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Go to an earlier version:

— April 15, 2009 to June 16, 2010

Earlier consolidated versions are not available online.

C.C.S.M. c. C80

The Child and Family Services Act

(Assented to July 11, 1985)

Declaration of Principles

The Legislative Assembly of Manitoba hereby declares that the fundamental principles guiding the provision of services to children and families are:

1. The safety, security and well-being of children and their best interests are fundamental responsibilities of society.
2. The family is the basic unit of society and its well-being should be supported and preserved.
3. The family is the basic source of care, nurture and acculturation of children and parents have the primary responsibility to ensure the well-being of their children.
4. Families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society.
5. Children have a right to a continuous family environment in which they can flourish.
6. Families and children are entitled to be informed of their rights and to participate in the decisions affecting those rights.
7. Families are entitled to receive preventive and supportive services directed to preserving the family unit.
8. Families are entitled to services which respect their cultural and linguistic heritage.

9. Decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status.
10. Communities have a responsibility to promote the best interests of their children and families and have the right to participate in services to their families and children.
11. Indian bands are entitled to the provision of child and family services in a manner which respects their unique status as aboriginal peoples.

S.M. 2008, c. 33, s. 1.

In furtherance of these principles,

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

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; (« mauvais traitements »)

"agency" means a child and family services agency that is

- (a) a corporation without share capital mandated under subsection 6.1(1),
- (b) continued under section 6.2,
- (c) a regional office, or
- (d) Jewish Child and Family Service; (« office »)

"authority" means a Child and Family Services Authority established in *The Child and Family Services Authorities Act*; (« régie »)

"child" means a person under the age of majority; (« enfant »)

"child care facility" means a foster home, a group home, a treatment centre, or any other place designated in the regulations as a child care facility; (« établissement d'aide à l'enfant »)

"child pornography" means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a child engaged in, or depicted as engaged in, explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ of a child or the anal region of a child,

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a child that would be an offence under the *Criminal Code* (Canada),

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada), or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada); (« pornographie juvénile »)

"children's advocate" means the Children's Advocate appointed under subsection 8.1(1) and includes a person appointed under subsection 8.1(9) to act as the Children's Advocate; (« protecteur des enfants »)

"common-law partner" of a person means a person who, not being married to the other person, is cohabiting with him or her in a conjugal relationship of some permanence; (« conjoint de fait »)

"court" means the Court of Queen's Bench of Manitoba (Family Division) or the Provincial Court (Family Division) in Part II, Part III other than in clauses 19(4)(a) and (a.1) and subsections 19(6) and (7), Part VI other than subsection 75(1.1), clauses 76(3)(a) and (b), 76(12)(a), 76(14)(a), and subsection 76(21), and in Part VII; and the Court of Queen's Bench of Manitoba (Family Division) in Part V; (« Cour »)

"director" means the Director of Child and Family Services appointed under this Act; (« Directeur »)

"family" means a child's parent, step-parent, siblings, grandparent, aunt, uncle, cousin, guardian, person *in loco parentis* to a child and a spouse or common-law partner of any

of those persons; (« famille »)

"foster home" means a home other than the home of the parent or guardian of a child, where not more than four children who are not siblings are placed by an agency for care and supervision but not for the purposes of adoption; (« foyer nourricier »)

"General Authority" means the General Authority established under *The Child and Family Services Authorities Act*; (« Régie générale »)

"group home" means a home where ordinarily not fewer than five or more than eight children are placed by an agency for full time care and supervision; (« foyer de groupe »)

"guardian" means a person other than a parent of a child who has been appointed guardian of the person of the child by a court of competent jurisdiction or to whom guardianship has been surrendered under section 16; (« tuteur »)

"master" means a master as defined in *The Court of Queen's Bench Act*; (« conseiller-maître »)

"minister" means the member of the executive council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"parent" means a biological or adoptive parent of a child and includes a person declared to be the parent of a child under Part II of *The Family Maintenance Act*; (« parents »)

"place of safety" means any place used for the emergency temporary care and protection of a child as may be required under this Act and includes treatment centres; (« lieu sûr »)

"prescribed" means prescribed by regulation; (« prescrit »)

"record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records; (« dossier »)

"regional office" means a regional office of the department of the government for which the minister is responsible; (« bureau régional »)

"registry" except in Part V, means the child abuse registry established and maintained under subsection 19.1(1); (« registre »)

"reporting entity" means an organization, agency or person

designated as a reporting entity by a regulation made under clause 86(w); (« entité compétente »)

"treatment centre" means any place established or designated by the minister primarily for the care and treatment of more than 8 children and includes facilities operated by any government department for those purposes but does not include facilities for the reception and temporary detention of a child; (« centre de traitement »)

"ward" means a child of whom the director or an agency is the guardian. (« pupille »)

Registered common-law relationship

1(2) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 1989-90, c. 3, s. 2; S.M. 1992, c. 28, s. 2; S.M. 1996, c. 4, s. 2; S.M. 1997, c. 48, s. 2; S.M. 1998, c. 6, s. 2; S.M. 2002, c. 24, s. 10; S.M. 2002, c. 35, s. 33; S.M. 2002, c. 48, s. 28; S.M. 2008, c. 9, s. 2.

Best interests

2(1) The best interests of the child shall be the paramount consideration of the director, an authority, the children's advocate, 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.

Child 12 years of age to be advised

2(2) In any proceeding under this Act, a child 12 years of age or more is entitled to be advised of the proceedings and of their possible implications for the child and shall be given an opportunity to make his or her views and preferences known to a judge or master making a decision in the proceedings.

Child's views may be considered

2(3) In any court proceeding under this Act, a judge or master who is satisfied that a child less than 12 years of age is able to understand the nature of the proceedings and is of the opinion that it would not be harmful to the child, may consider the views and preferences of the child.

S.M. 1992, c. 28, s. 3; S.M. 1997, c. 48, s. 3; S.M. 2002, c. 35, s. 33; S.M. 2008, c. 33, s. 1.

PART I ADMINISTRATION

Director of Child and Family Services

3 A Director of Child and Family Services shall be appointed as provided in *The Civil Service Act*.

Duties of director

4(1) Under the control and direction of the minister, the director shall

- (a) administer and enforce the provisions of this Act;
- (b) advise the minister on matters relating to child and family services;
 - (b.1) in accordance with the regulations, license child care facilities other than foster homes and hear and decide appeals from agencies with respect to the licensing of foster homes;
- (c) advise agencies;
- (d) ensure the development and establishment of standards of services and practices and procedures to be followed where services are provided to children and families, including standards, practices and procedures relating to a child's safety

and security that must include

(i) assessing risks to a child's life, health or emotional well-being in his or her present circumstances or any proposed placement, and

(ii) determining the nature and frequency of contact that an agency should have with a child to ensure that the child is safe and secure and receiving appropriate services;

(e) ensure that agencies are providing the standard of services and are following the procedures and practices established pursuant to clause (d) and by the provisions of this Act and the regulations;

(f) receive and hear complaints from any person affected by the administrative actions of an agency;

(g) exercise the powers and duties of an agency in any area in which no agency is functioning;

(h) supervise or direct the supervision of children in care, and receive and disburse moneys payable for their maintenance;

(i) protect children in need of protection;

(j) ensure the development of appropriate placement resources for children;

(k) submit a yearly budget for the child and family services system and keep books of account of all moneys received and disbursed by the director;

(l) prepare and submit an annual report to the minister;

(l.1) communicate to authorities the primary importance of a child's safety and security in the provision of child and family services and monitor the oversight provided by authorities of agencies in this regard;

(m) perform such other duties as may be prescribed by this Act, by the regulations, or as may be required by the minister.

Powers of director

4(2) For the purpose of carrying out the provisions of this Act, the director may

(a) enter and inspect the premises of an agency, a child care facility or other place where a child is placed under this Act;

(b) inspect and obtain a copy of any record, paper or thing, or a sample of any material, food, medication, or thing that, in the opinion of the director, relates to an agency, a child, a child care facility, or to any matter being investigated by the director and that is in the possession or under the control of an agency

or a person in charge of any place mentioned in clause (a);

(b.1) require any person who in the opinion of the director is able to give information relating to any matter being investigated by the director

(i) to furnish information to the director, and

(ii) to produce and permit the director to make a copy of any record, paper, or thing that, in the opinion of the director, relates to the matter being investigated and that may be in the possession or under the control of the person,

but nothing in this clause abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client;

(b.2) do any thing in relation to the licensing of child care facilities other than foster homes and the hearing and determination of appeals from agencies concerning the licensing of foster homes that may be prescribed by the regulations or otherwise considered necessary;

(c) conduct enquiries and carry out investigations with respect to the welfare of any child dealt with under this Act;

(d) establish procedures to hear complaints under this Act;

(e) solicit, accept and review reports from individuals or organizations concerned or involved with the welfare of children, families, or both;

(f) designate in writing a place or type of places as a place of safety for the purposes of this Act;

(g) issue a written directive to an agency;

(h) do any other thing in accordance with the provisions of this Act that the minister may require.

Proceedings re furnishing information prohibited

4(2.1) No proceedings lie against a person by reason of the person's compliance with a requirement of the director to furnish information or produce any record, paper or thing, or by reason of answering any question in an investigation by the director.

Delegation by director

4(3) The director may, in writing, authorize a person or an agency to perform any of the director's duties or exercise any of the director's powers and may pay reasonable fees and out-of-pocket expenses therefor.

Director may appoint an administrator

4.1(1) The director may at any time, by order, appoint a person as administrator to act in the place of an agency and its board, if the director is of the opinion that

- (a) the agency or its board is not properly carrying out or exercising its responsibilities, duties or powers under this Act; or
- (b) the health and safety of children is threatened.

Powers of administrator

4.1(2) Unless the appointment order states otherwise, and subject to the direction of the director, an administrator

- (a) has the exclusive right to exercise all the powers and authority of the agency and its board;
- (b) must carry out all of the responsibilities and duties of the agency and its board; and
- (c) is to be paid, out of the funds of the agency, the remuneration and expenses determined by the director.

Directors cease to hold office

4.1(3) Unless the appointment order states otherwise, on the appointment of an administrator, the directors of the board of the agency cease to hold office and must cease to perform any duties or exercise any powers assigned to them under this or any other Act.

Directors may continue to act

4.1(4) If the appointment order states that some or all of the directors continue to have the right to act respecting a matter, any such act of the directors is valid only if approved by the administrator.

Directors to assist

4.1(5) Upon the appointment of an administrator, the directors or former directors must

- (a) immediately deliver to the administrator all of the agency's funds, and all books, records and documents respecting the management and activities of the agency; and
- (b) give the administrator all information and assistance required to enable the administrator to carry out and exercise

his or her responsibilities, duties and powers.

Termination of appointment

4.1(6) When the director is of the opinion that an administrator is no longer required, the director shall terminate the administrator's appointment on any terms and conditions the director considers advisable.

Corporations Act, by-laws and articles not applicable

4.1(7) This section applies despite *The Corporations Act* or the articles of incorporation or bylaws of an agency.

S.M. 2002, c. 35, s. 33.

5 Repealed.

S.M. 2002, c. 35, s. 33.

6(1) to (12) Repealed, S.M. 2002, c. 35, s. 33.

6(13) Renumbered as section 7.1.

6(14) to (17) Repealed, S.M. 2002, c. 35, s. 33.

6(18) to (21) Renumbered as subsections 6.6(1) to (4).

S.M. 1986-87, c. 19, s. 8; S.M. 1997, c. 47, s. 131; S.M. 2002, c. 35, s. 33.

Authority may mandate agencies

6.1(1) An authority may, by resolution, mandate a corporation without share capital as an agency for the purpose of providing child and family services under this Act or *The Adoption Act* to persons for whom the authority is responsible to provide services under section 17 of *The Child and Family Services Authorities Act*, if the authority is satisfied that the corporation meets the standards established by the minister.

Mandating a regional office

6.1(2) The General Authority may mandate a regional office as an agency under subsection (1) even though it is not a corporation without share capital.

Contents of mandate

6.1(3) A resolution by an authority mandating an agency must state

- (a) the proposed name of the agency; and
- (b) whether the services are to be provided throughout

Manitoba or, if not, the geographic region in which they are to be provided.

Notice to minister of mandate

6.1(4) When an authority mandates an agency, the authority shall give written notice of the mandate to the minister in a form acceptable to the minister.

Regulation by minister setting out agency's mandate

6.1(5) On receiving notice from an authority, the minister shall, without delay, make a regulation setting out the mandate of the agency in accordance with the notice given by the authority.

S.M. 2002, c. 35, s. 33.

Transitional — continuing agencies under Corporations Act

6.2(1) A child and family services agency that was incorporated under subsection 6(2) before the coming into force of this section is continued as a corporation without share capital under *The Corporations Act* and as an agency under this Act.

6.2(2) Repealed, S.M. 2004, c. 42, s. 11.

Transitional — continuing First Nations agencies

6.2(3) A child and family services agency that was incorporated pursuant to an agreement under the former subsection 6(14) is continued as an agency under this Act, subject to the terms of any agreements referred to in subsection 6(14).

S.M. 2002, c. 35, s. 33; S.M. 2004, c. 42, s. 11.

Minister to determine initial mandates

6.3 For the purpose of ensuring that agencies are mandated by authorities on the day *The Child and Family Services Authorities Act* comes into force, the minister may, after consulting with the authorities, by regulation,

(a) deem each agency that is continued under section 6.2, each regional office that is an agency and Jewish Child and Family Service to be mandated by an authority specified in the regulation; and

(b) set out a geographic region for each agency.

S.M. 2002, c. 35, s. 33.

Varying an agency's mandate

6.4(1) An authority may, by resolution, change an agency's name or vary the geographic region in which it provides services.

Regulation amended if mandate varied

- 6.4(2) If an authority varies the mandate of an agency,
- (a) the authority shall give the minister written notice of the variation in a form acceptable to the minister; and
 - (b) the minister shall, without delay, amend the regulation respecting agencies accordingly.

S.M. 2002, c. 35, s. 33.

Withdrawing mandate from an agency

6.5(1) An authority may, by resolution, withdraw from an agency its mandate to provide child and family services to persons for whom the authority is responsible to provide services. In that case,

- (a) as of the date specified in the resolution, the agency is no longer mandated to provide those services;
- (b) the authority shall ensure the transfer to another agency of all responsibilities, obligations and duties towards any child who is a ward of the agency or under apprehension by the agency or for whom the agency had undertaken to provide care and treatment; and
- (c) despite *The Corporations Act* or the provisions of the agency's articles of incorporation or by-laws, the assets and liabilities of the agency shall be assumed by the authority, unless there is an agreement between the authority and the agency to the contrary.

Regulation amended if mandate withdrawn

- 6.5(2) If an authority withdraws the mandate of an agency,
- (a) the authority shall give the minister written notice that the mandate has been withdrawn in a form acceptable to the minister; and
 - (b) the minister shall, without delay, amend the regulation respecting agencies accordingly.

S.M. 2002, c. 35, s. 33.

Rates for services

6.6(1) The minister may fix rates payable for services provided under this Act.

Rates payable to agencies or treatment centres

6.6(2) The minister may fix rates for services provided under this Act that shall be chargeable to and payable by the director to an agency or treatment centre.

Effective date of order

6.6(3) The rates fixed under subsection (1) or (2) shall be effective on such date as may be fixed by the order of the minister which date may be retroactive.

Emergency services, etc.

6.6(4) Where a rate for a service under this Act has not been fixed by the minister or where emergency services are provided, the minister shall determine what is the reasonable amount to be paid.

S.M. 1986-87, c. 19, s. 8; S.M. 1997, c. 47, s. 131; S.M. 2002, c. 35, s. 33; S.M. 2004, c. 42, s. 11.

Duties of agencies

7(1) According to standards established by the director and subject to the authority of the director every agency shall:

- (a) work with other human service systems to resolve problems in the social and community environment likely to place children and families at risk;
- (b) provide family counselling, guidance and other services to families for the prevention of circumstances requiring the placement of children in protective care or in treatment programs;
- (c) provide family guidance, counselling, supervision and other services to families for the protection of children;
- (d) investigate allegations or evidence that children may be in need of protection;
- (e) protect children;
- (f) develop and provide services which will assist families in re-establishing their ability to care for their children;
- (g) provide care for children in its care;
- (h) develop permanency plans for all children in its care with a view to establishing a normal family life for these children;
- (i) provide adoption services under *The Adoption Act*;
- (j) provide post-adoption services to families and adults under