

Access

Adapted from the Yukon CFSA Policy Manual (2012).

Access may occur through a court order or by an agreement. When deciding the level and type of access between the child and his or her parent(s) and/or guardian(s), you should consider:

- the best interest of the child;
- the developmental age and needs of the child;
- it is consistent with the Case Plan Report or Plan of Care Agreement; and
- it is consistent with the wishes of the child.

After you have decided that access would be in the best interest of the child, you should request the court make access a term of the order. You should consider:

- the frequency of access based on the above-noted factors with particular attention on the child's age and attachment to his or her family.

The judge will consider including access in the order based on your Case Plan Report for the child and his or her parent(s) and/or guardian(s).

An example of the wording that could be used in a Temporary Custody Order is as follows:

"That the parents to the said child be allowed access to the child, at the discretion of the Director of Child and Family Services (Child Protection Worker), and consistent with the best interests of the child".

Section 28 (1) (c) of the Child and Family Services Act allows for a temporary custody order to contain a term of access. It states:

28. (1) A court may make one of the following orders that is, in the opinion of the court, in the best interests of the child who is the subject of the hearing:

- (c) the child be placed in the temporary custody of the Director for a specified period not exceeding 12 months; and the court may specify in the order
 - (i) any terms and conditions that the court considers necessary and

proper; and

- (ii) that the child's parent or person having actual care of the child
 - (A) at the time the declaration was made under subsection 27 (2), where the child was not apprehended; or
 - (B) at the time the child was apprehended, where the child was apprehended, be granted access to the child on the terms and conditions that the court considers appropriate.

Supervision of Access

Where it is believed that access between a child, and his or her parent(s) and/or guardian(s) should be supervised; you will need to determine who would be most appropriate to provide supervision. Depending on the situations, it could be you as the Child Protection Worker, a significant person to the child and/or family, a caregiver or an Agency. In situations where reunification is the plan, it's important for you to supervise some visits so you have the opportunity to observe and evaluate the child/parent(s) and/or guardian(s) interactions during the visits. All observations and decisions regarding the visits must be documented and placed on the child's file.

Effect of Custody

When a child is apprehended and placed in the custody of the Director of Child and Family Services on an interim basis, the Director does not have "custody" until a judge has made an order placing the child in the Temporary and/or Permanent custody of the Director.

The definition of custody is defined by who has the legal right to make decisions on behalf of the child. This definition is also supported by Sections 31(6.3), 47 and 48 because they define the effect of custody when a child is subject to an interim order, temporary custody order and permanent custody order.

Effect of Care Before any Order is Made

After a child is brought into care before Voluntary Support Services and Agreement, Plan of Care Agreement, Supervision Order, Interim Order, Temporary Custody or Permanent Custody Order has been reached, the Director only has "care" of the child. Legal "custody" has not been removed from the parent(s) and/or guardian(s) or transferred to the Director.

When a child's in the Director's care without an order or agreement, the Director has the

rights and responsibilities of a parent and/or guardian such as:

- where and with whom the child will live;
- consent to medical examination or assessment of the child by a health care professional;
- consent for medical care or treatment for the child, if it is believed, after consulting with a health care professional, that care or treatment should be provided; and
- consent to the child's participation in school, social and/or recreational activities.

Effect of Interim Orders

If a child is placed under the interim care of the Director, under Sections 31(6.3), the Director only has “care” of the child, custody still belongs to the parent(s) and/or guardian(s).

Even though “custody” still belongs to the parent(s) and/or guardian(s) under interim orders, the Director may:

- decide where and with whom the child will live;
- consent to medical examination or assessment of the child by a health care professional;
- consent for medical care or treatment for the child, if it is believed, after consulting with a health care professional, that care or treatment should be provided; and
- consent to the child's participation in school, social and/or recreational activities.

Effect of Temporary Custody Orders

If a child is placed under the temporary custody of the Director, under Section 47, the Director has “custody” of the child except in the following situations:

- They can only consent to the health care for the child if the parent(s) and/or guardian(s) are unavailable (unless in the opinion of a health care professional, the medical care or treatment is necessary); and
- they cannot consent to the child's adoption.

Effect of Permanent Custody Orders

When a child is placed in the Permanent Custody of the Director, the Director has full “custody” of the child.

Section 28 (1) (d) of the *Child and Family Services Act* allows for a Permanent Custody Order with access. In determining whether this is appropriate, considering the following:

- If the situation is severe enough to warrant a Permanent Custody Order, you must consider whether it is in the child's best interests to maintain any contact with his or her parent(s) and/or guardian(s). If so, then you need to consider whether any restrictions or safety measures need to be put in place in order for access to occur.
- If the child is old enough to have a relationship with his or her parent(s) and/or guardian(s), then it is probably advisable to consider some access.
- An access term may make a readily adoptable child incapable of being adopted. Section 36 (2) of the *NWT Adoptions Act* states:
 - *"In the case of a departmental adoption, where a provision granting access to the child was made in the order placing the child in the permanent custody of the Director of Child and Family Services, the court shall review the provision and where the court considers that it is in the best interests of the child to do so, the court may, at the time of the making of the adoption order, make a further order granting any or all persons who were granted access to the child under the order placing the child in the permanent custody of the Director of Child and Family Services access to the child after the adoption order is made on the terms and conditions that the Court considers appropriate".*

Therefore, if a Permanent Order contains a term of access, this must be considered by the judge in determining the adoption application. This could cause some concern for the prospective adoptive parent(s).

An example of the wording that could be used in a Permanent Custody Order is as follows:

"That the parents to the said child be allowed access to the child, at the discretion of the Director of Child and Family Services (Child Protection Worker), and only until such time as the child is placed for the purposes of adoption".

Appeals

There is a 30-day appeal period for all orders made under the *Child and Family Services Act*. The Director, a parent and/or guardian, or any party not satisfied with a decision of a judge can appeal an order. Where a child over the age of 12 years appeals an order, the judge will order that legal counsel be appointed for the child through the Office of the Children's Lawyer. Although a child may not appear in court, especially if he or she has legal counsel, the judge may request the child's appearance in situations where the child wants some input into his or her own future.

Appeal proceedings under the *Child and Family Services Act* are heard in the Supreme Court. After hearing the appeal, the Supreme Court may do one of the following:

- Affirm the order;
- Reverse or modify the order; or
- Make any other order that the court considers necessary and proper, including a declaration that the child needs protection.

If the parties associated with the new order are not satisfied with the decision from the Supreme Court judge, they can appeal the order to the Court of Appeal, the highest appeal court in the Northwest Territories.

Appearing in Court

Adapted from *the Yukon CFSA Policy Manual (2012)*.

Court Etiquette

In all forms of court, certain rules of etiquette apply.

- Dress conservatively for court, this tells the judge and others that you respect the court and take its authority seriously.
- When a judge enters or leaves the courtroom, stand up and be silent.
- When addressing a Territorial Court judge, address him or her as “Your Honour” and when speaking to a Justice of the Peace, address him or her as “Your Worship”.
- Stand up if the judge asks you questions about your case file.
- Remain calm and polite at all times especially in those situations when the opposing counsel appears rude, aggressive, etc. Remember your responsibility is to the court, not the opposing counsel.

What the Judge Expects of You in Court

The judge expects that you will provide clear, factual evidence that will help him or her develop an accurate picture of the child and family. You need to portray to the judge that you are knowledgeable, professional, sincere and honest.

Child Protection Worker as a Witness

During the child protection hearing, your role is to be a witness and legal counsel will present your case to the court.

During direct examination, your legal counsel will question you first, and then you will be cross-examined by the parent(s)/guardian(s) and/or child’s legal counsel, which may include questions relevant to the issue, whether it was covered or not during the direct examination.

When you or other witnesses are finished with providing your evidence, the cross-examination is over; however, if the opposing legal counsel brought up a new topic or

issue, your lawyer can ask you or the other witnesses' questions about that topic.

Before court, it's important that you are in the right mindset, such as:

Although you have the authority to decide whether a child is in need of protection outside of the courtroom, in the courtroom, the judge has the authority to make the final determination about whether a child is in need of protection;

The judge is only allowed to consider the proof of facts as a basis for his or her decision; and

When you offer your opinions during the hearing, you should include facts to support your opinions because the judge will draw conclusions or form his or her own opinions based on the facts of the case.

Lastly, before attending court, it is crucial that you are clear on which facts of the case are relevant and which ones are not.

Evidence

In child protection hearings, you and/or the Director, as the applicant, have the burden of proving your case on the balance of probabilities, that is, more likely than not that the allegation you are making is true. The parent(s) and/or guardian(s) on the other hand, do not have to prove anything.

Direct Evidence

Is evidence that you, as the witness, have touched, saw, smelled, tasted and heard during your interactions with a family. During these occasions, it is important that your notes include details about what happened and not make conclusions about the interactions.

Hearsay Evidence

Is evidence that you do not have direct knowledge about but, rather you are repeating what somebody else has said to you.

Evidence in Court and How to Give It

You can and should bring your case notes and notebook with you to court to help you in providing your evidence, especially in situations where you are having difficulty in answering a question. For this reason, it is important that you record all contacts while they are occurring, your notes will be more accurate and complete. Even if you make them at the end of the same day, they will still be reliable. Don't include quotes, unless they were recorded during the contact. Furthermore, if you wait a few days later or until

the end of the week, you might be questioned about the reliability of your notes, but you still should record them. Conversely, if you wait any longer than that, your notes are worthless.

Remember, take all the time you need to review your notes. In some cases, Child Protection Workers actually tab critical events that they can readily access during their testimony. While providing direct evidence, you should be prepared to do the following: Admit any mistakes you have made while investigating and/or case managing your file. This will show the judge that you are an honest and unbiased witness. Acknowledge what is working well for the parent(s) and/or guardian(s) as well as their strengths.

Be accurate and direct when providing your evidence about the concerns you have for the safety and well-being of the child and why you should be granted the order you are applied for. You can't worry about the parent(s) and/or guardian(s) feelings when answering questions.

Provide the judge with the information that he or she requires to make a decision. Do not downplay on the facts of the case.

Provide a picture of what the child is like and what has been going on with his or her life.

Applicable Aboriginal Organizations

APPLICABLE ABORIGINAL ORGANIZATIONS

PERSONS

Dene Bands

Acho Dene Koe First Nation (Fort Liard) - Band #758	Chief
Aklavik Band (Aklavik) - Band #755	Chief
Behdızı Ahda" First Nation (Colville Lake) - Band #771	Chief
Deh Gah Got'ie Dene Council (Fort Providence) - Band #760	Chief
Délıne Got'ıne Government (Délıne) - Band #754	Chief
Deninu K'ue First Nation (Fort Resolution) - Band #762	Chief
Fort Fitzgerald Sub-Band (Fort Smith) - Band #759	Chief
K'ásho Got'ıne Dene First Nation (Fort Good Hope) - Band #752	Chief
Fort Reliance Sub-Band (Łutselk'e) - Band #764	Chief
Gwichya Gwich'in Band (Tsiigehtchic) - Band #753	Chief
Inuvik Native Band (Inuvik) - Band #780	Chief
Jean Marie River First Nation (Jean Marie River) - Band #770	Chief
Ka'a'gee Tu First Nation (Kakısa) - Band #768	Chief
Kátl'odeeche First Nation (Hay River Reserve) - Band #761	Chief
Łııdlıı Kúę First Nation (Fort Simpson) - Band #757	Chief
Łutsel K'e Dene First Nation (Łutselk'e) - Band #764	Chief
Nahanni Butte Dene Band (Nahanni Butte) - Band #766	Chief
Pehdzeh K1 First Nation (Wrigley) - Band #756	Chief
Salt River First Nation #195 (Fort Smith) - Band #759	Chief
Sambaa K'e Dene Band (Trout Lake) - Band #767	Chief
Tetlit Gwich'in Band (Fort McPherson) - Band #751	Chief

Tulita Dene Band (Tulita) - Band #750	Chief
West Point First Nation (Hay River) - Band #772	Chief
Yellowknives Dene First Nation (Dettah) - Band #763	Chief
Yellowknives Dene First Nation (N'dilo) - Band #763	Chief

Inuvialuit Organizations

Aklavik Community Corporation	Chair
Inuvik Community Corporation	Chair
Paulatuk Community Corporation	Chair
Sachs Harbour Community Corporation	Chair
Tuktoyaktuk Community Corporation	Chair
Ulukhaktok Community Corporation	Chair

Métis Locals

Aklavik Northwest Métis Council	President
Fort Good Hope Métis Local 54	President
Fort Liard Métis Local 67	President
Fort Providence Métis Council	President
Fort Resolution Métis Council	President
Fort Smith Métis Council	President
Hay River Métis Government Council	President
Inuvik Métis Council	President
Métis Association Local #75, Fort Franklin (Délne), N.W.T.	President
Métis Association Local 58 - Fort McPherson, N.W.T.	President
Métis Association Local "63" Arctic Red River (Tsugehtchic)	President
Métis Association Local 52 - Fort Simpson, N.W.T.	President

Métis Nation Local #64, Rae-Edzo	President
Métis Nation Local #66, Yellowknife	President
Norman Wells Land Corporation	President
Begade Shotagotine Tulita Land Corporation	President
Yellowknife Métis Council	President
Yellowknife Métis Nation Local #77	President

Tłıchǫ Community Governments

Tłıchǫ Community Government of Behchokǫ	Chief
Tłıchǫ Community Government of Gamètì	Chief
Tłıchǫ Community Government of Wekweètì	Chief
Tłıchǫ Community Government of Whatì	Chief

Application to Terminate Temporary Custody and Permanent Custody Orders

Adapted from the Yukon CFSA Policy Manual (2012).

Temporary Custody

While a Temporary Custody Order is in effect, the Director of Child and Family Services and the family are expected to work together to resolve the concerns that required the child to be in the Director's custody. If they are able to resolve the concerns before the Order ends, the parent(s) and/or guardian(s) or the Director may request the court to terminate the Order and have the child return home.

The judge may terminate a Temporary Custody Order when there are positive and healthy changes in the needs or circumstances of the child and/or the ability of the parent(s) and/or guardian(s) to meet the child's need, since the Order was made.

Applications for terminating the Temporary Custody Order must be handled by legal counsel for the Director.

The applicant can either be the Director, the parent(s) and/or guardian(s) or the child over 12 years of age. The applicant must serve a notice of application, at least ten (10) working days, to the person(s) who were parties to the initial application.

Additionally, in situations where a child over 12 years of age makes an application to terminate his or her Order; the child must be referred to the Office of the Children's Lawyer for legal counsel who will apply to the court on the child's behalf. The request for legal representation for a child must be requested during the hearing so the judge can make an order directing the appointment.

When an existing Temporary Custody Order is terminated, the Director must return the child to his or her parent(s) and/or guardian(s) as soon as this may reasonably be done, within no more than 48 hours. Consideration is to be given to the child's best interests and upon request the judge may authorize a longer delay.

Permanent Custody

Although the rights and responsibilities of the parent(s) and/or guardian(s) end when a Permanent Custody Order is granted, the Director (Child Protection Worker), parent(s) and/or guardian(s), or child over 12 years of age, may ask the court to terminate the Permanent Custody Order reinstating the parent(s)' rights. An application may only be made if the child has not been placed for adoption and if there has been significant and relevant change in the circumstances of the parent(s) and/or guardian(s) lives since the

Permanent Custody Order was granted.

Similarly, applications for terminating a Permanent Custody Order must be handled by legal counsel for the Director.

The applicant can be the Director, the parent(s) and/or guardian(s) or the child over 12 years of age. The applicant must serve a notice of the application at least 10 working days before the hearing on the persons who were parties to the application when the initial Order was made.

When a child requests to terminate his or her Order, the child should have his or her own legal counsel. During the hearing, it's important for you to request the court to order that the child receives legal counsel. Thereafter, you would refer the child to the Office of the Children's Lawyer for legal representation.

When an existing Permanent Custody Order is terminated, the Director must return the child to his or her parent(s) and/or guardian(s) as soon as possible, within no more than 48 hours. Consideration must be given to the child's best interests and upon request the judge may authorize a longer delay.

Case Plan Report

The *Northwest Territories Child and Family Services Act* section 27(2)(a) and (b) allows the court to consider the Case Plan from the Child Protection Worker, and any terms and conditions recommended by the Child Protection Worker to implement including the Case Plan. The **Case Plan Report is presented after the court declares the child in need of protection** and cannot be filed with the court until it agrees. It is important to have this document ready if requested by the court.

The Case Plan Report should be prepared at the same time as the Originating Notice or Notice of Motion and Affidavit in Support.

The Case Plan for the child will outline the Child Protection Worker's proposed plans for the child and his or her family while the child is in care. It will include any terms and conditions that the Child Protection Worker would like to have attached to the Order that will assist in the implementation of the Case Plan; such as the mother must attend parenting sessions twice a week and/or the child must see a counsellor.

The Case Plan Report provides the court with a picture of the family and child's situation. In addition to the recommended Case Plan for the child, the Report must be as factual and as complete as possible. **Include any recommendations, terms and conditions, including access or visits with the child in the Case Plan Report.**

If the application is for a renewal of a Temporary Custody Order or for an Order for Permanent Custody where the child is already in care, the Report should outline the facts which led to your decision to continue the provision of care. Indicate what changes are needed, new terms and conditions and the time proposed for them. The Report must include the following information:

Cover Page

The title page should include the title "Case Plan Report," the child's name, date of birth and date of apprehension. The Child Protection Worker's name, title and appointment number should appear on the lower right-hand of the page along with the date the report was written.

Identifying Data

This area should include the child's name, date of birth, place of birth, ethnic origin, status and present placement/address. The same should be done for all other siblings and parents.

Previous Child Protection Involvement

All contact this family or child has had with the Child Protection Worker can be summarized in this section. Make sure to include the kind of services that have been offered during the time of involvement. Set out for the court what preventative or intervention measures the Child Protection Worker has already taken. Note whether or not the parents were cooperative in the past and what the issues were at the time. If there has been previous involvement, you may not have to complete a family history, as your involvement with the family should tell the story. Be careful not to include information about whether the family is on income support or any other issues that are not relevant to your application.

Family Background

Family history is important in order to understand the family dynamics. Information should include how many siblings there are in the family, whether the parents are married, common-law, separated, divorced, etc. Are there any previous spouses who are involved with the family or children? Is there any extended family such as grandparents, aunts or uncles who have contact with the family and who may want access to the child? The parent(s) and/or guardian(s) present employment and education should be included. Information regarding existing relationships, parenting issues and any other pertinent material will help the court understand the family unit.

Children in Need of Protection

Child's Health and Physical Description

If you have received a report from the child's family physician, advise the court of the child's current health. Are there any special needs, allergies, medical problems, dental issues, speech problems, etc.? Also, include a physical description of the child along with a description of his or her early development.

Education

Identify the child's grade and the school they are attending. Is the child having any learning difficulties in school, if so what are they? Poor attendance should be

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documented as well. The parent and guardian may be unable to ensure the child is attending school due to issues in the home. Document the child's scholastic abilities following discussions with his or her teacher.

Visitation

Document the regular visitation schedule for the parent(s) and/or guardian(s) to see their child, if there has been one. List the frequency of the visits and length of times. Furthermore, indicate whether the visits were monitored or the parent(s) and/or guardian(s) visited unsupervised. It is important to , document how the visit(s) have gone, the quality of the visits.

Adjustment to Current Placement

Describe the child's current placement. Advise the court the child's adjustment to the placement home and environment. Are there any difficulties, or has the child adjusted well to the new placement? Has the child given information regarding the placement, whether he or she feels accepted in the home? Are there difficulties with respect to behaviour or any other concerns that may have arisen since the time of placement?

Child Protection Concerns and Family Needs

List the current child protection concerns and the reasons why you believe the child is in need of protection. In addition, identify what the family needs in order to alleviate the concerns.

Family Strengths

Families play a major role in how well children do in school, how well the parent(s) and/or guardian(s) perform on the job as adults and how well they contribute to society in general. Families have the first influence on our development. Despite the stress and troubles families face, there are ways to keep the family strong. What traits make this family strong and healthy?

Services Currently Being offered to the Parent(s)/Guardian(s) and the Child(ren)

Based on the discussions that took place between the Child Protection Worker and the family, the Child Protection Worker will offer services to the family such as assisting with obtaining alcohol treatment, parenting skills, counselling, etc. These services will vary in each community. Check with your supervisor on the types of services you can provide. The services available and offered will be part of your Case Plan for the family.

Court
Plan of Care Committee Recommendations

Tool
Case Plan Report

If developed, document the Plan of Care Committee recommendations based on the Plan of Care Agreement, and a short statement as why the Plan of Care Agreement was not signed.

Recommendations and Case Plan

Document your recommendations based on all the information you have compiled on the family and your supervisor's recommendation. It is important to base your recommendations on facts. It is critical that you indicate how you will achieve your Case Plan and how you will measure its success. The Court will want to know what kind of work will be done with the family.

Extension to Case Plan

This heading is used when an updated Case Plan Report is needed to extend Temporary Custody or when you are requesting Permanent Custody or a Supervision Order for a child subject to an existing order. This section will include reasons explaining why the Director is requesting an extension. Information to cover includes the reasons why the Case Plan needs to be changed, treatment programs the parent(s) and/or guardian(s) may or may not have attended, whether the parent(s) and/or guardian(s) followed the recommended Case Plan, what needs to be changed and why, and new terms and conditions.

CONCLUSION

Once the Case Plan Report is drafted, provide a copy of it to your supervisor for review and approval. Thereafter, provide a copy to the parent(s) and/or guardian(s), child over 12 years of age, and the lawyer(s) at least five (5) days prior to the court hearing for review and approval. Once the Report has been approved, sign it and provide the signed copy to all parties involved for signature. Do not file the document with the court until the court asks for it. After court, place a copy of the filed Report on the child's file. Then review the Report with your supervisor according to the review date on the Report or every three (3) months.

Child Protection Hearing

Adapted from *the Yukon CFSA Policy Manual (2012)*.

If the judge adjourns a matter, you should:

- Offer the parent(s) and/or guardian(s) and child over 12 years of age the option to attend mediation to help address the child protection concerns. If this occurs, it's important that you make an application to adjourn the hearing.
- Consider withdrawing your application if you, on behalf of the Director of Child and Family Services, make an agreement with the parent(s) and/or guardian(s) that will ensure the protection of the child or if the circumstances have changed.
- Prepare for the child protection hearing with your counsel, especially if you are required to provide oral evidence.
- Provide the Case Plan Report to the parent(s) and/or guardian(s) and child over 12 years of age and legal counsel(s) as per the standard on Case Plan Report.
- File a Case Plan Report with the judge during the court hearing. The Case Plan Report must list all the services that will be provided to the family and their respective timeframes.
- Inform the parent(s) and/or guardian(s) and child over 12 years of age of the upcoming hearing.
- Attend the hearing prepared and in appropriate attire.

Completing Documents for Court

COMPLETING COURT DOCUMENTS

When a decision has been made to apply to the court in a child protection matter, the next step is to prepare relevant court documentation. The provisions of the *Act* determine the types of applications that may be made to the court, and you must be familiar with those provisions in the statute relating to applications to the court.

While provisions of the *Act* set out the types of applications the court will hear under the *Act*, there are general rules applying to all applications which are not stated in the legislation. For example, the following documents must be prepared for almost every application:

Originating Notice or Notice of Motion

These two documents give the court and any party at the hearing the following information:

- who is bringing the application;
- date, time, place, and court where the application will be heard;
- the kind of Order under the *NWT Child and Family Services Act Section 28 or 31, etc.* and for how long (exactly); and
- the facts on which the application is based.

Originating Notice is used to bring your first court application in a case. On the other hand, the Notice of Motion is used to bring the matter back to court, e.g.; to change, extend or end an Order.

It is your responsibility to complete the documents. State the appropriate subsection for finding the child in need of protection according to the *NWT Child and Family Services Act section 7(3)(a - o)*.

Affidavit (which Supports the Originating Notice or Notice of Motion)

The Affidavit is a sworn legal document that supports the Originating Notice or Notice of Motion and supports the type of Order you are requesting. The Affidavit describes to all parties the specific evidence or facts that you will present to the court in support of the Order you are seeking. The Affidavit should outline the circumstances which led to

bringing the matter to court.

The document must have the child's name, date of birth and apprehension on the front and back pages. This document must contain facts, not opinions. The information should relate to the requirement to find the child in need of protection and for an Order. On occasion, you may need to report previous court orders. Each paragraph must be brief and to the point. Number all paragraphs. The statements should always be in chronological order and should begin with the word "THAT" and the date. It does not matter whether it sounds repetitive. Starting by the word "THAT", date and time will give the Judge or Justice of the Peace a picture of how and when you became involved.

Do not include any extra information that does not pertain to finding the child in need of protection. Extra information can be included in your Case Plan Report. Your Report provides details about the family situation in a manner that will maintain the dignity of the family. The last two statements of the Affidavit should request that:

- the child be found in need of protection pursuant to the *NWT Child and Family Services Act sections 27 and 7(3)(a) to (o)*; and
- that the court make an Order for the child to be placed in Supervision, Temporary Custody or Permanent Custody.

When requesting a period of Supervision or Temporary Custody, be specific about the timeframe of custody being requested, including the additional statement "and any terms and conditions that the court considers necessary and proper." Never include the actual terms or conditions that will be requested with the Order in the Affidavit. The child must be found in need of protection before the court can hear and consider conditions. Specify in the Case Plan Report the terms and conditions that are being requested and that are to be attached to the Order.

After the Originating Notice or Notice of Motion and Affidavit are completed, you are ready to file them with the Justice of the Peace or Clerk of the Court.

If the Affidavit is for an extension of Temporary or Permanent Custody, the Affidavit should be sworn by the Child Protection Worker who has had the most contact with the family and the child, or involvement with the case. Outline the facts that formed the basis for your decision that it would not be in the child's best interest to return home. You will file and serve this document along with the Originating Notice or Notice of Motion.

Affidavits are completed by the Child Protection Worker who has the most information and contact with the clients and are reviewed by the Supervisor. When the Affidavit is completely accurate, you are ready to "swear" it. The Affidavit is sworn to and signed by the Child Protection Worker before a Commissioner for Oaths, Notary Public, RCMP officer or a lawyer. You will tell the Commissioner that you swear or affirm that you are the person named in the Affidavit, that you have read it and that you swear or affirm that it is

true. Then you will sign the Affidavit on the signature line.

The Commissioner will fill in the “jurat”, the “SWORN BEFORE ME” part on the lower left of the document and sign it above where it says, “A Commissioner for Oaths etc.” The Commissioner is certifying that you are who you say you are, that you actually appeared before him or her, and that you swore or declared that everything in the Affidavit is true.

If there are any Exhibits, that is, other documents referred to in the Affidavit and attached to it, the Commissioner will stamp them with a “THIS IS EXHIBIT__ referred to in the Affidavit of _____ [you]” stamp and sign it. Once the Affidavit is sworn, no changes can be made to it.

Note:

*All paragraphs must come before the place where you and the Commissioner sign. **Do not** add paragraphs below the signatures. **Do not** have a signature block alone on the last page; the court may not accept them because it cannot ensure a page is not missing between the content of the document and the signature.*

*There is a backer page to all documents. This is an essential part of every document. It must be prepared and attached **before** the document is filed with the Justice of the Peace or Clerk of the Territorial Court. It is the last page of each document, and it is turned facing out before filing.*

FILING COURT DOCUMENTS

Make several copies of each document at least one for each person requiring service, one copy for each different community where a person must be served, one for the court and one for your file, prior to filing court documents.

Justice of the Peace Court

Once you have a court date for the Justice of the Peace Court, ask the Justice of the Peace if he or she will accept the documents for filing. If he or she will, ask the Justice of the Peace if he or she will file the Originating Notice or Notice of Motion. If he or she agrees, give the Justice of the Peace the originals and true copies (copies of the originals) and he or she will write “Filed in Justice of the Peace Court” and the date on the back page of the document. Ask the Justice of the Peace to certify one of the true copies by writing that it is a certified copy of the “notice of motion filed on the ____ day of ____, 20 ____” on the back page of the document.

After you go to the Justice of the Peace Court and get the Order, have the Justice of the Peace sign the Order and write “filed” on the back. Have the Justice of the Peace sign and write “filed” on back of all documents you file, including Affidavits of Service and Case

Plan Reports. File these with the court when you appear on the court date. Either you or the Justice of the Peace will send the originals of the Originating Notice or Notice of Motion, Affidavit in Support and the Order to the Clerk of the Territorial court for that region.

Note:

The Justices of the Peace in various regions of the Northwest Territories may have several different ways of filing documents. Follow the filing procedure of your local Justice of the Peace.

Territorial or Supreme Court

If you use the Territorial Court, all Originating Notice(s) or Notice(s) of Motion and Affidavit(s) are filed with the Clerk for the Court for your region, either Yellowknife, Inuvik or Hay River.

The Clerk gives the case a Child Protection Court number that goes on the back of every document. The Child Protection Worker or Clerk will print the number on the back of each form in the upper right hand corner. The Justice of the Peace / Clerk of the court issues the certified copy(s) (one copy for each different community where a person must be served, one for the court and one for the Child Protection file). The copy you serve does not have to be certified copy, but you must carry a certified copy with you to show to the person you are serving if they ask to see it.

Note:

*You **must file the Originating Notice and Affidavit** with the Justice of the Peace / Clerk of the Court **before** you or another Child Protection Worker **serves** them.*

*It is **not necessary to file** a Notice of Motion and Affidavit in Support **before you serve them**. The Child Protection Worker can file the documents after they are served at least two (2) days before the court date.*

SERVICE OF COURT DOCUMENTS

You must provide all people who have the right to appear at the hearing with copies of the court documents. These copies must be true photocopies of the originals. Provide copies of all court documents which are officially signed by the Justice of the Peace or stamped as filed by the Court. If you are able to serve all interested parties, then you must swear an Affidavit of Service and attach the certified copies of the Originating Notice or Notice of Motion and the Affidavit to it. Make sure that you ask the Justice of the Peace or Clerk of the Court for enough certified copies for each Affidavit of Service you will require.

People who can serve court documents are the following:

- Child Protection Worker;
- Sheriff;
- RCMP Officer; and
- Any person who is 19 years old or older.

Section 25 of the *Child and Family Services Act* lists the people who must be served if their identities and locations are known. These are:

- The parent(s) of the child (if their addresses are known);
- Persons who have actual care and custody of the child (if other than the parent(s)), at the time of the investigation or apprehension;
- Plan of Care Committee members;
- Child, if age 12 years or over; and
- Applicable Aboriginal organization, if the child is Aboriginal.

All people must be served ten (10) days **before** the hearing date. To serve a person, simply give him or her a true photocopy of the Originating Notice or Notice of Motion and Affidavit. If they refuse to take it, leave it at their feet. Remember, you must have the certified copy of the Originating Notice or Notice of Motion and Affidavit with you in case they ask to see it.

If you have problems locating the people to serve, or if it appears you will not have ten (10) days to serve the documents, discuss the issue with your Supervisor. You may have to provide Substitutional Service (serve someone for the person you cannot locate) or adjourn the matter to a later date.

Note:

If a person who needs to be served lives in another community, ask the Child Protection Worker in that community to serve the documents on your behalf. You will need to send them a certified copy of each document to be served, as well as a filed copy. Also, provide a semi-completed Affidavit of Service. Courier the documents to ensure they get there on time. In addition, ensure that the information includes the waiver clause due to the tight time restraints.

Affidavit of Service / Affidavit of Attempted Service

An Affidavit of Service tells the court that you had served the parent(s) and/or guardian(s), child over 12 years of age, legal counsel or other party the required documents. The Affidavit of Service will make reference to Exhibit “A” and “B”, which you attach to the Affidavit of Service. The exhibits are the certified copies of the Originating Notice or

Notice of Motion and the Affidavit that was served. Exhibit “A” is always the Originating Notice or Notice of Motion and Exhibit “B” is always the Affidavit. Ensure that you have included the names of all parties. A Commissioner of Oaths, etc., must complete the exhibit stamps. If the parent(s) do not reside in the Northwest Territories, all the documents must be sworn by a Notary Public in the province/territory where they are being served.

Note:

Exhibits “A” and “B” must be sworn by the same Commissioner who swears the Affidavit of Service. Exhibits “A” and “B” must be attached to the Affidavit of Service.

Exhibit Stamps

Fold the bottom right corner of the first page of the Originating Notice or Notice of Motion to the middle of the page and then place the exhibit stamp in a blank spot on that page. When filling out the stamp, remember the Originating Notice or Notice of Motion is “Exhibit A”. The person who serves the documents and completes the Affidavit of Serve has their name written on the exhibit stamp, not the person who wrote the Originating Notice or Notice of Motion and Affidavit, unless they are the same person. The Commissioner of Oaths will complete the rest, including the date portion which will be the date the document was sworn. Follow the same procedure for your Affidavit.

The Affidavit is always referred to as “Exhibit B”. The Commissioner of Oaths will also commission your Affidavit at the same time. When this process has been completed, make copies of your Affidavit of Service. The original Affidavit of Service will be attached on top of the certified and exhibited Originating Notice or Notice of Motion and the Affidavit. The exhibit stamps look like this:

THIS IS EXHIBIT “ ____ A ____ ” referred to in the Affidavit of
Sworn before me this ____ day of ____ A.D. 20 ____
A Commissioner or Notary Public in and for the Northwest Territories My Commission Expires

If the same person serves several parties on different dates and in different locations, that person can use the same certified copies and only needs to prepare one Affidavit of Service. Different people who serve documents are required to fill out separate Affidavits

of Service. The Affidavit of Service will include the pertinent information with regards to each party served.

The Affidavit of Service can be filed with the Justice of the Peace at the time of court or with the Clerk of the Territorial Court after they are completed. Two copies of the Affidavit of Service should be stamped “filed”. Similarly, the Affidavit of Attempted Service documents your attempts to serve the parties, which also needs to be filed with the court. One will be placed on the child’s file, and the other kept by the court.

COURT ORDERS

Draft Order

After the court makes a declaration that a child is in need of protection, it becomes your responsibility or the lawyer(s) involved to ensure that the court Order is prepared and processed.

You or the lawyer(s) need to ensure that the Order is drafted. If the child’s parent(s) and/or guardian(s) or any other parties to the proceeding were not represented by legal counsel, the Order is, then forwarded to the Territorial Court Registry for signature by the Judge or Clerk of the court, who may also sign it. After the signed Order is returned, you need to ensure that copies are distributed to all parties.

If lawyer(s) are involved, they must receive copies of the draft Order before it is forwarded to the Territorial Court Registry. The lawyer for the other parties, e.g.; parent(s) and/or guardian(s) will check the draft document, sign it to indicate their approval, and return it. The draft Order is then signed by legal counsel for the Director of Child and Family Services, who will forward it to the Territorial Court Registry for signature by the Judge or Clerk of the court, and distributes copies of the signed Order once they are available.

In any instances in which counsel for another party refuses to sign a draft Order, the dispute may be brought before the Clerk of the Court or before the Judge who made the Order; such disputes should always be handled by counsel for the Director.

Ensuring that the Court’s Decision is Communicated

When a child’s parent(s) and/or guardian(s) are represented by counsel in a child protection proceeding, it’s their lawyer’s responsibility to ensure that the court’s decision is communicated to them, and that they receive a copy of any Order made by the court.

When parent(s) and/or guardian(s) are not represented by counsel, immediately after the hearing, or as soon as possible, you will need to inform the parent(s) and/or guardian(s) of the outcome and ensure that they understand:

- The judge's decision;
- That they may appeal the decision;
- Your role in providing ongoing support and services to the child and family;
- The plans for the child and family that you will be attempting to implement; and
- You will provide similar information to the child such as the judge's decision and how you will support the child and family, as appropriate for the child's age and development.

As stated above, if the parent(s) and/or guardian(s) are not represented by legal counsel, they need to be provided with a copy of the Order as soon as practicable. In certain situations, for example, when a case is contested or an order for Permanent Custody is granted; it is best practice to prepare an Affidavit of Services and file it with the court.

Completing the Affidavit

Adapted from *the Yukon CFSA Policy Manual (2012)*.

The Affidavit in support of an application is an important document that you will need to prepare for your court hearing. The circumstances that led you, on behalf of the Director of Child and Family Services, to bring the child into care will be reviewed by the judge, parent(s) and/or guardian(s), child over 12 years and legal counsel, it's important that your Affidavit is free of grammatical errors, factual, easy to understand/read, and accurate. Other important guidelines to following include:

- Include only the facts surrounding the case; e.g.; the reason why you believe the child is in need of protection. Avoid including your opinions in your Affidavit material.
- Remember your audience when writing your Affidavit. Use simple language and short sentence so parent(s) and/or guardian(s) and the child can understand what is written.
- Don't include statements from people whose identities are protected under the *Child and Family Services Act* and who will not testify in court. Further, don't include rumours and innuendos in your Affidavit material.
- Focus on facts and information as they relate to the child protection concerns; e.g.; reason why you apprehended a child.
- Always write in the first person "I", not the third person "social worker".
- Start each paragraph with "THAT" and then list all facts and events leading to the belief that child is in need of protection.
- Ensure that your Affidavit is not a typewritten version of your case notes. Your Affidavit outlines the grounds for your application for a child protection order. It should support the reasons why you believe the child is in need of protection and why the application is necessary to ensure the safety and well-being of the child.
- Your Affidavit should focus on the current child protection concerns, especially when you are writing an extension to your original affidavit. Remember, your original affidavit is already on the court file for reference, so only include information that is new since your original application.
- Lastly, make sure you include facts in your Affidavit that can be proved, you don't want to be in position where the Affidavit isn't true and the child is returned home.

Court Dictionary

ABRIDGING (as in “abridging time for service”) – shortening.

AFFIDAVIT HEARING – a hearing based on written affidavit evidence, not oral evidence.

CAUSE OF ACTION – the reason for bringing the action and/or issue to court.

HEARSAY - when a witness repeats a statement spoken or written by someone who is not a witness at the trial or a party to the trial, e.g.; a parent, it is considered hearsay. Such statements are generally inadmissible; however, there are exceptions to the rule.

INTERLOCUTORY – (as in interlocutory – interim – order of interlocutory hearing) - interim or temporary proceeding or order.

JOINT CUSTODY - parents or in some cases, non-parents, sharing the legal bundle of rights in relation to decision-making about a child.

JURISDICTION - the court’s authority to deal with the matter. In child protection matters, the Territorial Court and Supreme Court have concurrent jurisdictions, which mean they both are authorized to hear child protection matters. A Justice of the Peace Court has jurisdiction in child protection matters for most types of orders; however, they cannot hear permanent custody applications.

LAWFUL CUSTODY - a parent(s) or person(s) has lawful custody when they have the “bundle” of legal rights that allows them to make decisions about a child. One can gain lawful custody by court order, by agreement, by adoption or, in some cases, because enough time has passed without the other parent challenging their entitlement to custody. This last type of custody is called defacto custody, which means custody in fact.

LITIGANT - a party to the court case.

MATERIAL FACTS - the most important facts that you can rely on to help you prove your case.

MINOR - a person who has not yet reached the age of majority. Currently 19 years of age in the Northwest Territories.

NOTICE PERIOD - the time period in which a person must be given notice of the fact that you are going to court.

PEREMPTORY - the party must be prepared to proceed with the hearing at that time. It refers to a court date that cannot be changed.

RECORD - the material that is in front of the judge and upon which the judge bases his or her decision.

RELIEF SOUGHT - what you are asking the court to do – the remedy or the type of order or orders you are seeking.

RESERVED JUDGEMENT - when a judgement is not given at the end of a hearing or a trial but is given at a later date.

SHARED CUSTODY - where a child resides with both parents for certain periods of time.

SINE DIE - (as in to adjourn sine die) - to adjourn without a fixed court date.

STAY - an order by the court halting the proceedings.

STYLE OF CAUSE - the title of the proceedings.

SUBSTITUTIONAL SERVICE - a way of serving a party ordered by the court when the methods allowed by the rules cannot be carried out.

SUPPLEMENTARY AFFIDAVIT - an affidavit which is written in addition to a previous affidavit to clarify the facts originally set out or to detail new facts.

SWEAR OR AFFIRM - to solemnly promise that the facts a person is providing in court or in an affidavit are true.

VIVA VOCE HEARING - a hearing based on oral evidence.

Court

Prepare for Court

*Standards – Preparing for Court, Supervision Orders,
Temporary Custody Orders, Permanent Custody Orders
Consent Order & Removal Orders*

**Apprehend a Child Where Medical Care
is Refused to Preserve the Child's Life**

*Standard – Apprehension Where Medical
care or Treatment is Refused to Preserve
Life*

Prepare a Case Plan Report

Standards– Case Plan Report

Serve Court Documents to all Individuals involved in the Court Proceedings

Standard – Service of Court Documents & Timelines for Serving Court Documents

Request for Legal Counsel for the Child(ren) and for the Director, if Applicable

Standard – Obtaining Legal Counsel for Children & Obtaining Legal Counsel in Child Protection Matters

Provide Documents for Disclosure to Legal Counsel of the Director, if Applicable

Standard – How to Disclose

Release Information on a Child Protection Matter when Presented with a Subpoena or Search Warrant, if Applicable

Standard – Subpoena & Search Warrant

Return Child(ren), if Applicable

Standard – Return of Children

Determining the Court Date

You must present a child protection matter to the court within 45 days of the following (Section 24):

- A report was made to a Child Protection Worker under Section 10 (1) (a);
- The matter was referred to a Child Protection Worker under Section 10 (2) (b) or Subsection 11 (2);
- The child was apprehended by a Child Protection Worker under Section 11 (1);
- A Child Protection Worker notified the Child and Family Services Committee of the decision not to establish or to dissolve a Plan of Care Committee; or
- The Child Protection Worker receives an election to proceed to court under Subsection 18 (3).

It should be noted that the Child Protection Worker helps the parent(s) and/or guardian(s) to fill out the election form; however, this form is not filed with the court.

When you're of the opinion that the **termination of the Plan of Care Agreement will result in the child, subject to the Agreement, needing protection**, you will, without delay, apply to the court for a declaration that the child is in need of protection and for an order as per Section 22. Once notice of termination is given or received, you must bring the matter before the court **within 45 days**.

Use of Justice of the Peace Court

If you are deciding which Justice of the Peace to use when parties are in different communities, e.g; child is in one, parent(s) and/or guardian(s) in another; Justice of the Peace is in another community, talk to the parties and have the matter heard in the community that is most convenient. Speak with the Justice of the Peace to see if he or she is prepared to hear the matter. If they are, confirm a location, date and time. If the child is not going to court, you can have the matter heard in another community. It is easier if you can get a Justice of the Peace in the community where most of the parties and witnesses are located.

Using of the Territorial and Supreme Court

In communities outside of Yellowknife, Hay River and Inuvik, you will need to know when the court circuit will bring the Territorial Court to your community if you plan to present the matter in Territorial Court.

To present the matter in Supreme Court, you need to contact the Clerk in Yellowknife for

a date for your motion. They will schedule the motion for Yellowknife unless you tell the clerk you want it heard in another regional centre such as Inuvik. Speak to your Supervisor to arrange for legal counsel, who will in turn contact the Department for approval.

Disclosure

Adapted from *the Yukon CFSA Policy Manual (2012)*.

For many Child Protection Workers, the process of disclosure is a major task that requires a lot of preparations and organization, which usually occurs early in the hearing process. The purpose of disclosure is to ensure that all parties to the proceedings receive the relevant information collected or produced by the Director of Child and Family Services, such as case notes, on call reports, screening and investigation reports and statements from witnesses, etc. All parties then have the opportunity to review the evidence and obtain a clear sense of the child protection issues and the facts of the case prior to the hearing.

Criminal Court Matters

If a child's file is requested for disclosure during criminal proceedings, consult with your supervisor and legal counsel for direction. In cases where disclosure is necessary to ensure the safety and well-being of a child or another person, the file will be likely disclosed after it is redacted.

Custody Matters

If a child's file is being requested for the purposes of a child custody hearing, the file cannot be released without the consent of the client or by way of a court order. If a court order has been issued, it should specify the terms of disclosure. Again, consult with your supervisor and legal counsel about this request for disclosure.

When to Disclose

Anyone who is a party to the child protection proceedings can request disclosure of the child's file at any point. If you receive a request, inform your supervisor and legal counsel as soon as possible. Disclosure must be provided to the party no later than ten (10) days of receipt of the request. In some situation, the Director's and the parent(s) and/or guardian(s) counsels will agree about when disclosure should occur.

It should also be noted that file disclosure may still be required after the initial disclosure, especially in situations when the Director obtains new information about the

case. If this occurs, this information must be provided to the parties regularly until the court proceedings have been concluded.

Extension Orders

Adapted from *the Yukon CFSA Policy Manual (2012)*.

If you already have a supervision or temporary custody order and believe that it will be in the best interest of the child to continue with the order, you can apply to the court to extend the order. In order to extend an order, you must believe that there are reasonable grounds that the child continues to be in need of protection.

You, on the behalf of the Director of Child and Family Services, must serve all parties that were served when the initial supervision or temporary custody order was made. You must serve notice at least ten (10) working days before the hearing date as well as provide a Case Plan Report for the child at least five (5) days prior to court and file it during the hearing presentation.

The following extension orders can be applied for:

1. That the child returns to or remains in the custody of the parent(s) and/or guardian(s) and be under the Director's supervision for a specified period of time up to twelve months.
2. That the child remains or be placed in the temporary custody of the Director for a specified period up to twelve months.
3. That the child be placed in the permanent custody of the Director.

If the application for an extension order is filed but not heard before the expiration of the original supervision or temporary custody order, the judge will adjourn the matter to a later date, and the child will remain in the custody of the Director on an interim order.

Information for Court Order

INFORMATION FOR COURT ORDER

1. Name of the Child
2. Date of Birth
3. Name of Judge of Justice of the Peace
4. Date of Court
5. Place of Court
6. Documents filed and relevant dates (for example, Case Plan Report, dated January 4, 2014, Affidavit of John Doe, dated January 2, 2014; Notice of Motion, dated, etc.)
7. Under what sections of the Child and Family Services Act was the child found in need of protection?
8. What Order was granted and under what section(s) of the Child and Family Services Act? Did the court order a review date? What is the review date?
9. Did legal counsel appear? If yes, who did they represent?
10. Did the parent(s) and/or guardian(s) appear in court?
11. Did the parent(s) and/or guardians(s) consent to the Order being requested?
12. Was consent oral or written?
13. What conditions were imposed by the court?

Legal Counsel Approved List

The list of approved law firms, in ranked order, and with contact information is as follows:

1. Shannon R.W. Gullberg Law Office

Address: Ms. Shannon Gullberg
110 Niven Drive
Yellowknife, NT
X1A 3W8
Cell phone: (867) 445-5543
E-mail: shannong@theedge.ca

2. Dragon Toner Law Office

Address: Mr. Sheldon Toner
PO Box 996
5016-50th Avenue
Yellowknife, NT
X1A 2N7
Telephone: (867) 873-6000
Cell Phone: (867) 446-0265
Fax: (867) 873-6006
E-mail: sheldon@dragontoner.ca

3. McIlmoyle Law Office

Address: Ms. Bettylou McIlmoyle
PO Box 11030
5107-53rd Street
Yellowknife, NT
X1A 3X7
Telephone: (867) 669-0123
Cell Phone: (867) 446-0868
E-mail: bettylou@mcilmoyle.ca

Legal Services Protocol for Contested Child Protection Cases

The purpose of this protocol is to describe the criteria for how legal services will be acquired by the Health and Social Services Authorities, and what legal services will be paid for. The legal service budget will be administered by the Department, with the Authorities independently acquiring legal services as and when required. Legal services on contested child protection matters are provided by the Department of Justice and Department of Health and Social Services.

Eligible Legal Services:

The acquisition of legal services through this protocol can only be requested for contested child protection cases. Legal counsel should be retained on contested cases immediately, in order to resolve matters promptly and to prevent proceeding to trial.

Services eligible for payment include:

- Pre-trials;
- Appearances on contested matters;
- Court hearing preparation;
- Preparation for trial, not including file organization;
- Preparation of witnesses (Child Protection Workers must provide witness contact numbers, addresses and summary of facts that the witness will testify to);
- Court time;
- Lawyer's issuing subpoenas to witnesses;
- O'Connor (definition on next page) applications made during an active case;
- Preparation of court orders, including adjournment orders;
- Negotiating contested cases as alternative to going to trial; and
- Appeals on child protection hearings or matters.

Services ineligible for payment include:

- Preparation of court documents, including Originating Notice, Notice of Motion and Affidavit;
- Appearing on consented and uncontested matters;
- Reviewing court documents prior to completion;
- Service of court documents;

- Preparation of Affidavit of Service;
- Organization of file prior to hearing;
- Legal research on child protection issues resulting from improper preparation/handling by the Authority; and
- Any other duties that are the responsibility of the Child Protection Worker, Supervisor or Authority.

You and your Supervisor will continue to complete court work as outlined in the Child and Family Services Standards and Procedures Manual.

O'Connor Applications:

The Department of Justice will provide legal advice to the Authorities for O'Connor applications; e.g.; requests by the Crown for child protection file information to use in a criminal proceeding on closed and inactive files.

Mediation

Adapted from *the Statutory Training for Child Protection Workers – A Legal Perspective (2014)*.

What is Mediation?

Mediation is an alternative process for resolving disputes between two (2) or more people. The process is carried out in private, and it encourages an atmosphere of trust and cooperation. Mediation helps the parent(s) and/or guardian(s) and child over 12 years of age to design their own solutions based on a non-adversarial and collaborative process.

Mediation is most often successful in assisting parent(s) and/or guardian(s) and child over 12 years of age to reach agreement for a wide range of issues and settings. Some of the areas where mediation has proven most helpful include:

- Family disputes
- Labour grievances
- Customer conflicts
- Neighbourhood conflicts
- Contractual relationships
- Institution disputes

What is Required?

All that is required for mediation to work is a willingness to come together to focus on solving challenges and finding solutions. Furthermore, it's equally important that you develop effective verbal and non-verbal communication skills such as:

- An awareness of the various forms of body language; and
- Active listening skills – paraphrasing, encouraging, reflecting feelings, summarizing, reframing and questioning skills.

Why Choose Mediation?

- Parent(s) and/or guardian(s) and child over 12 years of age are responsible for the decision;
- Mediation is confidential;
- Faster than litigation;
- Geared to resolving difficulties and fostering mutual respect;
- Empowering and responsive;

- It maintains important ongoing relationships;
- Informal process;
- Inexpensive compared to litigation;
- More permanent and acceptable agreements; and
- Peace of mind.

Benefits of Mediation

Speed

- Resolution of a dispute is possible within hours, days or weeks depending upon the complexity of the issues. This can be crucial where family, neighbour, or business relationships are being strained as a result of the conflict.

Cost

- Substantial time and money can be saved by avoiding lengthy litigation.

Privacy

- The process is entirely confidential thereby avoiding exposure of the conflict itself and any confidential information.

Informal Atmosphere

- The setting in which mediation takes place is relaxed and informal with a focus on non-confrontational problem solving.

Satisfaction

- It provides a quick resolution of a dispute, focusing on common interests and understanding differences with a view to workable solutions, results in more acceptable and more permanent agreements.

How to Resolve Conflict

Positions vs. Interests

- Issue – the subject matter of the difference of opinion.
- Interests – the needs, wants, fears or concerns, which will be considered in forming the agreement.
- Positions – positions are the solutions which each party receives will satisfy their needs.

The Mediation Model

Pre-Session – Prepare to Mediate

- Gather information
- Identify what you believe are the needs and interests of the participants, explore your own needs and interests

- Set time and location

Stage One – Establish the Guidelines and Set the Climate

- Express collaborative and team approach
- Determine authority
- Establish guidelines for discussion

Stage Two – Define the Issues and Set the Agenda

- Set goals for session
- Clarify issues from both sides
- Form an agenda and prioritize it

Stage Three – Explore Issues and Interests

- Gather and exchange information
- Specify your interests and elicit theirs
- Identify common interests
- Separate each issue from the others
- Form neutral goal statements

Stage Four – Problem Solve and Form the Agreement

- Generate options
- Determine criteria for fairness
- Specify who will do what, when, where and to what degree
- Write the agreement
- Determine the criteria for evaluation

Office of the Children's Lawyer Information Sheet

Adapted from the Family Law Manual – GNWT (2007)

WHAT DOES THE CHILDREN'S LAWYER DO?

The children's lawyer represents children and youth in Child and Family Services cases as well as in custody and access cases. The lawyer ensures the court is aware of the child or youth's views, wishes and best interests. In Child and Family Services cases, the lawyer will attempt to reduce any anxiety or trauma associated with the case, while empowering the child or youth to have a voice during the proceedings. Furthermore, the children's lawyer can answer any questions or concerns that the child or youth may have about the court processes as well as their legal rights.

How does the Children's Lawyer do this?

The Children's Lawyer will meet and talk with the child or youth at any location they desire. The Lawyer will also speak with other people in the child or youth's life such as the parent(s) and/or guardian(s), child protection worker(s), doctor(s), teacher(s), counsellors, etc. During the meetings, the Lawyer will gather information that is relevant to the current court case and then present the information to the court, which also may include calling the people as witnesses.

ROLE OF THE CHILDREN'S LAWYER

The Children's Lawyer represents the independent views of the child or youth during the court process. The judge must consider the views of the child or youth when deciding what would be in their best interest. Overall, the Children's Lawyer must ensure that the child or youth has an understanding of what happens in court and the judge's decision and how it will affect them.

WHEN CAN A CHILDREN'S LAWYER BE ASSIGNED?

A Children's Lawyer will be assigned to a child or youth in the following situations:

- The court has ordered that a Children's Lawyer be appointed.
- A child or youth who are receiving services through Child and Family Services can ask a Child Protection Worker to request a lawyer for them.

- A parent and/or guardian, who are involved in a custody and access case, can request that a lawyer represent their child.
- A youth 16 years and older who is receiving services through Child and Family Services can request to speak with a Children's Lawyer.

It should be noted that the Children's Lawyer will only provide assistance to children and youth who are involved in custody and access cases as well as Child and Family Services, which are court ordered. Legal aid will provide assistance to youth who are involved in the criminal justice system. The costs for these services are provided by the Department of Justice, Government of the Northwest Territories.

Any information a child or youth provide to a lawyer is confidential.

Outline for Presenting in Child Protection Court

Good Morning your Honour/Worship (use “Honour” for Territorial Court Judge and “Worship” for a Justice of the Peace), my name is _____ and I am a duly authorized Child Protection Worker pursuant to Section 54 (2) of the *Child and Family Services Act* of the Northwest Territories.

Your Honour/Worship, I request that the courtroom be cleared of people not involved in the case pursuant to section 84 (1) of the *Child and Family Services Act*.

I would like to speak to child protection matter _____ (Whenever possible, use the court file number when referring to the case, and use the terms “mother”, “father”, and “child” when referring to the parties instead of the names of the parties), which is number _____ on the docket.

Present in court are _____ (Introduce parties). (Also, this is an opportunity to file any Affidavits of Service that need filing, or explain why a party has not been served).

OR

Present in court are _____ (Introduce parties), who have given consent to this Order. At this time, I would also like to file the Consent (and the Affidavit of Service, which was served to the _____ (parties)).

OR

Present in court are _____ (Introduce parties). At this time, I am unsure of the parents’ position on this matter. (I would also like to file the Affidavit of Service, which was served to the _____ (parties)).

OR

The parents are not present in court today; however, they have given consent to this Order. At this time I would also like to file the Consent (and the Affidavit of Service, which was served to the _____ (parties)).

OR

Present in court _____ (*Introduce parties*). At this time, I was unable to serve _____ (*the other parties*) because _____, therefore, I would like to request the court for a ____ week(s) adjournment to affect service.

This child/these children is/are alleged to be in need of protection under Section 7 (3) (____) (*name all paragraphs relating to the protection concern*) of the *Child and Family Services Act* of the Northwest Territories. As such, the Director of Child and Family Services is seeking a _____ (*length and type of Order*) on the named child(ren).

The Affidavit material indicates concerns regarding _____ (*briefly outline areas of concern*). Therefore, I ask that the court make an Order pursuant to Section 27 (1) of the *Child and Family Services Act* that the child(ren) is/are in need of protection.

AFTER THE ORDER IS MADE:

I would like to file the Case Plan Report that I have prepared with respect to the child(ren). I have already provided the _____ (*other parties*) with a copy of the Case Plan Report.

AFTER THE REVIEW OF THE CASE PLAN REPORT IS COMPLETED:

Having reviewed the materials provided to the court, I also ask your Honour/Worship to make an order _____ (*state what type of order you are seeking – supervision, temporary or permanent*) pursuant to section 28 (1) (c) of the *Child and Family Services Act*. I have prepared a draft Order for your review (*present Order*).

Thank you your Honour/Worship

Outline for Presenting in Youth Protection Court

Good Morning your Honour/Worship (use “Honour” for Territorial Court Judge and “Worship” for a Justice of the Peace), my name is _____ and I am a duly authorized Child Protection Worker pursuant to Section 54 (2) of the *Child and Family Services Act* of the Northwest Territories.

Your Honour/Worship, I request that the courtroom be cleared of people not involved in the case pursuant to section 84 (1) of the *Child and Family Services Act*.

I would like to speak to matter _____ (Whenever possible, use the court file number when referring to the case, and use the terms “mother”, “father”, and “youth” when referring to the parties instead of the names of the parties), which is number _____ on the docket.

Present in court are _____ (Introduce parties). (Also, this is an opportunity to file any Affidavits of Service that need filing, or explain why a party has not been served).

OR

Present in court are _____ (Introduce parties), who have given consent to this Order. At this time, I would also like to file the Consent (and the Affidavit of Service, which was served to the _____ (parties)).

OR

Present in court are _____ (Introduce parties). At this time, I am unsure of the parents’ position on this matter. (I would also like to file the Affidavit of Service, which was served to the _____ (parties)).

OR

The parents are not present in court today; however, they have given consent to this Order. At this time I would also like to file the Consent (and the Affidavit of Service, which was served to the _____ (parties)).

OR

Present in court _____ (*Introduce parties*). At this time, I was unable to serve _____ (*the other parties*) because _____, therefore, I would like to request the court for a ____ week(s) adjournment to affect service.

This youth is alleged to be in need of protection under Section 29.2 (a) of the *Child and Family Services Act* as I have reason to believe that that the youth is unable to care for and protect himself or herself and is unable and unwilling to enter into an agreement with the Director under section 6 due to developmental, behavioural, emotional, mental or physical capacity or disorder, or to the effects of the use of alcohol, drugs, solvents and other similar substances. As such, the Director of Child and Family Services is seeking a youth protection order with a term that the youth be placed in the temporary custody of the Director for a period of _____ months, pursuant to section 29.6(1)(a) or 29.6(1)(b).

The Affidavit material indicates concerns regarding _____ (*briefly outline areas of concern*). Therefore, I ask that the court make an Order pursuant to Section 29.2 (a) of the *Child and Family Services Act* that the youth is in need of protection.

OR

This youth is alleged to be in need of protection under Section 29.2 (b) of the *Child and Family Services Act* as I have reason to believe that that the youth is living in the circumstances of a child who needs protection under subsection 7 (3) (____) (*name all paragraphs relating to the protection concern*) of the *Child and Family Services Act* of the Northwest Territories. As such, the Director of Child and Family Services is seeking a youth protection order with a term that the youth be placed in the permanent custody of the Director for a period of _____ months, pursuant to section 29.6(1)(a) or 29.6(1)(b).

The Affidavit material indicates concerns regarding _____ (*briefly outline areas of concern*).

I would like to file the Case Plan Report that I have prepared with respect to the youth. I have already provided the _____ (*other parties*) with a copy of the Case Plan Report.

I have also beprepared a draft Order for your review (*present Order*).

Thank you your Honour/Worship

Permanent Custody Applications Guidelines

A Permanent Custody application is appropriate when:

- It is believed that a child is in need of protection and that the parent(s) and/or guardian(s) of the child are unlikely and/or unwilling to be able to ensure the child's protection, health and safety in the future.
- The child has been receiving services through a Plan of Care Agreement or under Temporary Custody for the past 24 months continuously (uninterrupted), but the original or new child protection concerns continue to place the child in need of protection.
- The child has no parent(s) and/or guardian(s) for an extended period (due to abandonment, death or incarceration) and extended family member(s) are unable or unwilling to care for the child.
- The parent(s) and/or guardian(s) wish to place the child for adoption (See Permanent Custody for the Purposes of Adoption section).

Making an application for Permanent Custody:

A. Initial custody applications:

- | | |
|----------------------|--------------------------|
| • Originating Notice | • Consent |
| • Affidavit | • Revocation of Consent |
| • Case Plan Report | • Affidavit of Execution |

B. Subsequent applications and/or Extensions of an Order:

- | | |
|--------------------|--------------------------|
| • Notice of Motion | • Consent |
| • Affidavit | • Revocation of Consent |
| • Case Plan Report | • Affidavit of Execution |

A judge can find a child in need of protection and grant a Permanent Custody Order.

Terms and conditions that can be ordered (*NWT Child and Family Services Act* Section 28(1)(d)):

- Access for the parent(s) and/or guardian(s) and child may include:
 - When and where the child and the person granted access to the child may visit each other; or
 - The right, if any, of the person granted access to the child to receive information about the child's well-being while in care.
- Any terms and conditions that the court considers necessary and proper (placement of a child may not be ordered by a court).

Notice must be served to the necessary people.

Responsibilities of a Child Protection Worker for children in Permanent Custody:

- Where and with whom the child will live (preferably a permanent home);
- Consent for medical care and treatment for the child (unless surgery or anaesthetics are needed, which require the Director's consent);
- The child's education; and
- The child's social and recreational activities.

Note: If a person who had lawful custody immediately prior to the child being placed in Permanent Custody requests the following information, they are entitled to receive it, unless the Child Protection Worker in consultation with the Supervisor determines that it is not in the child's best interest to release some or all the information as per Section 48. (1.1) of the *NWT Child and Family Services Act*.

Information that the parent(s) and/or guardian(s) may be entitled to:

- Whether the child is in a group home, foster home or adoptive home;
- Whether the child is in the NWT or elsewhere;
- Health status; or
- Educational status.

After the court issues a Permanent Custody Order, the Child Protection Worker must:

- Consider the following when determining a suitable placement for the child:
 - Input from the parent(s) and/or guardian(s) on the permanent home of his or her child.
 - It is preferable to keep siblings together in same home.
 - Placement with extended family and friends is to be considered first.
 - Placement in foster families with the same cultural and religious background is preferable.
 - It is preferable for the child to continue attending the same school as before.
 - It is preferable to keep the child close to friends and social activities.
- Ensure any changes to the existing Case Plan Report do not contradict the terms of the Permanent Order.
- Discuss and explain the terms of the order to the parent(s) and/or guardian(s), child and foster family, where applicable.
- Monitor the child's progress regularly as per Minimum Contact Guidelines or as required by the Permanent Custody Order.
- Engage in on-going permanency and transitional planning to ensure the child will have sufficient supports once they are no longer in the custody of the Director of Child and Family services (e.g. upon his or her 16th or 19th birthday). This will include assessing the skills, strengths and needs of the child and ensuring that the necessary services and support networks are developed and established.
- Discuss options to extend the period of the Permanent Custody Order past the child's 16th birthday with the Supervisor, the child and the foster family/caregivers.

The responsibilities of a Child Protection Worker for a child in permanent custody end when:

- The period of custody set out in the Order expires.
- A court discharges the order placing the child in the permanent custody of the Director.
- The child reaches the age of 16 years (unless an extension of the Permanent Custody Order is granted - this can be in effect until the day the child turns 19 years of age).
- The child is adopted under the *NWT Adoption Act*.

Termination of a Permanent Custody Order (court discharges the Order) would occur when (*NWT Child and Family Services Act Section 49(all)*):

- It is determined that it is in the best interest of the child.

- The parent is able to care appropriately for the child.

Who can request the termination of the Permanent Custody Order (through an application to the court)?

- The Child Protection Worker;
- The child (if aged 12 years or older); and
- The child's parent(s)/guardian(s).

Who can order the termination of the Permanent Custody Order?

- A judge

Extension of a Permanent Custody Order for a child over 16 years of age:

- Court may order a Permanent Custody Order to go beyond the child's 16th birthday, but not beyond the day the child turns 19 years old.
- The child must be in agreement with the extension, unless the court finds that the child is unable to decide due to physical, emotional or mental reasons or an extension is in the best interests of the child.
- The Permanent Custody Order can be terminated at any time through the process described in the previous section.

The following people can make an application to extend an order past a child's 16th birthday:

- The child;
- The Child Protection Worker, if it is believed to be in the child's best interests; and
- An interested person.

Purpose of Child Protection Proceedings

Adapted from *the Yukon CFSA Policy Manual (2012)*.

The purpose of the proceedings is to protect children as well as to determine whether the child is in need of protection based on the facts of the case and what is in the best interest of the child. Child Protection Proceedings are not a fight between the parent(s) and/or guardian(s) and the Director.

The procedures in a Child Protection Hearing are more relaxed and informal than a trial. For example, the rule against hearsay evidence is more relaxed under the *Child and Family Services Act*, which allows the admission of evidence about the views and preferences of children. This type of evidence may come from the child him/herself or from an adult, expert witness or a children's lawyer.

Role of the Child Protection Worker in Court

Child Protection Workers are registered/licensed social workers who are appointed by the Director to carry out the provisions of the *Child and Family Services Act*.

Even though the *Act* allows for the use of support services to assist families and children, the Court is still an important component of the *Act*, especially in situations where the Director believes that a child is in need of protection.

The Child Protection Worker has two (2) main responsibilities during the Court process:

1. Make the decision to apply to court for a Apprehension Order and/or Child Protection Order; and
2. Ensure that all preparations and procedures are carried out as per the *Act* and the Standards, including attending and presenting to the judge the reasons why the Order is being sought.

As stated above, the Child Protection Worker's role during the hearing is to present to the judge, through oral or written evidence, the facts of the case that relates to the order being sought and the child's need for protection. This will include the Child Protection Worker's observations and knowledge of the child and family and the circumstances that have led to the child to be in need of protection. It's important for the Child Protection Worker to know his or her file so he or she will be able to answer any questions about the history of the family as well as the family's current situation.

Who Attends a Child Protection Proceeding?

The following people may be included in the Child Protection Hearing:

1. Judge;
2. Director (as represented by the Child Protection Worker);
3. Director's legal counsel;
4. Child's Parent(s) and/or Guardian(s);
5. Child's Parent(s) and/or Guardian(s) legal counsel(s);
6. Band/Aboriginal organization;
7. Child (12 years and older)
8. Children's lawyer;
9. Approved support person to the child and/or parent(s) and/or guardian(s)
10. Witnesses
11. Sheriff
12. Court clerk; and
13. Court recorder.

The Child Protection Hearing is not open to the public; therefore it is important that you request that the court room be cleared of the public if the judge has not already made this request.

Removal Orders

What is a removal order?

A removal order is a document issued by court directing an incarcerated person be brought in front of a court, or other tribunal, for the purpose of dealing with a criminal or civil matter.

Unlike other court documents, a removal order is an ‘over the counter’ order. You do not need to appear in court to obtain the order, rather provide the documents to the Clerk who takes them to the judge, in Chambers, who will grant the order.

Some removal orders require the prisoner be physically brought to the court via RCMP escort while others simply require the individual to be available by videoconference.

Search Warrants

What is a search warrant?

A search warrant is a document issued by court which authorizes law enforcement officers to conduct a search of a person, location, or vehicle for evidence of a crime or to confiscate evidence.

A law enforcement officer must show you the signed search warrant. The warrant will identify the premises to be searched.

A search warrant cannot be issued in civil proceedings, such as child protection. Therefore it is highly unlikely that there will be many occasions where a social services office will be served with a warrant.

If you are served with a search warrant you must comply, however, it does not mean the officer can use your documents in a criminal proceeding. Your documents are generally confidential, in accordance with sections 71-74 of the *Child and Family Services Act* and are only released in accordance with the *Act*. In other words, you must comply with the search warrant but there are steps to ensure the confidentiality of your information is maintained.

How does legal counsel help?

Discuss the search warrant with your Supervisor and legal counsel. Copy the materials that are subject of the search warrant, place the originals in a sealed envelope.

Legal counsel will make a court application and a judge will determine if the materials will be opened. The test is whether the need to disclose the information outweighs the public policy that your files remain confidential.

Serving Court Documents and Timelines

This tool should be used in conjunction with Standard 5.12 – Service of Documents

Definitions:

Parties to the Proceeding:

- The child or youth's parent(s) and/or guardian(s);
- The person having actual care of the child at the time of the investigation under subsection 9 (1) or 11 (3);
- The person having actual care of the child at the time the child was apprehended;
- The person having actual care of the youth at the time of the application for Youth Protection Order ;
- The child who is 12 years and older;
- The youth who is 16 years and older (Youth Protection Order);
- The members of the Plan of Care Committee

Applicable Aboriginal Organization:

- If unclear of the child's aboriginal ancestry, their health card can provide that information through the first letter.

T – Inuvialuit/Inuit

D – First Nations

M – Metis (not born in the North)

H – Indigenous Metis (born in the North)

N – Non-Aboriginal

Assistant Director of Child and Family Services

- Certified copies can be hand delivered to your respective Chief Operating Officer (COO) who is delegated as an Assistant Director under the Act.

Director of Child and Family Services

- Certified copies should be mailed to the Director of Child and Family Services at:

Territorial Social Programs
Department of Health and Social Services
Government of the Northwest Territories
Box 1320, Yellowknife, NT X1A 2L9
5015-49th Street

- A scanned copy should also be emailed to the Director of Child and Family Services at: cfs_director@gov.nt.ca

****All documents should be certified, unless otherwise specified. Ensure that you provide all copies to the court registry and if possible, make extra copies.**

Note:

You will need a copy of every court document, as applicable, for:

- The child or youth's parent(s) and/or guardian(s)
- The child who is 12 years and older
- The youth who is 16 years and older (Youth Protection Order);
- Each child's file
- Each youth's file
- Defence lawyer
- The Director's legal counsel

An Affidavit of Service **does not** need to be completed for service upon the Assistant Director of Child and Family Services or the Director of Child and Family Services.

An Affidavit of Service **does** need to be completed for service upon anyone else, for any court document. This should be filed with the courts prior to an application being heard.

A certified order only has to be served if directed by the Judge. If this occurs, then service must be documented in an Affidavit of Service or Affidavit of Attempted Service. However, in situations where service is not ordered, forward the certified order to the applicable parties as outlined below. Ensure that a case note to document this has been placed on the child or youth's file.

<p style="text-align: center;">Supervision Order (0-15)</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Supervision Order:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Assistant Director of Child and Family Services
	<p>Timeline for service:</p> <p>Service must occur ten calendar days before the court hearing.</p>

<p style="text-align: center;">Apprehension (Section 12.1 (1)(2) and 31(7))</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Apprehension Order (as directed by the Judge):</p> <ul style="list-style-type: none"> - Parties to the Proceeding
	<p>Timeline for service:</p> <p>Service must occur four calendar days before of the court hearing.</p>

<p>Temporary Custody (0-15)</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Temporary Custody Order:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Assistant Director of Child and Family Services <hr/> <p>Timeline for service:</p> <p>Service must occur ten calendar days before the court hearing.</p>
<p>Permanent Custody (0-15)</p> <p>Extended Permanent Custody (16-18)</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Permanent Custody Order:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization - Assistant Director of Child and Family Services - Director of Child and Family Services <hr/> <p>Timeline for service:</p> <p>Service must occur ten calendar days before the court hearing.</p>

<p>Youth Protection – Temporary Custody (16-18)</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Temporary Custody Order:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Assistant Director of Child and Family Services
	<p>Timeline for service:</p> <p>Service must occur ten calendar days before the court hearing.</p>

<p>Youth Protection – Permanent Custody (16-18)</p>	<p>Notice of Motion/Originating Notice:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization <p>Affidavit:</p> <ul style="list-style-type: none"> - Parties to the Proceeding <p>Temporary Custody Order:</p> <ul style="list-style-type: none"> - Parties to the Proceeding - Aboriginal Organization - Assistant Director of Child and Family Services - Director of Child and Family Services
	<p>Timeline for service:</p> <p>Service must occur ten calendar days before the court hearing.</p>

Subpoenas

What is a subpoena?

A subpoena is a document issued by court that requires a person to give testimony or evidence during a court hearing.

What does a subpoena tell us?

The subpoena will be addressed to either, the Director of Child and Family Services, a Child Protection Worker by their personal name or it could be addressed to both.

Sometimes Child Protection Workers are required to provide evidence during a criminal or civil matter.

The document will indicate the date, time and place that you are required to be and what information is being requested. Your attendance with the requested materials is mandatory.

How does legal counsel help?

You may be required by the court to testify or disclose materials. However, your materials are generally confidential as stated in sections 71-74 of the *Child and Family Services Act*. Discuss the subpoena and the required materials with your legal counsel. Counsel will advise you on what will be released.

If someone believes you should provide evidence in court, the judge will decide if a subpoena will be issued. In doing so, the judge will determine if the need to disclose the information outweighs the policy that the records remain confidential. You don't decide whether you can or will produce the information.

Legal counsel will review the subpoena and file information. Next, legal counsel will decide what, if anything will be provided to the court and prepare you for court.

If you and legal counsel determine you should **not** testify or disclose any materials:

- make a copy of the file and provide the original file to the court (eventually your original file will be returned); and
- seal the file and give it to the judge.

The legal counsels will speak to the judge about why you should or should not testify and/or why you should or should not provide evidence. The judge will make the decision and provide direction. If the judge determines that you must disclose the information requested, then you need to have the information redacted as necessary

and as soon as possible.

Supervision Order Applications Guidelines

A Supervision Order application is appropriate when:

- The child is believed to be in need of protection, but can remain with, or be returned to his or her parent(s) and/or guardian (s) while the provision of necessary services is occurring.
- The child is believed to be in need of protection, but the removal of the child from the home would not be in the best interests of the child.
- The family's conditions and the motivation of the parent(s) and/or guardian(s) will be best supported and most successful if the child remains in the home rather than foster care.
- The parent(s) and/or guardian(s) or a child, 12 years or older, who is believed to be in need of protection, decides that they do not wish to develop a Plan of Care Agreement, and elects to go to court.
- The parent(s) and/or guardian(s) and the Child Protection Worker or the majority of the Plan of Care Committee members cannot agree on a Plan of Care Agreement within the required timelines.

Note: An order making a child subject to supervision by a Child Protection Worker cannot exceed 12 months. The total term, including any extensions, cannot exceed a continuous (uninterrupted) period of 24 months.

Making an application for Supervision:

A. Initial custody applications:

- | | |
|----------------------|--------------------------|
| • Originating Notice | • Consent |
| • Affidavit | • Revocation of Consent |
| • Case Plan Report | • Affidavit of Execution |

B. Subsequent applications and/or Extensions of an Order:

- | | |
|--------------------|--------------------------|
| • Notice of Motion | • Consent |
| • Affidavit | • Revocation of Consent |
| • Case Plan Report | • Affidavit of Execution |

A judge or justice of the peace can find a child in need of protection and grant a Supervision Order.

Terms and conditions that can be ordered (*NWT Child and Family Services Act*)

Section 28(1) (b)):

- The length of time that the Supervision Order will be in effect (cannot exceed 12 months).
- Any terms and conditions that the court considers necessary and proper.

After a court makes a Supervision Order on a child, the Child Protection Worker may bring the matter back to court to:

- Extend the order for one or more periods;
- Vary the order; and
- Discharge the order.

Notices must be served to the necessary people.

Responsibilities of a Child Protection Worker:

- Ensure any changes to the existing Case Plan Report do not contradict the terms of the Supervision Order.
- Discuss the terms of the Order with the parent(s) and/or guardians and child over 12 years of age and assist in arranging any support services (e.g., counselling, parenting courses).
- Monitor the child's progress and the family situation as per the Minimum Contact Guidelines or as required by the Supervision Order.
- Conduct a case review of the Case Plan Report with the involved parties (e.g., parent(s)/guardian(s), Plan of Care Committee) every three (3) months or as per the review date on the Supervision Order.
- Discuss the options to extend or shorten the period of the Supervision Order with the Supervisor and the parent(s) and/or guardian(s).

When the responsibilities of a Child Protection Worker end for a child who is the subject of an order:

- The period of supervision set out in the order expires; or
- A court discharges the order that made the child subject to supervision by a Child Protection Worker.

Temporary Custody Order Applications Guidelines

A Temporary Custody application is appropriate when:

- The child can only return to the parent(s) or guardian(s)' care after receiving the necessary services.
- The child is currently receiving services in the home through a Plan of Care Agreement; however, new protection concerns have arisen, which cannot be addressed while the child remains in the home.
- The parent(s) and/or guardian(s) or a child over the age of 12, decides that they do not wish to develop a Plan of Care Agreement and elect to go to court.
- The parent(s) and/or guardian(s) and/or the Child Protection Worker (or the majority of the Plan of Care Committee members) cannot agree on a Plan of Care Agreement within the required timelines.
- The child cannot stay with his or her parent(s) and/or guardian(s) for the time being, due to concerns for the protection, health or safety of the child.
- The child is under a Temporary Custody Order and although there have been improvements in the well-being of the child and/or family, it is not yet safe for the child to be returned to his or her parent(s) and/or guardian(s) care.
- The parent(s) and/or guardian(s) cannot be located within the timelines required for the Plan of Care Committees.
- When a youth has been declared in need of protection by the Court.

Limitations on Temporary Custody Orders *Child and Family Services Act* Section 28(1.1):

A Child Protection Worker may not make an application for an order for temporary custody of a child that results in a continuous period during which the child is in temporary custody exceeding:

- (a) 12 months, in the case of a child under 5 (five) years of age;
- (b) 18 months, in the case of a child 5 (five) years of age or over but under 12 years of age; or
- (c) 24 months, in the case of a child 12 years of age or over.

The Child Protection Worker will engage in permanency planning throughout the case management process. The child and youth's best interests must be upheld at all points in the permanency planning process.

Court**Temporary Custody Order Applications Guidelines**

The Child Protection Worker may apply for a Permanent Custody Order prior to the end of the maximum allotments for Temporary Custody Orders.

Making an Application for Temporary Custody:**A. Initial custody applications:**

- Originating Notice
- Affidavit
- Consent
- Revocation of Consent
- Case Plan Report
- Affidavit of Execution

B. Subsequent applications or Extensions of Temporary Custody application:

- Notice of Motion
- Affidavit
- Case Plan Report
- Consent
- Revocation of Consent
- Affidavit of Execution

The Court will declare when a child or youth or is in need of protection and may grant a Temporary Custody Order.

Terms and conditions that can be ordered *Child and Family Services Act* Section 28(1)(c) and 29.6(1)(a):

- The length of time that the Temporary Custody Order will be in effect or the length of time for any applications for extensions.
- The conditions of access (visitation) for the parent(s) and/or guardian(s) and child, including:
 - When and where the child and the person granted access to the child may visit each other; and
 - The right, if any, of the person granted access to the child to receive information about the child's well-being while in care.
- The Order may provide the child's parent(s) and/or guardian the right to give or refuse consent for medical care/ treatment for the child.
- The Order may require the child's parent(s) and/or guardian(s) make a financial contribution towards the cost incurred by the Director for the care of the child. If included in the Temporary Custody Order, Maintenance Enforcement will collect and return funds to the Department of Health and Social Services.
- The placement of a child may not be ordered by a court.
- And, any other terms and conditions that the court considers necessary and proper.

The Child Protection Worker is responsible for working with the parent(s) and/or guardian(s) to make the following decisions in the best interest of the child:

Court**Temporary Custody Order Applications Guidelines**

- Where and with whom the child will live;
- Consent for medical care and treatment for the child (unless the Temporary Custody Order states otherwise);
- The child's education; and
- The child's social and recreational activities.

The Child Protection Worker will make all reasonable efforts to work collaboratively with the parent(s) and/or guardian(s) and/or extended family to make arrangements for the child or youth's care and ensure that the following priorities are considered:

- It is preferable to keep siblings together in same home.
- Placement with extended family and friends is to be considered first.
- Placement in foster families with the same cultural and religious backgrounds is preferable.
- It is preferable for the child to continue attending the same school as prior to coming into care.
- It is preferable to keep the child close to friends and social activities.
- Relationships with relatives, family friends and members of the child and family's cultural community should be encouraged and maintained.
- That any changes to the existing Case Plan Report do not contradict the terms of the Temporary Custody Order.
- Discuss the terms of the Order with the parent(s), guardian(s) and/or a child over 12 years of age and foster family and assist in arranging any support services (e.g. counselling, parenting courses, etc.). Monitor the child's progress and the family situation regularly as per the *Minimum Contact Guidelines* or as required by the Temporary Custody Order.
- Conduct a Case Review with the involved parties (e.g. parents/guardians/Plan of Care Committee) every three (3) months or as per the review date on the Temporary Custody Order.
- Discuss the options to extend or shorten the period of Temporary Custody with the Supervisor and the parent(s) and/or guardian(s).

After the court makes a Temporary Order, the Child Protection Worker may bring the matter back to court to extend a Temporary Custody Order according to the following legislated guidelines in the *Child and Family Services Act* Section 28(10)(a)(b)(c):

A court may not make or extend an order that would result in a child being in the temporary custody of the Director for a continuous period exceeding:

- (a) 15 months, in the case of a child under five years of age when the order was made;
- (b) 24 months, in the case of a child five years of age or over but under 12 years of age when the order was made; or

(c) 36 months, in the case of a child 12 years of age or over when the order was made.

A Child Protection Worker may also bring the matter back to Court to vary the order; and/or discharge the order.

The Child Protection Worker will apply for a Permanent Custody Order, if the child is still in need of a Child Protection Order after the maximum extensions of Temporary Custody.

The Court System in the Northwest Territories

Adapted from the Department of Justice website (2009)

Introduction

The Courts in the Northwest Territories are organized and administered in a system similar to that of courts elsewhere in Canada. They include:

- Court of Appeal for the Northwest Territories
- Supreme Court of the Northwest Territories
- Domestic Violence Treatment Option
- Youth Justice Court of the Northwest Territories
- Justice of the Peace Court of the Northwest Territories

Court Registry hours and locations:

Monday to Friday – 9:30 am – 12:00 pm and 1:00 pm to 4:00 pm

Yellowknife 4903-49 th Street Box 550 Yellowknife, NT, X1A 2N4 (867) 920-8760 / 873-7602 or toll free: 1-866-822-5864 Fax: 867-873-0291	Hay River #201 – 8 Capital Drive Hay River, NT, X0E 1G2 (867) 874-6509 or toll free: 1-866-885-2535 Fax: 867-874-6731	Inuvik 151 Mackenzie Road Box 1965 Inuvik, NT, X0E 0T0 (867) 777-7300 Toll free: 1-866-344-3940 Fax: 867-777-3634
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Courts

Courts of Appeal for the Northwest Territories

The Court of Appeal for the Northwest Territories is the highest appeals court, which

hears criminal and civil appeals from the Supreme Court as well as appeals from the Territorial Court in indictable criminal cases.

Supreme Court of the Northwest Territories

The Supreme Court of the Northwest Territories is the highest trial court and has authority in all civil and criminal matters arising in the Territories, except those expressly excluded by statute.

The Supreme Court sits in Yellowknife but also provides services to other communities throughout the Northwest Territories. It has authority in summary conviction criminal cases heard by Territorial Court and the Justices of the Peace, as well as other types of cases where appeals are provided by statute. Further, the Court has authority over divorce, probate, and estate administration matters.

The Supreme Court can hear the following applications:

- Supervision, Temporary and Permanent Custody applications; including reviews, changes and extensions of Justice of the Peace orders.
- In addition to the above, the Supreme Court can also hear applications for medical care and treatment to preserve life.

Territorial Court of the Northwest Territories

The Territorial Court is the lowest court in the Northwest Territories, which authority is provided by federal and territorial legislation.

The Territorial Court hears the majority of criminal cases that come into the court system. It holds preliminary hearings and non-jury trials in communities throughout the Northwest Territories, visiting them regularly on regional circuits. When on circuit, the judges work in conjunction with community justice committees and other community representatives. The Court also has jurisdiction over all summary conviction offences created by federal and territorial statutes, such as environment offences, motor vehicle and highway safety infractions, and breaches of municipal by-laws. It hears cases involving child protection, custody and support. In additions, it has jurisdiction to hear civil cases where the monetary amount in dispute does not exceed \$35,000.00.

The Territorial Court can hear the following applications:

- Supervision, Temporary and Permanent Custody applications; including reviews, changes and extensions of Justice of the Peace orders.

Domestic Violence Treatment Option

The Domestic Violence Treatment Option allows people who have used violence against a partner to take responsibility for their behaviour and receive support and counselling. The program, which is eight (8) weeks in duration, also provides intervention by a team that can help improve the participant's relationships for the long term. After successfully completing the program, the sentencing judge will take into consideration the dramatic and meaningful step towards long term change made by the participant.

Youth Justice Court of the Northwest Territories

The Youth Justice Court, which is designated under the Youth Criminal Justice Act and the Youth Justice Act, hears all Criminal Code charges and territorial statute offences brought against young persons between the ages of 12 and 18. The majority of the cases are heard by the Territorial Court in Yellowknife and throughout the Territories.

Justice of the Peace

Justices of the Peace perform a variety of judicial and quasi-judicial functions on a part-time basis. They generally preside over summary conviction matters arising out of territorial statutes, municipal by-laws, and selected criminal matters. They also regularly conduct bail hearings and issue warrants and summonses. Furthermore, they conduct various public functions such as performing marriage ceremonies.

The Justice of the Peace Court can hear the following applications:

- Supervision and Temporary Custody applications; including reviews, changes and extensions of Justice of the Peace orders. Permanent applications cannot be heard here.

Total Cumulative Period for Court Orders

When decision is made to have the child remain under supervision or in the custody of the Director of Child and Family Services under Supervision Order or a Temporary Custody Order, there are time limits for the length of the Orders as per Sections 28 (1) (b) and 47 (3) of the *Child and Family Services Act*.

The time limits under the *Act* have been developed in consideration of a child's need for stability and permanence. Generally, the younger the child, the shorter the period he or she should remain in care without a permanent and stable home being identified.

In terms of Interim and Supervision Orders, the time that a child in care or under supervision by a Child Protection Worker, does not count towards the total cumulative period for how long a child can be in custody.

A Supervision Order cannot exceed twelve months in duration, including extensions. The total cumulative period for this type of Order cannot exceed a continuous period of two (2) years. If you feel that the child and his or her family still require services and/or new child protection concerns have arisen, a Temporary Custody Order must be sought.

Similarly, a Temporary Custody Order cannot exceed twelve months in duration, and the total term cannot exceed a continuous period of two (2) years. If a further order is required, a Permanent Custody Order must be requested.

The time calculation for a child who has received services through a Plan of Care Agreement and/or court order will include all periods that a child has had involvement with Child and Family Services within the past five (5) years, regardless of the time frame being continuous.

Working with Legal Counsel

The Director of Child and Family Service's legal counsels are there to assist you in presenting your case in court as effectively as possible. Legal counsels' roles vary but they mainly take instructions from you and the Director as well as give advice about such things as the strength of your case, the likelihood of obtaining your order and your effectiveness as a witness, etc. Remember, the case is your responsibility, not that of legal counsel. They are available for assistance and instruction but ultimately, you will need to decide, in consultation with your Supervisor, what order to apply for, and what terms and conditions to propose in the Order.

Your legal counsel can help and support when preparing for court. They can:

- Provide legal advice about the strength of your case;
- Advise how to present your case; e.g.; potential witnesses, additional evidence to collect and present in court, etc.;
- Help you to prepare your testimony for court;
- Prepare witnesses to give their evidence; and
- Review any information that you receive from the parent(s) and/or guardian(s) and child's lawyer.

If your Authority obtains legal counsel for your case, send him or her the following documents before the hearing (ask how soon he or she needs the documents):

- Copy of the Originating Notice or Notice of Motion;
- Copy of the Affidavit;
- Case Plan Report of the Child Protection Worker;
- Names of witnesses and what evidence you think they can give; and
- Any other documents that may be required, e.g.; notes on file, doctor's reports, school reports, psychological assessments, etc.

Preparing Witnesses for Court

If legal counsel plans to call witnesses during the hearing, decide with legal counsel well in advance which person(s) will need to testify.

Once you have decided on witnesses, make a summary of the evidence each can be expected to provide. This would include any facts which you think will support your application. For example:

- Father and mother have longstanding and ongoing issues with alcohol;
- Father has a lengthy history on repeated physical assaults on his children;
- House is dirty (community standard apply) and there is no food;
- Other children in the family have committed crimes and the parent(s) have not taken any actions to assist the children in receiving treatment or other attempts to address their behaviours; or
- The child has a special medical condition which is not being cared for by the parents.

In cases where legal counsel is involved, your preparatory notes on the witnesses will help in preparing to examine these witnesses at the hearing.

After you have provided your legal counsel with a list of witnesses and the summary of the evidence, you will need to prepare your witnesses for testifying in court. Witnesses need to feel comfortable and have an understanding of what to expect during the hearing. You should discuss:

- Ensure that the parent(s) and/or guardian(s) understands their rights to retain legal counsel and the process for obtaining this service;
- Advise the parent(s) and/or guardian(s) to speak to their legal counsel before the next court date;
- Ensure that the parent(s) and/or guardian(s) understands the importance of attending court;
- Explain to the parent(s) and/or guardian(s) the role of court etiquette and that the judge will base his or her decision in part on the impression he or she forms of them;
- Explain to the parent(s) and/or guardian(s) what type of order you are applying for in plain language. Furthermore, explain the roles in court, yours and the judge's and that the judge will decide whether or not their child is in need of protection, not you.
- Tell the parent(s) and/or guardian(s) why you believe their child is at risk and why you are seeking a specific order;
- Explain to the parent(s) and/or guardian(s) what alternative options the judge can make;
- Explain to the parent(s) and/or guardian(s) the court process, and that they will have an opportunity to tell their story once the Director/Child Protection Worker has presented their case; and

- Review with the parent(s) and/or guardian(s) the evidence that you will be presenting in court, which will paint a picture of what you know of the family.

If a child 12 years of age and older is to be present in child protection court, which is quite rare, it's important that the child has an understanding of the proceedings and is given an option to attend court as well as to have legal representations by the Office of the Children's Lawyer.

After preparing your witnesses, make sure that your witnesses can come to testify on the date of the hearing and contact your legal counsel to see if he or she wants to subpoena the witnesses to court. Subpoenas are important if some of your witnesses do not want to come to court. Some of the witnesses may need a subpoena to show their employer to obtain leave from work to attend court.

Ensure that appropriate arrangements are made to provide the witnesses with conduct money, money required to ensure that the witness will be able to attend court and cover travel expenses.

In many hearings, you, as the Child Protection Worker, will be the key witness and maybe the only witness, so it is crucial that you are thoroughly familiar with your file. You will need to assess what will happen in court in order to determine your level of preparation.

Witness Travel

Authorities are responsible for witness travel and accommodation costs.

Youth Protection Order Applications Guidelines

A Youth Protection application is appropriate when:

- The youth cannot stay with his or her parent(s) and/or guardian(s) for the time being, due to concerns for the protection, health or safety of the youth, and;
- The youth is unable or care for and protect himself or herself, and;
- The youth is unable or unwilling to enter into a Support Services Agreement with the Director of Child and Family Services due to developmental, behavioural, emotional, mental or physical incapacity or disorder, or the effects of the use of alcohol, drugs, solvents or other similar substances; **OR**
- The youth is living in circumstances of a youth who needs protection under subsection 7(3) of the *Child and Family Services Act*.

The Child Protection Worker will engage in permanency planning throughout the case management process. The youth's best interests must be upheld at all points in the permanency planning process.

The Child Protection Worker may apply for a Youth Protection Order for permanent custody as per section 29.6(1)(b) prior to the end of the temporary custody conditions if the youth is still believed to be in need of protection.

Making an Application for a Youth Protection Order for temporary and permanent custody:

A. Initial custody applications:

- | | |
|----------------------|--------------------------|
| • Originating Notice | • Revocation of Consent |
| • Affidavit | • Case Plan Report |
| • Consent | • Affidavit of Execution |

B. Subsequent applications or extensions for a Youth Protection Order for temporary and permanent custody:

- | | |
|--------------------|--------------------------|
| • Notice of Motion | • Consent |
| • Affidavit | • Revocation of Consent |
| • Case Plan Report | • Affidavit of Execution |

A Court can declare a youth to be in need of protection and grant a Youth Protection Order with Temporary Custody conditions or Permanent Custody.

Prior to granting the Youth Protection Order, the court may:

- Invite and consider representations on the Youth Case Plan for the youth by:

- The Director;
- The youth;
- The youth's parent(s) and/or guardian, if their identities and whereabouts are known and the court considers it in the best interest of the youth to hear from one or both of the youth's parent(s) and/or guardian(s);
- The person having actual care of the youth at the time of the Youth Protection Order application; and
- The applicable Aboriginal organization, if the youth is Aboriginal.
- Consider any terms and conditions recommended by the Director (Child Protection Worker) to implement the Youth Case Plan Report for the youth.

Terms and conditions that can be ordered in the Youth Protection Order (NWT Child and Family Services Act Section 29.6(1):

- The youth to be placed in temporary custody (not exceeding 12 months) or permanent custody of the Director, and the court may specify in the order:
 - Any other terms and conditions that the court considers necessary and proper; and
 - The youth's parent(s) and/or guardian(s) or person having actual care of the youth at the time the declaration was made for a Youth Protection Order be granted access to the youth on the terms and conditions that the court considers appropriate.
 - The Youth Protection Order may require the youth's parent(s) and/or guardian(s) make a financial contribution towards the cost incurred by the Director for the care of their child. If included in the Order, Maintenance Enforcement will collect and return funds to the Department of Health and Social Services.
 - The placement of a child may not be ordered by a court.

After the court makes a Youth Protection Order for a period of temporary custody, the Child Protection Worker, parent(s) and/or guardian(s) and youth may bring the matter back to court to:

- Extend the order for one or more periods;
- Vary the order or make any further order that the court considers necessary and proper; or
- Discharge the order.

Note: A Youth Protection Order with temporary custody conditions cannot exceed **12 months initially** but can be extended for **one or more periods**, can be **varied** or **discharged**.

After the court makes a Youth Protection Order for permanent custody, the Child Protection Worker, parent(s) and/or guardian(s) and youth may bring the matter

back to court to:

- Discharge the order.

Notice must be served to the necessary people.

Responsibilities of a Child Protection Worker for youth on a Youth Protection Order with a term of temporary custody or permanent custody:

- Where and with whom the youth will live;
- Consent for medical care and treatment for the youth; however this is not necessary if the youth has the capacity to consent to his or her own treatment (unless the Temporary Custody Order states otherwise);
- The youth's education; and
- The youth's social and recreational activities.

Note: If a person who had lawful custody immediately prior to the youth being placed in permanent custody requests the following information, they are entitled to receive it, unless the Child Protection Worker in consultation with the Supervisor determines that it is not in the youth's best interest to release some or all the information as per Section 48.(1.1) of the *NWT Child and Family Services Act*.

Information that the parent(s) and/or guardian(s) may be entitled to:

- Whether the youth is in a group home, foster home or adoptive home;
- Whether the youth is in the NWT or elsewhere;
- Health status; or
- Educational status.

After the court issues a Youth Protection Order for term of temporary custody or permanent custody, the Child Protection Worker is responsible to:

- Make all reasonable efforts to work collaboratively with the parent(s) and/or guardian(s) and/or extended family to make arrangements for the youth's care.
- Consider the following when determining a suitable temporary or permanent placement for the youth:
 - It is preferable to keep siblings together in same home.
 - Placement with extended family and friends is to be considered first.
 - Placement in foster families with the same cultural and religious backgrounds is preferable.
 - It is preferable for the youth to continue attending the same school as prior to coming into care.
 - It is preferable to keep the youth close to friends and social activities.
 - Relationships with relatives, family friends and members of the youth and family's

cultural community should be encouraged and maintained.

- Ensure that any changes to the existing Case Plan Report do not contradict the Temporary Custody or Permanent Custody term in the Youth Protection Order.
- Discuss the terms of the Order with the parent(s), guardian(s), youth and foster family, where applicable and assist in arranging any support services (e.g. counselling, parenting courses, etc.).
- Monitor the youth's progress and the family situation regularly as per the Minimum Contact Guidelines or as required by the Youth Protection Order.
- Conduct a Case Review with the involved parties (e.g. parents/guardians/youth, foster family) every three (3) months or as per the review date on the Youth Protection Order.
- Engage in on-going permanency and transitional planning to ensure the youth will have sufficient supports once they are no longer in the custody of the Director of Child and Family services. This will include assessing the skills, strengths and needs of the youth and ensuring that the necessary services and support networks are developed and established.
- Discuss the options to extend or shorten or discharge the period of temporary or permanent custody with the Supervisor and the parent(s) and/or guardian(s) and youth.