



STATUTES
OF THE
YUKON TERRITORY

PASSED BY THE LEGISLATURE OF
THE YUKON TERRITORY
IN THE YEAR
1984

IN THE FOURTH SESSION OF THE TWENTY FIFTH
LEGISLATIVE ASSEMBLY

CHILDREN'S ACT
VOLUME 2

STATUTES OF THE YUKON TERRITORY
1984, Chapter 2

CHILDREN'S ACT

(Assented to May 17, 1984)

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

- 1 (1) This Act may be cited as the Children's Act.
- 2 (1) This Act shall be construed and applied so that in matters arising under it the interests of the child affected by the proceeding shall be the paramount consideration and where the rights or wishes of a parent or other person and the child conflict the best interests of the child shall prevail.
- 3 (1) Subject to subsection (2), in all questions relating to the custody and education of minors, the rules of equity shall prevail.

(2) The rules of equity shall not prevail over the provisions of this or any other Act.
- 4 (1) For the purposes of construing any instrument or any Act, regulation or other legislative instrument, a reference to a guardian with respect to the person of a child shall be construed to refer to custody of the child and a reference to a guardian with respect to property of a child shall be construed to refer to guardianship for the child.

(2) Subsection (1) applies to any instrument or any Act, regulation or other legislative instrument enacted or made before, on or after the day this section comes into force.
- 5 (1) In this Act "parent" means the father or mother of a child by birth, or by virtue of an adoption order made or recognized under this Act.

PART 1

CHILD STATUS AND ESTABLISHMENT OF PARENTAGE

Part 1, Division (1) - EQUAL STATUS OF CHILDREN

- 6 (1) Subject to section 14, for all purposes of the laws of Yukon a person is the child of his or her natural parents, and his or her status as their child is independent of whether the child is born within or outside marriage.
- (2) Where an adoption order has been made or is recognized pursuant to this Act, the child is the child of the adopting parents as if they were the natural parents.
- (3) Kindred relationships shall flow from and be determined according to the relationships described in subsection (1) and (2), and in section 14.
- (4) Any distinction between the status of a child born inside marriage and a child born outside marriage is abolished and the relationship of parent and child and kindred relationships flowing from that relationship shall be determined for the purposes of the common law and equity in accordance with this section and section 14.
- 7 (1) For the purpose of construing any instrument, Act or regulation, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under sections 6 and 14.
- (2) Subsection (1) applies to any Act and to any regulation, or other legislative instrument enacted or made before, on or after the day this Division comes into force and it also applies to any other instrument made on or after the day this Division comes into force, but it does not affect
- (a) such other instrument made before this Act comes into force, or
- (b) a disposition of property made before this Act comes into force.

Part 1, Division (2) - ESTABLISHMENT OF PARENTAGE

- 8 (1) The court having jurisdiction for the purposes of sections 9 to 12 shall be the Supreme Court of Yukon.
- 9 (1) Any person having an interest may apply to the Court for a declaratory order that a person is or is not in law the mother of a child.
- (2) Where the Court finds on the balance of probabilities that a person is or is not in law the mother of a child, the Court may make a declaratory order to that effect.
- 10 (1) Any person having an interest may apply to the Court for a declaratory order that a person is or is not in law the father of a child.
- (2) Where the Court finds on the balance of probabilities that a person is or is not in law the father of a child, the Court may make a declaratory order to that effect.
- (3) Where the Court finds that a presumption of paternity exists under section 13, the Court shall make a declaratory order confirming that the presumed paternity is recognized in law, unless the Court finds on the balance of probabilities that the presumed father is not the father of the child.
- (4) A declaratory order that a person is in law the father of a child shall not be made under this section unless both the father and the child whose relationship is sought to be established are living.
- (5) Notwithstanding subsection (4), where only the father or the child is living and the Court finds that a presumption of paternity exists under section 13, the Court may make a declaratory order that a person is in law the father of the child.
- 11 (1) In sections 9 and 10 the concept of interest shall not be restricted to a proprietary interest and may include any other interest that the Court thinks justifies allowing the applicant the standing to proceed with his application.

- (2) For the purposes of section 9 and 10, a person who seeks a declaratory order to establish that there exists or that there does not exist a relationship between him and another person shall be deemed to have an interest.
- 12 (1) Subject to this section, a declaratory order made under section 9 or 10 shall be recognized for all purposes.
- (2) Where a declaratory order has been made under section 9 or 10 and evidence that was not available at the previous hearing becomes available, the Court may discharge or vary that order and make such other orders or directions as are ancillary thereto.
- 13 (1) Unless the contrary is proven on the balance of the probabilities, a person shall be presumed to be the father of a child in any one of the following circumstances:
- (a) he was married to the mother of the child at the time of the birth of the child;
 - (b) he was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree nisi was granted within 300 days before the birth of the child;
 - (c) he married the mother of the child after the birth of the child and acknowledges that he is the natural father;
 - (d) he was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit;
 - (e) he and the mother of the child have acknowledged in writing that he is the father of the child;
 - (f) he has been found or recognized in his lifetime by a court to be the father of the child.
- (2) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection (1), no presumption shall be made as to paternity.
- 14 (1) In this section, "artificial insemination" includes the fertilization by a man's semen of a woman's own ovum outside of her uterus and subsequent implantation of the fertilized ovum in her.

- (2) A man whose semen was used to artificially inseminate a woman is deemed in law to be the father of the resulting child if he was married to or cohabiting with the woman at the time she is inseminated even if his semen were mixed with the semen of another man.
 - (3) A man who is married to a woman at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination.
 - (4) A man who is not married to a woman with whom he is cohabiting at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination, unless it is proved that he refused to consent to assume the responsibilities of parenthood.
 - (5) Notwithstanding a married or cohabiting man's failure to consent to the insemination or consent to assume the responsibilities of parenthood under subsection (3) or (4) he shall be deemed in law to be the father of the resulting child if he has demonstrated a settled intention to treat the child as his child unless it is proved that he did not know that the child resulted from artificial insemination.
 - (6) A man whose semen is used to artificially inseminate a woman to whom he is not married or with whom he is not cohabiting at the time of the insemination is not in law the father of the resulting child.
- 15 (1) For the purposes of sections 13 and 14,
- (a) where a man and woman go through a form of marriage with each other and at least one of them does so in good faith and they then cohabit and the marriage is void, they shall be deemed to be married during the time they cohabit, and
 - (b) where a voidable marriage is decreed a nullity, the man and woman shall be deemed to be married until the date of the decree of nullity.

- 16 (1) Upon the application of a party in a civil proceeding in which a court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests on such persons as are named in the order granting leave and to submit the results in evidence.
- (2) Leave under subsection (1) may be given subject to such terms and conditions as the court thinks proper.
- (3) No order under subsection (1) authorizes the taking of a blood test without a sufficient consent given by the person on whom the blood test is taken.
- (4) Where leave is given under subsection (1) and a person named therein refuses to submit to the blood test, the court may draw such inferences as it considers appropriate.
- (5) Where a person named in an order granting leave under subsection (1) is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,
- (a) where the person is a minor of the age of 16 years or more, if the minor consents;
 - (b) where the person is a minor under the age of 16 years, if the person having the right to authorize medical treatment for the minor consents; and
 - (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.
- 17 (1) The Commissioner in Executive Council may make regulations governing blood tests for which leave is given by a court under section 16 including, without limiting the generality of the foregoing,
- (a) the method of taking blood samples and the handling, transportation and storage thereof;
 - (b) the conditions under which a blood sample may be tested;
 - (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 16;
 - (d) prescribing procedures respecting the admission of reports of blood tests in evidence.

- 18 (1) A written acknowledgment of paternity referred to in subsection 13(1) may be filed in the office of the Registrar General of Vital Statistics.
- (2) Any person having an interest, upon applying, furnishing information satisfactory to the Registrar General of Vital Statistics and paying the prescribed fee, may, if the Registrar General is satisfied that the information or documents the person seeks will not be used for an improper purpose, inspect and obtain certified copies of
- (a) any written acknowledgment of paternity filed under subsection (1), and
- (b) any documents made pursuant to subsection 3(6) or (8) of the Vital Statistics Act.
- (3) The clerk of the Court shall deliver to the Registrar General of Vital Statistics a statement in the prescribed form respecting each order of the Court under sections 9 or 10 that makes a declaration of parentage.
- (4) Any person may inspect an order filed under subsection (3) and obtain a certified copy of it from the Registrar General of Vital Statistics upon payment of the prescribed fee.
- (5) Subject to subsections 3(6) and (8) of the Vital Statistics Act, the Registrar General of Vital Statistics shall not make any amendment in the register of births in consequence of the filing of a written acknowledgment of paternity under subsection (1).
- (6) In consequence of receiving from the clerk of the Court a statement under subsection (3) about an order that makes a declaration about parentage, the Registrar General of Vital Statistics shall amend the register of births accordingly.
- (7) A certificate certifying a copy of a document to be a true copy, obtained under this section, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as prima facie proof of the filing and contents of the document for all purposes in any action or proceeding.

Part 1, Division (3) - RECOGNITION OF EXTRA-PROVINCIAL
DETERMINATION OF PATERNITY

- 19 (1) In sections 20 to 28
- (a) "extra-provincial declaratory order" means an order in the nature of a declaratory order provided for in section 9 or 10 but made by a court outside of Yukon;
 - (b) "extra-provincial finding of paternity" means a judicial finding of paternity that is made incidentally in the determination of another issue by a court outside of Yukon and that is not an extra-provincial declaratory order.
- 20 (1) An extra-provincial declaratory order that is made in Canada shall be recognized and have the same effect as if made in Yukon.
- 21 (1) An extra-provincial declaratory order that was made outside Canada shall be recognized and have the same effect as if made in Yukon if,
- (a) at the time the proceeding was commenced or the order was made, either parent was habitually resident,
 - (i) in the jurisdiction of the court making the order,
 - or
 - (ii) in a jurisdiction in which the order is recognized;
 - (b) the court that made the order would have had jurisdiction to do so under the rules that are applicable in Yukon;
 - (c) the child was habitually resident in the jurisdiction of the court making the order at the time the proceeding was commenced or the order was made; or
 - (d) the child or either parent had a real and substantial connection with the jurisdiction in which the order was made at the time the proceeding was commenced or the order was made.
- 22 (1) A court may decline to recognize an extra-provincial declaratory order and may make a declaratory order under this Act where,
- (a) new evidence that was not available at the hearing becomes available; or
 - (b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress.

- 23 (1) A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, may be filed in the office of the Registrar General of Vital Statistics but where the extra-provincial declaratory order is made outside of Canada, the copy shall be accompanied by,
- (a) the opinion of a lawyer entitled to practise law in Yukon that the declaratory order is entitled to recognition under the law of Yukon;
 - (b) a sworn statement by a lawyer or public official in the extra-provincial jurisdiction as to the effect of the declaratory order; and
 - (c) such translation, verified by affidavit, as the Registrar General of Vital Statistics requires.
- (2) Upon the filing of an extra-provincial declaratory order under this section, the Registrar General of Vital Statistics shall amend the register of births accordingly, but where the extra-provincial declaratory order contradicts paternity declared by an order already filed, the Registrar General shall restore the amended record as if unaffected by it or previous orders.
- (3) The Registrar General of Vital Statistics is not liable for any consequences resulting from filing under this section material that is apparently regular on its face.
- 24 (1) A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, is admissible in evidence without proof of the signatures or office of any person executing the certificate.
- 25 (1) An extra-provincial finding of paternity that is made in Canada shall be recognized and have the same effect as if made in Yukon under the same circumstances.
- 26 (1) An extra-provincial finding of paternity that is made outside Canada by a court that has jurisdiction to determine the matter in which the finding was made as determined by the conflict of laws rules of Yukon shall be recognized and have the same effect as if made in Yukon under the same circumstances.

- 27 (1) A copy of an order or judgment in which an extra-provincial finding of paternity is made, certified under the seal of the court that made it, is admissible in evidence without proof of the signature or office of any person executing the certificate.
- 28 (1) Sections 19 to 28 apply to extra-provincial declaratory orders and extra-provincial findings of paternity whether made before or after sections 19 to 28 come into force.

CUSTODY, ACCESS AND GUARDIANSHIP

Part 2, Division (1) - GENERAL PURPOSE

- 29 (1) In this Part,
- "care", in relation to a child, means the physical care and control of a child;
- "Court" means the Supreme Court of Yukon;
- "extra-provincial order" means an order, or that part of an order, of an extra-provincial tribunal that grants to a person custody of or access to a child;
- "extra-provincial tribunal" means a court or tribunal outside Yukon that has jurisdiction to grant to a person custody of or access to a child;
- "custody", in relation to a child, includes the right to care and nurturance of the child, the right to consent to medical treatment for the child, the right to consent to the adoption or the marriage of the child, and the responsibilities concomitant with those rights, including the duty of supporting the child and of ensuring that the child is appropriately clothed, fed, educated and disciplined, and supplied with the other necessities of life and a good upbringing.
- (2) In this Part, a reference to a child is a reference to the child while a minor.

- 30 (1) The purposes of this Part are,
- (a) to ensure that applications to the Courts in respect of custody of, incidents of custody of, access to children will be determined in accord with the best interests of the children.
 - (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in respect of the custody of the same child ought to be avoided, and to make provision so that the Court in Yukon will, unless there are exceptional circumstances, decline or refrain from exercising jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection;
 - (c) to discourage the abduction of children as an alternative to the determination of custody rights by due process; and
 - (d) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside Yukon.
- 31 (1) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, the Court shall consider all the needs and circumstances of the child including,
- (a) the bonding, love, affection and emotional ties between the child and,
 - (i) each person entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and
 - (iii) persons involved in the care and upbringing of the child;
 - (b) the views and preferences of the child, where such views and preferences can be reasonably ascertained;
 - (c) the length of time, having regard to the child's sense of time, that the child has lived in a stable home environment;
 - (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities of life and any special needs of the child;

- (e) any plans proposed for the care and upbringing of the child;
 - (f) the permanence and stability of the family unit with which it is proposed that the child will live;
 - (g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.
- (2) The past conduct of a person is not relevant to a determination of an application under this Part in respect of custody of or access to a child unless the conduct is relevant to the ability of the person to have the care or custody of a child.
- (3) There is no presumption of law or fact that the best interests of a child are, solely by virtue of the age or the sex of the child, best served by placing the child in the care or custody of a female person rather than a male person or of a male person rather than a female person.
- (4) In any proceedings in respect of custody of a child between the mother and the father of that child, there shall be a rebuttable presumption that the Court ought to award the care of the child to one parent or the other and that all other parental rights associated with custody of that child ought to be shared by the mother and the father jointly.

Part 2, Division (2) - CUSTODY AND ACCESS

- 32 (1) Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child.
- (2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child.
- (3) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and responsibilities of a parent on behalf of them in respect of the child.

- (4) Where the parents of a child live separate and apart and the child lives in the care of one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is vested in the parent with care of the child until an agreement between the parents or an order otherwise provides.
 - (5) The entitlement to access to a child includes the rights to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.
 - (6) In addition to rights referred to in subsection (5), the parent not having care of a child shall have
 - (a) the right to consent to the adoption or marriage of his minor child; and
 - (b) the right to give consent to urgent medical treatment on his or her child where the consent of the parent entitled to the care and custody of the child cannot expeditiously be obtained.
 - (7) The entitlement to custody of or access to a child is terminated on the marriage of the child.
 - (8) Any entitlement to custody or incidents of custody or to access under this section is subject to alteration by an order of the court or by an agreement between the parents or other persons entitled to the custody or access.
- 33
- (1) A person entitled to custody of a child may appoint one or more persons to have any of the appointor's rights of custody in relation to the child.
 - (2) An appointment of a custodian under subsection (1) may be effective during the lifetime of the appointor for such time as the appointor may specify.
 - (3) An appointment of a custodian under subsection (1) shall not be effective after the death of the appointor unless the appointment is made by a valid will.

- 34 (1) A parent of the child, or any other person, may apply to the Court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.
- (2) In an application under subsection (1) the Court
- (a) may grant the custody of or access to the child to one or more persons;
 - (b) may determine and make an appropriate order about any aspect of the incidents of the right to custody or access; and
 - (c) may make such additional order as the court considers necessary and proper in the circumstances.
- 35 (1) The Court shall not make an order under this Part that varies an order in respect of custody or access unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.
- 36 (1) Where an order is made for custody of or access to a child, the Court may give such directions as it considers appropriate for the supervision of the custody or access by a person, who has consented so to act.
- 37 (1) The Court may make an order restraining any person from molesting, annoying or harassing the applicant, or a child in the lawful care or custody of the applicant.
- 38 (1) The Court shall only exercise its jurisdiction to make an order for custody of or access to a child where,
- (a) the child is habitually resident in Yukon at the commencement of the application for the order;
 - (b) although the child is not habitually resident in Yukon the court is satisfied that,
 - (i) the child is physically present in Yukon at the commencement of the application for the order,
 - (ii) substantial evidence concerning the best interests of the child is available in Yukon,
 - (iii) no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,

- (iv) no extra-provincial order in respect of custody of or access to the child has been recognized by a court in Yukon;
 - (v) the child has a real and substantial connection with Yukon; and
 - (vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Yukon.
- (2) A child is habitually resident in the place where he resided,
- (a) with both parents;
 - (b) where the parents are living separate and apart, with one parent under an agreement or with the consent, implied consent or, acquiescence of the other or under a court order; or
 - (c) with a person other than a parent on a permanent basis for a significant period of time;
- whichever last occurred.
- (3) The removal or withholding of a child without the consent of the person having care and custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process for the return of the child by the person from whom the child is removed or withheld.
- 39 (1) Notwithstanding sections 38 and 51, the Court may exercise its jurisdiction to make or to vary an order in respect of the custody of or access to a child where,
- (a) the child is physically present in Yukon; and
 - (b) the Court is satisfied that the child would, on the balance of probabilities, suffer serious harm if,
 - (i) the child remains in the custody of the person legally entitled to custody of the child, or
 - (ii) the child is returned to the custody of the person legally entitled to custody of the child.
- 40 (1) In an application under this Part in respect of custody or access to a child, the Court may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Yukon.

- 41 (1) Where any party to any proceeding in respect of custody of or access to a child wants to continue his application and obtain the decision of the Court, the Court shall complete the hearing of the application within three months after the commencement of the proceeding, unless a party seeks a delay or stay and the Court is satisfied that there is justification for the delay or stay and that the delay or stay will not cause any prejudice to the best interests of the child.
- (2) The Court shall make its decision disposing of the application in respect of the custody of or access to the child so soon as practicable after the end of the hearing.
- 42 (1) An application under this Part in respect of custody of or access to a child is stayed by the commencement of an action for divorce under the Divorce Act (Canada) in which an application is also made in respect of custody of or access to that child, unless the Court grants leave for the application under this Part to be continued separately from that action for divorce.
- 43 (1) In an application for custody of or access to a child, the Court, at the request of the parties, may appoint a person selected by the parties to mediate any matter specified in the order.
- (2) The Court shall not appoint a person under subsection (1) unless the person
- (a) has consented to act as mediator, and
 - (b) has agreed to file a report with the Court within the period of time specified by the Court.
- (3) It is the duty of a mediator to confer with the parties and endeavour to obtain an agreement in respect of the matter he is appointed to mediate.
- (4) Before entering into mediation on the matter, ~~the parties~~ shall decide whether,
- (a) the mediator is to file with the Court a full report on the mediation, including anything that the mediator considers relevant to the matter in mediation; or

- (b) the mediator is to file with the Court a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter.
- (5) The mediator shall file his report with the clerk of the Court in the form decided upon by the parties.
- (6) The clerk of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child.
- (7) Where the parties have decided that the mediator's report is to be in the form described in paragraph (4)(b), evidence of anything said or of any admission or communication made in the course of the mediation is not admissible in any proceeding except with the consent of all parties to the proceeding in which the order was made under subsection (1).
- (8) The Court may order the parties to pay the fees and expenses of the mediator.
- (9) The Court may specify in the order the proportions or amounts of the fees and expenses that each party is to pay.
- 44 (1) In an application under this Part in respect of a child, the Court may request the Director of Family and Children's Services appointed under section 110 to cause an investigation to be made and to report to the court upon all matters relating to the custody, support and education of the child.
- (2) The Director shall have no obligation to prepare a report or to prepare a report within a stipulated period unless he consents to or has given a prior written report.
- 45 (1) Where the Court is of the opinion that it is necessary to receive further evidence from a place outside Yukon before making a decision, the Court may send to the Attorney General, Minister of Justice or similar officer of the place outside the Yukon such supporting material as may be necessary together with a request,
- (a) that the Attorney General, Minister of Justice or similar officer take such action as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application; and

- (b) that the Attorney General, Minister of Justice or similar officer or the tribunal send to the Court a certified copy of the evidence produced or given before the tribunal.
- (2) The Court that acts under subsection (1) may assess the cost of so acting against one or more of the parties to the application or may deal with such cost as costs in the cause.
- 46 (1) Where the Deputy Head of the Department of Justice receives from an extra-provincial tribunal a request similar to that referred to in section 37 and such supporting material as may be necessary, the Deputy Head of Justice shall refer the request and the material to the Court.
- (2) A court to which a request is referred by the Deputy Head of the Department of Justice under subsection (1) shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request.
- 47 (1) Where the Court is satisfied by a person in whose favour an order has been made in relation to custody of or access to a child that there are reasonable and probable grounds for believing that any person is unlawfully withholding the child from the applicant, the court may authorize the applicant or someone on his behalf to apprehend the child for the purpose of giving effect to the rights of the applicant in relation to custody or access, as the case may be.
- (2) Where the Court is satisfied that there are reasonable and probable grounds for believing,
- (a) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child, or
- (b) that a person who is prohibited by court order or separation agreement from removing a child from Yukon proposes to remove the child or have the child removed from Yukon, or
- (c) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from Yukon and is not likely to return the child to Yukon,

the Court may direct the sheriff or a police officer, or both, having jurisdiction in any area where it appears to the Court that the child may be, to locate, apprehend and deliver the child to the person named in the order.

- (3) An order may be made under subsection (2) upon an application made without notice where the court is satisfied that it is necessary that an order should be made without delay.
 - (4) The sheriff or police officer directed to act by an order under subsection (2) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.
 - (5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a sheriff or a member of a police force may with such assistance and such force as is reasonable, enter and search any place where he has reasonable and probable grounds for believing and does believe that the child may be.
 - (6) An entry or a search referred to in subsection (5) shall be made only between 6 o'clock in the forenoon and 9 o'clock in the afternoon unless the Court, in the order, authorizes entry and search at another time.
 - (7) An order made under subsection (2) shall name a date on which it expires, and that date shall be not later than one month after the order is made unless the Court, before the order expires, is satisfied that a longer period of time is necessary and grants an extension.
 - (8) An application under subsection (1) or (2) may be made with or separately from an application for custody or access.
- 48 (1) Where the Court is satisfied upon reasonable and probable grounds that a person prohibited by court order or an agreement from removing a child from Yukon proposes to remove the child from Yukon, the Court, in order to prevent the removal of the child from Yukon, may make an order under subsection (3).

- (2) Where the Court is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from Yukon and is not likely to return the child to Yukon, the Court, in order to secure the prompt, safe return of the child to Yukon may make an order under subsection (3).
- (3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following:
- (a) pay into Court or transfer property to a trustee to be held subject to the terms and conditions specified in the order;
 - (b) where payments have been ordered for the support of the child; make the payments into Court or to a trustee subject to the terms and conditions specified in the order;
 - (c) post a bond or other similar instrument satisfactory to the Court, with or without sureties, payable to the applicant in such amount as the court considers appropriate;
 - (d) deliver the person's passport, the child's passport and any other travel documents of either of them to the Court or to a person or public body specified by the Court.
- (4) In an order under paragraph (a) of subsection (3), the Court may specify terms and conditions for the return or the disposition of the property as the court considers appropriate.
- (5) A person or public body specified by the court in an order under paragraph (d) of subsection (3) shall hold a passport or travel document delivered pursuant to the order in safekeeping in accordance with any directions set out in the order.
- (6) In an order under subsection (3), the Court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate.
- 49 (1) Where it appears to the Court that,
- (a) for the purpose of bringing an application in respect of custody or access under this Part; or
 - (b) for the purpose of the enforcement of an order for custody or access,

the proposed applicant or person in whose favour the order is made needs to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in paragraph (b) is made, the Court may order any person or public body to provide the Court with such particulars of the address of the proposed respondent or person against whom the order referred to in paragraph (b) is made as are contained in the records in the custody of the person or body, and the person or body shall give the Court such particulars as are contained in the records and the Court may then give the particulars to such person or persons as the court considers appropriate.

- (2) The Court shall not make an order on an application under subsection (1) where it appears to the Court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, rather than to learn or confirm the whereabouts of the proposed respondent or the enforcement of an order for custody or access.
 - (3) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.
 - (4) This section binds the Government of the Yukon Territory.
- 50 (1) Where the Court may not exercise jurisdiction under section 38, or has declined jurisdiction under section 40 or 52, or is satisfied that a child has been wrongfully removed to or is being wrongfully detained in Yukon, the Court may do any one or more of the following:
- (a) make such interim order in respect of the custody or access as the Court considers is in the best interests of the child;
 - (b) stay the application subject to,
 - (i) the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or
 - (ii) such other conditions as the Court considers appropriate;

- (c) order a party to return the child to such place as the Court considers appropriate and, in the discretion of the Court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application.
- 51 (1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, the Court shall recognize the order unless the Court is satisfied
- (a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
 - (b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;
 - (c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child; or
 - (d) that, in accordance with section 38, the extra-provincial tribunal would not have jurisdiction if it were a court in Yukon.
- (2) An order made by an extra-provincial tribunal that is recognized by the Court shall be deemed to be an order of the Court and enforceable as such.
- (3) Where the Court is presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the Court under subsection (1), the Court shall recognize and enforce the order that appears to the Court to be most in accord with the best interests of the child.
- (4) Where the Court has recognized an extra-provincial order, the Court may make such further orders under this Part as the Court considers necessary to give effect to the order.
- 52 (1) The Court may make an order that supersedes an extra-provincial order in respect of custody of or access to a child where the Court is satisfied that there has been a material change in circumstances and that the change affects or is likely to affect the best interests of the child and

- (a) the child is habitually resident in the Yukon at the commencement of the application for the order, or
 - (b) although the child is not habitually resident in the Yukon the Court is satisfied that,
 - (i) the child is physically present in Yukon at the commencement of the application for the order,
 - (ii) the child no longer has a real and substantial connection with the place where the extra-provincial order was made,
 - (iii) substantial evidence concerning the best interests of the child is available in Yukon,
 - (iv) the child has a real and substantial connection with the Yukon, and
 - (v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Yukon.
- (2) The Court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Yukon.
- 53 (1) The Court may make an order that supersedes an extra-provincial order in respect of custody of or access to a child where the Court is satisfied that the child would, on the balance of probability, suffer serious harm if,
- (a) the child remains in the custody of the person legally entitled to custody of the child; or
 - (b) the child is returned to the custody of the person entitled to custody of the child.
- 54 (1) A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is prima facie evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or ~~other person~~.
- 55 (1) For the purposes of an application under this Part, the Court may take notice, without requiring formal proof, of the law of a jurisdiction outside Yukon and of a decision of an extra-provincial tribunal.

Part 2, Division (3) - INTERNATIONAL CHILD ABDUCTION(HAGUE CONVENTION)

- 56 (1) In this Division, "convention" means the Convention on the Civil Aspects of International Child Abduction set out in the Schedule to this Division.
- 57 (1) On, from and after the date the convention enters into force in respect of Yukon as set out in Article 43 of the convention, except for the reservation described in subsection (2), the convention is in force in Yukon and the provisions thereof are law in Yukon.
- (2) The Government of the Yukon Territory is not bound to assume any costs resulting under the convention from the participation of legal counsel or advisers or from court proceedings except in accordance with the Legal Aid Act.
- 58 (1) The Department of Justice of the Government of the Yukon Territory shall be the Central Authority for Yukon for the purpose of the convention.
- (2) An application may be made to the Supreme Court in pursuance of a right or an obligation under the convention.
- 59 (1) The Executive Council Member shall publish in The Yukon Gazette the date the convention comes into force in the Yukon.
- 60 (1) The Commissioner in Executive Council may make such regulations as he considers necessary to carry out the intent and purpose of this Division.
- 61 (1) Where there is a conflict between this Division and any other enactment, this Division prevails.

SCHEDULE
CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measure to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention:

- (a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- (b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures:

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access.
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacle to its application.

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain:

- (a) information concerning the identity of the applicant, of the child, and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by:

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of the Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention, or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in the Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or

retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States. .

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units:

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of the State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in the Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI - FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which Executive, judicial and legislative powers are distributed between central and other authorities with that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accessions referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciations referred to in Article 44.

Done at The Hague, on the 25th day of October, 1980 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

Part 2, Division (4) - GUARDIANSHIP

- 62 (1) A guardian for a child has charge of and is responsible for the care and management of the property of the child and shall act in the best interests of the child.
- (2) Where there is more than one guardian for a child, the guardians are jointly responsible for the care and management of the property of the child.

- (3) Notwithstanding subsection (2), where there is more than one guardian for a child, and subject to any testamentary appointment or to any order of the Court, any one of the guardians may exercise the rights and discharge the responsibilities of the guardianship without the consent of the other.
- (4) Notwithstanding subsection (2), a guardian is not liable for things done by another guardian without his knowledge, acquiescence or consent.
- 63 (1) Except as otherwise provided in this Part, the father and the mother of a child are, during their cohabitation, equally entitled to guardianship and are the guardians for the child.
- (2) Where the father and mother of the child do not cohabit, then the parent who has the lawful care and custody of the child is also the sole guardian for the child unless
- (a) the parents agree that the other parent shall also be a guardian,
 - (b) some other person is also a guardian in consequence of an appointment under section 64,
 - (c) the Court appoints the other parent or some other person to be a guardian in addition to or instead of the parent who has the lawful care and custody.
- (3) Where there is only one surviving parent who has the lawful care and custody of the child, that parent is also the sole guardian for the child unless
- (a) some other person is also a guardian in consequence of an appointment made under section 64, or
 - (b) the Court appoints some other person to be a guardian in addition to or instead of the surviving parent who has the lawful care and custody.
- (4) Where there is no surviving parent who has the lawful care and custody of the child, then the person who has the lawful care and custody of the child is also the sole guardian for the child unless
- (a) some other person is also a guardian in consequence of an appointment under section 64, or
 - (b) the Court appoints some other person to be a guardian in addition to or instead of the person who has the lawful care and custody.

- (5) Where there is no guardian with capacity to act in Yukon, the Official Guardian shall be the guardian for the child until the Court appoints some other person to act as the guardian.
- 64 (1) A guardian for a child may, by a written document, appoint one or more persons to have the appointor's rights of guardianship in relation to the child.
- (2) An appointment of a guardian under subsection (1) may be effective during the lifetime of the appointor for such time as the appointor may specify.
- (3) An appointment of a guardian under subsection (1) shall not be effective after the death of the appointor unless the appointment is made by a valid will.
- 65 (1) A person who is a minor may make an appointment under section 64.
- (2) An appointment under section 64 is not effective while the person appointed is a minor.
- (3) No appointment under section 64 is effective without the consent or ratification of the person appointed.
- (4) An appointment under this section does not prevent an application for or the making of an order under this Part.
- 66 (1) Subject to the terms of his appointment or an order of the Court, a person appointed under section 64 to guardianship for a child shall be entitled to act jointly with any other person entitled to guardianship for the child, and in the event of dispute between them any one of them may apply to the Court for any order or directions necessary to resolve the dispute.
- 67 (1) A parent of the child, or any other person entitled to custody of the child, may apply to the Court for an order respecting guardianship for the child or determining any aspect of the incidents of the guardianship.

- (2) Where there is no surviving parent or no other surviving person entitled to custody of the child, any person may apply to the Court for an order respecting guardianship for the child or determining any aspect of the incidents of the guardianship.
- (3) In an application under subsection (1) or (2), the Court may
- (a) appoint one or more guardians in addition to or in the place of any existing guardian;
 - (b) determine and make an appropriate order about any aspect of the incidents of the guardianship;
 - (c) limit the scope of the guardianship by reference to the length of time during which it may be exercised or to the property in respect of which it may be exercised; and
 - (d) make such additional order as the Court considers necessary and proper in the circumstances in order to implement guardianship for the child.
- (4) In deciding an application for the appointment of a guardian of the property of a child, the Court shall consider all the relevant circumstances, including,
- (a) the ability of the applicant to manage the property of the child;
 - (b) the merits of any plans proposed by the applicant for the care and management of the property of the child; and
 - (c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.
- 68 (1) The Court may require the guardian for a child to post a bond or other similar instrument satisfactory to the Court, with or without sureties, payable to the child in such amount as the Court considers appropriate in respect of the care and management of the property of the child.
- (2) Subsection (1) does not apply where the Court is of the opinion that it is inappropriate to require the person to post a bond or other similar instrument.
- 69 (1) Any guardian for a child may be required to account or may voluntarily pass his accounts in respect of his care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass his accounts in respect of his trusteeship.

- 70 (1) A guardian for a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of majority.
- 71 (1) A guardian for a child, who is not a parent of the child and who does not have the care and custody of the child, is entitled to payment of a reasonable amount for his fees and expenses for management of the property of the child and the Court may make those fees and expenses a charge upon the property of the child.
- 72 (1) Guardianship for a child ends when the child reaches the age of majority or marries, whichever first occurs.
- 73 (1) Any guardian for a child may be removed from his guardianship by the Court for the same reasons for which a trustee may be removed.
- (2) Any guardian appointed by another guardian under section 64 may resign his office upon giving reasonable notice to the person who appointed him, if that person is still living, and to any other guardian for the child and any person with the care or custody of the child known to him.
- (3) Any guardian appointed by the Court may resign his office upon giving reasonable notice to any other guardian for the child and any person with the care or custody of the child known to him.
- (4) Where a guardian who wants to resign his office is not able, after making a reasonable effort, to give the notice referred to in subsections (2) and (3), he may instead give reasonable notice of his resignation to the Official Guardian.
- (5) A guardian who gives the Official Guardian notice of his resignation shall also give the Official Guardian the information he has about the identity and possible whereabouts of the person who appointed him, if any, and of any other guardian for the child or any person with the care or custody of the child.
- 74 (1) A person who is under a duty to pay money or deliver personal property to a child shall discharge that duty by paying the money or delivering the property to a guardian for the child.

- (2) Notwithstanding subsection (1) but subject to subsection (3), where a person is under a duty to pay money or to deliver personal property to a child, the payment of not more than \$2,000 in a year and an aggregate of \$5,000 or the delivery of the personal property to a value of not more than \$2,000 in a year and an aggregate of \$5,000 discharges the duty to the extent of the amount paid or the value of the personal property delivered where it is paid or delivered to.
 - (a) the child, where the child is married,
 - (b) a parent with whom the child resides, or
 - (c) a person who has or is entitled to the care and custody of the child.
 - (3) There is no discharge of the duty to pay money or to deliver personal property under subsection (1) where the person under the duty to pay or to deliver knew or, by taking reasonable care, would have known
 - (a) that the person to whom he made the payment or the delivery was not a guardian for the child, or
 - (b) where he made the payment or delivery to the child, that the child was not married.
 - (4) Subsection (1) does not apply in respect of money payable or personal property that is to be delivered under a judgment or order of the Court.
 - (5) A person, other than the child, who receives money and personal property tendered to him by another person under subsection (1) has, for so long as he holds the money or the property, the responsibilities of a guardian for the care and management of the money or personal property.
- 75 (1) The Court may require or approve
- (a) the disposition or encumbrance of all or part of the interest of the child in land;
 - (b) the disposition or encumbrance of all or part of the interest of the child in personal property; or
 - (c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

- (2) An order shall be made under subsection (1) only where the Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child.
 - (3) An order under subsection (1) may be made subject to such conditions as the Court considers necessary and proper.
 - (4) The Court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.
 - (5) The Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment referred to in the order.
 - (6) The Court may give such directions as it considers necessary and proper, including vesting orders, for the carrying out of an order made under subsection (1).
 - (7) Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was of the age of majority or, if executed by another person in accordance with the order, as if the child had executed it and had been of the age of majority at that time.
- 76 (1) Upon application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his children, the Court may order that such part of the proceeds of the property as the Court considers proper be used for the support, education or benefit of one or more of the children.

Part 2, Division (5) - OFFENCES AND COSTS OF PROCEEDINGS
RELATED TO CUSTODY, ACCESS AND GUARDIANSHIP

- 77 (1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may have custody of, access to, or guardianship for the child.
- (2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may have custody of, access to, or guardianship for the child.
- (3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).
- (4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to \$5,000 or to imprisonment for as long as one year, or both; and, for a subsequent conviction, to a fine of up to \$10,000 or to imprisonment for as long as two years, or both.
- 78 (1) In a prosecution under section 77, the Court or justice shall take into account that the best interests of the child are deemed to be prejudiced by any of those offences.
- 79 (1) Subject to subsection (2), the Court shall not award costs of any proceeding under this Part.
- (2) The Court may award to one or more parties costs that it may impose against one or more other parties in respect of a proceeding under this Part where the Court is satisfied that the party or parties on whom the costs are imposed
- (a) propounded a claim or defence that was unreasonable or was without reasonable grounds;
 - (b) took a proceeding or step in a proceeding that was unnecessary or frivolous;
 - (c) acted in a way that tended to prejudice or delay the fair trial or hearing of the proceeding; or
 - (d) abused in any other way the process of the Court.

PART 3
ADOPTION

80 (1) In this Part

"applicant" means a person who applies for an order for adoption;

"Court" means the Supreme Court of Yukon;

"Director" means the Director of Family and Children's Services appointed under section 110.

Part 3, Division (1) - WHO MAY ADOPT

- 81 (1) Any person who has reached the age of majority may, in the manner herein provided, adopt as his child another person younger than himself.
- (2) Where the applicant has a spouse who is over the age of majority and that spouse is not a parent of the person who the applicant seeks to adopt, the Court shall not hear the application or order the adoption unless that spouse applies for the adoption jointly with the applicant.
- (3) Where the applicant has a spouse and that spouse is a parent of the person who the applicant seeks to adopt, that spouse may apply for the adoption jointly with the applicant, but regardless of whether that spouse joins in the application, the Court shall hear the application and may make an order for adoption.
- (4) Where one of the applicants or intended applicants dies after notice of the proposed adoption has been given to the Director, the surviving applicant may proceed with the application and an order for adoption by him alone may be made.
- (5) A person whose consent to an adoption is required by this Act is not prohibited from becoming a parent by adoption of the person in respect of whom he has given consent to adopt.

Part 3, Division (2) - CONSENT TO ADOPTION AND RELINQUISHMENT
OF PARENTAL RIGHTS

- 82 (1) A parent or, where there is no surviving parent, the person who is entitled to custody of the child may make a written agreement with the Director whereby the parent or that other person voluntarily gives up all his rights in respect of the child to the Director for the purpose of adoption of the child by some other person.
- (2) Without restricting the generality of subsection (1), an agreement under subsection (1)
- (a) operates in all respects as a consent to adoption of the child, except that the agreement and consent may be terminated under section 83 only, and the consent may not be revoked under section 86, and
 - (b) confers on the Director the rights of custody in respect of the child so as to enable the Director to have the care and custody of the child pending the adoption and to place the child in a home for the purpose of adoption.
- (3) An agreement under subsection (1) shall be
- (a) witnessed by a person over the age of majority who is not a public servant working under the supervision of the Director, and
 - (b) accompanied by a written statement by which the witness certifies that he witnessed the signature of the agreement by the parent or other person entitled to custody of the child, that the witness explained to the parent or that other person the nature and effect of the agreement, and that the parent or that other person appeared to understand the nature and effect of the agreement and to sign it voluntarily. -
- (4) A person under the age of majority may make an agreement under subsection (1).
- 83 (1) Where the child is not residing in a home for the purpose of adoption the parent or person entitled to custody who made the agreement under section 82 may terminate the agreement by giving to the Director written notice of the termination.

- (2) When an agreement is terminated under subsection (1), the Director, subject to any proceedings or order under this Act, shall return the child so soon as the return may reasonably be done, having regard to the interests of the child.
 - (3) Where the child is in a home for the purpose of adoption as a result of an agreement under section 82 then the agreement shall continue in force and shall not be terminated.
- 84
- (1) Where the person proposed to be adopted is twelve years of age or older and is capable of giving an informed consent no order for his adoption shall be made without his written consent.
 - (2) Where the person proposed to be adopted is married, no order for his adoption shall be made without the written consent of his spouse.
 - (3) Where the person proposed to be adopted is under the age of majority and is not in the permanent care and custody of the Director and is not the subject of an agreement under section 82, no order for the child's adoption shall be made, except as herein provided, without the written consent to adoption of the child's parents.
 - (4) No order for the adoption of a child in the permanent care and custody of the Director shall be made without the written consent of the Director.
 - (5) Where the person proposed to be adopted is a child who is the subject of an agreement under section 82, no order for the adoption of that child shall be made without the written consent of the Director.
 - (6) Subject to subsection (1) and pursuant to subsection (4), when a child proposed to be adopted is a child in the permanent care and custody of the Director, the written consent of the Director is the only consent required.
 - (7) Where the person proposed to be adopted is under the age of majority and does not reside in Yukon or was brought to Yukon for the purpose of adoption, the written consent referred to in subsection (6) may be given by the officer or person who

under the law of the province, state or country in which the child resides or from which the child was brought may consent to his adoption.

- (8) A parent under the age of majority may consent to the adoption of his child.
- 85 (1) A consent, other than the consent of the Director, shall be
- (a) in writing,
 - (b) witnessed by a person over the age of majority who is not a public servant working under the supervision of the Director, and
 - (c) accompanied by a written statement by which the witness certifies that he witnessed the signature of the agreement by the person whose consent is required, that the witness explained to that person the nature and effect of the agreement, and that the person whose consent is required appeared to understand the nature and effect of the consent and to sign it voluntarily.
- 86 (1) A person whose consent to an adoption is required under section 84
- (a) may revoke his consent within 30 days of having given the consent and to revoke it he does not have to give reasons or show any cause, or
 - (b) may revoke his consent at any time 30 days or more after having given the consent if he satisfies the Court that it is in the best interest of the child that the consent be revoked.
- (2) The person in whose lawful care or lawful care and custody the child is at the time of a revocation under paragraph (1)(b) may continue to have the care or the care and custody of the child pending the determination by the Court about whether the revocation of the consent shall be effective.
- 87 (1) Where a consent required by this Act has not been given and dispensing with the consent would be in the best interests of the child proposed to be adopted the Court may make an order dispensing with the consent after having regard to all relevant factors including:
- (a) whether continuing to require the consent would prejudice the best interests of the child,

- (b) whether the person whose consent has not been given is a concerned parent,
 - (c) whether the person whose consent has not been given is probably dead, is of unsound mind, or has not been found, despite reasonable efforts to locate him, or
 - (d) has deserted the child or neglected to provide adequate care and nurture or financial support for the child.
- (2) In subsection (1), "concerned" in relation to parent means:
- (a) a parent with the lawful care or lawful care and custody of the child,
 - (b) a parent regularly exercising rights of custody or of access in relation to the child, or attempting to exercise those rights,
 - (c) a parent regularly providing financial support for the child, or
 - (d) a parent whose application respecting care, custody or access in relation to the child is before a court and awaiting adjudication.
- 88 . (1) An application for an order dispensing with consent may be made by a notice of motion in the adoption proceeding.
- (2) The notice of motion shall include a statement of the grounds and material facts on which the applicant relies and which he intends to prove in support of his application for the order dispensing with the consent.
- (3) The notice of motion shall be served at least one month before the day on which the application is to be heard and it may be served in any manner, including substitutional service, that the Rules of Court provide for service of a writ of summons.

Part 3, Division (3) - Adoption Proceedings in Court

- 89 (1) The Court shall only exercise jurisdiction to hear an application or make an order for adoption of a child where
- (a) the applicant resides in Yukon at the time he makes his application to the Court, or

- (b) if the applicant no longer resides in Yukon and the person proposed to be adopted is under the age of majority, the applicant has resided in Yukon for a substantial part of the time during which the child has resided with him and the Court is satisfied that it is appropriate for jurisdiction to be exercised in Yukon.
- 90 (1) Except as herein provided, where the person to be adopted is under the age of majority, the Court shall not make an order for his adoption unless
- (a) notice of the proposed adoption has been given to the Director not less than six months before the application is made to the court;
 - (b) notice of the hearing of application and a copy of the application and all material to be used in support of it have been delivered to the Director not later than one month before the date of the hearing of the application; and
 - (c) the child sought to be adopted has for a period of not less than six months immediately prior to the application is made to the Court, resided with the applicant under conditions that, in the opinion of the Court, justify the making of the order.
- (2) The Court may, with the written consent of the Director, shorten the length of or dispense with any notice or the period of residence required by subsection (1).
- 91 (1) An application for an adoption order shall be made by a petition filed in the Court.
- (2) An application for adoption, and any proceedings incidental to it, may be held in chambers or in court, according to the direction of the judge, but in either case only the applicant, the person whose adoption is sought, a person whose consent to the adoption is required but who has not consented, the Director, and counsel or other agent on behalf of any of those people, have a right to be present during the hearing.
- (3) The Court may permit witnesses and other persons to be present during any part or all of the hearing.

- (4) Notwithstanding subsection (2), the Court may prohibit a person whose consent to the adoption is required but has not been given, or his counsel or other agent, from being present during any part of the hearing when that person's interests are not affected.
 - (5) The applicant may identify the person to be adopted by the birth registration number assigned by the proper authority of his place of birth and not by his name, in the title of the application and in the adoption order, and, in any such case, the applicant shall provide the judge of the court with a certificate of registration of the birth.
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- (1) The Director has standing to appear before the Court and take part in any adoption proceeding.
 - (2) The clerk of the Court shall forthwith forward to the Director a copy of the application, the notice of the hearing, any affidavits and any other document filed with the Court in connection with an application for adoption.
 - (3) The Director
 - (a) shall investigate the circumstances of any applicant, application or person proposed to be adopted.
 - (b) shall submit a written report to the Court regarding the adoption before the application for adoption is heard, and
 - (c) may give evidence at the hearing of an application for adoption, or any proceedings incidental to it, regarding the proposed adoption or any matter incidental to it, have regard especially to the best interests of the person proposed to be adopted.
- 93
- (1) The Court may make an order granting an adoption where the Court is satisfied:
 - (a) of the ages and identities of the parties;
 - (b) that every person whose consent is necessary and has not been dispensed with, has given his consent voluntarily, understanding its nature and effect and, in the case of a parent, understanding that its effect is to deprive him permanently of all parental rights; and
 - (c) that it is proper and in the best interests of the person to be adopted that the adoption should take place;

- (2) Where the Court is satisfied that an application for adoption could more appropriately be dealt with by granting an order for custody or custody and guardianship under Part 2 of this Act, whether jointly with another person or otherwise, the court may treat the adoption application as an application for custody or custody and guardianship.
- (3) Where an application is made for an order dispensing with a consent to adoption, the Court shall consider whether it would be more appropriate to deny that application and proceed under subsection (2).
- 94 (1) Unless the Court otherwise orders, the surname of an adopted person shall be the surname of the person who adopts him.
- (2) Notwithstanding anything in the Change of Name Act, in an order for adoption, the Court may change any name of the adopted person, in accord with the wish of the adopting person.
- 95 (1) Any person aggrieved by the making or the refusal of an order for adoption, may appeal to the Court of Appeal in like manner as appeals may be taken from any other judgement or order of the court.
- (2) Any person aggrieved by an order for adoption made hereunder may within one year after the date of the order apply to the court to set aside the order, and if upon such application the Court is satisfied that the written consent for the adoption was obtained by fraud, duress or oppressive or unfair means of any kind, the order may be set aside and the child restored to the person who is entitled to the custody of the child, or to such other person as the judge orders.
- 96 (1) No action or proceeding of any nature to set aside an adoption order on any ground shall be commenced after the expiration of one year from the date of the order.
- 97 (1) Where an adoption order is set aside, the adopted person ceases from the date of the setting aside of the order to be the child of the adopting person and the adopting person ceases from the same date to be a parent of the adopted

person, and the relationship to one another of the child and all persons is re-established as it was immediately before the adoption order was made.

- 98 (1) Within ten days after an order for an adoption is made by the Court the clerk of the Court shall forward a copy of the order, certified to be a true copy, to the Registrar General of Vital Statistics of Yukon and to the Director; and where the original name of the person to be adopted does not appear in the adoption order, he shall attach to each copy so forwarded a copy of the birth registration certificate.
- (2) Where an adopted child was born outside Yukon two copies of the order for adoption shall be sent to the Registrar General of Yukon together with such information as the Registrar General of Vital Statistics requires to enable him to carry out the requirements of the Vital Statistics Act.
- (3) Upon the expiry of the time limit for any appeal that may be taken or at such time as an appeal is concluded, the sealed packet containing all written documentation relating to an adoption application in the possession of the Court shall be retained by the clerk of the court in a confidential and secure manner.
- (4) The sealed material relating to adoption in the possession of the Court shall not be open to inspection without leave of the Court.
- (5) Following the making of an adoption order, the Director shall seal and retain all papers and materials forwarded to him or in his possession relating to an adoption application, and that information shall not be disclosed except in accordance with subsection (6) or (7).
- (6) Upon the application of any adult person who has been adopted or upon the application of either of his adoptive parents, the Director shall disclose to the applicant the particulars of adoption which shall contain at least such of the following information as is in his possession:
- (a) the name after adoption of the person adopted, the date of birth and birth registration number;

- (b) the names of the adoptive parents;
 - (c) the name of the court granting the order for adoption and the date of the order; and
 - (d) all information that does not tend to disclose the identity of the parents by birth or other kindred.
- (7) Upon the application of any person and subject to any regulations that may be prescribed, the Director may disclose to the applicant any particulars of the adoption that he has in his possession, including information identifying the parents by birth or other kindred.
- (8) In respect of applications under subsections (4), (6), and (7), the Commissioner in Executive Council may make regulations in relation to:
- (a) the procedure for making applications and the information to be supplied in support of the application,
 - (b) the procedure for making the disclosure,
 - (c) the protection of the anonymity of persons who are not the natural or adoptive parents, children, siblings, or other kindred of the applicant,
 - (d) the protection of the anonymity of any person who requests that his anonymity be preserved, and
 - (e) reasons why an application under subsection (4) or (7) may be refused.
- (9) Any person who discloses any information except in the manner prescribed in this section commits an offence.
- 99 (1) Where the best interests of a child may be served by granting a child care subsidy to the adopting parent of the child, the Director may authorize payments, from time to time and upon such terms and conditions as may be prescribed, of such amounts as are necessary for such purposes.

Part 3, Division (4) - STATUS OF AN ADOPTED PERSON

- 100 (1) For all purposes, when the adoption order is made,
- (a) the adopted person becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted person as if the adopted person had been born to the adopting parent; and

- (b) except as provided in subsection (2), the person adopted ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted person and any care and custody or right of custody of the adopted person shall cease.
- (2) Where the adopting parent has a spouse who is a parent of the person to be adopted and that parent chooses not to apply for the adoption jointly with the adopting parent, the relationship of that parent and of his or her kindred with the adopted person shall continue and shall not be altered in any way by the order for adoption.
- (3) The relationship to one another of all persons, whether the adopted person, the adopting parent, the kindred of the adopting parent, the parent before the making of the adoption order, the kindred of that parent or any other person, shall be determined in accordance with subsections (1) and (2).
- (4) The severance of relationship to the natural parents by subsection (1) and (2) does not apply for the purpose of the laws relating to incest and prohibited degrees of kindred for marriage to remove any person from a relationship in consanguinity which, but for this section, would have existed.
- (5) Where a person is adopted a second or subsequent time, all the legal consequences of any previous order for his adoption terminate.
- (6) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation previously in force in Yukon, but it shall not apply so as to affect any right or any interest in property that has vested before this Part comes into force.
- 101 (1) In any instrument or any Act, regulation or other legislative instrument, whether made before or after this Part comes into force, unless the contrary intention is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or to include, as the case may be, a person who comes within the description as a result of his own adoption or the adoption of another person.

- 102 (1) An adoption effected according to the law of any province or territory of Canada or of any other country, or part thereof, while the adopted person or the adopting person was habitually resident there, has the same effect in Yukon as an adoption ordered under this Part.

Part 3, Division (5) - OFFENCES RELATED TO ADOPTION

- 103 (1) Subject to subsection (3), any person who receives a child into his care for the purpose of adopting that child shall, within 30 days of receiving the child, notify the Director of Family and Children's Services that he has the child in his care.
- (2) Subject to subsection (3), any person who helps to place a child into the care of another person for the purpose of adoption by that other person shall, within 30 days of the placement of the child with that other person, notify the Director of Family and Children's Services that the placement has occurred.
- (3) Subsection (1) and (2) do not apply where the child is received from or placed by the Director of Family and Children's Services or by some person acting on his behalf.
- (4) Failure to comply with subsection (1) or (2) is an offence.
- 104 (1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may adopt the child.
- (2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may adopt the child.
- (3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).

- (4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to \$5,000 or to imprisonment for as long as one year, or both; and, for a subsequent conviction, to a fine of up to \$10,000 or to imprisonment for as long as two years.
- 105 (1) In a prosecution of an offence under section 103 or 104, the court or justice shall take into account that the best interests of the child are deemed to be prejudiced by the commission of any of those offences.

PART 4

CHILD PROTECTION

- 106 (1) In this Part

"agent" means a public servant designated by the Director as having authority to act as an agent of the Director in relation to the matter concerned under this Part;

"child" means a person under eighteen years of age;

"child care service" includes the following in relation to children:

- (a) homemaker services for care, supervision and maintenance in a home;
- (b) day-care services for care supervision and maintenance out of a home;
- (c) services for assessment, counselling and treatment; and
- (d) services for protection, referral and placement;

"child caring facility" means

- (a) a foster home for one or more children,
- (b) a group home for one or more children,
- (c) a residential centre for one or more children, or
- (d) a receiving home for one or more children;

"concerned" in relation to parent means

- (a) a parent with the lawful care or lawful care and custody of the child,
- (b) a parent exercising rights of custody or of access in relation to the child, or attempting to exercise those rights,
- (c) a parent providing financial support for the child, or
- (d) a parent whose application respecting care, custody or access in relation to the child is before a court and awaiting adjudication;

"Director" means the Director of Family and Children's Services designated under section 110;

Added by 1987, c.22

"director of juvenile justice" means the director of juvenile justice appointed under the Young Persons Offences Act."

"Diversion Council" means a Diversion Council established under section 113,

"judge" means any judge of the Territorial Court of Yukon, or any justice of the peace, designated by the Commissioner in Executive Council as having authority to deal with the class of case involved;

"Official Guardian" means the Public Administrator and Official Guardian appointed under the Judicature Act;

"peace officer" means a police officer, a probation officer, a youth worker under the Young Offenders Act (Canada), or a person designated by the Executive Council Member as a peace officer for the purposes of this Part.

Part 4, Division (1) - GENERAL
FUNCTION OF DIRECTOR

- 107 (1) It is the policy of the Executive Council Member and the Director to supply services as far as is reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care.

- 108 (1) For the implementation of the policy described in section 107, the Director shall take reasonable steps to ensure the safeguarding of children, to promote family conditions that lead to good parenting, and to provide care and custody or supervision for children in need of protection.
- 109 (1) Where practicable a child shall be placed with a family of his own cultural background and lifestyle preferably in his home community, but if such placement is not possible within a reasonable time the child may be placed in the most suitable home available.
- 110 (1) The Commissioner in Executive Council may designate a public servant to be the Director of Family and Children's Services.
- (2) The Commissioner in Executive Council may designate one or more public servants to be Assistant Directors of Family and Children's Services.
- (3) An Assistant Director of Family and Children's Services has all the powers, duties and functions of a Director.
- (4) The Executive Council Member may designate such other public servants to assist the Director in the performance of any of his duties under this Act as he deems necessary.
- (5) The Director shall
- (a) ensure that the provisions of this Act are carried out,
 - (b) direct and supervise the visiting of any child and the inspection of any place where a child is placed pursuant to this Part,
 - (c) administer or supervise any child caring facility established pursuant to this Act,
 - (d) prepare and submit an annual report to the Executive Council Member,
 - (e) be and perform the functions of provincial director under the Young Offenders Act (Canada),
 - (f) supervise, inspect and evaluate such community groups or persons to whom his powers have been delegated under section 111(1).
- (6) The Director shall, in accordance with this Act, have general superintendence over all matters pertaining to the care and custody of children who come into his care under this Act.

Part 4, Division (2) - COMMUNITY GROUPS

- 111 (1) Subject to subsection (2) the Commissioner in Executive Council may delegate any power of the Director under this Part to any community group or persons.
- (2) The right of the Director to custody of and guardianship for children in his temporary or permanent care and custody shall not be delegated or assigned and shall remain with the Director notwithstanding any delegation that may be made under subsection (1).
- (3) A delegation of the powers of the Director under subsection (1) may be revoked by the Commissioner in Executive Council at any time.
- (4) A delegation of the powers of the Director under subsection (1) shall be subject to regulations made by the Commissioner in Executive Council specifying
- (a) the periods of time during which the delegation is to have effect,
 - (b) the area of Yukon within which the community group or person may act, and,
 - (c) the children over whom the community group or person may exercise the delegated powers.
- (5) The Director shall have a power of supervision, inspection and evaluation of such approved community groups and persons and the programs for which they are responsible, which shall include all those powers in sections 148 to 154 inclusive in relation to child caring facilities.
- (6) The powers and responsibilities that may be delegated to a community group or person may include some or all of the following:
- (a) providing services to families with children;
 - (b) finding foster homes and the placement in such homes of children in need of protection;
 - (c) care and supervision of children in the temporary or permanent care and custody of the Director;
 - (d) supervision of children in need of protection;
 - (e) investigation of cases where children are alleged to be in need of protection;

- (f) taking into care or to a place of safety children alleged to be in need of protection;
 - (g) operation of child caring facilities;
 - (h) recruitment and approval of adoptive homes and the provision of adoption placement services.
- (7) Where a child is entrusted to the temporary or permanent care of a community group or person to whom the Director's powers have been delegated, that community group or person shall have the same responsibility for ensuring the protection and safety of the child, and for the provision of food, clothing, education, medical services and a good upbringing for the child as the Director has for a child in his care and custody.
- (8) The Director has no liability for anything done or omitted by a community group or person to whom a delegation has been made under subsection (1).

Part 4, Division (3) - DIVERSION COUNCIL, DIVERSION

112 ~~(1) In this Division, "diversion" refers to guidance, counselling, treatment, education, training, work projects or other activities or programs of similar nature that may be used as an alternative to proceedings for judicial adjudication, and includes proceedings under section 115 to determine whether a child is a child in need of guidance or to determine appropriate activities or programs in respect of a child who is in need of guidance.~~

*substitution by
1987, c.22*

- 113 (1) The Commissioner in Executive Council shall establish a Diversion Council for Yukon.
- (2) The Diversion Council shall consist of the Director or his nominee, a chairman, and not less than four other members appointed by the Commissioner in Executive Council to hold office for not more than three years at a time.
- (3) The functions of the Diversion Council shall be
- (a) to conduct research into and to establish reasonable methods of diversion for children in any part or all of Yukon,

"112. In this division, "diversion", means alternative measures under the Young Offenders Act (Canada) or the Young Persons Offences Act and diversion schemes, programs or services shall have the same meaning."

- (b) for the implementation of diversion schemes, to establish Diversion Committees comprising such membership as the Diversion Council may require,
 - (c) to assess the ability and suitability of any persons or community group to function as a Diversion Committee,
 - (d) to designate the part of Yukon in which any diversion scheme may be provided and to appoint the Diversion Committee that may provide the diversion scheme in that area,
 - (e) to describe the groups of children for whom a Diversion Committee may provide diversion,
 - (f) to describe the types of infraction or behaviour by children in respect of which a Diversion Committee may provide diversion,
 - (g) to oversee and evaluate the performance of Diversion Committees and impact of diversion schemes.
- (4) The Executive Council Member may, from among the persons employed in the public service,
- (a) designate a person to be the secretary of the Diversion Council, and
 - (b) provide the Diversion Council with such other employees or assistants as he may deem necessary for the proper conduct of the work of the Diversion Council.
- (5) A member of the Diversion Council or of a Diversion Committee who is not a member of the public service of Yukon may be paid transportation, accommodation and living expenses incurred in connection with the performance of his duties away from his ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of Yukon.
- (6) A quorum is four members of the Diversion Council, but a vacancy in the membership of the Council does not impair the right of the remainder to act.
- 114 (1) The Commissioner in Executive Council may make regulations respecting
- (a) the fees and expenses that may be paid to members of the Diversion Council or a Diversion Committee,
 - (b) the functions of the Diversion Council or a Diversion Committee,

- (c) the coordination of the work of Diversion Committees in the implementation of any diversion scheme,
 - (d) the establishment of diversion programs or services, and
 - (e) designation of diversion programs or services to be alternative measures within the scope of the Young Offenders Act (Canada). *on the Young Person's Offences Act. ↗ added by 1987, c 22*
- 115 (1) In this section "a child in need of guidance" means a child who
- (a) has committed an act that, but for the fact that he is under 12 years of age, would have been an offence under the Criminal Code of Canada or any other Act of Parliament;
 - (b) is under the age of 12 years and has committed an offence under any Act of the Legislative Assembly or any by-law of a municipality;
 - (c) is over the age of 12 years but under the age of 18 years and who admits to having committed an offence under any Act of the Legislative Assembly or any by-law of a municipality and who is not charged with such offence.
- (2) Any peace officer or agent who has reasonable and probable grounds to believe and does believe that a child is a child in need of guidance shall report the relevant facts to the Director.
- (3) Where the Director, after consultation with and upon the recommendation of an agent of the Attorney General of Canada, concludes that a child is likely a child in need of guidance and may benefit from diversion, the Director, by notice in writing served on a concerned parent, or on any other person entitled to care and custody of the child, may request such parent or person to appear, or to bring the child named in the notice, before the Diversion Committee at the place and time named in the notice to determine whether a child is a child in need of guidance.
- (4) The notice referred to in subsection (2) shall be served at least five days before the day on which the parent or other person is to appear or bring the child before the Diversion Committee.

- (5) Where the Diversion Committee concludes that the child can benefit from a diversion program that is administered by the Committee and the child admits the substance of any allegations made against him, and the child and a concerned parent or other person entitled to care and custody of the child agree to the child's participation in the diversion program proposed for him, the Committee may
- (a) declare the child to be a child in need of guidance,
 - (b) order a program of diversion for the child,
 - (c) define the duration of the child's participation in the program, and
 - (d) describe the conditions that the child must comply with in order to continue his participation in the program.
- (6) No diversion shall be ordered under subsection (5) where
- (a) a concerned parent or other person entitled to care and custody of the child do not agree with the child being referred to a Diversion Committee or with the diversion program proposed by the Committee,
 - (b) no Diversion Committee has been established in the community,
 - (c) the child has been held by the Diversion Committee to be unsuitable for diversion,
 - (d) the Diversion Committee concludes the child requires resources or facilities beyond those available to the Committee.
- (7) Where a Diversion Committee orders a diversion program for the child and the child complies with the requirements of that diversion program, he shall not be prosecuted for any offence that was a ground upon which the Committee concluded he was a child in need of guidance.
- (8) The Director, any agent of the Director, any agent of the Attorney General of Canada, any advocate for a concerned parent or other person entitled to care and custody of the child, and any advocate for the child have the right to be heard in proceedings before the Diversion Committee.

- 116 (1) Where a child commits an offence against an Act of the Legislature or a municipal by-law and a diversion program cannot be or is not ordered for him, he may be prosecuted for the offence.

*Repealed
by 80A
1987, c-22 →*

- (2) Where a child commits an offence against an Act of the Legislature or a municipal by-law and a diversion program is ordered for him and he does not comply with the requirements of the ordered diversion program he may be prosecuted for any offence that was a ground upon which the diversion program was ordered.
- (3) No admission, confession or statement accepting responsibility for an act or omission made by a child in the course of diversion proceedings shall be admissible in evidence against him in any civil or criminal proceedings or in any proceedings for the prosecution of an offence against an Act of the Legislature or a municipal by-law.
- (4) A prosecution referred to in subsection (1) or (2) shall be conducted by judicial proceedings in youth court and all proceedings incidental to or consequential upon the prosecution shall be taken in the same manner as though the offence were an offence and the child were a young person within the scope of the Young Offenders Act (Canada).
- (5) Where a diversion program could not be or was not ordered for the child and he is alleged to have committed an offence against an Act of the Legislature or a municipal by-law, alternative measures as described in the Young Offenders Act (Canada) may be used to deal with him.
- (6) Alternative measures as described in the Young Offenders Act (Canada) shall not be used to deal with a child who is alleged to have committed an offence against an Act of the Legislature or a municipal by-law that was a ground upon which a diversion program was ordered for him.

Part 4, Division (4) - REPORTING OF CHILD ABUSE OR NEGLECT,
TAKING CHILDREN INTO CARE AND PROCEEDINGS BEFORE A JUDGE

- 117 (1) A person who has reasonable grounds to believe that a child may be a child in need of protection may report the information upon which he bases his belief to the Director, an agent of the Director, or a peace officer.

- (2) No legal action of any kind, including professional disciplinary proceedings, may be taken against a person who reports information under subsection (1) by reason of his so reporting, unless the reporting was done maliciously and falsely.
- (3) Any person who maliciously and falsely reports to a peace officer, the Director, an agent of the Director, or to any other person facts from which the inference that a child may be in need of protection may reasonably be drawn commits an offence and is liable on summary conviction to a fine of up to \$5,000 or imprisonment for as long as six months, or both.

- 118 (1) A child is in need of protection when
- (a) he is abandoned;
 - (b) he is in the care of a parent or other person who is unable to provide proper or competent care, supervision or control over him;
 - (c) he is in the care of a parent or other person who is unwilling to provide proper or competent care, supervision or control over him;
 - (d) he is in probable danger of physical or psychological harm;
 - (e) the parent or other person in whose care he is neglects or refuses to provide or obtain proper medical care or treatment necessary for his health or well-being or normal development;
 - (f) he is staying away from his home in circumstances that endanger his safety or well-being;
 - (g) the parent or other person in whose care he is fails to provide the child with reasonable protection from physical or psychological harm;
 - (h) the parent or person in whose care he is involves the child in sexual activity;
 - (i) subject to subsection (2), the parent or person in whose care he is beats, cuts, burns or physically abuses him in any other way;
 - (j) the parent or person in whose care he is deprives the child of reasonable necessities of life or health;
 - (k) the parent or person in whose custody he is harasses the child with threats to do or procures any other person to do any act referred to in paragraphs (a) to (j); or
 - (l) the parent or person in whose care he is fails to take reasonable precautions to prevent any other person from doing any act referred to in paragraphs (a) to (j).

- (2) The mere subjection of a child to physical discipline does not bring the child within the definition of child in need of protection but the child may be in need of protection where the force is unreasonable or excessive, having regard to:
- (a) the age of the child;
 - (b) the type of instrument, if any, employed in corporal punishment;
 - (c) the location of any injuries on the child's person;
 - (d) the seriousness of the injuries which resulted, or which might reasonably have been expected to result, to the child;
 - (e) the reasons for which it was felt necessary to discipline the child and any element of disproportion between the need for discipline and the amount of force employed.
- 119 (1) Where the Director, an agent, or a peace officer receives a report or believes that a child may be in need of protection, the Director, agent, or peace officer shall conduct such investigation as may be necessary with a view to determining what action, if any, should be taken under this Part and, for that purpose, may,
- (a) at any reasonable time, enter any place to which the public is customarily admitted,
 - (b) with the consent of an occupant apparently in charge of the premises, enter any other place,
 - (c) for his examination, request the production of documents or things that are or may be relevant to his investigation,
 - (d) upon giving a receipt therefor, remove from any place documents produced in response to a request under paragraph (c) for the purpose of making copies of them or extracts from them, and
 - (e) upon giving a receipt therefor, remove from any place any other thing produced in response to a request under paragraph (c) to retain possession of it pending conclusion of the investigation or proceedings under this Part.
- (2) Where any person denies the person conducting the investigation under subsection (1) entry to any place, instructs him to leave any place, or impedes or prevents an investigation by that investigator in any place, that investigator may apply to a judge for a warrant to enter under subsection (4).

- (3) If a person refuses to comply with a request of the investigator under subsection (1) for the production of documents or things, the investigator may apply to a judge for an order for the production of the documents or things under subsection (5).
- (4) Where a judge is satisfied by evidence on oath or affirmation that there are reasonable grounds to believe it is necessary that a place being used as a dwelling, or to which entry has been denied, be entered to investigate any matter under this Part, he may issue a warrant to enter in the prescribed form authorizing entry by the Director, or any agent or peace officer referred to in the warrant into the place referred to in the warrant.
- (5) Where a judge is satisfied by evidence on oath or affirmation that a request under subsection (1) for production of a document or other thing has been refused and that there are reasonable grounds to believe that production of the document or thing is necessary to investigate any matter under this Part, he may make an order for the production of documents in the prescribed form authorizing the Director, or any agent or peace officer referred to in the order, to seize the documents or things described in the order.
- (6) An order under subsection (5) for the production of documents or other things may be included in a warrant to enter issued under subsection (4) or may be made separately from such a warrant.
- (7) A warrant issued under subsection (4) and any order made under subsection (5) shall be executed at such time as may be specified in the warrant or order.
- (8) Every warrant issued under subsection (4) and every order made under subsection (5) shall name a date on which it expires, which shall be a date not later than 14 days after it is issued or made.
- (9) Notwithstanding subsection (1), the Director shall
 - (a) refuse to investigate or to continue investigating a report or complaint where he is satisfied that the report or complaint is frivolous, vexatious or malicious, and

- (b) cease investigating a report or complaint where he is satisfied that there is insufficient evidence to warrant further action under this Part.
- 120 (1) Where the Director or an agent has reasonable and probable grounds to believe and does believe that a child might be in need of protection he may, instead of taking the child into care or to a place of safety, by notice in writing served upon a concerned parent, or other person entitled to the care or custody of the child, require such parent or person to appear, or bring the child named in the notice, before a judge at a place named in the notice and at a time not earlier than five days after nor later than one month after the date of the service of the notice to determine
- (a) whether the child is in need of protection, or
 - (b) whether the parents or other person entitled to the care or custody of the child should make the child available to the Director for such investigations or tests as are recommended by the Director in writing and approved by the court to assess whether there should at a later date be a hearing to determine whether the child is in need of protection.
- (2) A person who fails to comply with a notice issued pursuant to subsection (1) commits an offence.
- (3) Where in the opinion of the Director a child is of sufficient age and understanding to comprehend the purpose of a notice and the other proceedings under this section the Director shall make all reasonable efforts to inform the child and his family with whom he resides when the notice is given of the facts and the reasons for such action by the Director.
- (4) Upon a notice being issued pursuant to subsection (1) the Director may notify the school which the child attends and any community groups or other persons who the Director thinks should be ~~advised~~ of the action.
- 121 (1) Where the Director, an agent, or a peace officer has reasonable and probable grounds to believe and does believe that a child is in immediate danger to his life, safety or health, the Director, agent, or peace officer may, without a warrant,
- (a) take the child into care and begin proceedings before a judge under this Part,

- (b) take the child to a place of safety and then, without taking proceedings before a judge under this Part, return the child to a concerned parent, or other person entitled to the child's care and custody, upon the request of that concerned parent or other person, or
 - (c) in the case of a child already in the care of the Director and who absconded or was being detained without lawful authority and without the Director's consent, return the child to such place as the Director may designate.
- (2) For the purpose of taking a child into care or to a place of safety under subsection (1), the Director, an agent, or a peace officer may, without a warrant,
 - (a) enter at any time any place where on reasonable and probable grounds he believes the child to be, and
 - (b) use such reasonable force as may be necessary.
- (3) Where the Director, an agent, or a peace officer has reasonable and probable grounds to believe and does believe that a child is in need of protection or that a child in the care of the Director has absconded or is being detained without lawful authority and without the Director's consent, the Director, agent, or peace officer may apply to a judge for a warrant to take the child into care under subsection (4).
- (4) Where a judge is satisfied by evidence on oath or affirmation that the person applying for a warrant to take the child into care has reasonable and probable grounds to believe and does believe that the child in respect of whom the application is made is in need of protection the judge may issue his warrant in the prescribed form authorizing the Director, or the agent or peace officer referred to in the order, to take the child referred to in the order into the Director's care and, for that purpose, to enter any place referred to in the warrant.
- (5) A warrant issued under subsection (4) shall be executed at such time as may be specified in the warrant.
- (6) Every warrant issued under subsection (4) shall name a date on which it expires, which shall be a date not later than 14 days after it is issued.

- (7) Where a child is taken into care pursuant to a warrant issued under subsection (4), the person who takes the child into care shall
- (a) begin proceedings before a judge under this Part,
 - (b) take the child to a place of safety and then, without taking proceedings before a judge under this Part, return the child to a concerned parent, or other person entitled to the child's care and custody, upon the request of that concerned parent or other person, or
 - (c) in the case of a child already in the care of the Director and who absconded or was being detained without lawful authority and without the Director's consent, return the child to such place as the Director may designate.
- (8) For the purpose of executing a warrant to take a child into care issued under subsection (4) or a warrant to enter issued under subsection 119(4) or an order to produce documents or things made under subsection 119(5) the person executing the warrant may use such reasonable force as may be necessary.
- (9) An application for a warrant to take a child into care under subsection (4) or for a warrant to enter under subsection 119(4) or for an order for the production of documents or things under subsection 119(5) may be made without notice to any party.
- (10) Where, pursuant to subsection (1), a place has been entered without a warrant, the owner or any occupant of the place may, in addition to any rights he may have under common law or another Act, apply to a judge for an order to require the person who entered without a warrant to justify the entry.
- 122 (1) Where a child is taken into care or to a place of safety under section 121 the person who takes the child into care or to a place of safety, shall forthwith notify the Director.
- (2) When a child is taken into care under section 121 or a notice is issued pursuant to section 120 requiring a person to bring a child before a judge, the Director shall inform the Official Guardian as soon as reasonably practicable so that the Official Guardian may determine whether a child representative should be appointed for the child.

- 123 (1) Subject to paragraphs 121(1)(b) and (c) and 121(7)(b) and (c), where a child is taken into care under section 121 the Director shall
- (a) as soon as practicable, give reasonable notice in writing to the concerned parent, or other person entitled to the care or custody of the child, of the place and time of a hearing to be held under subsection (5) and of the grounds then known to the Director for the alleged need for protection of the child, which grounds may be stated in any of the words set out in subsection 118(1), and
 - (b) so that a hearing may be held under subsection (5), appear before a judge and make such application as the Director thinks there are grounds to make.
- (2) Where in the opinion of the Director the child is of sufficient age and understanding to comprehend that he has been taken into care he shall be told of this fact and the reasons for the intervention by the Director.
- (3) On taking a child into care, the Director may notify the school which the child attends and any community groups or other persons who the Director thinks should be advised of the action.
- (4) The hearing under subsection (5) shall be at a time not later than seven days after the child is taken into care.
- (5) The judge shall hold a hearing as soon as reasonably practicable after he is asked to do so for the purpose of,
- (a) determining the identity of the child and his concerned parents or other persons entitled to his care or custody, and
 - (b) determining whether reasonable and probable grounds exist for taking the child into care.
- (6) Where, at the conclusion of the hearing under subsection (5), the judge finds that reasonable and probable grounds do exist for taking the child into care, the judge shall
- (a) subject to subsection (9), set a date and place for a hearing before a judge to determine, within two months, whether the child is in need of protection and what order ought to be made in consequence of that determination,

- (b) order that the child remain in the temporary care and custody of the Director pending the outcome of the hearing referred to in paragraph (a), and
 - (c) if a concerned parent, or other person entitled to the care or custody of the child, is not present, give direction as to the manner of service of the notice of the hearing referred to in paragraph (a) on the absent concerned parent or other person entitled to the care or custody of the child.
- (7) Where, at the conclusion of the hearing under subsection (5), the judge finds that there are no reasonable and probable grounds for taking the child into care, the Director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when he was taken into care.
- (8) The Director shall return the child pursuant to subsection (7) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.
- (9) The hearing before a judge to determine whether a child is in need of protection and what order should be made in consequence of that determination shall be held and the determination shall be made within two months of the day the hearing under subsection (5) is begun, unless the Director or a concerned party seeks a delay, and a judge is satisfied that the delay will not cause any prejudice to the best interests of the child and is necessary for the proper conduct of the hearing.
- (10) There shall be a rebuttable presumption that failure to comply with the time limits specified in this section is prejudicial to the interests of the child and it is therefore the duty of the Director, the concerned parents, and the judge to comply with those time limits.
- (11) Lack of compliance with the time limits specified in this section shall not deprive any judge of jurisdiction to act at the request of the Director or a concerned parent after expiration of the time.

- 124 (1) A proceeding under this Part that has been commenced before one judge may be continued before any other judge, but that other judge may refuse to let the hearing be continued before him if he is satisfied that the continuation before him would prejudice any party to the proceeding and that continuation before the judge who heard the earlier part of the proceeding would not be impractical or prejudicial to any party.
- 125 (1) Where the Director or an agent makes any application to a judge under this Part, the Director has exclusive conduct of the application and may, in his discretion, continue it or discontinue it.
- 126 (1) In proceedings under this Part,
- (a) the Director is a representative of the child and the interest of the Director is to seek the best interest of the child; and
 - (b) the judge has jurisdiction to hear and determine and shall, in accordance with this Act, hear and determine on its merits any application made by the Director, regardless of whether some person who has a right to be present is present and regardless of whether a person who is, under this Part, entitled to be served has been served with notice of the hearing or application.
- (2) Where a person who is, under this Part, entitled to be served with notice of a hearing or an application is not served with the notice and is not present at the hearing and the judge makes an order in that hearing or in respect of the application, that person may apply to a judge under and subject to subsection 145(3) for an order setting aside in relation to him the order so made.
- (3) Where an order is set aside in relation to a person who applied under subsection (2), the order continues to have the same effect in relation to all other persons as if no order had been made in relation to the person who applied under subsection (2).
- 127 (1) The purpose of the hearing set under subsection 123(6) and conducted under subsection 123(9) is for the judge to determine whether the child is in need of protection and what order ought to be made in consequence of that determination, and pending the conclusion of the hearing the judge may:

- (a) adjourn the hearing from time to time for a period up to but not exceeding three months from the date the child was taken into care; and
 - (b) make an order for the temporary care and custody of the child, pending the conclusion of the hearing.
- 128 (1) Where, at the conclusion of the hearing set under subsection 123(6) and conducted under subsection 123(9), the judge finds on the balance of probabilities that the child is a child in need of protection, the judge shall
- (a) allow the child to be returned into the care of the concerned parent, or other person entitled to his care or custody, in whose care and custody the child was when he was taken into care or when proceedings were instituted pursuant to section 120,
 - (b) commit the child into the temporary care and custody of the Director, or
 - (c) commit the child to the permanent care and custody of the Director.
- (2) Where, at the conclusion of the hearing set under subsection 123(6) and conducted under subsection 123(9), the judge finds on the balance of probabilities that the child is not a child in need of protection, the Director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when he was taken into care.
- (3) The Director shall return the child pursuant to subsection (2) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.
- 129 (1) Where the judge makes an order under paragraph 128(1)(a),
- (a) the Director shall have a power of supervision in respect of the care of the child during the time that the order is in effect;
 - (b) the order shall be in effect for such time as the judge may specify, but that time shall not exceed 12 months for a child under two years of age at the date of taking into care or of issuance of the notice to bring, and shall not exceed 15 months for a child under four years of age at

- the date of taking into care or of issuance of the notice to bring, and shall not exceed 24 months in any other case; and
- (c) the order may contain such reasonable conditions binding upon and in respect of the conduct of the person to whose care the child is allowed to be returned as the judge thinks are necessary.
- 130 (1) No order for temporary care and custody of a child pursuant to section 128(1)(b) shall be, whether in consequence of adjournment, or of an initial order or any extension of an initial order, for a time exceeding,
- (a) a period of 12 months, for a child under two years of age at the date of taking into care or of issuance of the notice to bring before a judge; or
- (b) a period of 15 months, for a child under four years of age at the date of taking into care or of issuance of notice to bring before a judge; or
- (c) twenty-four months in any other case.
- (2) In calculating the continuity of periods referred to in paragraphs (a), (b) or (c) of subsection (1), the judge shall disregard any period or periods the aggregate of which does not exceed six weeks in which the child was temporarily returned to the care of his parents or other person entitled to his care and custody.
- (3) Any order for temporary care and custody of a child pursuant to section 128(1)(b) that purports to be for a time exceeding the time allowed by this section shall be deemed to subsist for only the time that is allowed under this section.
- (4) Notwithstanding the provisions of this section a judge may on the application of a child who has attained the age of 14 years and with the written consent of the Director, extend a period of temporary care and custody to the Director beyond two years for a further period not exceeding two years.
- 131 (1) Where the child has been taken into care by a peace officer, a judge shall not commit a child to the care and custody of the Director except upon an application by the Director.

- 132 (1) In deciding whether to make an order for temporary or permanent care and custody the judge shall have regard to the following considerations relating to the best interests of the child:
- (a) the bonding existing between the child, and its concerned parent, or other care giver, but not necessarily the bonding existing between the concerned parent or other care-giver and the child;
 - (b) evidence about who the child identifies and relates to as his parent or care given;
 - (c) the length of time, according to the child's sense of time, that a child has been in care and the effect upon the child of any delay in the final disposition in the proceedings;
 - (d) the effect upon the child of any disruption of the child's sense of continuity,
 - (e) the child's right to be a wanted and needed member within a stable and secure family structure;
 - (f) the child's mental, emotional and physical stages of development;
 - (g) the risks and merits of the child returning to or remaining in the care of his concerned parent or other person entitled to his care;
 - (h) the views and preferences of the child, where such views and preferences can reasonably be ascertained;
 - (i) any physical or psychological risk to the child of returning the child to, or allowing the child to remain in, the care of his or her parent;
 - (j) the mental, emotional and physical needs of the child and the appropriate care or treatment to meet those needs; and
 - (k) the cultural heritage of the child.
- 133 (1) Where it appears to the Director that medical, surgical or other remedial care is urgently required in order to preserve the life or health of a child and the parent, or other person with the care or care and custody of a child, will not consent to the treatment or care or cannot be found in time, the Director may apply to a judge, without notice to the parent or any other person if necessary, for an order authorizing the Director to consent to the medical, surgical, or other remedial care and any consequent orders relating to the care and custody of the child pending the giving of the care and pending any further proceedings under this Part.

- (2) Where the judge makes an order under subsection (1) authorizing the Director to consent to the medical, surgical, or other remedial care, the Director may exercise his powers under subsection 119(2) for the purpose of giving effect to the order.
- (3) Where a person has acted in accordance with a consent given by the Director in consequence of an order under subsection (1), no action shall be taken against that person on the ground that he ought to have obtained the consent of some other person.
- (4) The Director shall pay the cost of the medical, surgical or other remedial care that he consents to under this section and the parent, or other person with the care or care and custody of the child, shall not have any liability for that cost.
- 134 (1) Where the Director has reasonable and probable grounds to believe and does believe that a foetus is being subjected to a serious risk of suffering from foetal alcohol syndrome or other congenital injury attributable to the pregnant woman subjecting herself during pregnancy to addictive or intoxicating substances, the Director may apply to a judge for an order requiring the woman to participate in such reasonable supervision or counselling as the order specifies in respect of her use of addictive or intoxicating substances.
- 135 (1) Where a judge commits a child to the temporary care and custody of the Director, the judge may at the same time, or subsequently upon application by the Director, make an order for payment by the parent of the child of any costs or portion thereof incurred by the Director in maintaining and supervising the child in any child caring facility.
- 136 (1) At any time after an order for payment is made pursuant to section 135, the Director may apply to a judge for an order varying the order already made.
- (2) Any parent may make application to a judge for an order varying the amount payable by him under any order, or revoking the order, or suspending in whole or in part the operation of the order insofar as it applies to him.

- (3) A judge may make an order under subsection (1) or (2) only where there has been a material change in the circumstances of the parent bound by the order already made and the change affects his ability to pay.
- 137 (1) An order made against a parent under section 135 or 136 may be enforced in the same manner as an order for support made under the Matrimonial Property & Family Support Act.

Part 4, Division (5) - EFFECTS OF CHILDREN BEING IN
TEMPORARY OR PERMANENT CARE AND CUSTODY

- 138 (1) When the care and custody of a child is committed to the Director under this Part, the Director shall have the custody of and the guardianship for the child and as such shall have all the rights and powers of a parent and those that might be conferred upon a guardian under any Act until
- (a) the child reaches nineteen years of age, where the child is dependent because he is pursuing an education program or because of mental or physical incapacity,
 - (b) the child reaches eighteen years,
 - (c) the child is adopted pursuant to this Act,
 - (d) the child marries, or
 - (e) the date of expiry of the order for temporary care and custody.
- (2) Notwithstanding subsection (1) where the child has been committed to the temporary care and custody of the Director
- (a) the consent of the concerned parent shall be required in any application for adoption of the child; and
 - (b) a parent or other person who but for the proceedings under this Part would be entitled to access to the child or, to custody, or to care and custody of the child shall have reasonable access to the child with the consent of the Director, such consent not to be unreasonably withheld.
- (3) During the subsistence of an order for temporary care and custody the Director shall, so far as is practicable, keep the concerned parents informed of the progress and situation of the child and discuss with them the future plans for the child.

- (4) During the time between when a child is taken into care under this Part and when an order for permanent or temporary care and custody is made by a judge under this Part the Director shall have
- (a) subject to subsection (5), power to determine who can have access to the child and upon what conditions, but the parent or other person who, but for the proceedings under this Part, would be entitled to access to the child, or to custody, or to care and custody of the child shall have reasonable access to the child with the consent of the Director, such consent not to be unreasonably withheld,
 - (b) power to give consent to any necessary medical care or attention for the child, unless a parent, or other person entitled to the care and custody of the child, has notified the Director that he objects to the Director giving the consent,
 - (c) the duty to provide for the child's physical and emotional needs, and
 - (d) notwithstanding paragraph (b), power to arrange and give consent to any medical or psychiatric examination or assesment for the purpose of ascertaining the physical or mental condition of the child.
- (5) A person who, under paragraph (2)(b) or (4)(a) is entitled to have reasonable access to the child and who alleges that the Director has unreasonably withheld his consent to access may apply to the judge for an order and the judge may make an order settling the terms and conditions of reasonable access by that person to the child.
- 139 (1) Where a child has been in the care or care and custody of the Director for a period of one year. the Director shall conduct a review of the child's care.
- (2) The Director shall conduct a further review annually for so long as the child is in the care or care and custody of the Director.
- 140 (1) Where a child is in the temporary or permanent care and custody of an officer or authority in another province whose functions duties and powers are similar to the Director's, the Director may assume the care and supervision of the child and

the right to give consent to medical or surgical care and treatment but custody of and guardianship for the child remains vested in the officer or authority to whom the child was committed.

- (2) Where a child who has been committed to the temporary or permanent care and custody of the Director pursuant to this Act is, by agreement with the appropriate officer or authority, transferred to any province of Canada or to any other country or part thereof, the Director may place the child in the care and supervision of that officer or authority and grant to him the right to give consent for medical or surgical care and treatment but custody of and guardianship for the child remains vested in the Director.

- 141 (1) Any parent, or other person entitled to care and custody of a child may enter into an agreement with the Director to have the child placed under the temporary supervision or care of the Director or his agent for the purpose of providing the services required to meet the needs of the child where the parent or that other person is

- (a) through special circumstances of a temporary nature is unable to make adequate provision for his child, or
(b) unable to provide the service required for his child because of the needs of the child.

- (2) The effect of an agreement made under subsection (1) shall be during its subsistence, to confer on the Director the same rights, duties and powers as he would have under an order for temporary care and custody of the child.

- 142 (1) The duration of an agreement under section 141 shall not exceed one year.

- (2) With the approval of the Director any such agreement may be renewed for one further period not exceeding one year.

- (3) The parent or other person who makes an agreement under section 141 may cancel the agreement at any time.

- (4) When the agreement is cancelled pursuant to subsection (3) the Director shall, within 48 hours, return the child to the care of the parent or other person entitled to the child's care and custody who cancelled the agreement.

- (5) The provisions of this section supersede and subsume any existing agreement of similar nature.

- 143 (1) No person shall
- (a) induce or attempt to induce a child to abscond from a child care service or child caring facility or other similar place in which the child was placed by the Director,
 - (b) detain or knowingly harbour an absconding child admitted to the care or care and custody of the Director.
- (2) Breach of subsection (1) is an offence.

Part 4, Division (6) - VARIATION, TERMINATION AND APPEAL
OF JUDGE'S ORDER

- 144 (1) Where a child has been committed to the temporary care and custody of the Director, then the Director, any parent, or any other person who but for the proceedings under this Part would be entitled to the care and custody of the child may apply to a judge for
- (a) an order rescinding the order for temporary care and custody, or
 - (b) an order that, without terminating the temporary care and custody of the Director, allows the applicant to have the care of the child subject to supervision by the Director.
- (2) A child over the age of 14 years who is in the temporary care and custody of the Director may apply to a judge for
- (a) an order rescinding the order for temporary care and custody, or
 - (b) an order that, without terminating the care and custody of the Director, allows him to reside in the care of some other person subject to supervision by the Director.
- (3) A judge shall not make an order under subsection (1) or (2) unless
- (a) there has been a material change in the circumstances since the order for temporary care and custody was made and that change affects or is likely to affect the best interests of the child, and

- (b) implementing the order will not be prejudicial to the best interests of the child.
- (4) An application under subsection (1) or (2) shall be made on not less than 10 days notice to the Director and to any concerned parent, or other person entitled to care and custody, who is not already a party to the application.
- (5) Where the judge makes an order under paragraph (1)(b) or (2)(b), that order may
- (a) remain in effect for the unexpired time in the period of temporary committal of care and custody of the child to the Director, and
 - (b) contain such reasonable conditions binding upon and in respect of the conduct of the person to whose care the child is allowed to be placed as the judge considers necessary.
- 145 (1) A parent, or other person entitled to the care and custody, of a child who has been committed to the permanent care and custody of the Director may apply to a judge for an order to terminate the order for the permanent care and custody of the child.
- (2) A child who is over the age of 14 years and who has been committed to the permanent care and custody of the Director and who can return to the care and custody of the person in whose care and custody he was when the proceedings under this Part resulting in his committal were instituted may apply to a judge for an order to terminate the order for his permanent care and custody.
- (3) The judge shall hear the application and may set aside the order for the permanent care and custody of the child where
- (a) the child is not residing in a home for the purpose of adoption,
 - (b) there has, since the order for the permanent care and custody of the child was given, been a material change in the circumstances and that change affects or is likely to affect the best interests of the child, and
 - (c) setting aside the order will not be prejudicial to the best interests of the child.

- (4) An application under subsection (1) or (2)
- (a) shall be made on not less than 10 days notice to the Director and to any concerned parent, or other person entitled to care and custody, who is not already a party to the application;
 - (b) shall not be made until the expiration of 30 days after the day on which the order for permanent care and custody was given; and
 - (c) shall not be made more frequently than once in any six month period, unless the Director consents in writing to a shorter period.
- (5) At any hearing to terminate an order for permanent care and custody the judge may
- (a) adjourn the hearing for a period not to exceed six months and order a medical, psychiatric, or other examination of the child, or a medical, psychiatric or other examination of a parent, or other person entitled to care and custody of the child, with the written consent of the parent or other person, or
 - (b) adjourn the hearing for a period not to exceed six months from the date of the application for a trial placement with the applicant under the supervision of the Director, or
 - (c) terminate the care and custody by the Director.
 - (d) dismiss the application.
- (6) Where the Director's care and custody is terminated under subsection (5), the Director shall return the child to the parent, or other person entitled to the care and custody of the child, who obtained the order terminating the Director's care and custody.
- (7) The Director shall return the child pursuant to subsection (6) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.
- 146 (1) The Director or any person aggrieved may appeal to the Supreme Court of Yukon against any order made by a judge under this Part or any refusal of a judge to make an order under this Part.

- (2) An appeal under subsection (1) shall be taken by notice of appeal given within 30 days from the date on which the decision or order or refusal against which the appeal is taken was given.
- (3) The Court may grant an extension of time to appeal but no extension of the appeal may be granted and no appeal shall be taken after the expiration of 30 days from the date on which the decision or order or refusal against which the appeal is taken was given where
- (a) the child is residing in a home for the purpose of adoption, or
- (b) the extension of time to appeal would be prejudicial to the best interests of the child.
- (4) The procedure for the conduct of an appeal taken under subsection (1) shall be, with such reasonable modifications directed by the Court as may be necessary, the same as for an appeal in the Court of Appeal.
- (5) Upon hearing an appeal, the Court may affirm, reverse, or modify the order appealed against, and make such other order as seems proper to the Court.
- 147 (1) No proceedings of any kind, other than an application under section 144 or 145, or an appeal under section 146 or under the Court of Appeal Act or the Supreme Court of Canada Act (Canada), shall be taken on any grounds to set aside or vary an order committing a child to the temporary care and custody or to the permanent care and custody of the Director.

Part 4, Division (7) - GOVERNMENT AND PRIVATE
CHILD CARE FACILITIES

- 148 (1) The Executive Council Member may from time to time as he deems advisable establish, operate and provide child caring facilities or child care services for children who are in the care or the care and custody of the Director.

- (2) The Executive Council Member may make agreements with persons to operate child caring facilities or child care services on behalf of the Executive Council Member.
 - (3) The Director shall have the supervision of any child caring facility or child care service established, operated or maintained by or on behalf of the Executive Council Member under subsections (1) and (2).
 - (4) The Executive Council Member shall comply with the regulations under paragraph 149(1)(b) prescribing standards of care and accommodation for the establishment and operation of child caring facilities.
- 149 (1) The Commissioner in Executive Council may make regulations
- (a) classifying child caring facilities,
 - (b) prescribing standards of accommodation and care in relation to the establishment and operation of any or all classes of child caring facilities,
 - (c) prescribing conditions about standards of care and accommodation that may be made part of a licence issued in respect of any child caring facility,
 - (d) prescribing the period of time during which a licence may subsist, and
 - (e) prescribing the information that any person applying for a license must, or may be required to, disclose in support of his application.
- (2) Without restricting the generality of subsection (1), standards of care and accommodation for the establishment and operation of child caring facilities may include requirements about the location of the facility, space allocation within the facility, sanitary conveniences, practices to help preserve health, fire and electrical safety, eating and sleeping accommodation, activity programs and areas, number and qualifications of staff, and records that must be kept.
- 150 (1) Where the applicant demonstrates that he can and will comply with section 153 and with the regulations made under section 149, the Director shall issue a licence authorizing the operation of a child caring facility, and the authorization may be subject to such conditions as the Director may, pursuant to the regulations, describe in the licence.

- (2) A licence may subsist for such time as may, pursuant to the regulations, be stated by the Director on the licence, and where no time is so stated the licence may subsist for one year.
 - (3) Continued compliance by the operator and his staff with the regulations made under section 149 shall be deemed to be a condition of every licence issued under this section.
- 151 (1) The following child caring facilities may be operated without a licence issued under section 150:
- (a) a facility that has been approved by the Director and is a facility where the only children being cared for, other than children who are related by consanguinity, marriage or adoption to the operator of the facility, are children who are in the care and custody of the Director and who have been placed in the facility by the Director,
 - (b) a facility that is approved by the Superintendent of Education appointed under the School Act and that is operated solely as a residence for students attending a course of studies given under the supervision of or approved by the Superintendent of Education, and
 - (c) a facility that is licensed as a day care service or a family day-home under the Day Care Act and is operated in compliance with that licence and that Act.
- (2) The Director shall exempt the operator of a child caring facility from the requirement of obtaining a licence
- (a) where the only children being cared for in the facility are children who are related by consanguinity or by marriage to the operator of the facility, or
 - (b) where the only children being cared for in the facility are children who are cared for during a period not exceeding six weeks.
- (3) A child caring facility established by or operated under a contract with the Executive Council Member or the Director may be operated without a licence.
- 152 (1) No person shall operate a child caring facility unless he is authorized to do so by a subsisting licence validly issued under section 150 or he is, under section 151, exempt from licensing.

- (2) A person who breaches subsection (1), or any regulation made under section 149, or who violates any condition in a licence issued to him under section 150 commits an offence and is liable on summary conviction to a fine of up to \$250, or to imprisonment for as long as two months, or both.
- (3) Each day that a breach of subsection (1), or of any regulation made under section 149, or a violation of a condition in a licence continues after written notification by the Director about the alleged offence constitutes a separate offence.
- 153 (1) The Director may inspect a child caring facility to determine whether the facility is being operated in compliance with sections 149 to 152, inclusive, the regulations, or the conditions stated on a licence issued under section 150.
- (2) For the purposes of an inspection under subsection (1),
- (a) the Director or his agent may enter the child caring facility at reasonable times without notice, or at any time after giving reasonable notice, and
 - (b) the operator of the facility shall allow the Director or his agent to enter and inspect the premises in which the facility is being operated, and the operator shall also disclose to the Director or his agent such relevant information or records about the operation of the facility or any child cared for in it as the Director or his agent may request and the operator possesses.
- (3) Where the operator of a child caring facility does not comply with subsection 153(2), the Director may forthwith suspend or cancel any licence that has been issued under section 150.
- 154 (1) The Director may apply to the Supreme Court of Yukon for, and the Court may grant, an injunction ordering any person to stop operating a child caring facility where the person operating the facility
- (a) is breaching subsection 152(1),
 - (b) is violating a condition of a licence issued to him under section 150,
 - (c) is not complying with the standards of accommodation and care prescribed for the establishment and operation of the child caring facility, or
 - (d) does not comply with paragraph 153(2)(b).

Part 4, Division (8) - MISCELLANEOUS RELATING
TO CHILD WELFARE

- 155 (1) Notwithstanding any other provision in this Part no child shall be deemed to be in need of protection merely because services could with advantage be extended to him.
- (2) At any hearing under this Act including a hearing or an application for termination of the care and custody of the Director, the judge may admit as evidence
- (a) the record of any other proceedings under this Part or under the Child Welfare Act that is repealed by this Act, and
 - (b) evidence taken by a commissioner appointed by a judge pursuant under this or any other Act to take the evidence of a witness.
- 156 (1) In proceedings under this Part a judge shall determine on the evidence admitted in the proceeding whether a child is in need of protection and, where the child is in need of protection, what order ought to be made in consequence thereof and the judge shall not limit the hearing to grounds for taking the child into care that are stated in any notice or other document.
- (2) A judge making an order or rendering a decision under this Act shall on request give written reasons which shall be available to any party to the proceeding.
- 157 (1) In this Part, where personal service of any document is impractical, substituted service without any prior permission from a judge may be effected by any means, including certified mail to the last known address of the person to be served or if such person has no known address, by delivering the document to a person, or by mailing it by certified mail to a person who can reasonably be expected to know where the person to be served is or to be contacted by the person to serve.
- (2) Where service of a document has been effected by substituted service under subsection (1), the judge may
- (a) confirm the sufficiency of the service,
 - (b) require more efforts to achieve service by personal delivery, or.

- (c) pursuant to section 175, order substituted service to be effected again or in some other manner.
- (3) The powers of the judge in relation to service of documents exist only in relation to the manner of service.
- 158 (1) No order for costs of the proceedings can be made in respect of proceedings under this Part.
- 159 (1) Where a child has been placed in the care and custody of the Director, the Director
 - (a) shall, if the parent or other person who but for the proceedings under this Part would be entitled to the care and custody of the child requests, provide the parent or that other person such information about the circumstances of the child as is not prejudicial to the best interests of the child or of the person with whom the Director has placed the child, and
 - (b) where the child is in the permanent care and custody of the Director, he may advise the parent whether the child has been placed in a home for the purpose of adoption, but he shall not disclose the location of the home or the identity of the adopting parents.
- 160 (1) In proceedings under this Part a judge has the same powers in relation to compelling the attendance of a witness as a judge of the Territorial Court of Yukon has in summary conviction proceedings.
- 161 (1) An order made by a judge under this Part may be filed in the Court and from the time it is filed the order shall have, for the purpose of its enforcement, the same effect as an order of the Court and proceedings for its enforcement may be taken in the Court.
- 162 (1) An agent may serve and execute any process issued under this Act and for the purpose of enforcing this Act shall have all the powers and authority of a peace officer.
- 163 (1) The Director, his agent or any lawyer representing the Director or his agent or any organization to whom powers of the Director have been delegated pursuant to section 111 may appear and be heard in any court in respect to any matter concerning them arising under this Part.

- 164 (1) Where a court has committed a child to the charge or care of the Director by an order made under the provisions of section 20(1)(h) of the Juvenile Delinquents Act (Canada), or an order under the Child Welfare Act, the child shall be deemed to have been committed to the care and custody of the director in accordance with this Part.
- 165 (1) Any family allowance paid to the Director on behalf of any child in the care and custody of the Director shall not be public money within the meaning of the Financial Administration Act.
- 166 (1) No child who is held or brought before a judge in proceedings under this Act shall be placed or allowed to remain with any adult prisoner in any lock-up or police cell used for ordinary criminals or persons charged with crimes.
- 167 (1) Where a person who is conducting an investigation under subsection 119(1) wants to apply under subsection 119(4) for a warrant to enter or under subsection 119(5) for an order to produce documents or things, or where the Director, agent, or peace officer wants to apply for a warrant to take a child into care under subsection 121(4), and it is impractical for a judge to be available so that the person may appear personally to make the application, that person may apply by telephone or any other means of telecommunication to a judge for the warrant or order.
- (2) The person who makes the application under subsection (1) shall submit the following evidence in support of his application:
- (a) a statement of his information and belief about the circumstances that make it impractical for a judge to be available so that he may appear personally to make the application,
 - (b) a statement of his information and belief about the circumstances on which he relies that would justify the issuing of the warrant under subsection 119(4) or 121(4) the making of the order under subsection 119(5),
 - (c) a statement of his information and belief about any other warrant under subsection 119(4) or 121(4), order under subsection 119(5), or application for such a warrant or order in respect of the same persons or matter that he knows about.

- (3) The evidence referred to in subsection (2) shall be given on oath or affirmation which may be administered by telephone or any other means of telecommunication.
- (4) The judge who receives an application under subsection (1) shall record the evidence and representations of the applicant verbatim, if practicable, or in as complete and accurate a fashion as practical, and shall as soon as reasonable file his record or a transcript of it, certified by him as to time, date, and contents, with a clerk of the Territorial Court.
- (5) Where the judge issues a warrant or makes an order in response to an application under subsection (1),
 - (a) the judge shall complete and sign the warrant or order in the prescribed form, noting on its face the time, date, and place of issuance, or making, and
 - (b) the person who made the application under subsection (1) shall complete, in duplicate, a facsimile of the warrant or order in the prescribed form, noting on its face the name of the judge who issues the warrant or makes the order and the time, date, and place of issuance or making.
- (6) A warrant or order issued or made in response to an application under subsection (1) is not subject to challenge and shall not be set aside by reason only that the circumstances were not such as to make it reasonable to deal with the application under this section rather than by means of the personal attendance of the applicant before a judge.

PART 5

PROCEDURAL AND GENERAL MATTERS,
REPEALS AND CONSEQUENTIAL AMENDMENTSPart 5, Division (1) - SEPARATE REPRESENTATION OF CHILDREN

- 168 (1) In this section a reference to a child is a reference to a child while still a minor.

- (2) In proceedings under this Act, the Official Guardian shall have the exclusive right to determine whether any child requires separate representation by a lawyer or any other person that will be paid for at public expense chargeable to the Yukon Consolidated Revenue Fund.
- (3) In proceedings under this Act a child requiring separate representation may include
 - (a) a child for whom there is no guardian other than the Official Guardian;
 - (b) a child in the care of the Director of Family and Children's Services; or
 - (c) a child alleged to be in need of protection.
- (4) The Official Guardian may act as guardian for the proceeding or appoint a guardian for the proceeding for a child needing separate representation.
- (5) When determining whether separate representation or the appointment of a guardian for the proceeding for the child at public expense is required the Official Guardian
 - (a) shall consider advice or recommendations from the Legal Aid Committee, the judge before whom or Court in which the proceedings are taking place, and any party to the proceeding, and
 - (b) shall consider
 - (i) the ability of the child to comprehend the proceeding,
 - (ii) whether there exists and if so the nature of any conflict between the interests of the child and the interest of any party to the proceeding, and
 - (iii) whether the parties to the proceeding will put or are putting before the judge or Court the relevant evidence in respect of the interests of the child that can reasonably be adduced.
- (6) Where the Official Guardian is of the opinion that separate representation of a child is required and is best achieved by the appointment of a person other than a lawyer he may appoint such other person.

- (7) Where the Official Guardian acts as or appoints a guardian for the proceeding pursuant to this section he shall as soon as practicable inform the concerned parents or other person entitled to care and custody and cause the child to be informed where the child is of sufficient age and understanding to comprehend the appointment.

Part 5, Division (2) - EVIDENCE AND PROCEDURE

- 169 (1) In proceedings under this Act, other than for the prosecution of an offence punishable on summary conviction, the standard of proof shall be proof on the balance of probabilities and that standard is discharged if the trier of fact is satisfied of the existence of the fact to be proven on evidence sufficient to establish that the existence of the fact is more probable than its non-existence.
- (2) In proceedings under this Act, other than for the prosecution of an offence punishable on summary conviction, the following evidence is admissible if relevant:
- (a) the views of the child, whether given directly to the judge or Court in the proceeding or to some person who is a witness in the proceeding;
 - (b) opinion evidence, even where this is relevant to the very question before the judge or Court, but the weight to be given to the opinion evidence shall be judged according to
 - (i) whether the opinion is in respect of a matter within an expertise possessed by the witness,
 - (ii) the extent to which the opinion is based on facts perceived by the witness, and
 - (iii) the nature of the testimony of the witness or of other evidence with respect to the facts upon which the opinion is based; and
 - (c) hearsay evidence, but the weight to be given to hearsay evidence shall be judged according to its apparent reliability and the availability of other evidence that would be admissible without relying on this paragraph.

- (3) Either parent of a child shall be a competent and compellable witness in all proceedings under this Act, even where the evidence may tend to disclose that either of the parents has been guilty of a criminal offence.
 - (4) Where previous proceedings, whether criminal or civil, have taken place in respect to the same child or his siblings the Court or a judge may accept at his discretion any evidence taken at a previous hearing in Yukon or before a court of competent jurisdiction in any other part of Canada.
 - (5) The weight to be attached to evidence referred to in subsection (4) shall be a matter for the Court or the judge to determine.
- 170 (1) Unless the contrary is proved, a document purporting to be signed by a judge or court officer shall be deemed to have been so signed without proof of the judicial or official character of the person appearing to have signed it and, unless the contrary is proved, the court officer by whom a document is signed shall be deemed to be the proper officer of the court to sign the document.
- 171 (1) In any proceedings under this Act, a birth or baptismal certificate or a copy thereof purporting to be certified under the hand of the person in whose custody such records are held is evidence of the age of the person named in the certificate or copy.
- (2) In the absence of any certificate or copy mentioned in subsection (1), or in corroboration of any such certificate or copy the Court or the judge may receive and act upon any other documents or information relating to age that it considers reliable.
 - (3) In any proceedings under this Act, the Court or the judge may draw inferences as to the age of a person from the person's demeanour or from statements made by the person in direct examination or cross-examination.
- 172 (1) Without limiting the generality of section 2, the paramount consideration in granting adjournments shall be the best interest of the child and the child's right to an early disposition of the case, compatible with his sense of time.

- 173 (1) Subject to section 91 admittance to the place in which the hearing or proceeding under this Act takes place shall be restricted at the discretion of the Court or judge and no person shall be permitted to be present other than the officials of the court, the parties, their counsel and such other persons as the Court or judge may require or permit to be present and whose presence will not be prejudicial to the best interests of the child or the proper conduct of the proceeding.
- (2) No report of a proceeding under this Act in which the name of the child or his parent or in which the identity of the child is otherwise indicated shall be published, broadcast or in any other way made public by any person without the leave of a judge of the Court or a judge.
- 174 (1) Nothing in this Act shall prevent the Court or a judge from requiring the presence of the child in court in any case where the attendance of the child would not be prejudicial to his best interest and the interests of justice require his attendance.
- 175 (1) Unless otherwise specified in this Act, where for any reason it is impractical to serve a notice or other document by personal delivery to the person to be served, the Court or the judge may order substituted service, whether or not there is evidence that the document will probably reach the person to be served or will probably come to his attention or that the person is evading service.
- (2) Substituted service of any notice or other document under this Act may be effected by taking such steps as the Court or judge has ordered to bring the notice or document to the attention of the person to be served.
- (3) In proceedings under this Act, service of any notice or other document may be effected outside Yukon without prior leave of the Court or of a judge.
- 176 (1) Subject to section 98 and any regulation that may be made under this Act, no information or document that is kept by the Director of Family and Children's Services and that deals with the personal history of a child or an adult and has come into

existence through any proceedings under Part 3 or 4 shall be disclosed to any person other than an agent of or lawyer acting for the Director, unless it is disclosed with the consent of the Director or pursuant to subsection (2).

- (2) No person shall be compelled to disclose any information or document obtained by him in the course of the performance of his duties under Part 3 or 4 except
 - (a) in the course of proceedings before the Court or a judge under Part 3 or 4, or
 - (b) in any other case, with the consent of the Director or upon the order of the Court.
- 177 (1) Notwithstanding section 176, but subject to section 98, the Director of Family and Children's Services shall, upon the request of and after the presentation of reasonable identification by any person, disclose to that person the nature and substance of all information in the Director's possession about that person, other than information
 - (a) that would disclose the identity of another person, or
 - (b) the disclosure of which would breach a duty of confidentiality owed to another person.
- (2) Where the person who obtains a disclosure of information under subsection (1) disputes the completeness or accuracy of any of the information disclosed to him he may give the Director a written statement of the nature and substance of his dispute, and the Director shall, within 30 days, investigate and notify the person in writing:
 - (a) that the Director has corrected the record of the information in his possession so that it is consistent with what the person has said in his written statement of dispute that it should be, or
 - (b) that the Director will not change the record of the information in his possession.
 - (3) Where the Director decides not to change the record of the information in his possession, he shall
 - (a) include in his record the person's written statement of the nature and substance of the dispute that was delivered to him under subsection (2), and
 - (b) include a copy or disclosure of that written statement of dispute with any subsequent disclosure or use of the disputed information.

- (4) This section is not intended as a rule of evidence and does not affect disclosure in any proceeding in any court.
- 178 (1) For the purpose of carrying out the provisions of this Act according to their intent, the Commissioner in Executive Council may make regulations
- (a) respecting any time limits referred to in this Act, where because of the remoteness or climatic conditions in any part of Yukon the regulation is necessary for the proper conduct of proceedings under this Act,
 - (b) respecting procedure and forms to be followed in the conduct of proceedings under Parts 3 and 4,
 - (c) respecting safe-keeping and copying of and access to records of the Director of Family and Children's Services and of the Court and any judge in respect of proceedings under this Act and the administration of this Act,
 - (d) that are consistent with this Act and that he deems necessary and ancillary to this Act.
- (2) No expenditure from the Yukon Consolidated Revenue Fund can be compelled under this Act except to the extent that there is an unexpended balance of an appropriation for the purpose of such an expenditure.

Part 5, Division (3) - MISCELLANEOUS RULES OF LAW

- 179 (1) No civil action for damages shall be brought by a parent for the enticement, harbouring, seduction or loss of service of his or her child or for any damages resulting therefrom.
- 180 (1) Subject to subsection (2), no person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child.
- (2) An action that is based on negligence and that could not be taken in the absence of subsection (1) may be taken only in relation to circumstances in respect of which the person against whom the action is taken is insured and the amount of any judgment of a court that is based on those circumstances shall not exceed the amount for which that person is insured.

- (3) Any provision in a contract of insurance that purports to deny coverage for the reason that the insured and another person stand in the relationship of parent and child shall be void and unenforceable.
- 181 (1) Subject to subsection 180(2), no person shall be disentitled from recovering damages in respect of injuries for the reason that the injuries were incurred before his birth.
- 182 (1) Section 181 shall not be construed to affect the operation of any provision of the Criminal Code (Canada).
- 183 (1) The inherent jurisdiction of superior courts in relation to children does not vest in the Territorial Court of Yukon or any judge thereof or in any justice of the peace.
- 184 (1) The Executive Council Member may, on behalf of the Government of the Yukon Territory, enter into agreements with the Government of Canada respecting the payment by Canada to the Territory of such part of the expenditures required for the purposes of this Act as are agreed upon.

Part 5, Division (4) - REPEALS AND CONSEQUENTIAL AMENDMENTS,
COMING INTO FORCE

- 185 (1) The Child Welfare Act is repealed.
- (2) An order made under the Child Welfare Act committing a child to the Director of Child Welfare shall have the same effect as if that child were committed to the care and custody of the Director of Family and Children's Services under this Act.
- (3) An order made under the Protection of Children Act that was repealed by the Child Welfare Act committing a child to the care of the Superintendant of Child Welfare shall have the same effect as if that child were committed to the permanent care and custody of the Director of Family and Children's Services under this Act.
- 186 (1) In subsection 2(1) of the Corrections Act
- (a) the definition of "child" is repealed;
 - (b) the definition of "industrial school" is repealed;

- (c) "or industrial school" is deleted from the definition of "inmate";
 - (d) the definition of "juvenile court" is repealed; and
 - (e) the definition of "juvenile delinquent" is repealed.
- (2) In subsection 2(1) of the Corrections Act the following definitions are added:
- "(a) "Director of Family and Children's Services" means the Director of Family and Children's Services designated under Part 4 of the Children's Act;
 - (b) "young person" has the same meaning as under the Young Offender's Act (Canada);
 - (c) "youth court" has the same meaning as under the Young Offenders Act (Canada);
 - (d) "youth worker" has the same meaning as under the Young Offenders Act (Canada)."
- (3) In paragraph 4(1)(d) of the Corrections Act, "and industrial schools" is deleted.
- (4) In paragraph 4(1)(e) of the Corrections Act, "an" is substituted for "a child or".
- (5) In subsection 4(2) of the Corrections Act, "industrial school or" is deleted.
- (6) The following is substituted for section 16 of the Corrections Act:
- "16(1) The Commissioner in Executive Council may:
 - (a) appoint a Chief Probation Officer and such other probation officers as may be required to carry out the provisions of this Act; and
 - (b) designate probation officers who may function as youth workers under the Young Offenders Act (Canada).
 - (2) A probation officer who has been designated a youth worker shall, in connection with his employment as a youth worker, be under the supervision of the Director of Family and Children's Services.

- (3) A probation officer appointed under this section shall, under the supervision of the Director of Corrections, serve any court, other than a youth court, in Yukon, and shall perform such functions as can by law devolve upon a probation officer in the proceeding in that court.
- (4) A probation officer who has been designated a youth worker shall, under the supervision of the Director of Family and Children's Services, serve any youth court in Yukon, and shall perform such functions as can by law devolve upon a youth worker in the proceeding in youth court."
- (7) The following is substituted for section 17 of the Corrections Act:
- "17(1) A probation officer is, for the purpose of discharging his duties, an officer of every court in Yukon and a peace officer."
- (8) In the Corrections Act, "Young Offenders" is substituted for "Juvenile Offenders" between section 18 and section 19.
- (9) The following are substituted for sections 19 and 20 of the Corrections Act:
- "19(1) For the purposes of this Part, the Director of Family and Children's Services shall be and perform the functions of provincial director under the Young Offenders Act (Canada).
- 20(1) The Commissioner in Executive Council may
- (a) establish or designate facilities to be used as places of temporary detention or as places for open custody or secure custody within the scope and for the purposes of the Young Offenders Act (Canada),
- (b) establish or designate facilities, programs or services for the implementation of dispositions made under the Young Offenders Act (Canada),

- (c) make regulations respecting the operation of any facility, program or services established or designated under paragraphs (a) or (b),
- (d) for the purposes of subsection 7(5) of the Young Offenders Act (Canada), designate the Director of Family and Children's Services or any other person to be a person whose authorization is required before a young person who has been arrested may be detained prior to the young person's appearance before a youth court or justice, and
- (e) for the purposes of subsection 7(5) of the Young Offenders Act (Canada), prescribe offences in respect of which a young person may, or may not, be detained prior to his appearance before a youth court or justice."

(10) Section 21 of the Corrections Act is repealed.

(11) The following is substituted for section 22 of the Corrections Act:

- "22(1) A probation officer who has been designated a youth worker may, for the purposes of Part 4 of the Children's Act,
- (a) perform all the functions of a Diversion Committee in any part of Yukon in which a diversion scheme may be provided but for which no Diversion Committee has been appointed,
 - (b) in any part of Yukon for which a Diversion Committee has been appointed, assist the Diversion Committee in the performance of its functions."

(12) Sections 23, 24, 25, 26, 27, 28 and 29 of the Corrections Act are repealed.

(13) The following is substituted for subsection 30(2) of the Corrections Act:

- "(2) If an inmate so wishes, a clergyman may visit the inmate at any correctional institution for the purpose of instructing the inmate in religion on such days and at such times as the superintendent may authorize."

- (14) In subsections 31(1), 31(2), and 32(1), and in section 34 "or industrial school" is deleted.
- 187 (1) The International Child Abduction (Hague Convention) Act is repealed.
- 188 (1) Sections 14 and 15 of the Intestate Succession Act are repealed.
- 189 (1) Paragraph 10(1)(k) of the Judicature Act is repealed.
- 190 (1) The Legitimation Act is repealed.
- 191 (1) In the definition of "child" in subsection 2(1) of the Matrimonial Property and Family Support Act, "or by virtue of an adoption made or recognized under the Children's Act" is substituted for "or by virtue of section 84 or 86 of the Child Welfare Ordinance".
- (2) In the definition of "parent" in subsection 2(1) of the Matrimonial Property and Family Support Act, "or by virtue of an adoption order made or recognized under the Children's Act" is substituted for "or by virtue of section 84 or 86 of the Child Welfare Ordinance".
- 191.1(1) The following subsection is added to section 20 of the Interpretation Act:
- "(3) In an enactment a reference to the Supreme Court of Yukon is a reference to the Supreme Court of the Yukon Territory."
- 192 (1) In subsection 3(3) of the Vital Statistics Act, "a child born outside marriage" is substituted for "an illegitimate child".
- (2) In subsection 5(1) of the Vital Statistics Act, "Where after the birth of the child his parents marry each other" is substituted for "Where a child is legitimated by the inter-marriage of his parents subsequent to his birth".
- (3) Subsection 30(2), of the Vital Statistics Act is repealed.
- 193 (1) This Act, other than Part 4 and section 186, comes into force on the date of assent to this Act.

- (2) Part 4 comes into force on a day to be fixed by the Commissioner in Executive Council that is no later than 180 days after assent to this Act.
 - (3) If Part 4 is not sooner brought into force, it shall come into force on the day that is 181 days after the date of assent to this Act.
 - (4) Section 186 comes into force on a day to be fixed by the Commissioner in Executive Council.
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