Government of Newfoundland and Labrador
Department of Child, Youth and Family Services

Legislative Review of the *Child, Youth and Family Services Act*, S.N.L. 1998, c. C-12.1, as amended

Consultations Discussion Guide

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Background

The Department of Child, Youth and Family Services is completing an examination and review of the *Child, Youth and Family Services Act*. The *Child, Youth and Family Services Act* was proclaimed January 5, 2000, and replaced the *Child Welfare Act.* This is the legislation which governs the protection of children in Newfoundland and Labrador. The *Act* provides the authority to intervene when a child is the victim, or at risk of maltreatment by the parents, and to place a child in out-of-home care when necessary.

In addition to introducing principles which support the best interests of the child, the 2000 *Act* included provisions for: a continuum of family services; expanded services to youth aged 16 and 17; alternate dispute resolution mechanisms; child-focused timelines for court hearings and court orders; the continuity of relationships for children in care; and accountability mechanisms.

The provincial government recognizes that the *Child, Youth and Family Services Act* needs to be reviewed and updated. Various reports have recommended a legislative review, including the Turner Review and Investigation and the Clinical Services Review. The experiences of those who are affected by child protection legislation will be carefully considered during this process.

The Department of Child, Youth and Family Services is seeking your input on the current legislation. This provides an invaluable opportunity to help build a revitalized system; one that is based on a culture of excellence and accountability and that is responsive to the priority needs of children, youth and families in Newfoundland and Labrador.

Introduction

The purpose of this discussion guide is to obtain a broad range of feedback from interested persons and stakeholders who work with, or are impacted by, child protection legislation. A glossary of terms is located at the end of the document.

This review will focus on any limitations or gaps in the current legislation. This will range from analyzing terminology to a broader examination of the legislative principles and authority for providing services to children, youth and their families.

The following questions are provided as a guide only based on issues raised by stakeholders. All comments are welcome.

1.0 Part I

1.1 Interpretation

Part I of the *Act* governs the structure of the legislation by providing definitions of terms and identifying the responsibilities of the Minister and the roles of the people responsible for the administration of the *Act*.

1.2 Discussion Questions

1.2.1 Question 1

The *Act* defines "child" as a person under the age of 16 and "youth" as a person who is 16 or 17 years old. Upon reaching their 16th birthday, youth who were in the care and custody of the director must exit the foster care system as they are no longer in the custody of the director. Youth may then voluntarily continue to receive supportive services by entering into a voluntary care agreement.

Should youth in these situations be expected to make such life decisions? Should the age of "child" and/or "youth" be changed? Should the Act be amended to give 16 year olds the option of remaining in the continuous custody of the director until they are 18?

1.2.2 Question 2

Under the old *Child Welfare Act*, following removal from their parents, children were placed in homes called "foster homes" and the persons who provided care to the children were called "foster parents." Under the current legislation, the terms "foster homes" and "foster parents" are not used. Instead, "caregiver" is the term used to describe people who provide care.

Are there more appropriate terms that could be used to identify a person, other than a parent, who has been given the responsibility for the care of a child by Child, Youth and Family Services?

1.2.3 Question 3

There is no provision in the *Act* that allows a child, guardian or caregiver to ask for review of a decision made by a director under the *Act*.

Should the Act be amended to allow for such administrative decision reviews? What should the review process look like?

2.0 Part II

2.1 Principles

Part II of the *Act* lays out the general principles that guide the interpretation and administration of the *Act*. This section also identifies the principles that apply to the provision of child, youth and family services, as well as the factors that are to be considered when determining a child's best interests.

2.2 Discussion Question

The general principles of the *Act* state that the overriding and paramount consideration in any decision shall be in the best interests of the child. The principles also acknowledge that the family is the basic unit of society responsible for the safety, health and well-being of the child. The challenge is balancing family preservation, while reducing risk of harm to a child, and developing a reasonable plan to achieve a permanent home for the child.

How do you think the Department of Child, Youth and Family Services can achieve this balance?

3.0 Part III

3.1 Services and Agreements

Part III of the *Act* identifies the nature and manner of agreements that may be entered into with families and youth. This section also gives authority for the use of alternate dispute resolution mechanisms to resolve conflicts.

3.2 Discussion Questions

3.2.1 Question 1

The *Act* allows for a youth to enter into a youth care agreement with CYFS when that young person cannot return home or does not have a parent willing or able to provide care. The youth must be able to enter into the agreement themselves and the nature of the agreement must be explained to the youth. However, a youth who lacks the capacity to consent may not understand the nature and scope of the agreement.

What would you recommend to address this issue?

3.2.2 Question 2

The *Act* permits the use of alternate dispute resolution mechanisms to resolve a conflict and specifically references the use of family group conferences, pre-trial settlement conferences or mediation. A family group conference is a collaborative decision making process whereby a skilled neutral coordinator brings together family, extended family, a social worker and other service providers to develop a plan for the safety and well-being of a child. A pre-trial settlement conference is a meeting that occurs before the trial or hearing in which all parties may discuss the issues and come to an agreement without going to trial. Mediation is a process for working out disagreements and developing agreements with the help of a specially trained, neutral person.

Should alternate dispute resolution be used and, if so, when? Should these or other forms of alternate dispute resolution be used? Are there situations when the consideration of alternate dispute resolutions mechanisms should be mandatory? How do you protect the best interests of the child in these processes?

4.0 Part IV

4.1 Protective Intervention

Part IV of the *Act* identifies the circumstances under which a child could be found in need of protective intervention and the responsibilities of a person who has such information. This section contains the provisions that allow for an investigation to take place and the possible removal of a child who is in need of protective services.

4.2 Discussion Questions

4.2.1 Question 1

The *Act* states that a child is in need of protection when the child is physically harmed, sexually abused or exploited; or at risk of being physically harmed, sexually abused or exploited by a parent or by a person and the parent does not protect the child. As well, the *Act* also states that a child is in need of protection when the child is being emotionally harmed by a parent or other person and the parent does not protect the child. The *Act* does not state that a child may be in need of protective intervention when at risk of emotional harm.

Should the Act be amended to include risk of emotional harm as a ground for finding a child in need of protective intervention?

4.2.2 Question 2

Emotional harm is not defined in the *Act*. While other provinces do not give a definition of emotional harm in their legislation, some offer guidance in finding emotional harm by identifying behaviours in a child that can be indicative of emotional harm. For example, in Nova Scotia their legislation states that emotional harm may be demonstrated by "severe anxiety, depression, withdrawal or self-destructive or aggressive behaviour" resulting from actions or a failure to act by the parent.

Should emotional harm be defined in our Act? If so, how? How can the issue of emotional harm be addressed for infants?

4.2.3 Question 3

Alberta's legislation identifies parental behaviours that a child may be exposed to which can lead to emotional harm. The list includes rejection; emotional, social, cognitive or physiological neglect; deprivation of affection or cognitive stimulation; exposure to domestic violence or severe domestic disharmony; inappropriate criticism; threats or humiliation.

Should the indicators of parental behaviours that may result in emotional harm be identified in our Act? What indicators should be included?

4.2.4 Question 4

The *Act* currently states that a child is in need of protection when the child has no living parent or a parent is unavailable to care for the child and has not made adequate provision for the child's care or has abandoned the child. However, there are situations where a parent is available but the parent/child relationship has deteriorated to the point where the parent is unwilling to parent the child and cannot identify another place where the child can live.

Should the Act be amended to identify a child as in need of protection when parents are unwilling to parent and have not made arrangements for another place for the child to live?

4.2.5 Question 5

The Duty to Report section states that "where a person has information that a child is or may be in need of protective intervention, the person must immediately report this information. . ." Section 15(4) states that where a person "who, acting in the course of his or her professional duties, has reasonable grounds to suspect that a child is or may be in need of protective intervention" that person must immediately report this information. The use of the term "reasonable grounds" may allow a professional to assess the information he or she has in order to determine if a child may be in need of protective intervention.

Should the Duty to Report standard be the same for both the general public and professionals?

4.2.6 Question 6

Considering both the importance of maintaining confidentiality in child protection matters and acknowledging the unique relationship that aboriginals have with their respective communities (including governing bodies and aboriginal governments), at what point should the aboriginal communities become involved in child protection matters involving their members?

Who should be advised and at what point in the process: at the investigative stage (s. 16) or only when court proceedings are commenced? What role would they be expected to play?

4.2.7 Question 7

CYFS social workers may require access to third party information in order to determine if a child protection investigation should be initiated or for case management purposes, with or without the client's consent. However, social workers are often denied access to this information.

If an agency or person has information regarding a child or someone significant to that child, including medical or police professionals, should the Act require the release of information when

that information is relevant for the purposes of providing services and/or is relevant to an investigation to determine if a child is in need of protective intervention?

5.0 Part V

5.1 Court Proceedings

Part V of the *Act* outlines the court proceedings that are to be followed when Child, Youth and Family Services is seeking a court order for a child in need of protective intervention. This includes the types of documents that must be filed with the courts and the types of orders that a court may grant at a presentation or protective intervention hearing. It also details who must be legally served with court documents.

5.2 Discussion Questions

5.2.1 Question 1

The *Act* states that a protective intervention hearing shall be held within 30 days of the filing of an application for supervision, temporary or continuous custody order. The reality is that delays in getting to court are not unusual. The delays may be due to the provision of disclosure documents, the need to obtain an assessment or expert report, or the scheduling of the courts or lawyers. When the child is not removed from the home and the application is for a supervision order, the delay in getting to court sometimes leads to difficulties in providing services, developing a supportive relationship with a family or assessing risk.

Are there amendments to the Act that would address this issue?

5.2.2 Question 2

When the child has been removed from the home, the delay in getting to court sometimes leads to difficulties in moving forward on a permanent plan for the child and his or her family may have to wait several weeks or months before they can challenge the removal of the child.

Are there amendments to the Act that would address this issue?

5.2.3 Question 3

Once an application for a temporary or continuous custody order has been filed, a presentation hearing must be held within ten days. At this hearing, the court will review the circumstances surrounding the removal of the child and consider the director's interim plan for the child until the full hearing (the protective intervention hearing) can be held. At the protective intervention hearing, the court will review all the evidence presented regarding a parent's ability to be protective. The *Act* states that a plan of care for a child must be filed ten days prior to the protective intervention hearing. The practice has evolved that the plan of care is frequently filed before the presentation hearing. This allows parties and the court to have an understanding of the history of the family that is relevant to the child protection issues, outlines the circumstances surrounding the removal, may

identify recommendations for the provision of services, and may outline the terms of access that a child will have to his or her parents that the director believes is in the best interests of the child.

Should the Act require that the plan of care be filed before the presentation hearing?

5.2.4 Question 4

The *Act* allows for a presentation hearing to be conducted by means of a teleconference but not a protective intervention hearing.

Should the Act allow protective intervention hearings to be held by teleconference? What other forms of technology should be considered?

5.2.5 Question 5

The time limits for temporary orders are clearly laid out in the *Act*. For example, a child under the age of five can only be in the custody of the director for a period of three orders, with each order being of three months' duration. This means that a child under five should only be in the custody of the director for a period of nine months. The reality is that delays in getting to court are not unusual. The delays may be due to the provision of disclosure documents, the need to obtain an assessment or expert report or the scheduling of the courts or lawyers. In light of the scheduling limitations that are present, a child can be in protective custody for a significantly longer period.

What would you recommend to address this issue?

Should there be a cumulative time in which a child can be in protective custody, regardless of any delays that might result from scheduling limitations?

Should that time limit be able to be extended upon application to a court when it is in a child's best interest to do so?

5.2.6 Question 6

The *Act* allows for a matter to be postponed over for a total period of three months in order to complete an assessment.

When a matter has proceeded to court and the director has completed the necessary assessments to reach their decision supporting the application before the court, should the court be able to postpone a matter in order for additional assessments to be completed?

6.0 Part VI

6.1 General Court Matters

Part VI of the *Act* outlines general court matters; including the kind of evidence that may be admitted, who may attend a hearing, how a child may participate, and how court documents may be served. The responsibilities of a person involved in a hearing are also covered, such as providing copies of any information that he or she may have to the other involved parties.

6.2 Discussion Question

The *Act* requires that a child over the age of 12 be served with a copy of the court documents that relate to the removal of that child or involve an application for protective custody, including the plan of care. A child of any age, who is the subject of a hearing, has the right to have his or her views known at the hearing. However, the judge has the authority to decide how this input will take place. The judge might decide to meet with the child, permit the child to testify, allow the child to submit his or her views in writing or allow the child to express his or her views in some other way, such as through a social worker, counsellor or other support person. As well, during court, a parent may identify what the child has told the parent he or she wants.

How should a child's views best be presented to the court? Should there be a standardized approach? Should a child's age be a factor in whether or not the child's views are considered? Are there situations where a lawyer should represent a child to ensure his or her voice is heard and/or to present and argue the child's position?

7.0 Other Issues

7.1 Issue 1

The *Act* does not address the issue of a publication ban on child protection matters. The practice has developed that the court will place a publication ban on an individual decision or the court may release a decision identifying the parties just by their initials. The purpose is to ensure privacy for the children who may be affected by the information disclosed during the court hearing. Some other jurisdictions have publication bans in their legislation.

Should the Act be amended to include publication bans?

7.2 Issue 2

When a court makes a finding that a child is in need of protective intervention, it can return the child to the parent under the supervision of CYFS, place the child with another person under the supervision of CYFS, or place the child in the temporary or continuous custody of the director. The *Act* states that when a judge makes such an order, the judge may grant a person significant to the child access to the child, and may attach conditions that he or she considers appropriate. These conditions might include where the child should live, the type of services that the child should receive, such as counselling, or where a child should attend school.

Except for the issue of access, should the court be able to attach conditions to a temporary order or a continuous custody order? Should the conditions that can be attached to a continuous custody order be different if the plan for the child is to place the child for adoption?

7.3 Issue 3

The accountability provisions of the *Act* require that the Minister establish an advisory committee whose function is to review the operation of the *Act* every two years and to report to the Minister concerning the *Act*'s operation and stating whether the principles and purpose of the *Act* are being achieved. The *Act* also requires a custody review committee to review annually, and report on, the care of all children in the continuous custody of a director. The Child and Youth Advocate and the Citizen's Representative also have powers to review various aspects of any department's work in this area.

Are these the appropriate accountability mechanisms and are there alternatives?

Should there be a statutory review process? What should be the parameters of such a process?

Conclusion

As mentioned above, these guidelines are provided as an aid to facilitate discussion during the consultation process. The *Child, Youth and Family Services Act* can be viewed at http://assembly.nl.ca/Legislation/sr/statutes/c12-1.htm .

When submitting your comments, please reference corresponding section(s) in the discussion document. Comments regarding other issues and/or concerns are encouraged and welcomed.

Comments can be made by January 30, 2010:

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Glossary

Child	a person under 16 years old.
Youth	a person who is between 16 and 18 years old.
Parent of a child	the custodial mother of a child, the custodial father of a child, a custodial step-parent, a non-custodial parent who regularly exercises or attempts to exercise rights of access, a person to whom custody of a child has been granted by a written agreement or by a judge, or a person with whom a child resides, except a caregiver.
Caregiver	a person who cares for a child with the approval of and in agreement with CYFS but does not include a parent.
Custody	the rights and responsibilities of a parent in respect of a child.
Youth Care Agreement	a voluntary agreement that CYFS can enter into with a youth who cannot remain with or be re-established in the youth's family or where there is no parent to provide care to the youth.
Presentation Hearing	an interim hearing at which a judge may give an interim or final order.
Protective Intervention	intervention by CYFS in the life of a child to reduce risk of harm to that child.
Protective Services	the services that will be offered to a child and/or the child's family to reduce risk of harm to the child.
Alternate Dispute Resolution	includes alternate methods to resolve conflict without going to court.
Protective Intervention Hearing	a hearing at which a judge will determine if a child is in need of protective intervention.
Supervision Order	a court order declaring a child to be in need of protective intervention, where the child remains with the parent but under the supervision of CYFS for a period of up to 6 months.
Temporary Order	a court order declaring a child to be in need of protective intervention and giving CYFS custody of a child for a specified period, with the right to make all decisions regarding the child during the specified period. CYFS cannot consent to medical treatment, other than necessary medical treatment, unless a parent consents or CYFS is permitted by court order to make decisions for medical treatment.
Assessment	the opinion of a professional service provider, usually informed by parent feedback, CYFS file review and examination results, with regard to a specific mental health, parenting, or behavioural issue.
Plan of Care	the plan for the care of a child while the child is in the care or custody of CYFS.