

CONSOLIDATION OF CHILDREN'S LAW ACT

S.N.W.T. 1997,c.14

In force November 1, 1998: SI-014-98

(Current to: September 1, 2006)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1998,c.17

S.N.W.T. 1999,c.5

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34

In force April 1, 1999

S.N.W.T. 1999,c.9

In force April 1, 1999

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CHILDREN'S LAW ACT

Whereas it is desirable to confirm the status of children within their families whether they are born inside or outside of marriage or are adopted;

And whereas it is desirable to provide for the recognition in law of the parentage of a child;

And whereas it is desirable to provide for the mutual obligations of parents to care for and support their children whether or not the parents cohabit;

And whereas it is recognized that decisions concerning the custody of and access to children, and the guardianship of the estates of children, should be made in accordance with the best interests of children, with a recognition that differing cultural values and practices must be respected in those determinations;

And whereas it is desirable to provide in law for the timely and orderly settlement of the affairs in respect of a child and to avoid a multiplicity of proceedings in relation to the affairs of a child;

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

INTERPRETATION

Definitions

1. In this Act,

"applicable guidelines" means

- (a) the guidelines established under subsection 85(1), or
- (b) where no guidelines have been established under subsection 85(1), the Federal Child Support Guidelines, with such modifications as the circumstances require and as they are modified by guidelines made under subsection 85(2); (*lignes directrices applicables*)

"clerk of the court" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier du tribunal*)

"cohabit" means to live together in a conjugal relationship, whether within or outside marriage; (*cohabiter*)

"court" means the Nunavut Court of Justice; (*tribunal*)

"domestic contract" means a domestic contract as defined in section 2 of the *Family Law Act*; (*contrat familial*)

"Federal Child Support Guidelines" means the guidelines established under section 26.1 of the *Divorce Act*, as they are amended from time to time; (*lignes directrices fédérales sur les pensions alimentaires pour enfants*)

"guardian for a child" means a guardian of the estate of a child; (*tuteur*)

"Public Trustee" means the Public Trustee appointed under the *Public Trustee Act*; (*curateur public*)

"Registrar General" and "Deputy Registrar General" means the Registrar General of Vital Statistics and the Deputy Registrar General of Vital Statistics, respectively, appointed under the *Vital Statistics Act*. (*registraire général*)
S.N.W.T. 1998,c.34,Sch.C,s.4(2).

PART I

STATUS OF CHILDREN

Rule of parentage

2. (1) Subject to subsection (2), for all purposes a person is the child of his or her natural parents and his or her status as their child is independent of whether he or she is born within or outside of marriage.

Rule for adopted children

(2) Where an adoption order has been made under the *Adoption Act* or any predecessor Act, the child is the child of the adoptive parents as if they were the natural parents.

Kindred relationships

(3) The parent and child relationships as determined under subsections (1) and (2) shall be followed in the determination of other kindred relationships flowing from the parent and child relationship.

Abolition of common law distinction

(4) Any distinction at common law between the status of a child born in marriage and born out of marriage is abolished and the relationship of parent and child and kindred relationships flowing from that relationship shall be determined in accordance with this section. S.N.W.T. 1998,c.17,s.6(2).

Rule of construction

3. (1) For the purpose of construing an instrument or enactment, unless the contrary intention appears, 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 section 2.

Application

(2) Subsection (1) applies to an enactment made before, on or after June 17, 1987 and an instrument made on or after June 17, 1987, but it does not affect a disposition of property made before June 17, 1987.

PART II

ESTABLISHMENT OF PARENTAGE

Declaratory Order Respecting Parentage

Application

4. (1) Any interested person may apply to a court for a declaratory order that a female person is the mother of a child.

Declaration of maternity

(2) Where the court finds on the balance of probabilities that a female person is the mother of a child, the court may make a declaratory order to that effect.

Application

5. (1) Any interested person may apply to a court for a declaratory order that a male person is or is not recognized in law to be the father of a child.

Declaration as to paternity

(2) Where the court finds on the balance of probabilities that a male person is or is not the father of a child, the court may make a declaratory order to that effect.

Declaration of paternity where presumption exists

(3) Where the court finds that a presumption of paternity exists under section 8, unless it is established on the balance of probabilities that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.

Limitation

(4) A court may not make a declaratory order under subsection (2) unless both the persons whose relationship is sought to be established are living at the time the application was made.

Order recognized

6. An order made under section 4 or 5, as varied under section 7, shall be recognized for all purposes, unless it has been discharged.

New evidence

7. (1) Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, a court may, on application, discharge or vary the order and make such other orders or directions as are ancillary to the order.

Effect of new order

- (2) Where an order is discharged or varied under subsection (1),
- (a) rights and duties that have been exercised and performed are not affected; and
 - (b) interests in property that have been distributed as a result of the order before it was discharged or varied are not affected.

Presumption and Acknowledgement of Parentage

Presumption of paternity

8. (1) Unless the contrary is proven on the balance of probabilities, a person shall be presumed to be, and shall be recognized in law to be, the father of a child where

- (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
 - (i) death or judgment of nullity within 300 days before the birth of the child, or
 - (ii) divorce where the judgment of divorce 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 has acknowledged 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 was born within 300 days after he and the mother of the child ceased cohabiting in a relationship of some permanence;
- (e) he and the mother of the child have filed a statement under subsection 3(2) or 4(2) of the *Vital Statistics Act* or under a similar provision of the corresponding Act of another jurisdiction in Canada;
- (f) he and the mother of the child have acknowledged in writing that he is the father of the child; or
- (g) he has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

Where marriage void or voidable

- (2) For the purposes of subsection (1),
- (a) where a man and a woman go through a form of marriage with each other in good faith and then cohabit and the marriage is void,

- they shall be deemed to be married during the time they cohabit;
and
- (b) where a marriage is decreed a nullity, the man and woman shall be deemed to be married until the judgment of nullity is granted.

Conflicting presumptions

- (3) Where circumstances exist that give rise to a presumption of paternity by more than one father under subsection (1),
- (a) no presumption shall be made as to paternity; and
 - (b) no person is recognized in law to be the father unless an order is made to that effect under subsection 5(2) or 7(1).

Admissibility of acknowledgment of parentage

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgement is, in the absence of evidence to the contrary, proof of the fact.

Order for Tests to Determine Parentage

Tests to determine parentage

- 10.** (1) On the application of a party in a civil proceeding in which a court is called on to determine the parentage of a child, the court may give the party leave
- (a) to obtain, in respect of such persons as are named in the order granting leave, tests on a blood sample or such other biological sample as may be specified by the court; and
 - (b) to submit the results of the tests in evidence.

Conditions

(2) Leave under subsection (1) may be given subject to such terms and conditions as the court considers proper.

Costs

(3) The court shall require one or more parties to pay the cost of the tests and, where more than one party is ordered to pay, specify in the order the proportions or amounts of the costs that each party must pay.

Consent

(4) No order under subsection (1) authorizes the taking of a blood or other biological sample and conducting of a test on the sample without the consent of the person in respect of whom the test is to be obtained.

Person presumed to have capacity to consent

- (4.1) Where a person named in an order under paragraph (1)(a) is
- (a) a parent or person alleged to be a parent, and
 - (b) a minor, but is not otherwise incapacitated,

unless the contrary is proven on the balance of probabilities, the person shall be presumed to be capable of giving consent for the purposes of this section.

Person without capacity to consent

(5) Where a person named in an order under paragraph (1)(a) is not capable of giving consent because of age or other incapacity, a person having lawful custody of the person named in the order may consent on his or her behalf.

Inference from refusal

(6) Where leave is given under subsection (1) and a person named in the order granting leave refuses to submit to the test, the court may draw such inferences as it considers appropriate.

Regulations

11. The Commissioner, on the recommendation of the Minister, may make regulations governing tests for which leave is given by a court under section 10 including, without limiting the generality of the foregoing,

- (a) the method of taking blood and other biological samples and the handling, transportation and storage of the samples;
- (b) the conditions under which a sample may be tested;
- (c) designating persons or facilities or classes of persons or facilities that are authorized to conduct tests for the purposes of section 10;
- (d) respecting procedures for the admission of reports of tests in evidence; and
- (e) respecting forms for the purpose of section 10 and this section.

Filings in the Office of the Registrar General

Declaration of paternity

12. (1) Any male person may file in the office of the Registrar General a declaration, in the prescribed form, that he is the father of a child.

Discretion to amend register

(2) The Registrar General is not required to amend the register of births in relation to a declaration filed under subsection (1).

Inspection and certified copies of filings

13. (1) On payment of the fee prescribed under the *Vital Statistics Act* and on satisfying the Registrar General that he or she is a person described in subsection (1.1), a person may inspect and obtain from the Registrar General a certified copy of

- (a) a declaration filed under subsection 12(1); or
- (b) a statement filed under subsection 3(2) or 4(2) of the *Vital Statistics Act*.

Who may inspect filings

(1.1) Inspection may be allowed and a certified copy may be issued under subsection (1) only

- (a) to a person who must inspect the declaration or statement, or who requires the certified copy, for a stated reason that in the opinion of the Registrar General justifies the inspection or the issuance of the certified copy, as the case may be;
- (b) to an officer of Her Majesty in right of Canada who must inspect the declaration or statement, or who requires the certified copy, for use in the discharge of the official duties of the officer; or
- (c) to a person on the order of a judge.

Certificate as evidence

(2) A certificate certifying a copy of a document to be a true copy, obtained under subsection (1), 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 admissible in evidence without proof of the office or signature of the Registrar General or Deputy Registrar General and, in the absence of evidence to the contrary, is proof of the filing and contents of the document for all purposes in any action or proceeding.
S.N.W.T. 1998,c.34,Sch.C,s.4(5)(a).

Filing of orders and judgments

14. (1) Where a court makes a finding of parentage under section 4, 5 or 7, the clerk of the court shall transmit a copy of the declaratory order to the Registrar General.

Amendment to register of births

(2) On receipt under subsection (1) of a declaratory order, the Registrar General shall, in accordance with section 28 of the *Vital Statistics Act* and the order, amend the register of births.

PART III

CUSTODY, ACCESS AND GUARDIANSHIP

Definitions

15. (1) In this Part,

"extra-territorial order" means an order, or that part of an order, of an extra-territorial tribunal that grants to a person custody of or access to a child; (*ordonnance extraterritoriale*)

"extra-territorial tribunal" means a court or tribunal outside the Territories that has jurisdiction to grant to a person custody of or access to a child; (*tribunal extraterritorial*)

"parental or separation agreement" means a parental agreement or separation agreement, both defined in section 2 of the *Family Law Act*, and includes an agreement or contract in the nature of such a parental agreement or separation agreement that is deemed to be a domestic contract under section 13 of that Act. (*accord parental ou de séparation*)

Reference to child

(2) In this Part, a reference to a child is a reference to the child while a minor.

Purposes of Part

16. 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 and guardianship for children will be determined in accordance with the best interests of the children, with a recognition that differing cultural values and practices must be respected in that determination;
- (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 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, in conjunction with the *International Child Abduction Act*, 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 the Territories.

DIVISION A - CUSTODY AND ACCESS

Best Interests Test

Best interests of child

17. (1) The merits of an application under this Division in respect of custody of or access to a child shall be determined in accordance with the best interests of the child, with a recognition that differing cultural values and practices must be respected in that determination.

Considerations in determining best interests

(2) In determining the best interests of a child for the purposes of an application under this Division 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 love, affection and emotional ties between the child and
 - (i) each person entitled to or seeking custody or access,

- (ii) other members of the child's family, and
- (iii) persons involved in the care and upbringing of the child;
- (b) the child's views and preferences if they can be reasonably ascertained;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the ability and willingness of each person seeking custody to, directly or indirectly, provide the child with guidance, education and necessities of life and provide for any special needs of the child;
- (e) the ability of each person seeking custody or access to act as a parent;
- (f) who, from among those persons entitled to custody or access, has been primarily responsible for the care of the child, including care of the child's daily physical and social needs, arrangements for alternative care for the child where it is required, arrangements for the child's health care and interaction with the child through, among other things, teaching, playing, conversation, reading and discipline;
- (g) the effect a change of residence will have on the child;
- (h) the permanence and stability of the family unit within which it is proposed that the child live;
- (i) any plans proposed for the care and upbringing of the child;
- (j) the relationship, by blood or through adoption, between the child and each person seeking custody or access; and
- (k) the willingness of each person seeking custody to facilitate access between the child and a parent of the child who is seeking custody or access.

Further consideration – act of violence

(3) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall also consider any evidence that a person seeking custody or access has at any time committed an act of violence against his or her spouse, former spouse, child, child's parent or any other member of the person's household or family and any effect that such conduct had, is having or may have on the child.

Consideration of past conduct

(4) Subject to subsection (3), a person's past conduct may be considered in an application under this Part in respect of custody of or access to a child only where the court is satisfied that it is relevant to the person's ability to act as a parent.

Economic circumstances may not be considered

(5) The economic circumstances of a person seeking custody or access are not relevant to the person's ability to act as a parent.

Entitlement, Appointment and Application for Order

Entitlement to custody

18. (1) Except as otherwise provided in this Division, the father and the mother of a child are equally entitled to custody.

Rights and responsibilities

(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.

May act for child

(3) Without limiting the generality of subsection (2), a person entitled to custody of a child may act for and on behalf of the child, except where the person's authority is otherwise limited by the law of the Territories or court order.

Authority of one to act

(4) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child.

Where parents live separate and apart

(5) The right of a parent to exercise the entitlement of custody of a child and the incidents of custody, but not the entitlement to access to the child, is suspended until a parental or separation agreement or a court order otherwise provides where

- (a) the parents of the child live separate and apart and the child lives with the other parent; and
- (b) the parent has consented, either expressly or by implication, or acquiesced to the other parent having sole custody of the child.

Access

(6) The entitlement to access to a child includes the right 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.

Marriage of child

(7) The entitlement to custody of or access to a child terminates on the marriage of the child.

Alteration by agreement or order

(8) Any entitlement to custody or incidents of custody or to access under this section is subject to alteration by a court order or by a parental or separation agreement.

Appointment of custodian

19. (1) A person entitled to custody of a child may, in writing, appoint one or more persons to have any of the appointor's rights or responsibilities of custody in relation to the child.

Appointment *inter vivos* or by will

- (2) An appointment under this section may be made effective
- (a) during the lifetime of the appointor for such time as the appointor may specify; or
 - (b) after the death of the appointor if the appointment is made
 - (i) by valid will, or
 - (ii) by written instrument signed by the appointor, where the appointor is a minor and unmarried.

Where appointee is a minor

(3) An appointment of a person under this section is not effective while the person is a minor.

Consent of appointee

(4) No appointment under this section is effective without the consent or ratification of the person appointed.

Revocation

(5) A person who has made an appointment under this section or subsection 23(1) of the *Domestic Relations Act* may revoke the appointment,

- (a) if the appointment is or is to be effective during the lifetime of the appointor, in writing; or
- (b) if the appointment is to take effect after the death of the appointor,
 - (i) by valid will, or
 - (ii) by written instrument signed by the appointor, where the appointor is a minor and unmarried.

Application or order under this Division

(6) An appointment under this section does not prevent an application for or the making of an order under this Division in respect of custody and access.

Implied revocation

(7) For greater certainty, an appointment made under this section by will is revoked if the will is revoked.

Application for order

20. (1) A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

Application for leave

(2) A person other than a parent may not make an application under subsection (1) for an order respecting custody of a child or determining any aspect of the incidents of custody of the child without leave of the court.

Powers of court

- (3) On an application under subsection (1), the court may
- (a) grant custody of or access to the child to one or more persons;
 - (b) determine any aspect of the incidents of custody or the right to access and make such order in respect of the determination as the court considers appropriate; and
 - (c) make such additional order as the court considers necessary and proper in the circumstances.

Application to fix times or days of access where order

21. (1) Where an order made in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

Order

(2) On an application under subsection (1), the court may vary the order by specifying the times or days agreed to by the parties or, where the parties do not agree, the times or days the court considers appropriate.

Application to fix times or days of access where agreement

(3) Where a parental or separation agreement provides for a person's access to a child without specifying times or days and the parties to the agreement cannot agree on the times or days, a party to the agreement may apply to a court to fix times or days for access.

Order

(4) On an application under subsection (3), the court may fix the times or days the court considers appropriate.

Variation of order

22. (1) A court shall not make an order under this Division that varies an order in respect of custody or access made by a court in the Territories unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.

Exception

(2) Subsection (1) does not apply in respect of an application made under section 21.

Supervision of custody or access

23. Where an order is made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access by a person who has consented to act as supervisor.

Where written reasons required

24. A court shall provide written reasons for its decision where, on an application under this Division, the court

- (a) grants custody of a child to more than one person notwithstanding the objection of one party to such an order; or
- (b) makes an order setting out a custody arrangement that was not requested by a party.

Court's Exercise of Jurisdiction

Jurisdiction of court

25. (1) A 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 the Territories at the commencement of the application for the order; or
- (b) the child is not habitually resident in the Territories, but the court is satisfied that
 - (i) the child is physically present in the Territories at the commencement of the application for the order,
 - (ii) substantial evidence concerning the best interests of the child is available in the Territories,
 - (iii) no application for custody of or access to the child is pending before an extra-territorial tribunal in another place where the child is habitually resident,
 - (iv) no extra-territorial order in respect of custody of or access to the child has been recognized by a court in the Territories,
 - (v) the child has a real and substantial connection with the Territories, and
 - (vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Territories.

Habitual residence

(2) A child is habitually resident in the place where he or she last resided with

- (a) both parents;
- (b) one parent under a parental or separation agreement or a court order or with the consent, implied consent or acquiescence of the other, if the parents are living separate and apart; or
- (c) a person other than a parent on a permanent basis for a significant period of time.

Effect of removal or withholding

(3) The removal or withholding of a child without the consent of the person having custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing process for the return of the child by the person from whom the child is removed or withheld.

Exercise of jurisdiction where serious harm may result

26. Notwithstanding sections 25 and 34, a court may exercise 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 the Territories; 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,
 - (ii) the child is returned to the custody of the person legally entitled to custody of the child, or
 - (iii) the child is removed from the Territories.

Declining jurisdiction

27. A court having jurisdiction under this Division in respect of custody or access may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the Territories.

Orders where court does not exercise full jurisdiction

28. Where a court may not exercise jurisdiction under section 25, has declined jurisdiction under section 27 or subsection 35(2) or is satisfied that a child has been wrongfully detained in the Territories, the court may do any one or more of the following:

- (a) make such interim order in respect of custody or access as the court considers is in the best interests of the child;
- (b) direct a party to the application to promptly commence a similar proceeding before an extra-territorial tribunal or make such other order as the court considers appropriate and provide that, when the application is commenced and the order otherwise complied with, the application under this Act is stayed;
- (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 at the hearing of the application or of witnesses at the hearing of the application.

Assessment Respecting Child and Parties

Assessment

29. (1) The court before which an application is brought in respect of custody of or access to a child may, by order,

- (a) appoint a person who has the technical or professional skill necessary to assess and report to the court on
 - (i) the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child, or

- (ii) any particular issue respecting the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child specified by the court;
- (b) give directions on the methods to be used for the assessment; and
- (c) require the parties, the child or any other person who has been given notice of the proposed order to attend for assessment by the person appointed by the order.

When order may be made

(2) An order may be made under subsection (1) on or before the hearing of the application in respect of custody of or access to the child and with or without a request by a party to the application.

Appointment

(3) The court shall appoint a person under subsection (1) who is agreed on by the parties, but if the parties do not agree, the court shall choose and appoint a person it considers appropriate.

Consent to act

(4) The court may not appoint a person under subsection (1) unless the person has consented to make the assessment and to report to the court within the period of time specified by the court.

Inference from refusal

(5) Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the court may draw such inferences from the refusal in respect of the ability and willingness of any person to satisfy the needs of the child as the court considers appropriate.

No recommendations may be made

(6) The person appointed under subsection (1) shall not make any recommendation as to whom custody or access should be granted.

Report

(7) The person appointed under subsection (1) shall file his or her report with the clerk of the court.

Distribution of report

(8) On the filing of a report, the clerk of the court shall give a copy of it to each party and to the child's solicitor, if any.

Confidentiality of report

(8.1) The clerk of the court shall keep every report filed under subsection (7) in a sealed packet or shall otherwise ensure that it is not available or made available to anyone other than the parties, the child's solicitor, if any, or the court for inspection, review or copying, unless otherwise ordered by the court.

Admissibility of report

(9) The report filed under subsection (7) is admissible in evidence in the application.

Attendance as witness

(10) The person appointed under subsection (1) shall attend as a witness at the hearing of the application, unless the parties and the child's solicitor, if any, otherwise agree.

Directions

(11) On application, the court may, by order, give such directions in respect of the assessment as the court considers appropriate.

Fees and expenses

(12) The court shall

- (a) require the parties to pay the fees and expenses of the person appointed under subsection (1); and
- (b) specify in the order the proportions or amounts of the fees and expenses that each party shall pay.

Other expert evidence

(13) The appointment of a person under subsection (1) does not prevent the parties or the child's solicitor from submitting other expert evidence as to the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

Application to Enforce Access

Application to enforce access

30. (1) A person in whose favour an order has been made for access to a child at specific times or on specific days, and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child, may make an application for relief under subsection (2) to the court that made the access order.

Order for relief

(2) Where the court is satisfied that the party against whom the application is brought wrongfully denied the applicant access to the child, the court may make such order as it considers appropriate, including any one or more of the following orders:

- (a) requiring the respondent to give the applicant compensatory access to the child for the period agreed to by the parties or, if the parties do not agree, for the period the court considers appropriate;
- (b) giving directions for the supervision of custody or access under section 23;

- (c) requiring the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the wrongful denial of access;
- (d) appointing a mediator in accordance with section 71 as if the application were an application for access.

Application respecting failure to exercise access, etc.

(3) A person in whose favour an order has been made for custody of a child, and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise access or to return the child as the order requires, may make an application for relief under subsection (4) to the court that made the access order.

Order for relief

(4) Where the court is satisfied that the party against whom the application is brought, without reasonable notice and excuse, failed to exercise access or to return the child as the order required, the court may make such order as it considers appropriate, including any one or more of the following orders:

- (a) giving directions for the supervision of custody or access under section 23;
- (b) requiring the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the failure to exercise access or to return the child as the order requires;
- (c) appointing a mediator in accordance with section 71 as if the application were an application for access;
- (d) requiring the respondent to provide his or her address and telephone number to the applicant.

Orders under *Divorce Act*

(5) This section does not apply in respect of orders made under the *Divorce Act* or a predecessor of that Act.

Application

(6) This section does not apply in respect of a denial of access or a failure to exercise access or to return a child that took place before the day this section comes into force.

Application Where Child Unlawfully Held or to Prevent Unlawful Removal of Child

Order where child unlawfully held

31. (1) Where a court is satisfied on application by a person in whose favour an order has been made for custody of a child that there are reasonable grounds for believing that any person is unlawfully withholding the child from the applicant, the court may, by order, authorize the applicant or someone on his or her behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody.

Order to locate and apprehend child

(2) On application, a court may, by order, direct a police force having jurisdiction in any area in the Territories where it appears to the court the child may be to locate, apprehend and deliver a child to the person named in the order, where the court is satisfied that there are reasonable grounds for believing that

- (a) a person is unlawfully withholding a child from a person entitled to custody of the child;
- (b) a person who is prohibited by court order from removing a child from the Territories, or who has, in a parental or separation agreement, agreed that he or she will not remove a child from the Territories, proposes to remove the child or have the child removed from the Territories; or
- (c) a person who is entitled to access proposes to remove the child or to have the child removed from the Territories and that the child is not likely to return.

Ex parte application

(3) An order may be made under subsection (2) on an *ex parte* application where the court is satisfied that it is necessary that the order should be made without delay.

Duty to act

(4) The police force directed to act by an order under subsection (2) shall do all things that can reasonably be done to locate, apprehend and deliver the child in accordance with the order.

Entry and search

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a member of the police force may, with such assistance and such force as is reasonable, enter and search any place where he or she has reasonable grounds for believing that the child may be.

Time for entry and search

(6) An entry or a search referred to in subsection (5) may be made only between 6 a.m. and 9 p.m. unless the court, by order, authorizes entry and search at another time.

Expiration of order

(7) The court shall include in an order made under subsection (2) a date on which the order expires, which date shall be not later than six months after the order is made unless the court is satisfied that a longer period of time is necessary in the circumstances.

When application may be made

(8) An application under subsection (1) or (2) may be made in an application for custody or access or in a separate application.

Application to prevent unlawful removal of child

32. (1) Where, on application, a court is satisfied on reasonable grounds that a person who is prohibited by court order from removing a child from the Territories, or who has, in a parental or separation agreement, agreed that he or she will not remove a child from the Territories, proposes to remove the child from the Territories, the court, in order to prevent the removal, may make an order requiring a person to do any one or more of the acts listed in subsection (3).

Application to ensure return of a child

(2) Where, on application, a court is satisfied on reasonable grounds that a person entitled to access to a child proposes to remove the child from the Territories and is not likely to return the child to the Territories, the court, in order to prevent the removal or to secure the prompt, safe return of the child to the Territories, may make an order requiring a person to do any one or more of the acts listed in subsection (3).

Order

(3) In an order made under subsection (1) or (2), the court may require a person to do any one or more of the following:

- (a) pay money into court, or transfer specific property to a named 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 named trustee subject to the terms and conditions specified in the order;
- (c) post a bond or other similar instrument acceptable to the court, with or without sureties, payable to the applicant in such amount as the court considers appropriate; and
- (d) deliver the person's passport, the child's passport and any other travel documents of the person or child to the court or to an individual or body specified by the court.

(4) Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(a).

Terms and conditions

(5) In an order under paragraph (3)(a), the court may specify terms and conditions for the return or disposition of the property as the court considers appropriate.

Directions respecting safekeeping

(6) In an order made under subsection (1) or (2), the court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as it considers appropriate.

Holding of passport, travel document

(7) The court or the individual or body specified by a court in an order under paragraph (3)(d) shall hold a passport or travel document delivered pursuant to the order in safekeeping in accordance with any directions set out in the order.

S.N.W.T. 1998,c.34,Sch.C,s.4(3)(a),(4)(a).

Order for Access to Information

Order for access to information

33. (1) Where, on application brought by notice of motion, it appears to a court that, for the purpose of bringing an application under this Part in respect of custody or access or 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 determine or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public body in the Territories to provide the court with any information shown on a record in the possession or control of the person or public body that indicates the place of employment, address or location of the proposed respondent or person against whom the order is made.

Where subsection (1) does not apply

(1.1) Subsection (1) does not apply in respect of

- (a) personal correspondence between the proposed respondent or person against whom the order is made and a parent, child, spouse, brother or sister of that person; or
- (b) information that is subject to solicitor-client privilege.

Order respecting confidentiality

(1.2) Where a court makes an order under subsection (1), it may make any order with respect to the confidentiality to be maintained in connection with the information provided pursuant to that order that it considers appropriate.

Provision of information

(2) A person or public body ordered to provide information to the court under subsection (1) shall do so forthwith and the court may then give the information to such person or persons as the court considers appropriate.

Exception

(3) A 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 determine or confirm the whereabouts of the proposed respondent or for the enforcement of an order for custody or access.

Confidentiality

(4) 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.

Government bound

(5) This section binds the Government of the Northwest Territories.

Extra-Territorial Orders

Recognition of extra-territorial orders

34. (1) On application by any person in whose favour an order for the custody of or access to a child has been made by an extra-territorial 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-territorial tribunal before the order was made;
- (c) that the law of the place in which the order was made did not require the extra-territorial tribunal to have regard for the best interests of the child;
- (d) that the order of the extra-territorial tribunal is contrary to public policy in the Territories; or
- (e) that, under section 25, the extra-territorial tribunal would not have jurisdiction if it were a court in the Territories.

Effect of recognition of order

(2) An order made by an extra-territorial tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such.

Conflicting orders

(3) Where a court is presented with conflicting orders made by extra-territorial 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 in the best interests of the child.

Further orders

(4) A court that has recognized an extra-territorial order may make such further orders under this Division as the court considers necessary to give effect to the order.

Superseding order, material change in circumstances

35. (1) On application, a court may make an order that supersedes an extra-territorial 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 that affects or is likely to affect the best interests of the child and

- (a) the child is habitually resident in the Territories at the commencement of the application for the order; or
- (b) although the child is not habitually resident in the Territories, the court is satisfied that
 - (i) the child is physically present in the Territories 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-territorial order was made,
 - (iii) substantial evidence concerning the best interests of the child is available in the Territories,
 - (iv) the child has a real and substantial connection with the Territories, and
 - (v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Territories.

Declining jurisdiction

(2) A 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 the Territories.

(3) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(b).**

Superseding order, serious harm

36. (1) On application, a court may make an order that supersedes an extra-territorial order in respect of custody of or access to a child where the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if

- (a) the child remains in the custody of the person legally entitled to custody of the child;
- (b) the child is returned to the custody of the person entitled to custody of the child; or
- (c) the child is removed from the Territories.

(2) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(c).**

Extra-territorial order as evidence

37. A copy of an extra-territorial order purporting to be certified as a true copy by a judge, other presiding officer or registrar of the extra-territorial tribunal that made the order or by a person charged with keeping the orders of the extra-territorial tribunal is admissible in evidence without proof of the office or signature of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the making and content of the order.

Judicial notice

38. For the purposes of an application under this Part, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside the Territories and of a decision of an extra-territorial tribunal.

Dispensing with Consent of Parent to Medical Treatment of Child

Dispensing with consent of parent

39. (1) Any person may apply to the court for an order dispensing with the consent of a parent to medical treatment of a minor that is required by law where the consent is refused or otherwise not obtainable.

Court order

(2) The court shall hear an application made under subsection (1) in a summary manner and may proceed *ex parte* or otherwise and, where it is satisfied that the withholding of the medical treatment would endanger the life or seriously impair the health of the minor, may by order dispense with the consent of the parent to the medical treatment as is specified in the order.

Representation by minor

(3) The court may, in an application under subsection (1), hear representation by or on behalf of the minor where it is practical to do so.

Liability

(4) Where by this section the consent of the parent of a minor to the medical treatment of the minor is dispensed with, the medical treatment does not constitute a trespass to or an assault of the person of the minor merely by reason that the consent of the parent was not obtained.

"parent" defined

(5) In this section "parent" includes any person other than a parent who is entitled to give consent to medical treatment of a minor. S.N.W.T. 1998,c.34,Sch.C,s.4(4)(b).

DIVISION B – GUARDIANSHIP AND PROPERTY OF A CHILD

Application for order

40. (1) Any person, including a child, may apply to the court for an order respecting guardianship for the child.

Rights and responsibilities of guardian

(2) A guardian for a child has charge of and is responsible for the care and management of the child's estate and, as guardian, shall act in the best interests of the child. S.N.W.T. 1998,c.34,Sch.C,s.4(4)(c).

Parents as guardians

41. (1) As between themselves and subject to any court order or any parental or separation agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians for the child.

More than one guardian

(2) A court may appoint more than one guardian for a child.

Responsibilities of joint guardians

(3) Where there is more than one guardian appointed for a child,

- (a) the guardians are jointly responsible for the care and management of the child's estate; and
- (b) any one of the guardians may exercise the rights and discharge the responsibilities of the guardianship without the consent of the other.

When paragraph (3)(b) does not apply

(4) Paragraph (3)(b) does not apply where an order of the court provides otherwise.

Limit of liability

(5) No proceedings lie against a guardian in respect of an act of another guardian taken without his or her knowledge, acquiescence or consent.

S.N.W.T. 1998,c.34,Sch.C,s.4(4)(d).

Order

42. (1) In an application under subsection 40(1), the court may

- (a) determine any aspect of the incidents of the guardianship;
- (b) limit the length of time during which the guardianship may be exercised or the property in respect of which the guardianship may be exercised; and
- (c) make any other order the court considers necessary and proper in the circumstances.

Criteria

(2) In deciding an application for the appointment of a guardian for a child, the court shall consider all the relevant circumstances, including

- (a) the ability of the proposed guardian to manage the child's estate;
- (b) the merits of any plans of the proposed guardian for the care and management of the child's estate;
- (c) the child's views and preferences, if they can reasonably be ascertained; and
- (d) the relationship, by blood or through adoption, between the child and each person seeking guardianship.

S.N.W.T. 1998,c.34,Sch.C,s.4(4)(e).

Guardianship, appointment by will

43. (1) A guardian for a child may appoint by will one or more persons to be guardians for the child after the death of the appointer.

Appointment by minor

(2) An unmarried parent who is a minor may make an appointment referred to in subsection (1) by written instrument signed by the parent.

Limitation

- (3) An appointment under subsection (1) or (2) is effective only
- (a) if the appointor is the only guardian for the child on the day immediately before the appointment is to take effect; or
 - (b) if the appointor and any other guardian for the child die at the same time or in circumstances that render it uncertain who survived the other.

Where more than one appointment

(4) Where two or more persons are appointed to be guardians for a child by appointors who die as referred to in paragraph (3)(b), only the appointments of the persons appointed by both or all the appointors are effective.

Consent of appointee

(5) No appointment under subsection (1) or (2) is effective without the consent or ratification of the person appointed.

Expiration of appointment

(6) An appointment under subsection (1) or (2) for guardianship for a child expires 90 days after the appointment becomes effective or, where the appointee applies under this Division for guardianship for the child within that 90 day period, when the application is disposed of.

Application or order under section 40

(7) An appointment under this section does not apply to prevent an application for the making of an order under section 40.

Application

- (8) This section applies in respect of
- (a) any will made on or after the day on which this section comes into force; and
 - (b) any will made before the day on which this section comes into force if the testator is living on that day.

Security

44. The court may require a guardian for a child to post a bond or other similar instrument acceptable to the court, with or without sureties, payable to the child in the amount the court considers appropriate in respect of the care and management of the child's estate. S.N.W.T. 1998,c.34,Sch.C,s.4(4)(f).

Accounts

45. The court may require a guardian for a child to pass the accounts, or a guardian for the child may voluntarily pass the accounts, in respect of the care and management of the child's estate in the same manner as an executor under a will may be required to account or may pass the accounts in respect of the estate.
S.N.W.T. 1998,c.34,Sch.C,s.4(4)(g).

Management fees and expenses

46. A guardian for a child is entitled to payment of a reasonable amount for fees for and expenses of management of the child's estate, and the court may make the fees and expenses a charge on the child's estate. S.N.W.T. 1998,c.34,Sch.C,s.4(4)(h).

Termination of guardianship

47. The guardianship for a child ends when the child attains the age of 19 years.

Transfer of property to child

48. 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 19 years.

Removal of guardian

49. (1) A guardian for a child may be removed by the court for the same reasons for which a trustee may be removed.

Resignation

(2) A guardian for a child may, with the permission of the court, resign as guardian on such terms as the court considers appropriate.
S.N.W.T. 1998,c.34,Sch.C,s.4(4)(i).

Payment of debt owed to child

50. (1) Subject to subsection (2), where a person is under a duty to pay money or to deliver personal property to a child and the court has not appointed a guardian for the child, the payment to any of the following persons of not more than \$2,000 in a year or the delivery of personal property to a value of not more than \$2,000 in a year discharges the duty to the extent of the amount paid or the value of the personal property delivered:

- (a) the child, where the child has a legal obligation to support another person;
- (b) a parent with whom the child resides;
- (c) a person who has lawful custody of the child.

Limit

(2) The total amount paid and total value of property delivered under subsection (1) in respect of the same obligation may not exceed \$5,000.

Responsibility for money or property

(3) A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian for the care and management of the money or personal property.

Where subsections (1) and (2) do not apply

(4) Subsections (1) and (2) do not apply in respect of

- (a) wages and salary owing to a child; or
- (b) an amount payable or personal property that is to be delivered under a judgment or court order.

S.N.W.T. 1998,c.34,Sch.C,s.4(4)(j).

Disposition of child's property

51. (1) On application, 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.

Criteria

(2) An order may 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.

Conditions

(3) An order under subsection (1) may be made subject to such conditions as the court considers appropriate.

Application by next friend or guardian

(4) An application under subsection (1) shall be made in the name of the child by the next friend or guardian for the child but shall not be made without the consent of the child if the child has attained the age of 12 years unless the court otherwise directs or allows.

Limitation

(5) The court may 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.

Execution of documents

(6) 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.

Directions, other orders

(7) The court may give such directions and make such other orders, including vesting orders, as it considers necessary and proper for the carrying out of an order made under subsection (1).

Validity of documents

(8) A document executed in accordance with an order made under this section is as effectual as if, at the time the document was executed, the child by whom it was executed had attained the age of 19 years or, if executed by another person in accordance with the order, as if the child had executed it and had attained the age of 19 years.

Application of proceeds of sale

(9) The money arising from the disposition or encumbrance of an interest of a child referred to in paragraph (1)(a) or (b) and the money referred to in paragraph (1)(c) shall be paid out, applied and disposed of in the manner that the court directs.

Liability

(10) No person incurs or shall be deemed to incur liability by making a payment in accordance with an order made under subsection (1).
S.N.W.T. 1998,c.34,Sch.C,s.4(4)(k).

Order confirming settlement

52. (1) Where

- (a) an action is maintainable on behalf of a child in respect of an injury to the child, and
- (b) the guardian, parent or next friend of the child acting on behalf of the child has, either before or after the commencement of an action, agreed on a settlement of the claim or action with the person against whom the claim is made or action brought,

the guardian, parent or next friend of the child or the person against whom the claim or action is made or brought may, on 10 days notice to the opposite party and to the Public Trustee, apply, by originating notice, to a judge sitting in chambers for an order confirming the settlement.

Confirmation of settlement

(2) On an application under subsection (1), the judge shall confirm the settlement where it appears to the judge that the settlement is in the best interests of the child.

Further claims

(3) Where a settlement is confirmed under subsection (2), the person against whom the claim is made or action brought is discharged from all further claims arising out of or in respect of the injury to the child.

Order for payment to guardian or Public Trustee

(4) On an application under subsection (1), the judge may order that the money from the settlement be paid to the guardian where one has been appointed or to the Public Trustee under the *Public Trustee Act*. S.N.W.T. 1998,c.34,Sch.C,s.4(5)(b); S.N.W.T. 1999,c.9,Sch.E,s.1.

Assignment of lease

53. (1) Where a child is the owner of land that is subject to a lease and the lease contains a covenant not to assign, sublet or transfer without leave, the guardian of the child may, with the approval of a judge, consent to any assignment, sublease or transfer of the leasehold interest, in the same manner and with the same effect as if the consent were given by a lessor under no such disability.

"land", "owner"

(2) In subsection (1), "land" and "owner" have the meanings assigned to them in section 1 of the *Land Titles Act*. S.N.W.T. 1998,c.34,Sch.C,s.4(5)(c).

DIVISION C - GENERAL

Rule of construction

54. (1) For the purposes of construing any instrument or enactment, 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 the estate of a child shall be construed to refer to guardianship for a child.

Application

(2) Subsection (1) applies to any instrument or enactment made before, on or after the day this Act comes into force.

Consent of minor

55. A consent in respect of a matter provided for by this Part is not invalid by reason only that the person giving the consent is a minor.

Right of child to withdraw

56. Nothing in this Part abrogates the right of a child who has attained the age of 16 years to withdraw from the charge of his or her parents.

Application of Part

56.1. This Part applies to an order respecting custody of or access to a child or respecting the guardianship of the person of a child made under the law of the Territories before the coming into force of this section as if the order were an order made under this Part.

PART IV
CHILD SUPPORT

Definitions

57. In this Part,

"child" means a person who

- (a) is a minor and who has not withdrawn from the charge of his or her parents, or
- (b) is the age of majority or over, but who is unable, by reason of illness, disability, pursuit of reasonable education or other cause, to withdraw from a parent's charge; (*enfant*)

"parent", in relation to a particular child, includes a person who stands in the place of a parent for the child, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody. (*père ou mère ou parents*)

S.N.W.T. 1998,c.17,s.6(3).

Obligation of parent to support child

58. A parent has an obligation to provide support for his or her child where the parent is capable of doing so.

Order for support

59. (1) A court may, on application, order a parent to provide support for his or her child and determine the amount and duration of such support.

Applicants

- (2) An application for an order under subsection (1) may be made by
 - (a) another parent or a person who has lawful custody of the child or with whom the child lives;
 - (b) the child for whom support is requested; or
 - (c) the Minister responsible for the *Social Assistance Act*, where assistance has been requested, is being provided or has been provided under that Act for the child's support.

Interim order

(3) Where an application is made under subsection (1), the court may, on application by any party, make an interim order requiring a parent to provide support for his or her child in an amount determined by the court.

Applicable guidelines

(4) A court making an order under subsection (1) or an interim order under subsection (3) shall do so in accordance with the applicable guidelines.

Adding third party

(5) In an application under this section the respondent may add as a third party another person who may have an obligation to provide support for the child.

Where court may award different amount

59.1. (1) Notwithstanding subsection 59(4), a court may award an amount of support for a child that is different from the amount that would be determined in accordance with the applicable guidelines where the court is satisfied that

- (a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the parents or, where the parents are spouses, the division or transfer of their property, directly or indirectly benefit the child or that special provisions have otherwise been made for the benefit of the child; and
- (b) the application of the applicable guidelines would result in an amount of support that is inequitable given the special provisions referred to in paragraph (a).

Where written reasons required

(2) Where the court awards, under subsection (1), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall provide written reasons for its decision.

Consent orders

(3) Notwithstanding subsection 59(4), on the consent of the parties in an application under section 59, the court may award an amount for the support of a child that is different from the amount that would be determined in accordance with the applicable guidelines if it is satisfied, having regard to the applicable guidelines, that reasonable arrangements have been made for the support of the child.

Where amount agreed to is not the same

(4) In determining under subsection (3) whether reasonable arrangements have been made for the support of a child, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

Setting aside provision in domestic contract

59.2. A court may set aside a provision respecting support for a child in a domestic contract and may determine and order support for the child in an application under section 59 notwithstanding that the domestic contract may contain an express provision excluding the application of this section, where

- (a) the provision results in unconscionable circumstances;
- (b) the provision is in respect of a child who qualifies for an allowance for support out of public money;

- (c) there is, at the time the application is made, a default of at least three months duration in making a full payment of support under the domestic contract; or
- (d) the court is not satisfied that reasonable arrangements have been made for the support of the child.

Powers of court

60. (1) In an application under section 59, the court may, in accordance with any guidelines that may be made under subsection 85(1) or (2), make an order

- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) requiring that a lump sum be paid or be held in trust;
- (c) requiring that property be transferred to or in trust for or vested in the child, whether absolutely, for life or for a term of years;
- (d) requiring that some of or all the money payable under the order be paid into court or to another appropriate person or agency for the child's benefit;
- (e) requiring that support be paid in respect of any period before the date of the order;
- (f) requiring payment to the Minister responsible for the *Social Assistance Act* of an amount in reimbursement for assistance provided to the child under that Act before the date of the order;
- (g) requiring payment of expenses in respect of a child's prenatal care and birth;
- (h) requiring that a parent who has a policy of life insurance as defined in the *Insurance Act* designate the child as the beneficiary irrevocably;
- (i) requiring that a parent who has an interest in a pension plan or other benefit plan designate the child as beneficiary under the plan and providing that the parent may not change that designation;
- (j) requiring the securing of payment under the order by a charge on property or otherwise; and
- (k) binding the estate of the person who has the obligation to provide support for the child.

(2) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(d).**

Assignment of support

(3) An order for support may be assigned to the Minister responsible for the *Social Assistance Act* where assistance is or will be provided for the child's support under that Act. S.N.W.T. 1998,c.34,Sch.C,s.4(3)(d).

Application to vary order

61. (1) The following persons may apply to the court that made an order in respect of a child under this Part for variation of the order:

- (a) a person who was a party to the proceeding in which the order was made;
- (a.1) a person who has lawful custody of the child or with whom the child lives;
- (b) the child;
- (c) the Minister responsible for the *Social Assistance Act*, where assistance has been requested, is being provided or has been provided under that Act for the support of the child.

Powers of court

(2) Where the court is satisfied that evidence not available on the previous hearing has become available or that a change in circumstances as provided for in the applicable guidelines has occurred since the making of an order of support or the disposition of another application for variation in respect of the same order, the court may

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part of or all the arrears or any interest due on the arrears; and
- (c) make any other order under section 60 that the court considers appropriate.

Applicable guidelines

(3) A court making an order under subsection (2) shall do so in accordance with the applicable guidelines.

Limitation on applications for variation

(4) No application for variation may be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court.

Where court may award different amount

62. (1) Notwithstanding subsection 61(3), in making an order under subsection 61(2), a court may award an amount of support for a child that is different from the amount that would be determined in accordance with the applicable guidelines where the court is satisfied that

- (a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the parents or, where the parents are spouses, the division or transfer of their property, directly or indirectly benefit the child or that special provisions have otherwise been made for the benefit of the child; and
- (b) the application of the applicable guidelines would result in an amount of support that is inequitable given the special provisions referred to in paragraph (a).

Where written reasons required

(2) Where the court awards, under subsection (1), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall provide written reasons for its decision.

Consent orders

(3) Notwithstanding subsection 61(3), on the consent of the parties to an application under section 61, the court may award an amount for the support of a child that is different from the amount that would be determined in accordance with the applicable guidelines if it is satisfied, having regard to the applicable guidelines, that reasonable arrangements have been made for the support of the child.

Where amount agreed to is not the same

(4) In determining under subsection (3) whether reasonable arrangements have been made for the support of a child, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

Application of sections 61 and 62 to previous orders

63. Sections 61 and 62 also apply to orders for maintenance made under the *Child Welfare Act*, the *Domestic Relations Act* and the *Maintenance Act* before the day on which this section comes into force and to orders made in proceedings commenced under any of those Acts before the day on which this section comes into force.

"spousal support order" defined

64. (1) In this section, "spousal support order" means an order referred to in section 16 or 23 of the *Family Law Act*.

Priority for support for child

(2) A court shall give priority to support for a child where it considers the following applications at the same time:

- (a) an application under section 59 or 61; and
- (b) an application for a spousal support order made by a parent of the child who is the subject of the application referred to in paragraph (a) against another parent of the child.

Where spousal support order not made or lessened

(3) Where, as a result of giving priority to support for the child, a spousal support order is not made or the amount of a spousal support order is less than it otherwise would have been,

- (a) the court shall provide written reasons for its decision; and

- (b) any subsequent reduction or termination of the order made under section 59 or 61 constitutes, for the purposes of an application for a variation order respecting a spousal support order, a material change in the circumstances of the spouse or the respondent on the application.

Order for return by employer

65. (1) In an application under section 59 or 61, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding 12 months.

Return as evidence

(2) A return purporting to be signed by an employer is admissible in evidence without proof of the signature of the employer and, in the absence of evidence to the contrary, is proof of its contents.

Order for access to information

(3) Where, on application brought by notice of motion, it appears to a court that, for the purpose of bringing an application under section 59 or 61, the proposed applicant needs to determine or confirm the whereabouts of the proposed respondent, the court may order any person or public body in the Territories to provide the court with any information shown on a record in the possession or control of the person or public body that indicates the proposed respondent's place of employment, address or location.

Where subsection (3) does not apply

(3.1) Subsection (3) does not apply in respect of

- (a) personal correspondence between the proposed respondent and a parent, child, spouse, brother or sister of that person; or
- (b) information that is subject to solicitor-client privilege.

Order respecting confidentiality

(3.2) Where a court makes an order under subsection (3), it may make any order with respect to the confidentiality to be maintained in connection with the information provided pursuant to that order that it considers appropriate.

Provision of return or information

(4) A person or public body ordered to make a written return or to provide information to the court under this section shall do so forthwith and the court may then give the return or information to such person or persons as the court considers appropriate.

Confidentiality

(5) The making of a written return or the giving of information in accordance with an order under this section shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

Government bound

(6) This section binds the Government of the Northwest Territories.

Arrest of absconding respondent

66. Where an application is made under section 59 or 61 and the court is satisfied that the respondent is about to leave the Territories and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Part, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court.

Order restraining depletion of property

67. The court may, on application, make an order restraining the depletion of a respondent's property that would impair or defeat a claim under this Part.
S.N.W.T. 1998,c.34,Sch.C,s.4(4)(l).

Order for sale

68. Where the court makes an order requiring that payment under an order for support be secured by a charge on property or otherwise, the court may, on application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the charge or other security. S.N.W.T. 1998,c.34,Sch.C,s.4(4)(m).

Liability for necessities of minor

69. (1) Where a person is entitled to recover against a minor in respect of the provision of necessities for the minor, a parent who has an obligation to support the minor is liable for them jointly and severally with the minor.

Where persons jointly liable

(2) Where persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

PART V

GENERAL

Domestic Contracts

Incorporation of contract in order

70. (1) A provision of a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act.

Contract prevails

(2) A domestic contract dealing with a matter that is also dealt with in this Act prevails if the contract so provides, unless this Act or Part I of the *Family Law Act* provides otherwise.

Domestic contracts

(3) In the determination of a matter respecting the support, education, moral training or custody of a child, access to a child or guardianship for a child, the court may disregard any provision of a domestic contract pertaining to the matter where, in the opinion of the court, to do so is in the best interests of the child.

Setting aside domestic contract

(4) A court may, on application, set aside a provision in a domestic contract respecting a child

- (a) where a party failed to disclose to the other party significant assets or significant debts or other liabilities existing when the provision was made;
- (b) where a party did not understand the nature or consequences of the provision; or
- (c) otherwise in accordance with the law of contract.

Application of subsection (4)

(5) Subsection (4) applies notwithstanding any agreement to the contrary.

Mediation**Mediation**

71. (1) On an application for custody of, access to or support for a child under this Act, the court may appoint a person selected by the parties to mediate any matter that the court specifies.

Consent to act

- (2) The court may only appoint a person who
- (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.

Duty of mediator

(3) The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties.

Full or limited report

- (4) Before entering into mediation, the parties shall decide whether
- (a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant to the matter specified for mediation; or
 - (b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement.

Filing and copies of report

(5) The mediator shall file with the clerk of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties.

Confidentiality of report

(5.1) On the filing of a report, the clerk of the court shall put it in a sealed packet or shall otherwise ensure that it is not available or made available to anyone other than the parties or the court for inspection, review or copying, unless otherwise ordered by the court.

Admissions, etc., in the course of mediation

(6) Where the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed.

Payment of fees and expenses

(7) The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.

Restraining Order

Restraining order

- 72.** (1) On application, a court may
- (a) make an order restraining a person who is cohabiting or has cohabited with the applicant or who is the parent, or a person who claims to be the parent, of children in the applicant's lawful custody from
 - (i) molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or
 - (ii) communicating with the applicant or children, except as the order provides; and
 - (b) require the person to enter into the recognizance that the court considers appropriate.
- (2) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(e).**

Offence and punishment

- (3) Every person who contravenes a restraining order made under subsection (1) is guilty of an offence and is liable on summary conviction,
- (a) for a first offence, to a fine not exceeding \$1,000, to imprisonment for a term not exceeding 90 days or to both; and
 - (b) for each subsequent offence, to a fine not exceeding \$5,000, to imprisonment for a term not exceeding two years or to both.

Arrest without warrant

(4) A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds to have contravened a restraining order.

S.N.W.T. 1998,c.34,Sch.C,s.4(3)(e).

73. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(f).

Registration of Orders

Land Titles Act

74. (1) An order made under this Act that affects real property in respect of which a certificate of title has been issued is registrable under the *Land Titles Act*.

Personal Property Security Act

(2) Where an order made under this Act affects personal property as defined in the *Personal Property Security Act*, a financing statement disclosing the contents of the order may be registered in the Personal Property Registry established by that Act.

S.N.W.T. 1999,c.5,Sch.C,s.13.

Procedure

Application of Rules of the Nunavut Court of Justice

75. The Rules of the Nunavut Court of Justice apply to the proceedings under this Act except where they are inconsistent with this Act. S.N.W.T. 1998,c.34,Sch.C,s.4(6).

Commencement of application

76. (1) An application under this Act shall be commenced by originating notice.

Joinder of proceedings

(2) An application under this Act may be made in the same proceeding as an application under the *Family Law Act* or in a separate proceeding.

Parties

(3) The following must be included as parties to an application under Part III:

- (a) the mother and father of the child;
- (b) the persons responsible for the care and upbringing of the child immediately before the application is commenced;
- (c) any other person whose presence as a party is necessary to determine the matters in issue.

Application or response by minor

(4) Notwithstanding subsection 4(3) of the *Public Trustee Act*, a minor who is a parent may make an application under this Act without a next friend and may respond without a guardian *ad litem*.

Notice of application

(5) Notice of an application under Division B of Part III must be served on the Public Trustee. S.N.W.T. 1998,c.17,s.6(4),(5).

Substitutional service

77. Where there is no presumption of paternity and the identity of the father is not known or is not reasonably capable of being ascertained, the court may order substitutional service or may dispense with service of documents on the father in the proceeding.

Adjournment of application

78. Where, in an application under this Act, it appears to the court that it is necessary or desirable for the appropriate determination of the matters in issue or in the best interests of the child to have other matters determined first or simultaneously, the court may adjourn the application until such other application is brought or determined as the court considers appropriate.

79. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(g).

Effect of divorce action on application for custody, access

80. (1) Subject to subsection (3), where an action for divorce is commenced under the *Divorce Act*, any application under this Act in respect of custody of or access to a child that has not been adjudicated is stayed.

Effect of divorce action on application for support

(2) Subject to subsections (3) and (4), where an action for divorce is commenced under the *Divorce Act*, any application for support under this Act in respect of a child that has not been adjudicated is stayed.

Leave to continue separately

(3) The court may grant leave for the application under this Act referred to in subsection (1) or (2) to be continued separately from the action for divorce.

Arrears

(4) Where an order of support has been made under Part IV before the commencement of an action for divorce under the *Divorce Act*, the court may determine the amount of arrears owing under the order and make an order respecting that amount at the same time it makes an order under the *Divorce Act*.

Where question not adjudicated

(5) Where a marriage is terminated by divorce or judgment of nullity and the question of custody, access or support is not adjudicated in the divorce or nullity proceedings, an order in respect of custody or access or an order for support, as the case may be, made under this Act continues in force according to its terms.
S.N.W.T. 1998,c.34,Sch.C,s.4(4)(n).

Consent orders

80.1. (1) On the consent of the parties in an application under this Act, the court may make any order that it is otherwise empowered to make by this Act even though the conditions for making the order have not been met, subject to the duty of the court to have regard to the best interests of the child.

Where subsection (1) does not apply

(2) Subsection (1) does not apply to an application under section 59 or 61.

Interim order

81. (1) In a proceeding under this Act, other than an application under section 59, the court may make such interim order as it considers appropriate.

(2) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(h).**

82. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.4(3)(i).

Child entitled to be heard

83. (1) In considering an application under Part III, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them.

Interview by court

(2) The court may interview the child to determine the views and preferences of the child.

Conduct of interview

(3) Where the court interviews the child, the interview shall be recorded.

Counsel

(4) The child is entitled to be advised by and to have his or her counsel, if any, present during the interview.

Regulations

Regulations

84. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the form of declaration referred to in subsection 12(1);
- (b) respecting orders under section 31 and the recovery of costs incurred in housing and transporting a child pursuant to an order made under that section;
- (c) respecting the form of warrant referred to in section 66;
- (d) respecting restraining orders; and
- (e) respecting the procedure to be used in applications under this Act.

Guidelines respecting support

- 85.** (1) The Commissioner, on the recommendation of the Minister, may establish guidelines respecting the making of orders of support under Part IV including, but without limiting the generality of this power to make guidelines, guidelines
- (a) respecting the way in which the amount of an order of support is to be determined;
 - (b) respecting the circumstances in which discretion may be exercised in the making of an order of support;
 - (c) respecting orders under subsection 60(1);
 - (d) respecting the circumstances in which an order of support may include provisions allowing for an annual increase in the amount of support to offset inflation and respecting how the annual increase may be calculated;
 - (e) respecting the circumstances that give rise to the making of an order under section 61 and orders made under section 61 in general;
 - (f) empowering a person or body to assist courts in the determination of the amount of an order of support;
 - (g) empowering a person or body to recalculate, at regular intervals, in accordance with the applicable guidelines, the amount of an order of support on the basis of updated income information and deeming that amount to be the amount payable under the order of support;
 - (h) respecting the recalculation of an order of support and the payment of the recalculated amount of support;
 - (i) respecting the determination of income for the purposes of the application of the guidelines;
 - (j) authorizing a court to impute income for the purposes of the application of the guidelines;
 - (k) respecting the production of income information and providing for sanctions when that information is not provided; and
 - (l) adopting, as part of the guidelines, any portion of the Federal Child Support Guidelines as they are amended from time to time or as they read on the day they are adopted.

Federal Child Support Guidelines – modification

(2) Where the applicable guidelines are the Federal Child Support Guidelines, the Commissioner, on the recommendation of the Minister, may make guidelines respecting the making of orders of support under Part IV, including, but without limiting the generality of this power to make guidelines, any matters set out in paragraphs (1)(a) to (k), that vary or delete any provision or part of a provision of the Federal Child Support Guidelines or add to the Federal Child Support Guidelines.

Basis for guidelines

(3) The guidelines referred to in subsection (1) or made under subsection (2) must be based on the principle set out in section 58.

Deemed regulations

(4) The guidelines referred to in subsection (1) or made under subsection (2) are deemed to be regulations for the purposes of the *Statutory Instruments Act*.

S.N.W.T. 1998,c.17,s.6(6).

AMENDMENTS TO THIS ACT

Amendment when *Adoption Act* comes into force

86. If Bill 5, introduced during the fourth session of the thirteenth Legislative Assembly and entitled *Adoption Act*, is assented to, then, on the day on which it comes into force, subsection 2(2) of this Act is amended by striking out "*Child Welfare Act*" and by substituting "*Adoption Act*".

REPEAL

Child Welfare Act

87. Parts III and IV of the *Child Welfare Act* are repealed.

Domestic Relations Act

88. The *Domestic Relations Act* is repealed.

Extra-Territorial Custody Orders Enforcement Act

89. The *Extra-Territorial Custody Orders Enforcement Act* is repealed.

Maintenance Act

90. The *Maintenance Act* is repealed.

Minors Act

91. The *Minors Act* is repealed.

COMING INTO FORCE

Coming into force

92. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.