by attention to the following:

(a) Waiting Area

There is considerable hustle and bustle around the courtroom, inside and out, which may be disconcerting to children already feeling insecure and uncertain. Children waiting to appear in a child protection court should be provided with a separate waiting area where they will not be exposed to potentially stressful situations e.g., accused persons or witnesses also awaiting appearance in criminal court, or the child's own parents, or other parents. Ideally, there should also be access to an interview room or even a space where the child can have a private conversation with counsel, if necessary.

(b) Timing

The child protection court should be dealt with separately and at a separate time from other proceedings such as criminal or family, again to avoid or minimize the stressfulness of the experience.

(c) Courtroom

Section 75(1) of the Act mandates that, minimally child protection proceedings be closed to the general public.

Optimally, when a child is to appear in court the court should be cleared of all those persons not directly involved in the proceedings.

In some situations, the judge/master may also need to consider requesting the parent(s) to leave the courtroom while the child is present.

In some limited circumstances the judge/master may wish to speak to the child alone (albeit with the clerk present and in a monitored situation). If this occurs, the child must understand that the judge/master cannot keep secrets from the other participants in the proceeding.

NB It should be noted that the committee was divided on this approach, given for example the comments of the Manitoba Court of Appeal in *Jandrisch v. Jandrisch* (1980), 16 R.F.L. (2d) 239, and other considerations.

If possible, consideration should be given to alter the physical setting of the courtroom and the individuals in it to make it more child friendly. If, for example, the courtroom has an elevated platform upon which the judge/master sits, he/she might consider descending from the platform and seating themselves on the same level as the child; or the judge/master might consider having a round table meeting with the child, lawyers, social workers and parents present.

2. COMMUNICATING WITH THE CHILD IN THE COURTROOM

(a) Pre-appearance Preparation

Advance preparation is essential to ensuring compliance with the legislative objectives in the least stressful manner to the child.

- The social worker should prepare the child by explaining the agency plan and the court process (e.g., what will happen in court, who will be there, court formalities) to the child in advance, and obtaining from the child some sense of the child's position.
- Advance communication by agency counsel with duty counsel respecting the forthcoming attendance of the child may be of assistance, for example, to obtain a clearer sense of the respective positions of the parties and of the child.
- Some background information may need to be provided to the judge/master immediately prior to the child's entering the courtroom. This information would likely touch upon the child's life background; capacity/special needs; the child's recent and current emotional state; the parties' interpretation of the child's understanding of the plan and of the child's position. It is advisable that the child not be present in the courtroom for this process.

(b) The Appearance

The following order and method of proceeding is suggested:

Introduction

The judge or master may wish to introduce themselves to the child and speak briefly and simply about the process. Making eye contact and smiling will assist in making the child feel more at ease.

The following is an example of appropriate dialogue:

> "Hello Suzy, I am Judge Brown. We are here today to discuss how you are going to be cared for. Your social worker is going to tell me where you are living and why. Then I need to know if the plans the social worker has told me about are OK with you. There will also be some talking between the adults and we will use legal

words that you might not understand. That is just part of our work to keep the records straight. If you have any questions, you can ask anytime."

The purpose of this exercise is to make a connection with the child and to create a comfort level for them so they can relax a bit and be better able to express themselves and to ask any questions they might have.

Outline of Agency's Plan by the Social Worker:

The outline of the plan is for the benefit of the court and the child. This should include at a minimum the following information:

- nature and length of order sought
  (i.e., supervisory, temporary, permanent, etc.)
- where the child will be living during the period of the order
- what the expectations of the child will be
  e.g., attendance at school
  attendance at work program
  attendance for counseling
  complying with curfews
- what the expectations are of the parents
- access arrangements to visit with parents, siblings and extended family
- the goal of the agency at the end of the order (in the case of a supervisory or temporary order)

Details of reasons for the apprehension should not be included.

Assessment of a Child's Comprehension of Plan and General Reaction to the Process to this Point

It is appropriate at this point to assess how the child is managing. How do they look? Are they crying, laughing nervously, not making eye contact? Are they belligerent?

It is also important to assess the child's understanding of the plan. Was the child given a chance to ask questions or make requests? Do they seem confused or mixed up about one thing or another? Clarify what they mean if necessary and ask them if they need you to be clearer. Is it possible to use some of the words or terms they use? Has an effort been made to assist the child to understand and to feel included? Simple words and short sentences are helpful.

The judge/master may ask:

"Suzy, did you understand what your social worker said?"

The judge/master could reiterate the plan for them, or ask them to reiterate it for you to be sure they understand:

"Suzy, do you know what the plan is for your care?"
"Do you know where you will live and how long you will be there?"
"Where do you live now and how long will you be there?"

The child may have other more immediate issues of concern (e.g., visitation with parents, siblings, etc. concerns about placement, new school, etc.).

Involving a Lawyer

At this point it is appropriate for the court to explain to the child they may have the right to have a lawyer appointed to represent them or their best interests. Do they know and understand why that might happen and why they might need one? Would they like to talk the situation over with a lawyer anyway?

If there is any question as to their not having understood the plan, it may be appropriate for the court to consider referring them to speak to a lawyer. This does not mean that counsel is now being appointed to represent them, but simply that they have been provided with an opportunity to clear up some things which are preventing them from clarifying their position. At some dockets counsel may be available to talk to the child.

If a child responds "No" to the initial inquiry as to whether or not they need or want a lawyer there may be a benefit for the court to explain to them, once again, in simple terms, what the lawyer's role would be. Two different responses to the same inquiry, or the response that they are "not sure" may reveal an ambivalence justifying a referral to a lawyer.

Canvassing the Child's Position

If the child appears sure they do not want to speak to a lawyer, the judge/master may ask:

"Are you all right with that plan?"
"Is it OK for you or are some parts not OK?"
"What parts of the plan are good; what parts are not very good?"
"How might the plan be better?"
"Would you like to see something different happening for yourself or your family?"

Appointing Counsel

Provisions respecting the appointment of legal counsel or *amicus*, and the terms of such appointment are set out in sections 34(2) and (3) of *The Child & Family Services Act* (see ***Appendix A***).

Concluding the Appearance

Finally, when they are through, the court thanks them for coming, perhaps acknowledging that it must have been difficult, that coming to court can be a scary experience, and expressing appreciation that they shared their thoughts and feelings. They may need to hear

that it is an adult's job to look after children and that is what everybody is trying to do: to make sure they are safe and well looked after.

The disposition sheet recording the proceedings in court should clearly reflect what occurred, i.e., that the child's position was canvassed, that the child declined to speak to counsel, that counsel was appointed and the nature of the appointment, i.e., to take instructions or as *amicus.* The recording should also note if no further attendance by the child is required.

(c) USE OF LANGUAGE

Throughout the court involvement, the language needs to be simple and children need to know what is going on. Basically, it is a matter of having time to express the compassion most people feel for these children and doing so simply. Simple clear language should be used after connecting with the child, asking simple questions and listening to the answers. The child needs to be made aware of what is happening throughout. It is important that everyone involved in providing information do so in simple terms to minimize confusion for the child. It is respectful to carry on proceedings in a manner that includes them.

Even intellectually capable children can become flustered and unable to process what is being said. Legal jargon, even the simple jargon, such as "parties" and "positions" and "adjournment", may be baffling to them. They need that interpreted:

> "Sorry Suzy, all that conversation was about was whether or not everybody understood who was looking after you and what the plans for your care are. After that we chose a time for our next meeting."

A brief glossary of child friendly terminology is provided at ***Appendix B***, attached.

APPENDIX A

Presence of child under 12 not required

33(1) *In proceedings under this Part, the presence of a child less than 12 years of age is not required unless a judge or master on application so orders.*

Presence of child 12 or over required ***[amended provision]***

33(2) *In proceedings under this Part, the presence of a child 12 years of age or older is required unless a judge or master*

(a) is satisfied that independent legal counsel has explained the child's rights in the proceeding to the child and is able to advise the court respecting the child's views and preferences; or

(b) on application, orders that the child not be present.

Right to counsel

34(1) *Subject to subsections (1.1) and (2), a judge or master shall, before the commencement of a hearing under section 27, advise any person who was given notice of the hearing under section 30* and who is present at the hearing that the person has the right to be represented by legal counsel.*

Legal counsel for parent who is a child

34(1.1) *Where the parent of a child who is the subject of a hearing under section 27 is a child and is 12 years of age or older, the parent has the right to retain and instruct legal counsel in respect of the hearing without having a litigation guardian appointed for the parent.*

Counsel for child

34(2) *In the case of the child who is the subject of the hearing, a judge or master may order that legal counsel be appointed to represent the interests of the child and, if the child is 12 years of age or older, may order that the child have the right to instruct the legal counsel.*

Factors affecting need for counsel for child

34(3) *In making an order under subsection (2), the judge or master shall consider all relevant matters including,*

(a) any difference in the view of the child and the views of the other parties to the hearing;

(b) any difference in the interests of the child and the interests of the other parties to the hearing;

(c) the nature of the hearing, including the seriousness and complexity of the issues and whether the agency is requesting that the child be removed from the home;

(d) the capacity of the child to express his or her view to the court;

(e) the views of the child regarding separate representation, where such views can reasonably be ascertained; and

(f) the presence of parents or guardians at the hearing.

**Section 30(1) provides*

Notice of Hearing

30(1) *The agency shall give two clear days notice of the date the application under subsection 27(1) is returnable or is set for hearing, together with particulars of the grounds that are alleged to justify a finding that the child is in need of protection, to*

(a) the parents;

(b) the guardians;

(c) the child where the child is 12 years of age or more;

(d) the person in whose home the child was living at the time of apprehension or immediately prior to placement in hospital or other place of safety;

.....

(emphasis added)

APPENDIX B

CHILD FRIENDLY TERMINOLOGY. Some suggestions:

agency particulars – information from the social worker

alternative plan – another plan

biological father – birth father

children will be in different placements – different homes

consent/opposed to the plan – agree/disagree – ok/not ok with the plan

counsel for the respondent – mother's/father's lawyer

facilitate access – set up visits

facilitate return to your mother's care – help you go back home to live with your mom

foster placement – foster home

has disclosed – has told

maternal/paternal aunt – your aunt, Mary Smith

no restrictions respecting access – you and your mom can have visits whenever you want

not receptive to access – not open to visits

opportunity to discuss with a lawyer – have a chance to talk about the plan with a lawyer

participate in therapy – meet with your counsellor, Jane Doe

parties involved – people involved, your mom/dad/grandparents

permanent order – until you are 18/an adult

place of safety – with your aunt, Mary Smith

primary goal is to reunite – hope is that you can go home at the end of the three months

reside with – live with

reunification program – counselling to help your family get back together

siblings – brothers and sisters

stood down – we'll take a few minutes so you can meet with

supervised access – visits with your family at the agency office

transition home – start spending more time at home

two week adjournment – we'll come back to court in two weeks

what is your position – what do you think about this plan

C. PRECEDENTS – CHILD PROTECTION

1. Petition and Notice of Hearing

File No. CP

THE PROVINCIAL COURT (FAMILY DIVISION)
_____, Manitoba

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M. 1985, c.C80 and amendments thereto

AND IN THE MATTER OF: _____

born the _____ day of _____, 20_____

BETWEEN:

_____,

Petitioner,

- and -

_____ and _____,

Respondents.

PETITION AND NOTICE OF HEARING

NOTE: If you have been delivered a document entitled "Notice of Hearing as Adjourned" you may make your appearance in court at the later date shown on it.

Agency:

Solicitors for Petitioner:

Your next court date is on _____, the ____ day of _____, 20__ at _____ a.m., at the Court Room, _____, in the _____ of _____, in Manitoba.

THE PROVINCIAL COURT (FAMILY DIVISION)
_____, Manitoba

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M. 1985, c.C80 and amendments thereto

AND IN THE MATTER OF: _____

born the _____ day of _____, 20_____

BETWEEN:

_____,

Petitioner,

- and -

_____ and _____,

Respondents.

PETITION AND NOTICE OF HEARING

TAKE NOTICE that the Petitioner seeks a finding that the above-named child was, on the ____ day of _____, 20__, and is still, in need of protection.

AND TAKE NOTICE that a hearing will be held at the Court Room, _____, in the _____ of _____, in Manitoba, on _____ day, the _____ day of _____, 20__, at _____ in the forenoon, and that you are entitled to be represented by legal counsel but if you do not attend in person or by counsel at that time and place, an order may be made in your absence.

AND FURTHER TAKE NOTICE that one of the following orders may be made if the child is found to be in need of protection, namely:

☒ an Order of Supervision; or

☒ an Order that the child be placed with such person, other than a parent or guardian, that the Judge considers best able to care for the child, with or without transfer of guardianship; or

☒ an Order of Temporary Guardianship; or

☒ an Order of Permanent Guardianship; or

such other Order as may be just.

AND FURTHER TAKE NOTICE that the Petitioner makes application for an Order pursuant to s. 38(3) of *The Child and Family Services Act* requiring the Respondents to contribute to the cost of the child's maintenance in such amount as to this Honourable Court may deem appropriate.

The Petitioner proposes that the following times and conditions of access shall apply pending the hearing of the petition: "reasonable access in the circumstances".

TO: The above-named Respondent(s)

Your next court date is on _____, the ____ day of _____, 20__ at _____ a.m., at the Court Room, _____, in the _____ of _____, in Manitoba.

WAIVER OF TWO CLEAR DAYS NOTICE

I hereby give up my right to two clear days' notice of the date of the hearing of the application as described herein.

Witness	Respondent
Witness	Respondent

DISCLOSURE OF FINANCIAL INFORMATION

TAKE NOTICE that if you are the child's parent or guardian you must within ten days of receiving this notice, file with the Court at _____ in _____ and serve the Agency, _____ at _____ in _____, Manitoba, with the Declaration of Family Income Form, Form CFS-10 that accompanies this petition.

DATED this _____ day of _____, 20__

_____

2. Petition and Notice of Further Hearing

File No. CP

THE PROVINCIAL COURT (FAMILY DIVISION)
_____, Manitoba

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M. 1985, c.C80 and amendments thereto

AND IN THE MATTER OF: _____

born the _____ day of _____, 20_____

BETWEEN:

_____,

Petitioner,

- and -

_____ and _____,

Respondents.

PETITION AND NOTICE OF FURTHER HEARING

NOTE: If you have been delivered a document entitled "Notice of Hearing as Adjourned" you may make your appearance in court at the later date shown on it.

Agency:

Solicitors for Petitioner:

Your next court date is on _____, the ____ day of _____, 20__ at _____ a.m., at the Court Room, _____, in the _____ of _____, in Manitoba.

THE PROVINCIAL COURT (FAMILY DIVISION)
_____, Manitoba

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M. 1985, c.C80 and amendments thereto

AND IN THE MATTER OF: _____

born the _____ day of _____, 20_____

BETWEEN:

_____,

Petitioner,

- and -

_____ and _____,

Respondents.

PETITION AND NOTICE OF FURTHER HEARING

TAKE NOTICE that the Petitioner seeks a finding that the above-named child with respect to whom an Order was made on the ____ day of _____, 20__, was and is still, in need of protection and that a further Order be made.

AND TAKE NOTICE that a hearing will be held at the Court Room, _____, in the _____ of _____, in Manitoba, on _____ day, the _____ day of _____, 20__, at _____ in the forenoon, and that you are entitled to be represented by legal counsel but if you do not attend in person or by counsel at that time and place, an order may be made in your absence.

AND FURTHER TAKE NOTICE that one of the following orders may be made if the child(ren) is/are found to be in need of protection, namely:

☒ an Order of Supervision; or

☒ an Order that the child be placed with such person, other than a parent or guardian, that the Judge considers best able to care for the child, with or without transfer of guardianship; or

☒ an Order of Temporary Guardianship; or

☒ an Order of Permanent Guardianship; or

such other Order as may be just.

AND FURTHER TAKE NOTICE that the Petitioner makes application for an Order pursuant to s. 38(3) of *The Child and Family Services Act* requiring the Respondents to contribute to the cost of the child(ren)'s maintenance in such amount as to this Honourable Court may deem appropriate.

The Petitioner proposes that the following times and conditions of access shall apply pending the hearing of the petition: "reasonable access in the circumstances".

DATED this _____ day of _____, 20__

_____

TO: The above-named Respondent(s)

Your next court date is on _____, the ____ day of _____, 20__ at _____ a.m., at the Court Room, _____, in the _____ of _____, in Manitoba.

WAIVER OF TWO CLEAR DAYS NOTICE

I hereby give up my right to two clear days' notice of the date of the hearing of the application as described herein.

Witness	Respondent
Witness	Respondent

3. Certificate of Apprehension

CERTIFICATE OF APPREHENSION

Name of Child:	
Style of Cause:	
K.B. File No.:	
P.C. File No.:	
Name of Agency:	The Director of Child and Family Services
Date of this apprehension:	
Child's Date of Birth:	
Age of Child at Date of Apprehension:	

Details of all prior temporary orders made pursuant to s. 38 or s. 40 during this apprehension (provide details as follows, commencing with the earliest):

Date of Order	Provide date from which first order ran and length of each prior order

Date:_____

(Signed) _____
Counsel for The Director of Child & Family Services

4. Declaration of Family Income

[Document follows on next page]

FORM CFS-10

Manitoba
Family
Services

DECLARATION OF FAMILY INCOME

The Child and Family Services Act
(subsection 15(2) or 30(1.2))

AGENCY:

FAMILY INFORMATION: Give full name(s) and address of applicants.

Applicant(s): _____

Children: List children under 18 years of age at home and in care of the agency. Exclude adult dependents and foster children in home.

Full Name of Child	Birth Date	Relationship

Attach separate list if more than six children in the home.

FINANCIAL INFORMATION: Check only one item below and provide information requested for item.

☐ Currently in receipt of income assistance from_____.
(If you complete this item, do not complete Detailed Calculation of Annual Family Income)

☐ Current annual family income expected to be about the same as per attached copy(ies) of Revenue Canada assessment(s) for the most recent taxation year and receipts for child support payments. (Only complete *totals* of Detailed Calculation of Annual Family Income. Include amount of *child support payments* paid or received for the most recent taxation year.)

☐ Current annual family income expected to be about the same as for most recent taxation year, but no copy(ies) of Revenue Canada assessment(s) attached. (Complete Detailed Calculation of Annual Family Income)

☐ Current annual family income expected to be higher/lower than most recent taxation year. (Complete Detailed Calculation of Annual Family Income)

DECLARATION:

1. I/we are the applicant(s) named in this statement.

2. The statements contained herein are true to the best of my/our knowledge and belief and I/we have not concealed or omitted any information respecting my/our family income.

3. I/we agree to provide the agency with copies of documents or receipts in my/our possession to verify my/our current income or income for the most recent taxation year.

4. I/we authorize and give consent to the agency securing information from any source as may be deemed necessary for verification purposes and I/we consent to those sources releasing the information to the agency.

Date: _____ Applicant: _____

Date: _____ Applicant: _____

See next page for Detailed Calculation of Annual Family Income

DETAILED CALCULATION OF ANNUAL FAMILY INCOME:

Sources of Income (As per T1 General Income Tax Form – Line 150)	**Applicant**	**Applicant**	**Total Annual Family Income**
Employment income			
Other employment income			
Old Age Security			
Canada or Quebec Pension Plan benefits (include disability)			
Other pensions or superannuation			
Employment Insurance benefits			
Taxable amount of dividends from Canadian corporations			
Interest and other investment income			
Net partnership income: limited or non-active partnerships			
Net rental income			
Taxable capital gains			
Spousal support and taxable child support			
Registered retirement savings plan income			
Other income (specify)			
Net business income			
Net professional income			
Net commission income			
Net farming income			
Net fishing income			
Workers compensation payments			
Social assistance payments			
Net federal supplements			
Total Annual Family Income Before Adjustments (As per T1 General Income Tax Form – Line 150)			

Deductions from Total Annual Family Income	**Applicant**	**Applicant**	**Total Deductions**
Union, professional and other dues and employment expenses			
Excess portion of dividends from taxable Canadian			
Actual business investment losses			
Carrying charges and interest expenses			
Prior period earnings			
Sole proprietorship and partnership income			
Add: All child support payments paid over past year			
Total Deductions from Annual Family Income			

Additions to Total Annual Family Income	**Applicant**	**Applicant**	**Total Additions**
Capital gains			
Payments by a self-employed person to a family member or someone else not at arm's length			
Capital cost allowance for real property			
Employee stock options			
Add: All non-taxable child support payments received over past year			
Total Additions to Annual Family Income			
Subtract: Total Deductions from Annual Family Income			
Total Adjusted Annual Family Income			

5. Court Particulars – Short Form

AGENCY HEADER

Short Form Court Particulars

SECTION 1 – FAMILY INFORMATION

Note: Copy and paste blank information boxes if more than one child.

Child's Full Legal Name:			
Also Known As:			
Date of Birth:			
Place of Birth:			
Cultural Identification:			
Band Name:			
Band Affiliation(s):			
Apprehension Date:			

The person in whose home the child was living at the time of the apprehension:

Parent(s) or legal guardian(s):

Other agency or organization needed to be served a notice for Indigenous children:

SECTION 2 – ORDER BEING SOUGHT AND REASONS

Child's Name:	Type of Order:	Duration:	Circumstances for Apprehension (Appendix A): Identify reason child may be in need of protection.
			Choose an item.
			If 'other' explain:

Explain Circumstances of Apprehension

Name of Apprehending Worker and Agency:			
Name of Assigned Worker:			
Date Worker Assigned:		Telephone #:	
Name of Supervisor:			
Name of Lawyer for Agency:			

Signatures:

Assigned Worker Print Name	Signature	Date
Assigned Worker Print Name	Signature	Date

SECTION 3 – APPREHENSION: DETAILS AND HISTORY

Orders and Voluntary Placement Agreements:
It is important to include all orders and Voluntary Placement Agreements (VPA).

Type	Start Date	End Date
		Click or tap to enter a date.

Family Background:

Parent/Legal Guardian:			
Also Known As:			
Date of Birth:			
Cultural Identification:			
Band Name:		Treaty #:	
Band Affiliation:			
Custodial Status			
Parent/Legal Guardian has been served?	Yes: ☐ No: ☐	Date of Service:	

Parent/Legal Guardian:			
Also Known As:			
Date of Birth:			
Cultural Identification:			
Band Name:		Treaty #:	
Band Affiliation:			
Custodial Status			
Parent/Legal Guardian has been served?	Yes: ☐ No: ☐	Date of Service:	

Significant Others and/or Siblings Residing in the Home (Primary Residence):
Note: Use cut and paste function for each additional child/person.

Full Legal Name:			
Date of Birth:			
Cultural Identification:			
Band Name:		Treaty #:	
Band Affiliation:			
Legal Status, if applicable:	Choose an item.		

6. Court Particulars – Long Form

AGENCY HEADER

Court Particulars

CFS Worker:
Completed On:

CHILD (full legal names) **Birth Date** **Age** **Birthplace**

SIBLINGS (full legal names)

PARENTS (full legal names)

Mother:
Birth date: Marital Status:
Occupation: Native Band:
Lawyer:

Father:
Birth date: Marital Status:
Occupation: Native Band:
Lawyer:

Apprehension:
(Date) (Apprehended from)

ORDER BEING SOUGHT:

PREVENTATIVE STEPS TAKEN PRIOR TO APPREHENSION:

CIRCUMSTANCES OF APPREHENSION:

PREVIOUS APPREHENSIONS AND ORDERS:

HISTORY OF AGENCY INVOLVEMENT:

IDENTIFIED PROBLEMS AND CONCERNS: (based on Agency involvement and circumstances of last apprehension)

Mother:

-

Father:

-

WHAT ARE THE REASONS FOR REQUESTING THE PRESENT ORDER BEING SOUGHT:

AGENCY PLAN: The expectations of the Agency for the parents to resolve the outstanding protection concerns are as follows:

(1) **Expectations of parents or either one and/or conditions to be met by them:**

Mother:

-

Father:

-

(2) **Circumstances of children during plan:**

(a) Placement (i.e. foster placement, place of safety, with relatives, etc.)

(b) What school or day care does this child attend?

(c) Treatment / therapy to pursued (if any)

(d) Cultural connectivity

(3) **What access arrangements will be made during this order?**

(a) Mother – how often do the parents have visits?

(b) Father – how often do the parents have visits?

7. Intake Brief

File No. CP

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

IN THE MATTER OF: *"The Child and Family Services Act"*, R.S.M., 1985 c.C80 and amendments thereto

IN THE MATTER OF:
born the

BETWEEN:

THE DIRECTOR OF CHILD AND FAMILY SERVICES,

Petitioner,

- and -

,

Respondent.

INTAKE BRIEF OF THE _____

Hearing Date:

INTAKE BRIEF OF THE _____

Counsel:

For Mother:
For Father
For Agency:
For Child:
For Other:

Children's names and dates of birth:

Sibling's names and status:

Date of Apprehension:

Previous CFS orders (include number of months in care):

Previous VPAs (include number of months in care):

Total number of months in care since apprehension, (including VPA and order time):

Family law proceedings/orders:
YCJA order(s) affecting child:

APPLICATION:

1. ☐ Supervision Order
2. ☐ Temporary Guardianship Order
3. ☐ Permanent Guardianship Order
4. ☐ Alternate placement Order (s.38(1)(b) or private guardianship)
5. ☐ Other: _____

Reasons for Apprehension:

Prior Agency Involvement:

Reasons for Requested Order and Agency plan:

Is the Agency requesting summary judgment motion, and if so, on what basis:

Trial dates:

Issues for Trial:

Service:

Mother ☐ Yes ☐ No ☐ Substitutional ☐ Dispensed
Affidavit filed _____

Father (1) ☐ Yes ☐ No ☐ Substitutional ☐ Dispensed
Affidavit filed _____

Father (2) ☐Yes ☐ No ☐ Substitutional ☐ Dispensed
Affidavit filed _____

Other ☐ Yes ☐ No ☐ Substitutional ☐ Dispensed
Affidavit filed _____

Children over 12 years (before trial date) ☐ Yes ☐ No

Name: _____ **Child consents** ☐ Yes ☐ No

Name: _____ **Child consents** ☐ Yes ☐ No

Witnesses:

Number of witnesses You Intend to Call: _____

Names: (1) _____ (2) _____
(3) _____ (4) _____
(5) _____ (6) _____

Number of Expert Witnesses You Intend to Call: _____

Names: (1) _____ Area of Expertise _____
Resume/Assessment/Report Disclosed ☐ **Yes** ☐ **No**

Names: (2) _____ Area of Expertise _____
Resume/Assessment/Report Disclosed ☐ **Yes** ☐ **No**

8. Affidavit of Service of Notice of Opportunity to Provide Information (Form CA-2)

[Document follows on next page]

FORM CA-2

AFFIDAVIT OF SERVICE OF NOTICE OF OPPORTUNITY TO PROVIDE INFORMATION

In the matter of _____
(Name of Child Abuse Committee)

and

_____
(Name of Alleged Abuser)

I, _____, in the province of Manitoba, _____,
(occupation)
do hereby make oath and say (solemnly affirm) as follows:

(personal service)

On _____, at _____, I gave _____
(date) (time) (identify person)
Notice of Opportunity to Provide Information (Form CA-1) by leaving a copy with him (or her) at _____
_____.
(address where notice was left)

I was able to identify the person by means of _____.
(state means by which the person's identity was ascertained)

(service by registered mail)

On _____, I sent to _____
(date) (identify person)
by registered mail with Canada Post Corporation item number_____ attached to the envelope, a copy of the *Notice of Opportunity to Provide Information* (Form CA-1).

Attached is the confirmation of delivery receipt obtained from Canada Post Corporation for item number_____ showing the envelope was delivered to_____on
(identify person served)
_____.
(date of receipt)

The item number on the confirmation of delivery receipt is identical to the item number on the registered mail receipt obtained from Canada Post Corporation for the envelope sent to _____.
(address where mail was delivered)

(service by leaving a copy with an adult person in the same household)

I gave _____ *Notice of Opportunity to*
(identify person)
Provide Information (Form CA-1) by leaving a copy on _____, at_____, with a
(date) (time)
person _____ who appeared to be an adult member
(insert name if known)

of the same household in which _____ is residing,
(identify person)
at _____, and by sending a copy by regular lettermail
(address)
on _____ to _____ at the same address.
(date) (identify person)

I ascertained that the person was an adult member of the person's household by means of _____
_____.
(state how it was ascertained that the person was an adult member of the person's household)

Before giving the documents in this way, I made an unsuccessful attempt to give _____
(identify person)
the Notice personally at the same address on _____.
(date)
[If more than one attempt has been made, add: and again on _____.]
(date)

THAT I make this affidavit conscientiously believing it to be true.

SWORN (AFFIRMED) before me)
at the _____ of _____)
in the Province of Manitoba)
this _____ day of _____) _____
Signature

_____
A Commissioner of Oaths in and
for The Province of Manitoba
My Commission expires _____

M.R. 178/2003

9. Notice of Intended Entry on Child Abuse Registry (Form CA-3)

[Document follows on next page]

FORM CA-3

NOTICE OF INTENDED ENTRY ON CHILD ABUSE REGISTRY

THE CHILD AND FAMILY SERVICES ACT
C.C.S.M. c. C80 - subsection 19(3)

TO: _____

_____
Name and address of person

TAKE NOTICE that a report has been received from the Child Abuse Committee of _____
(Name of Agency)
on the _____ day of _____, ___, stating that the child _____
born on the _____ day of _____, _____ was abused.

AND TAKE NOTICE that a report has been received from the Child Abuse Committee of _____
(Name of Agency)
on the _____ day of _____, ___, stating that _____ abused this child.

AND TAKE NOTICE that the circumstances surrounding the above as reported by the Child Abuse Committee of _____ are as follows:
(Name of Agency)

The Agency's Child Abuse Committee has formed an opinion that _____
_____ was physically/sexually/emotionally
(Name of child)
abused_____
_____
_____
_____.
[type detailed particulars here – who, what happened, when and by whom]

AND FURTHER TAKE NOTICE that _____'s name and circumstances
(Name of alleged offender)
surrounding the abuse will be entered on the registry unless _____
(name of alleged offender)
objects to the placement of his/her name on the registry

(a) by filing with the Court of Queen's Bench of Manitoba (Family Division) a notice of application for a hearing together with a true copy of this notice given under subsection 19(3.2); and

(b) serves this agency with a true copy of the notice of application;

within 60 days of the date of the giving of this notice.

AND FURTHER TAKE NOTICE where no notice of application is received by this agency within 60 days of the date of the giving of this notice, this agency shall report _____
(Name of alleged offender)
name and circumstances of the abuse to the director of Child and Family Services for entry in the Child Abuse Registry.

THE ADDRESS of this agency is: _____
(Insert Agency Address here)

DATED this _____ day of _____, ___.

_____
Executive/Area/Regional director, Name of Agency

D. GUARDIANSHIP AND NON-PARENTAL ACCESS

1. Introduction and Notice of Impending Changes

Guardianship of a child is the non-parent parallel to parenting. It is one of the legal relationships whereby a child may be in the care and control of an adult who is not their parent. Guardianship, while appearing to be the non-parent analogy to parenting, is subdivided into guardianship of the person and guardianship of the estate. The child's estate is dealt with separately pursuant to the provisions of *The Infants' Estates Act*.

Guardianship of the person and non-parental access to a child were formerly covered by *The Child and Family Services Act* in Part VII, section 77. Section 77 of *The Child and Family Services Act* has been repealed and the legislative authority for the granting of guardianship is now found in section 48 of *The Family Law Act.* The granting of third-party access, now called "contact", is found in sections 40-43 of *The Family Law Act*.

The provisions of *The Family Law Act* for "contact orders" and guardianship are very similar to those previously in force under *The Child and Family Services Act*.

Under section 48 of *The Family Law Act,* guardians may be appointed and removed by the court. While not specified in the new provisions, guardianship of the person of a child historically could be sole or joint. The guardian appointed by the court, pursuant to section 48:

> *…has parental responsibilities respecting the child and is responsible for the child's support and well-being.*

The decision of a court in a guardianship or contact order hearing is governed by the best interests of the child, as defined in section 35 of *The Family Law Act.*

Best interests

35(3) *In determining the best interests of a child, the court must consider all of the factors related to the child's circumstances, including the following:*

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each person who has or is seeking parental responsibilities or contact with the child or who is a guardian or seeks guardianship of the child, as well as with siblings, grandparents and any other person who plays an important role in the child's life;

(c) the willingness of each person seeking parental responsibilities, guardianship or contact with the child to support the development and maintenance of the child's relationship with other persons to whom the order would apply;

(d) the history of care of the child;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(g) any plan for the child's care;

(h) the ability and willingness of each person in respect of whom the order is to apply to care for and meet the needs of the child;

(i) the ability and willingness of each person in respect of whom the order is to apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on matters affecting the child;

(k) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child.

In addition, section 35(2) states:

Primary consideration

35(2) *When considering the factors referred to in subsection (3), the court must give primary consideration to the child's physical, emotional and psychological safety, security and well-being.*

King's Bench Rule 70.24.1(3) makes it mandatory for any Manitoban who is either an applicant or a respondent in a private guardianship or matter related to contact with a child to complete the parent information program offered throughout the province by Family Resolution Service if and only if a party to the proceeding is contesting the request. The attendance must be verified by an acknowledgement of completion form which must be filed

in court by 2:00 p.m. at least two days before any hearing of a guardianship matter – whether interim or final – unless the court orders otherwise.

Variations of guardianship orders do not require completion of the program, but any party involved in a guardianship case can apply for a court order requiring other parties to enroll in the program at the discretion of the court. The court has various remedies available to it for addressing a party's failure to complete the program, but one party's failure does not prevent the court from hearing the matter. The court retains substantial discretion to address problems and inequities that may result from this mandatory parent information program.

This mandatory completion requirement only applies to persons/individuals and not to corporations and agencies. All rules about the parties' completion or exceptions to completion are found in Rules 70.24.1(1) to 70.24.1(22). Detailed information about the parent information program, including exceptions to the completion requirements, is found in Chapter 1: Initial Considerations and Chapter 3: Divorce, Parenting, Support and Protective Relief.

2. Private Guardianship Applications

A private claim for guardianship of the person of the child is commenced by an application. Notice must be provided as follows:

> ***Notice of application re guardianship***
> ***4*** *A person applying for a guardianship order under section 48 of the Act or applying to remove a guardian appointed under section 48 of the Act must give notice to the following:*
> *(a) the parents of the child;*
> *(b) the guardian of the child;*
> *(c) the child if the child is 12 years of age or older;*
> *(d) if the child is in the care of an agency, that agency;*
> *(e) if the child is in the care of an Indigenous service provider, that Indigenous service provider;*
> *(f) the Director of Child and Family Services appointed under The Child and Family Services Act;*
> *(g) if the child is Indigenous, the agency or Indigenous service provider serving the child's Indigenous group, community or people;*
> *(h) such other person as the court may direct.*

Affidavits must be filed in support of the application (Rule 70.03) and will require service, on 30 days' notice, to all interested parties.

When applications may be heard by the court differ depending upon jurisdiction and have recently changed in Winnipeg. Contact the court to determine where an application should be made returnable. In many jurisdictions, such applications are returnable at first instance on a master's docket (in King's Bench).

If the application is uncontested, consents of all relevant parties should be filed. It is also wise to file some form of independent input for the hearing such as letters of reference from respected members of the community who know the guardianship applicants, supporting letters or other relevant documents from a representative of a child protection agency, and/or an independent home-study of the applicants. The court and section 5 of the new regulations also require original and recent criminal record and child abuse registry checks for each guardianship applicant, or any other adult who may be residing permanently in the applicant's home. More supporting documents are always better than less.

> The court reserves the right to order the production of independent evidence which it considers suitable and relevant before granting even a consent guardianship order.

In most cases of private guardianship, the child is already living with the guardianship applicants, or is poised to move in with them, with the consent of all parties. Previously, in rare cases, a person who stood *in loco parentis* to a child as a result of having lived in a common-law relationship with the natural parent of a child, wished to retain care and control of that child after the breakdown of the common-law relationship. In that situation the *in loco parentis* parent previously would make an application to the court for guardianship of the child. That being said, section 37(1) of *The Family Law Act* states that a person who has stood in the place of a parent may make an application for a parenting order as an alternative.

Section 37(1)(b) states an application for such an order may be made by:

> *(b) a person other than a parent who stands in the place of a parent or intends to stand in the place of a parent, if there is leave of the court and notice of the application is given to the parents.*

This provision may impact on the number of guardianship applications brought; however, this will be determined in time.

If there is an urgency to the guardianship application, but the court is not satisfied with the completeness of the evidence available, the court may consider granting an interim (temporary) guardianship order pursuant to section 90(1) of the Act:

> ***Interim order***
> ***90(1)*** *When an application is made under this Act, other than for a declaratory order of parentage under Part 2, the court may make an interim order if it is satisfied that a delay in making an order might prejudice or cause hardship to a party to the proceedings or to a child.*

This may occur when a child has been left with a relative or friend who is prepared to care for that child, and the relative or friend seeks legal status *vis-a-vis* the child. It may also happen to prevent the intervention of a child protection agency. The applicants should then, concurrently with the filing of the application, file a notice of motion requesting the relief necessary for an interim order. It may also happen where a concerned relative wishes to intervene in a private court action between estranged parents, where neither parent should have, at least for the time being, the responsibility for the care of the child.

The motion may include the following requests:

(a) to be heard without notice or to be heard on short leave;

(b) to dispense with service of the application on one or more of the respondents or for an order of substituted service;

(c) for an order of contact with child;

(d) for an order of interim guardianship of the person of the child;

(e) for a court ordered investigation into relevant issues; and

(f) leave of the court for the motion to be heard prior to the convening of a case conference.

If, after commencing the action, the applicants find that the matter will be contested, it must be adjourned and the matter will then proceed to case conference and trial, if necessary, just as any other contested matter.

If the child is 12 years of age or older, their position should be before the court. If the child is under 12, and the child's position is felt to be critical, the applicants should seek leave of the court to submit material from the child. The latter situation, however, rarely occurs.

If an interim guardianship order is granted, the matter should return to court for a final determination, but an interim order has the full force and effect of a final guardianship order.

A guardianship order may be set aside by further application to the court, and the process is an originating process. Only one or more of the original parties may apply, unless a child protection agency is involved, in which case the agency may bring such an application if the child is in its care. If a person has guardianship of a child who is apprehended, the guardian must be served and becomes a party to the child protection proceedings.

A guardianship order might be vacated by consent because, for example, one or both of the child's parents is (are) now capable of being the child's custodian(s). The onus then rests with the person seeking to vacate the order to prove that it is in the best interests of the child to do so. Section 48(5) of *The Family Law Act* states:

> ***48(5)*** *On application by a parent, guardian or person standing in the place of a parent, the court may remove a guardian appointed under this section, with or without appointing another guardian.*

3. Applying for Guardianship of Children in Care of a Child Protection Agency

If a guardianship application is being brought after a child has been apprehended (taken into care) by a child protection agency, the application should be made returnable to the relevant child protection docket court date, using Form 70F as modified by Rules 70.03(5) and (6). The applicants must serve not only the parents, but also the relevant child protection agency. Additionally, all services required of a guardianship application under *The Family Law Act* as outlined above will need to be completed. Guardianship applications filed during child protection matters before the Provincial Court in rural areas will follow a similar process.

> There may be a need to seek interim relief. A motion to consolidate the guardianship application and the child protection petition, for purposes of hearing only, should be filed and served concurrently. Alternatively, at a child protection pre-trial, a judge may order that the two matters be joined for hearing purposes, by consent, without a formal motion.

Often with guardianship applications filed in conjunction with child protection hearings, service on one or more parents may be difficult or impossible. If so, as part of the motion to consolidate, apply for an order dispensing with service, or alternatively, for an order of substituted service. Take note of how the child protection agency has served the respondents. These matters can all be addressed at the level of the child protection docket court that is presided over by a master of the court (or judge in Provincial Court), or at ensuing intake court hearings or pre-trials.

If all respondents, including the child protection agency, are consenting to the guardianship application, in rare cases it may be heard by a stand-by judge who is available at the end of each child protection docket day. Normally, in Winnipeg, it will be adjourned, by consent of all parties, off the child protection docket and on to the next available child protection intake hearing list. This can be done directly from the courtroom. Occasionally, a pre-trial judge who is seized of a child protection matter, and therefore familiar with the case, may, by consent of all parties, grant an uncontested private guardianship order. At that point, the child protection agency would withdraw its action.

If this type of guardianship is contested by either the parents or the child protection agency and the matters have been consolidated, it will proceed through a pre-trial conference and to a trial in the normal course of a contested matter.

Counsel should also be aware of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Bill C-92). This federal legislation came into force in January 2020 and is further discussed and outlined in Child Protection section A. 3. of these materials. While the federal Act is technically applicable only to children in the care of a child caring agency and does not

specifically mention private guardianship proceedings (or adoption), it has been noted by the Court of King's Bench in Manitoba that the principles should still be considered.

In addition to the private guardianship that can be sought in relation to a child in care, there is also a provision under section 38(1)(b) of *The Child and Family Services Act* that allows for the court, upon application by an agency in a protection hearing, to make an order that a child be placed with an individual who is not their parent "with or without a transfer of guardianship." This provision essentially allows the court, having found a child in need of protection from their parent or legal guardian, to grant guardianship to another individual.

In such cases the application for such order must come from the petitioner agency or from the court itself and removes the need for a subsequent or concurrent private guardianship application. The standard checks are required and the individual receiving care may or may not be represented by independent counsel.

Different agencies will use this provision to varying degrees when seeking to have a child subject to protection proceedings placed in the permanent care of an extended family member or other care provider. Where the subject child is currently under apprehension or a temporary order of guardianship of an agency, counsel for guardianship applicants should be familiar with this option.

It should also be noted by counsel that some agencies now have programs in place to assist in funding for individuals who seek guardianship of a child or children who would otherwise be in care. As an attempt to remove the financial barrier for extended family and others to provide care for children outside of agency involvement, supported guardianship programs may be available depending on the agency involved.

4. Non-Parental Access to a Child

Section 41 of *The Family Law Act* allows family members (other than parents) and non-family members to apply for periods of contact with a child. Previously this relief was sought under section 78 of *The Child and Family Services Act.* Access to or contact with a child is often sought through the courts in conjunction with a guardianship application while awaiting a court determination when the applicants do not already have the children in their care. It also may be used independently of guardianship applications to obtain free-standing access or as they are now known, contact orders.

Section 41 is predominantly designed for use by grandparents, aunts or uncles, or other family members who find that their relationship with a child has been severed by a family breakdown, or by the actions of a child protection agency. It is also available to non-family members who can persuade a court that protecting their relationship with a specific child is in the child's best interests, but only in exceptional circumstances. Time and service requirements are in the statute regulations.

The process gives applicants the opportunity to request certain relief outlined in the statute beyond simple access or contact. This relief is outlined in the applicable sections of the Act:

Contact order

41(1) *On an application under section 40, the court may make an order respecting contact between the applicant and the child in the manner, at the times and subject to any conditions that the court considers to be in the child's best interests as required by section 35.*

Content of contact order

41(2) *A contact order may include, but is not limited to, any or all of the following provisions:*

(a) that the child spend specified periods of time with the person granted contact;

(b) that the person granted contact be permitted to attend specified activities of the child;

(c) that the child be permitted to receive gifts from or send gifts to the person granted contact, directly or indirectly;

(d) that the child and the person granted contact be permitted to communicate with each other, directly or indirectly, whether orally, in writing or by other means;

(e) that a person named in the order give the person granted contact pictures of the child and information about the child's health, education and well-being;

(f) that the child not be removed from a specified geographic area without the written consent of a specified person or without a court order authorizing the removal.

Duration of order

41(3) *The court may make a contact order for a definite or indefinite period or until a specified event occurs and may impose any terms, conditions and restrictions that it considers appropriate.*

Supervision

41(4) *A contact order may require that contact with a child or the transfer of the child from one person to another be supervised.*

While the Manitoba statute has historically allowed for orders of access by persons other than the parents of a child, until December 2006 *The Child and Family Services Act* did not differentiate between extended family members and other third-party applicants. After December 2006, section 78 of that Act divided the provisions for access to a child into two categories. Section 78(1.1) allowed a "grandparent, step-parent or other member of a child's family" the right to apply for access to a child, while section 78(2) allowed any other third party to apply for such access in "exceptional circumstances."

This has carried into the current provisions of *The Family Law Act* which require exceptional circumstances for contact orders (formerly "access") between children and non-familial applicants but no such requirement exists for familial applicants (note the definition of "family" within the Act as it includes those standing *in loco parentis* or who are married or were married to extended family members). These provisions are outlined along with the purpose of the section which states as follows:

Purpose of contact order

40(2) *The purpose of this section and section 41 is*

(a) to facilitate relationships between children and their grandparents and other family members, when those relationships are in the child's best interests; and

(b) to recognize that in exceptional circumstances children can benefit from contact with non-family members under a contact order, when such contact is in the child's best interests.

Application for contact — family member

40(3) *A family member may apply to the court for a contact order.*

Application for contact — non-family member

40(4) *A person who is not a family member may apply to the court for a contact order if there is leave of the court.*

Exceptional circumstances required re non-family member

40(6) *Before making a contact order respecting a non-family member, the court must be satisfied that exceptional circumstances warrant doing so.*

The statute expands the criteria the court should consider when determining if access by an applicant under this section is in the child's best interests (as defined in the new Act as outlined above).

The court may grant interim orders for contact under the above sections. It should be noted that no application will be allowed under any provisions of this section during the period of time a child has been placed for adoption until an order of adoption is finalized.

Grandparent contact mediation and support groups for grandparents seeking contact with their grandchildren are offered by the province through the *Family Resolution Service.* Parties applying for contact with a child under this section must also complete the *For the Sake of the Children* program run by the *Family Resolution Service* and attend a case conference prior to the hearing of the application by the court. The specifics of completion and the exceptions are included in Rule 70.24.1.

Goldstrand v. Goldstrand, 2009 MBQB 40 was the first reported case dealing with the December 2006 amendments to section 78. The court is clear in *Goldstrand* that the amendments "have changed the landscape for grandparents who seek access," and that the court now recognizes a special status that grandparents have in relation to their grandchildren.

While the provisions do not change the onus on grandparents to show that contact is in the best interests of a child, the court emphasizes that the right to apply exists now in the absence of being able to demonstrate exceptional circumstances. Nonetheless, the court is careful to outline that they must still be satisfied on the merits of a case for grandparent contact and must also give careful weight to a parent's resistance and objection to such contact.

The importance of considering the parent's resistance, the existing relationship between the grandparent and child and the individual family's situation was again confirmed by the court in *Anderson v. Enns*, 2012 MBQB 180.

The Court of Queen's Bench (Family Division) decision of *S.A.L. v. S.T.*, 2009 MBQB 150 discusses the factors to be considered in determining the existence of "exceptional circumstances" for access to a child requested by a third party under section 78(2) of *The Child and Family Services Act*. This will arguably continue to be the starting point for "exceptional circumstances" for contact orders under *The Family Law Act*.

When applying for guardianship and/or contact whether together or as separate heads of relief, all the relevant sections of *The Family Law Act* should appear on the documents.

> Note that the court process detailed here describes what occurs in Winnipeg. If you are bringing an application in another jurisdiction, you should talk to a senior clerk in the relevant court and/or an experienced lawyer from that jurisdiction. Through these inquiries you should be able to determine any applicable local variations in practice.

5. Parenting or Contact Orders for Non-Parents

Section 16.1 of the *Divorce Act* and all amendments to it, provide for the possibility of "a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent" obtaining an order for parenting time or decision-making responsibility to a child of the marriage, but only with leave of the court. This section is restricted to circumstances in which the parents of the child are married and in the context of a divorce proceeding.

Grandparents whose access to their grandchildren has been severed because of a marriage breakdown, for example, might use this section to intervene in ongoing divorce proceedings. In such a case, they would be applying for parenting time or decision-making responsibility under the *Divorce Act* instead of *The Family Law Act*.

Section 16.5(1) of the *Divorce Act* also permits a person other than a spouse to seek a contact order, only with leave of the court. A contact order allows for contact by way of visits or other means of communication with the child. In this case, the court will consider all relevant factors, including whether contact could otherwise occur, for example during a parent's parenting time.

Under the divorce legislation, the same consideration, the best interests of the child, is paramount. This is a little used provision, but the possibility of its application should not be ignored in an appropriate case.

E. PRECEDENTS – GUARDIANSHIP

1. Notice of Application for Guardianship

File No. FD 22-01-

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

NOTICE OF APPLICATION FOR GUARDIANSHIP
HEARING DATE: MONDAY, , 20__ AT 9:30 A.M.

LAW FIRM
ADDRESS
MARY JACKSON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and –

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

NOTICE OF APPLICATION FOR GUARDIANSHIP

TO THE RESPONDENT: **LISA BROWN**
ADDRESS
Winnipeg MB

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing before a Master on Monday, June 13, 20__ at 9:30 a.m., at 408 York Avenue, Winnipeg MB, R3C 0P9.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least seven days before the hearing.

If you are served with a Demand for Financial Information in Form 70D.1, you must also provide the financial information required of you within the time set out in the Demand for Financial Information.

IF YOU FAIL TO FILE AND SERVE YOUR COMPLETED FINANCIAL INFORMATION ON TIME, YOU MAY INCUR SERIOUS PENALTIES.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

_____ Issued by:_____

Date

Registrar
Court of King's Bench – Winnipeg Centre
408 York Avenue
Winnipeg MB R3C 0P9

APPLICATION

1. The Applicants makes application for:

    a. That this matter proceed on short leave;

    b. An Order of Guardianship of the person of the child, **DELILAH BROWN**, born June 5, 2017, to the Applicants on both an interim and final basis;

    c. An Order for liberal and reasonable contact between the Guardianship Applicants and the child, **DELILAH BROWN**, born June 5, 2017;

    d. An Order for the disclosure of CFS records from Métis Child, Family and Community Services and Child and Family All Nations Coordinated Response Network relating to the Respondent, **LISA BROWN** and the child, **DELILAH BROWN**, born June 5, 2017;

    e. An Order for the disclosure of Winnipeg Police Service records relating to the Respondent, **LISA BROWN**;

    f. Costs; and

    g. Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

    a. *The Family Law Act;*

    b. *The Child and Family Services Act*;

    c. The *Parens Patriae* jurisdiction of the Court;

    d. *The Court of King's Bench Act* and Rules; and

    e. Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

   a. Birth Certificate of the child, **DELILAH BROWN**;

   b. Affidavit of **AMANDA HODGE**, affirmed , 20__;

   c. Affidavit of **FRED HODGE**, affirmed , 20__;

   d. Criminal Record Check of **AMANDA HODGE**;

   e. Criminal Record Check of **FRED HODGE**;

   f. Child Abuse Registry search of **AMANDA HODGE**;

   g. Child Abuse Registry search of **FRED HODGE**;

   h. Marriage Certificate of the Applicants;

   i. Death Certificate of the Respondent, **GEORGE LEEVES**;

   j. Guardianship Assessment; and

   k. Such further and other evidence as counsel may advise and this Honourable Court may permit.

_____, 20__

_____

LAW FIRM
ADDRESS
Winnipeg MB
MARY JACKSON
Telephone: (204)
Facsimile: (204)

2. Notice of Motion (Interim Guardianship)

File No. FD 22-01-

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

NOTICE OF MOTION
HEARING DATE: _____, 20__ AT 9:30 A.M.

LAW FIRM
Barristers & Solicitors
ADDRESS
Winnipeg MB

MARY JACKSON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

NOTICE OF MOTION

THE Applicants will make a Motion before the presiding Judge (or Master) on the Monday, the _____ day of _____, 20__ at 9:30 a.m., or as soon after that time as the Motion can be heard at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

THE MOTION IS FOR an Order for the following relief:

a. This matter be heard on short leave;

b. An Order for guardianship of the person of the child, **DELILAH BROWN**, born June 5, 2017, to the Applicants on an interim basis;

c. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

a. *The Family Law Act*;

b. *The Court of King's Bench Act*; and

c. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

a) The Affidavit of **AMANDA HODGE**, affirmed _____, 20__;

b) The Affidavit of **FRED HODGE**, affirmed _____, 20__; and

c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date

LAW FIRM
Barristers & Solicitors
ADDRESS
Winnipeg MB
MARY JACKSON
Telephone: (204)
Facsimile: (204)
Counsel for the Applicants

TO: **ARBUS LAW CENTRE**
ADDRESS
Winnipeg MB
EDWARD ARBUS
Telephone: (204)
Facsimile: (204)

3. Affidavit

File No. FD 22-01-

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

AFFIDAVIT OF AMANDA HODGE
AFFIRMED THE _____ DAY OF _____, 20__

LAW FIRM
Barristers & Solicitors
ADDRESS
Winnipeg MB

MARY JACKSON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

AFFIDAVIT OF AMANDA HODGE

I, **AMANDA HODGE**, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM AND SAY THAT:

1. I am one of the Guardianship Applicants herein and, as such, have personal knowledge of the matters and facts herein deposed to by me, except where same are based on information and belief, in which case I do verily believe them to be true.

2. I am currently 36 years of age and am employed as a as a child care worker at Fun Kids Day Care. I am employed on a part-time basis, and work 4 mornings a week. I earn an annual income of approximately $13,400.00. Attached hereto and marked as Exhibits "A", "B", and "C" respectively to this my Affidavit are copies of my 20__, 20__, and 20__ Notices of Assessment. Attached

hereto and marked as Exhibit “D” to this my Affidavit are copies of my three most recent paystubs.

3. My co-Applicant, Fred Hodge (“*Fred*”), and I commenced cohabiting together in a common-law relationship on January 1, 2016 and were married on January 1, 2020 in Las Vegas, Nevada. Attached hereto and marked as Exhibit “E” to this my Affidavit is a copy of our Marriage Certificate.

4. Fred and I are applying to be the guardians of the child, Delilah Brown, born June 5, 2017 (“*Delilah*”).

5. Delilah ’s biological mother, the Respondent, Lisa Brown (“*Lisa*”), and I are first cousins. Fred and I have been involved in Delilah ’s life since she was an infant.

6. In March 2018, Lisa served a sentence at the Addiction Assistance Center. At that time, Delilah was placed in the care of Lisa’s and my grandparents, Sally and Bert Brown, under a private arrangement. I was advised, and do verily believe, that Child and Family Services was involved with Delilah at that time.

7. In October 2018, I was approached by my grandparents who asked Fred and me if we would provide long-term care for Delilah, to which we agreed.

8. In November 2018, Lisa was released from the Addiction Assistance Center. I have been advised by my grandparents, and do verily believe that a worker from Métis Child, Family and Community Services (the *"Agency*") advised them not to return Delilah to Lisa until her Court hearings were settled and that she would be considered a child in need of protection if returned to Lisa. At that time, Delilah began having sleepovers at our house.

9. In January 2020, I was advised by my grandparents, and do verily believe, that an Agency worker advised them to return Delilah to Lisa, which they did.

10. In May 2020, Lisa was arrested. At that time, Delilah was returned to the care of my grandparents and resumed having sleepovers at our house.

11. In September 2020, Lisa was arrested while in a vehicle containing illicit substances.

12. Between May 2020 and June 2021, Delilah gradually transitioned from residing at our home on a part-time basis to a full-time basis.

13. In March 2021, the First Nations Child Advocate facilitated telephone calls with Lisa and Delilah. However, as Lisa did not attend three consecutive

telephone calls, the Advocate refused to facilitate any further telephone calls.

14. In July 2021, Fred and I became Delilah 's primary caregivers under a private arrangement. She has remained in our care since that time.

15. In October 2021, Lisa was arrested operating a stolen vehicle and was also in breach of her previous conditions. While she was incarcerated at Headingley Correctional Centre, Lisa reached out to Delilah via letter and telephone calls. Fred and I facilitated contact between them.

16. In March 2022, Lisa entered treatment at the Tamarack Treatment Centre as part of her criminal conditions. At that time, Fred and I began to facilitate bi-weekly supervised visits between Lisa and Delilah, as well as weekly telephone calls.

17. The supervised visitation/telephone calls have continued, as stated above. Lisa was also invited to be present at Delilah's family birthday celebration at our home. Fred and I have also facilitated a supervised visit between Lisa and Delilah at the zoo where they spent the day together.

18. We have also maintained a close relationship with Lisa's sister (Delilah's aunt and my cousin Sheila). While Sheila resides outside the Province

of Manitoba, she has stayed at our house when she is in Manitoba to visit with Delilah. We also ensure that she has significant virtual visitation with Delilah. Sheila also assists by providing payment for Delilah's dance lessons and continues to be a support to Fred and me in caring for Delilah.

19. Lisa's brother Howard (Delilah's uncle, and my cousin) also has a close relationship with Delilah, which we continue to support and he continues to support us in caring for Delilah.

20. In addition to the above, both Fred's family and my parents have also provided significant support to us in caring for Delilah and have formed a close relationship with her.

21. Delilah's father, the Respondent, George Leeves ("*George*"), is deceased.

22. With respect to the paternal family, while we have tried to reach out, we have not been successful in developing a connection between them and Delilah. That being said, we remain open to the possibility of forming those relationships in the future.

23. Delilah currently attends kindergarten each morning and is registered to attend Grade One at our neighborhood school next September. I am Delilah's primary caregiver during the daytime hours while Fred is at work and we co-parent when we are both at home.

24. Delilah is presently enrolled in dance, skating and swimming lessons. She also enjoys camping, skiing, and attending Eagle Medicine camp.

25. While Lisa chose to work with the Agency when Child and Family Services was involved with her, Lisa is not of Métis heritage. Delilah is also not of Métis heritage and neither are Fred and I. From our understanding, Lisa does not have an indigineous background; however, we believe that Delilah's father, George, was a member of the Sunrise First Nation. We do not know if George was status; however, we believe that Delilah is of Ojibway heritage. Given our understanding, Fred and I recognize the extreme importance of Delilah having knowledge, respect, and love for her culture and heritage. Fred and I have embraced the Ojibway culture and enjoy the cultural diversity in our home and encourage self-exploration. Fred, Delilah and I will attend cultural events as a whole family whenever opportunities arise.

26. Fred and I have attended the Eagle Medicine Camp facilitated by Ojibway Elders with Delilah and will continue to do so into the future. We attended pow wows which were held on line during the time in person gatherings were restricted due to covid-19 and plan to attend in future when they are held in person.

27. Fred and I own our home located at 17 Railway Street, Winnipeg, Manitoba. This home has three bedrooms and is large enough to accommodate our family. Our home is close to all the amenities that would be required by Delilah, including schools, hospital, other medical facilities, parks, and recreation centres.

28. Fred and I are arranging to participate in a guardianship assessment; however, were advised by our counsel and do verily believe that an Application had to be filed before an assessment could be completed given the assessor's request for access to Delilah and Lisa 's Child and Family Services records.

29. Fred and I are committed to Delilah to the age of majority and beyond. I feel that Delilah's best interests are served with an Order of Guardianship to me and Fred. We are committed to ensuring Delilah is in a loving, supportive home connected to her extended family, including grandparents,

great-grandparents, aunts, uncles and cousins. Fred and I are also committed to providing a safe manner for Delilah to remain connected to Lisa.

30. Both Fred and I love Delilah; she has become deeply attached to us. We believe it is in the best interests of Delilah for Fred and I to be recognized as her legal guardians and we are committed to Delilah for her lifetime.

31. Fred and I do have the financial ability to provide for Delilah and, as stated above, are committed to her for her lifetime regardless of what needs may develop.

32. In addition to Fred and me, we also have a large extended family that have embraced and love Delilah. My parents and siblings as well as Fred's are all committed to Delilah. Delilah has a relationship with grandparents, great-grandparents, aunts, uncles, and cousins. We are committed to maintaining a positive and safe relationship between Delilah and Lisa.

33. I have no criminal record and I am not listed on the Child Abuse Registry. Copies of my Criminal Record Check and Child Abuse Registry Check are attached hereto as Exhibits "F" and "G" respectively.

34. I make this Affidavit *bona fide* and in support of my Application for guardianship of Delilah.

AFFIRMED before me at)
the City of Winnipeg,)
in the Province of Manitoba,)
this _____ day of _____, 20__)

_____
AMANDA HODGE

_____
A Barrister-at-Law Entitled to Practice
In and for the Province of Manitoba

4. Affidavit

File No. FD 22-01-

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

AFFIDAVIT OF FRED HODGE
AFFIRMED THE _____ DAY OF _____, 20__

LAW FIRM
Barristers & Solicitors
ADDRESS
Winnipeg MB

MARY JACKSON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMANDA HODGE and FRED HODGE,

Applicants,

- and -

LISA BROWN and GEORGE LEEVES (deceased),

Respondents.

AFFIDAVIT OF FRED HODGE

I, **FRED HODGE**, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM AND SAY THAT:

1. I am one of the Guardianship Applicants herein and, as such, have personal knowledge of the matters and facts herein deposed to by me, except where same are based on information and belief, in which case, I do verily believe them to be true.

2. My co-Applicant, Amanda Hodge ("*Amanda*"), and I commenced cohabiting together in a common-law relationship on January 1, 2016 and were married on January 1, 2020 in Las Vegas, Nevada. Attached and marked as Exhibit "E" to Amanda's Affidavit is a copy of our Marriage Certificate.

3. Amanda and I are applying to be the guardians of the child, Delilah Brown, born June 5, 2017 ("*Delilah*").

4. I am currently 37 years of age and am employed as a senior technician at TECHCO. I am employed on a full-time basis with an annual income of approximately $120,000.00. Attached hereto and marked as Exhibits "A", "B", and "C" respectively to this my Affidavit are copies of my 20__, 20__, and 20__ Notices of Assessment. Attached hereto and marked as Exhibit "D" to this my Affidavit are copies of my three most recent paystubs.

5. I have read the Affidavit of my co-applicant, Amanda Hodge, affirmed _____ ("*Amanda's Affidavit*"). I agree with the statements made in that Affidavit and make this Affidavit supplemental thereto. I especially reaffirm Amanda's statement with respect to our love and commitment for Delilah and the commitment for our entire family to love and support her for a lifetime. I also specifically reaffirm the commitment and statements of Amanda relating to our commitment to ensure that Delilah continues to gain knowledge and appreciation for her culture and heritage.

6. Amanda is the primary caregiver of Delilah during the daytime hours while I am at work. We both co-parent when we are both home from work.

7. I have no criminal record and am not listed on the Child Abuse Registry. Attached hereto and marked as Exhibit "E" to this my Affidavit is a copy of my Criminal Record Check. Attached hereto and marked as Exhibit "F" to this my Affidavit is a copy of my Child Abuse Registry Search.

8. Both Amanda and I love Delilah; she has become deeply attached to us. We believe it is in Delilah's best interests for Amanda and me to be recognized as her legal guardians. We are committed to Delilah for her lifetime.

9. I make this Affidavit *bona fide* and in support of my Application for guardianship of Delilah.

AFFIRMED before me at)
the City of Winnipeg,)
in the Province of Manitoba,)
this _____ day of _____, 20__)

_____
FRED HODGE

_____
A Barrister-at-Law Entitled to Practice
In and for the Province of Manitoba

5. Consent of Parent to Guardianship

File No. CP

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M., 1985 c.C80 and amendments thereto

IN THE MATTER OF: **CAMERON GERALD MAPLE**
born the 8th day of October, 2012
BRUCE MARC MAPLE
born the 1st day of June, 2015

BETWEEN:

ANISHINAABE CHILD AND FAMILY SERVICES,

Petitioner,

- and -

JUNE GREEN AND ROBERT MAPLE,

Respondent,

- and -

ANN MAPLE,

Guardianship Applicant,

- and -

HANNAH BRIGHT AND HERMAN BRIGHT,

Guardianship Applicants.

CONSENT OF PARENT TO GUARDIANSHIP

LAW FIRM
Barristers and Solicitors
ADDRESS
Winnipeg MB

WILLIAM WASHINGTON
Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M., 1985 c.C80 and amendments thereto

IN THE MATTER OF: **CAMERON GERALD MAPLE**
born the 8th day of October, 2014
BRUCE MARC MAPLE
born the 1st day of June, 2017

BETWEEN:

ANISHINAABE CHILD AND FAMILY SERVICES,

Petitioner,

- and -

JUNE GREEN AND ROBERT MAPLE,

Respondent,

- and -

ANN MAPLE,

Guardianship Applicant,

- and -

HANNAH BRIGHT AND HERMAN BRIGHT,

Guardianship Applicants.

CONSENT OF PARENT TO GUARDIANSHIP

I, **JUNE GREEN**, of the City of Edmonton, in the Province of Alberta, hereby certify that:

1. I am the biological mother of **CAMERON GERALD MAPLE**, born October 8, 2014 ("***Cameron***"), and **BRUCE MARC MAPLE**, born June 1, 2017 ("***Bruce***").

2. Cameron and Bruce were made permanent wards of the Petitioner, **ANISHINAABE CHILD AND FAMILY SERVICES** (the "***Agency***"), on _____.

3. I am the Respondent in the Guardianship Application made by **HANNAH BRIGHT** ("***Hannah***") and **HERMAN BRIGHT** ("***Herman***").

4. I confirm that I have received a copy of the Notice of Application for Guardianship made by Hannah and Herman.

5. I have been served with a Notice of Application for Guardianship by Cameron's and Bruce's paternal grandmother, the Applicant, **ANNE MAPLE**. I do not support that guardianship application.

6. I confirm that I understand the effect of an Order of Guardianship in favour of Hannah and Herman would discharge Cameron and Bruce from the care of the Agency and would allow Hannah and Herman to have the legal authority to make decisions relating to the health and welfare of Cameron and Bruce.

7. I confirm that I have had and continue to have ongoing contact with Cameron and Bruce along with members of my extended family and as arranged between myself and Hannah and Herman.

8. I confirm that I support Cameron and Bruce remaining in the care of Hannah and Herman and expect that they will continue to allow access between Cameron and Bruce and me, as well as my extended family. I confirm that we have had a positive relationship between both of our families and expect that relationship will continue to be positive and strengthen on a go-forward basis.

9. I confirm that I am in support of the Guardianship Application of Hannah and Herman and that I have been advised that I may seek legal advice with respect to this Application.

SIGNED at the City of Edmonton, in the Province of Alberta, this _____ day of _____, 20__.

_____ _____

Signature of Witness **JUNE GREEN**

AFFIDAVIT OF EXECUTION

I, _____ of the City of Edmonton, in the Province of Alberta,

AFFIRM AND SAY THAT:

1. My occupation is a _____.

2. I was personally present and did see the foregoing Consent signed by **JUNE GREEN** of the City of Edmonton, in the Province of Alberta.

3. I know the said parent, **JUNE GREEN**, who is 27 years of age.

4. Prior to witnessing the Consent of Parent to Guardianship, I explained fully to the parent the effect of the consent and advised her of her right to independent legal advice with respect to same.

5. **JUNE GREEN**, of her own free will and volition, decided to sign the Consent of Parent to Guardianship.

6. This Consent was executed at the City of Edmonton, in the Province of Alberta, and I am the subscribing witness thereto.

Affirmed before me at)
the City of Edmonton,)
in the Province of Alberta,) _____
this _____ day of _____, 202___)

_____
A Notary Public
In and for the Province of Alberta

6. Final Order of Guardianship

File No. CP

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M., 1985 c.C80 and amendments thereto

IN THE MATTER OF: **BYRON JEFFERSON TAFT**
born on the 16th day of May, 2010

BETWEEN:

CREE NATION CHILD AND FAMILY CARING AGENCY,

Petitioner,

- and -

SERENA TAFT and MORGAN ALLEN,

Respondents,

- and -

ALICE HEARD and BLAKE RECORDS,

Guardianship Applicants.

FINAL ORDER OF GUARDIANSHIP

LAW FIRM
Barristers and Solicitors
ADDRESS
Winnipeg, Manitoba

SERGE WEAVER

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

THE HONOURABLE)
)
JUSTICE)

) **_____ day, the _____ day of _____ , 20__**

IN THE MATTER OF: *The Child and Family Services Act*, R.S.M., 1985 c.C80 and amendments thereto

IN THE MATTER OF: **BYRON JEFFERSON TAFT**
born on the 16th day of May, 2012

BETWEEN:

CREE NATION CHILD AND FAMILY CARING AGENCY

Petitioner,

- and -

SERENA TAFT and MORGAN ALLEN

Respondents,

- and -

ALICE HEARD and BLAKE RECORDS,

Guardianship Applicants.

FINAL ORDER OF GUARDIANSHIP

1.0 This matter having proceeded at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9, at the request of **ALICE HEARD** and **BLAKE RECORDS**;

2.0 This matter being a request for an Order of Guardianship of the child **BYRON JEFFERSON TAFT**, born May 16, 2012;

3.0 In the absence of:

3.1. **BARBARA STACK**, counsel for **CREE NATION CHILD AND FAMILY CARING AGENCY**;

3.2. **ALICE HEARD**;

3.3. **BLAKE RECORDS**; and

3.4. **SERGE WEAVER** counsel for **ALICE HEARD** and **BLAKE RECORDS;**

4.0 **CREE NATION CHILD AND FAMILY CARING AGENCY**, **ALICE HEARD**, and **BLAKE RECORDS** having consented to the content of this Order;

5.0 The following documents having been relied upon in support of this Motion:

5.1. Notice of Application (document #);

5.2. Birth Certificate of **BYRON JEFFERSON TAFT** (document #);

5.3. Affidavit of **ALICE HEARD**, affirmed October 26, 20__ (document #);

5.4. Affidavit of **BLAKE RECORDS**, affirmed October 26, 20__ (document #);

5.5. Criminal Record Search Certificate of **ALICE HEARD** (document #);

5.6. Criminal Record Search Certificate of **BLAKE RECORDS** (document #);

5.7. Child Abuse Registry Check of **ALICE HEARD** (document #);

5.8. Child Abuse Registry Check of **BLAKE RECORDS** (document #);

5.9. Affidavit of Service on counsel for **CREE NATION CHILD AND FAMILY CARING AGENCY**, affirmed _____ (document #);

5.10. Affidavit of Jane Jones, affirmed _____ (document #);

5.11. Order dispensing with service on **MORGAN ALLEN** (document #);

5.12. Order of substitutional service on **SERENA TAFT** (document #); and

5.13. Affidavit of Substitutional Service on **SERENA TAFT** (document #); and

5.14. Affidavit of Sean Aulneau, affirmed _____, (document #).

6.0 **THIS COURT ORDERS** pursuant to *The Family Law Act* that:

6.1. **ALICE HEARD** and **BLAKE RECORDS** have guardianship of the person of **BYRON JEFFERSON TAFT**, born May 16, 2012;

7.0 **THIS COURT ORDERS** pursuant to *The Court of King's Bench Act* and Rules that:

7.1. A copy of this Order shall be served upon **CREE NATION CHILD AND FAMILY CARING AGENCY** by regular mail or facsimile addressed to BARBARA STACK of LAWYERS LP, Barristers and Solicitors, ADDRESS, Winnipeg, Manitoba, within 20 days of the date of signing.

7.2. A copy of this Order shall be served upon **SERENA TAFT** by sending a copy of the Order by private Facebook Messenger message to **SERENA TAFT**'s Facebook account, which appears on the Messenger program as "Serena Taft" within 20 days of the date of signing.

7.3. Service upon **MORGAN ALLEN** of this Order is not required;

Date:_____ _____

Judge/Deputy Registrar

CONSENTED AS TO FORM AND CONTENT:

_____

BARBARA STACK
Counsel for **CREE NATION CHILD**
AND FAMILY CARING AGENCY

_____

SERGE WEAVER Counsel for **ALICE HEARD**
and **BLAKE RECORDS**

Lawyer of record for **CREE NATION CHILD AND FAMILY CARING AGENCY** is:
LAWYERS LLP
Barristers & Solicitors
ADDRESS
Winnipeg, Manitoba
BARBARA STACK
Telephone: (204)
Facsimile: (204)

Lawyer of record for **ALICE HEARD and BLAKE RECORDS** is:
LAW FIRM
Barristers & Solicitors
ADDRESS
Winnipeg, Manitoba
SERGE WEAVER
Telephone: (204)
Facsimile: (204)

7. Notice of Application

File No. FD -01

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMELIA ENDERS

Applicants,

- and -

CAROLINE ENDERS and ANDREW HALL,

Respondents.

APPLICATION UNDER: *The Family Law Act*

NOTICE OF APPLICATION

CARTON LLP
Barristers and Solicitors
ADDRESS
Winnipeg, Manitoba

HOWARD CARTON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMELIA ENDERS

Applicants,

- and -

CAROLINE ENDERS and ANDREW HALL,

Respondents.

APPLICATION UNDER: The Family Law Act

NOTICE OF APPLICATION

TO THE RESPONDENTS: **CAROLINE ENDERS**
Address

ANDREW HALL
Address

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge on Tuesday, the ___ day of _____ 20__, at 9:00 a.m., at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least seven days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

_____ Issued by _____

Date

Registrar
Court of King's Bench – Winnipeg Centre
408 York Avenue
Winnipeg, Manitoba
R3C 0P9

APPLICATION

1. The Applicant makes Application for an Order that:

   a) The children of the Respondent, namely **ELOISE ENDERS**, born December 18, 2013, and **MADISON ENDERS**, born October 17, 2018, spend specified periods of time without supervision with the Applicant;

   b) The children have the opportunity to have the Applicant attend extracurricular activities;

   c) The children be able to receive gifts from and be able to send gifts to the Applicant directly;

   d) The children be able to receive communications from and send communications to the Applicant directly;

   e) The Respondents provide the Applicant with pictures of the children and information about the children's health, education and welfare;

   f) Costs; and

   g) Such further and other relief counsel may advise and this Honourable Court may permit.

2. The grounds for the Application are:

   a) Section 41 of *The Family Law Act*;

   b) The Parens Patriae Jurisdiction of the Court;

   c) *The Court of King's Bench Act* and Rules; and

   d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

   a) The Affidavit of AMELIA ENDERS, affirmed _____; and

b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date:

CARTON LLP
Barristers & Solicitors
Address
Winnipeg, Manitoba
HOWARD CARTON
Telephone: (204)
Facsimile: (204)

8. Notice of Motion

File No. FD 11-01-

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMELIA ENDERS

Applicant,

- and -

CAROLINE ENDERS and ANDREW HALL,

Respondents.

APPLICATION UNDER: *The Family Law Act*

NOTICE OF MOTION
HEARING DATE: _____AT 9:30 A.M.

CARTON LLP
Barristers and Solicitors
Address
Winnipeg, Manitoba

HOWARD CARTON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMELIA ENDERS

Applicants,

- and -

CAROLINE ENDERS and ANDREW HALL,

Respondents.

APPLICATION UNDER: *The Family Law Act*

NOTICE OF MOTION

THE Applicant will make a Motion before the presiding Judge (or Master) on the __ day of _____, at 9:30 a.m., or as soon after that time as the Motion can be heard at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

THE MOTION IS FOR:

An Order:

a) That this matter proceed on short leave;

b) The children of the Respondents, namely **ELOISE ENDERS**, born December 18, 2013, and **MADISON ENDERS**, born October 17, 2018, spend specified periods of time without supervision with the Applicant;

c) The children have the opportunity to have the Applicant attend extracurricular activities;

d) The children be able to receive communications from and send communications to the Applicant directly;

e) The Respondents provide the Applicant with pictures of the children and information about the children's health, education and welfare;

f) Dispensing with the requirement of service or, in the alternative, an Order of substitutional service on ANDREW HALL;

g) Costs; and

h) Such further and other relief counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

a) Sections 40 and 90 of *The Family Law Act*;

b) The Parens Patriae Jurisdiction of the Court;

c) *The Court of King's Bench Act* and Rules;and

d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

a) The Affidavit of **AMELIA ENDERS**, affirmed _____; and

b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: _____

CARTON LLP
Barristers & Solicitors
Address
Winnipeg, Manitoba
HOWARD CARTON
Telephone: (204)
Facsimile: (204)

TO: **CAROLINE ENDERS**
Address
Winnipeg, Manitoba

ANDREW HALL
Address
Calgary, Alberta

9. Interim Order

File No. FD 11-01-97740

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

AMELIA ENDERS

Applicants,

- and -

CAROLINE ENDERS

Respondents.

APPLICATION UNDER: *The Family Law Act*

ORDER

CARTON LLP
Barristers and Solicitors
Address
Winnipeg, Manitoba

HOWARD CARTON

Telephone: (204)
Facsimile: (204)

File No.

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

THE HONOURABLE	**)**	
	)	**Monday, the __ day of _____, 20__**
JUSTICE _____	**)**	

BETWEEN;

AMELIA ENDERS

Applicants,

- and -

CAROLINE ENDERS

Respondents.

APPLICATION UNDER: *The Family Law Act*

ORDER

1.0 This matter having proceeded at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9, at the request of **AMELIA ENDERS**;

2.0 In the presence of:

2.1. **AMELIA ENDERS**;

2.2. **HOWARD CARTON** counsel for **AMELIA ENDERS**;

2.3. **CAROLINE ENDERS**; and

2.4. **MAX NORTH**, counsel for **CAROLINE ENDERS**;

3.0 **AMELIA ENDERS** and **CAROLINE ENDERS** having consented to the content of the within Order;

4.0 Upon considering the evidence presented and submissions made in this matter;

5.0 **THIS COURT ORDERS** pursuant to *The Family Law Act* that:

5.1. **AMELIA ENDERS** shall have access to **ELOISE ENDERS**, born December 18, 2013, and **MADISON ENDERS**, born October 17, 2018, as follows:

5.1.1. September 18, 20__ from 12:00 p.m. – 6:00 p.m.;

5.1.2. September 30, 20__ from 4:00 p.m. – 8:00 p.m.;

5.1.3. October 15, 20__ from 12:00 p.m. – 6:00 p.m.;

5.1.4. October 28, 20__ from 4:00 p.m. – 8:00 p.m.; and

5.1.5. Such further and other times as the parties may agree;

All pickups and drop offs shall occur at the Pizza Place at 1587 Portage Avenue;

5.2. **AMELIA ENDERS** has the right to forward correspondence/gifts and/or cards to **ELOISE ENDERS** and **MADISON ENDERS** by sending them directly to **CAROLINE ENDERS** in an unsealed envelope. **CAROLINE ENDERS** undertakes to provide **ELOISE ENDERS** and **MADISON ENDERS** with such correspondence/gifts and/or cards.

5.3. The relief listed above shall be reviewable at the Motion date of _____ at 10:00 a.m.;

6.0 **THIS COURT ORDERS** pursuant to *The Court of King's Bench Act* and Rules that:

6.1. All relief as set out in the Applicant's Motion is adjourned to _____ at 10:00 a.m.;

6.2. The costs of the Motion filed by the Applicant are reserved to the trial Judge for determination;

6.3. A copy of this Order shall be served upon **CAROLINE ENDERS** by regular mail or facsimile addressed to North South, Barristers & Solicitors, address, Winnipeg, Manitoba, Attention: Max North, within 20 days of the date of signing.

Date:_____ _____
Judge/Deputy Registrar

CONSENTED AS TO FORM AND CONTENT:

_____
HOWARD CARTON
Counsel for **AMELIA ENDERS**

_____
MAX NORTH
Counsel for **CAROLINE ENDERS**

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