



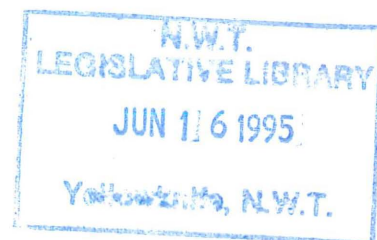
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PROPOSED
CHILDREN'S LAW ACT

General description

This proposed *Children's Law Act* is one of four proposed statutes that would reform family law legislation in the Northwest Territories. This statute would cover status of children, establishment of parentage, custody of and access to children, support for children and guardianship of a child's estate.

IMPORTANT: This proposed *Children's Law Act* is being released for information purposes only.





PROPOSED
CHILDREN'S LAW ACT

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INTERPRETATION

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Definitions

1. In this Act,

"clerk of the court" means, in relation to the Territorial Court, the Clerk of the Territorial Court appointed under the *Territorial Court Act* and, in relation to the Supreme Court, the Clerk of the Supreme Court appointed under the *Judicature Act*;

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

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"court" means the Supreme Court or the Territorial Court;

"domestic contract" means a domestic contract as defined in Part IV of the *Family Law Act*;

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"Public Trustee" means the Public Trustee appointed under the *Public Trustee Act*;

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"Registrar General" and "Deputy Registrar General" means the Registrar General of Vital Statistics and the Deputy Registrar General of Vital Statistics, respectively, appointed under the *Vital Statistics Act*;

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"spouse" means either of a man and a woman who
(a) are married to each other, or
(b) are cohabiting outside marriage, if they
 (i) have cohabited for a period of at least two years, or
 (ii) are cohabiting in a relationship of some permanence and are together the natural or adoptive parents of a child.

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PART I

STATUS OF CHILDREN

Rule of
parentage

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

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whether he or she is born within or outside of marriage.

Rule for adopted children	(2) Where an adoption order has been made under the laws of the Territories, the child is the child of the adoptive parents as if they were the natural parents.	5
Kindred relationships	(3) The parent and child relationships as determined under subsections (1) and (2) shall be followed in the determination of other kindred relationships flowing from the parent and child relationship.	10 15
Abolition of common law distinction	(4) Any distinction at common law between the status of a child born in marriage and born out of marriage is abolished and the relationship of parent and child and kindred relationships flowing from that relationship shall be determined in accordance with this section.	20
Rule of construction	3. (1) For the purpose of construing an instrument or enactment, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under section 2.	25 30
Application	(2) Subsection (1) applies to an enactment made before, on or after June 17, 1987 and an instrument made on or after June 17, 1987, but it does not affect a disposition of property made before June 17, 1987.	35

PART II

ESTABLISHMENT OF PARENTAGE

Declaration as to mother	4. (1) Any person having an interest may apply to a court for a declaratory order that a female person is the mother of a child.	45
Declaration of maternity	(2) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.	50
Declaration as to father	5. (1) Any person having an interest may apply to a court for a declaratory order that a male person is recognized in law to be the father of a child.	55

Declaration of paternity recognized in law	(2) Where the court finds that a presumption of paternity exists under section 8, unless it is established on the balance of probabilities that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.	5
Where no presumption of paternity	(3) Where there is no person presumed under section 8 to be the father of a child and the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect.	10
Limitation	(4) A court may not make a declaratory order under subsection (3) unless both the persons whose relationship is sought to be established are living at the time the application was made.	15
Order recognized	6. Subject to section 7, an order made under section 4 or 5 shall be recognized for all purposes.	20
New evidence	7. (1) Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, a court may, on application, discharge or vary the order and make such other orders or directions as are ancillary to the order.	25
Effect of new order	(2) Where an order is discharged or varied under subsection (1), (a) rights and duties that have been exercised and performed are not affected; and (b) interests in property that have been distributed as a result of the order before it was discharged or varied are not affected.	30
Presumption of paternity	8. (1) Unless the contrary is proven on the balance of probabilities, a person shall be presumed to be, and shall be recognized in law to be, the father of a child where (a) he was married to the mother of the child at the time of the birth of the child; (b) he was married to the mother of the child by a marriage that was terminated by (i) death or judgment of nullity within 300 days before the birth of the child, or (ii) divorce where the judgment of	35
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divorce was granted within 300 days before the birth of the child;

- (c) he married the mother of the child after the birth of the child and has acknowledged that he is the natural father;
- (d) he was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child was born within 300 days after he and the mother of the child ceased cohabiting in a relationship of some permanence;
- (e) he and the mother of the child have filed a statement under subsection 3(2) or 4(2) of the *Vital Statistics Act* or under a similar provision of the corresponding Act of another jurisdiction in Canada;
- (f) he and the mother of the child have acknowledged in writing that he is the father of the child; or
- (g) he has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

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Where marriage void or voidable

- (2) For the purposes of subsection (1).
 - (a) where a man and a woman go through a form of marriage with each other in good faith and then cohabit and the marriage is void, they shall be deemed to be married during the time they cohabit; and
 - (b) where a marriage is decreed a nullity, the man and woman shall be deemed to be married until the judgment of nullity is granted.

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Conflicting presumptions

- (3) Where circumstances exist that give rise to a presumption of paternity by more than one father under subsection (1), no presumption shall be made as to paternity.

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Application of section

- (4) This section applies for all purposes, whether or not a declaration is sought under section 5.

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Admissibility of acknow- ledgment of parentage	9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgement is, in the absence of evidence to the contrary, proof of the fact.	5
Blood tests	10. (1) On the application of a party in a civil proceeding in which a court is called on to determine the parentage of a child, the court may give the party leave to obtain blood tests in respect of such persons as are named in the order granting leave and to submit the results in evidence.	10
Conditions	(2) Leave under subsection (1) may be given subject to such terms and conditions as the court considers proper.	15
Consent	(3) No order under subsection (1) authorizes the taking of blood and conducting of a blood test without the consent of the person in respect of whom the blood test is to be obtained.	20
Inference from refusal	(4) Where leave is given under subsection (1) and a person named in the order granting leave refuses to submit to the blood test, the court may draw such inferences as it considers appropriate.	25
Regulations	11. The Commissioner, on the recommendation of the Minister, may make regulations governing blood tests for which leave is given by a court under section 10 including, without limiting the generality of the foregoing.	30
	(a) the method of taking blood samples and the handling, transportation and storage of the blood samples;	35
	(b) the conditions under which a blood sample may be tested;	
	(c) designating persons or facilities or classes of persons or facilities that are authorized to conduct blood tests for the purposes of section 10;	40
	(d) respecting procedures for the admission of reports of blood tests in evidence; and	45
	(e) respecting forms for the purpose of section 10 and this section.	
Statutory declaration of paternity	12. (1) Any male person may file in the office of the Registrar General a declaration, in the prescribed form, that he is the father of a child.	50

Filing acknowledg- ement	(2) A written acknowledgment of paternity referred to in subsection (1) may be filed in the office of the Registrar General.	5
Discretion to amend register	(3) The Registrar General is not required to amend the register of births in relation to a written acknowledgment filed under subsection (2).	10
Inspection of filings	(4) On payment of the fee prescribed under the <i>Vital Statistics Act</i> and on satisfying the Registrar General that the information is not to be used for an unlawful or improper purpose, any person may inspect and obtain from the Registrar General a certified copy of <ul style="list-style-type: none"> (a) a written acknowledgment filed under subsection (2); or (b) a statement filed under subsection 3(2) or 4(2) of the <i>Vital Statistics Act</i>. 	15
Certificate as evidence	(5) A certificate certifying a copy of a document to be a true copy, obtained under subsection (4), purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is admissible in evidence without proof of the office or signature of the Registrar General or Deputy Registrar General and, in the absence of evidence to the contrary, is proof of the filing and contents of the document for all purposes in any action or proceeding.	25
Filing of orders and judgments	13. (1) Where a court makes a finding of parentage under section 4 or 5, the clerk of the court shall transmit a copy of the declaratory order to the Registrar General.	30
Amendment to register of births	(2) On receipt under subsection (1) of a declaratory order, the Registrar General shall, in accordance with section 28 of the <i>Vital Statistics Act</i> and the order, amend the register of births.	35

PART III

CUSTODY, ACCESS AND GUARDIANSHIP 50

Definitions	14. (1) In this Part, "extra-territorial order" means an order, or that part of an order, of an extra-territorial tribunal that grants to a person custody of or access to a child;	55
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"extra-territorial tribunal" means a court or tribunal outside the Territories that has jurisdiction to grant to a person custody of or access to a child;

"guardian for a child" means a guardian of the estate of a child.

Reference to child

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

Purposes of Part

15. The purposes of this Part are

- (a) to ensure that applications to the courts in respect of custody of, incidents of custody of, access to and guardianship for children will be determined in accordance with the best interests of the children and with a recognition that differing cultural values and practices must be respected in that determination;
- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in respect of the custody of the same child ought to be avoided, and to make provision so that the court will, unless there are exceptional circumstances, decline or refrain from exercising jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection;
- (c) to discourage, in conjunction with the *International Child Abduction Act*, the abduction of children as an alternative to the determination of custody rights by due process; and
- (d) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside the Territories.

DIVISION A - CUSTODY AND ACCESS

Best interests of child

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

Considerations in determining best interests	(2) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including	5
	(a) the love, affection and emotional ties between the child and	
	(i) each person entitled to or seeking custody or access,	10
	(ii) other members of the child's family, and	
	(iii) persons involved in the care and upbringing of the child;	
	(b) the child's views and preferences if they can be reasonably ascertained;	15
	(c) the child's cultural, linguistic and spiritual or religious upbringing and ties;	
	(d) the ability and willingness of each person seeking custody to, directly or indirectly, provide the child with guidance, education and necessities of life and provide for any special needs of the child;	20
	(e) the ability of each person seeking custody or access to act as a parent;	
	(f) who, from among those persons entitled to custody or access, has been primarily responsible for the care of the child, including care of the child's daily physical and social needs, arrangements for alternative care for the child where it is required, arrangements for the child's health care and interaction with the child through, among other things, teaching, playing, conversation, reading and discipline;	25
	(g) the effect a change of residence will have on the child;	30
	(h) the permanence and stability of the family unit within which it is proposed that the child will live;	35
	(i) any plans proposed for the care and upbringing of the child; and	40
	(j) the relationship, by blood or through adoption, between the child and each person seeking custody or access.	45
Consideration of past conduct	(3) Subject to subsection (4), a person's past conduct may be considered in an application under this Part in respect of custody or access to a child only where the court is satisfied that it is relevant to	50

the person's ability to act as a parent.

Ability to act as parent	(4) In assessing a person's ability to act as a parent, the court shall consider evidence that the person has at any time committed violence against his or her spouse or former spouse, child, child's parent or any other member of the person's household or family.	5
Economic circumstances may not be considered	(5) The economic circumstances of a person seeking custody or access is not relevant to the person's ability to act as a parent.	10
Relocation of custodial parent	(6) It shall not be presumed that the relocation of a parent with whom the child lives is contrary to the best interests of the child unless it is proven on the balance of probabilities that (a) the relocation will be detrimental to the child; or (b) the primary reason for the relocation is to discourage, defeat or interfere with the other parent's right to access to the child.	15 20 25
Entitlement to custody	17. (1) Except as otherwise provided in this Division, the father and the mother of a child are equally entitled to custody.	30
Rights and responsibilities	(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child.	35
May act for child	(3) Without limiting the generality of subsection (2), a person entitled to custody of a child may act for and on behalf of the child and may prosecute or defend an action or proceeding in the name of the child, except where the person's authority is otherwise limited by legislation or court order.	40
Authority of one to act	(4) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child.	45 50
Where parents separate or live apart	(5) Where the parents of a child live separate and apart and the child lives with one parent with the consent, implied consent or acquiescence of the other parent, the right of the other parent to exercise the entitlement of custody and the incidents of custody, but not the entitlement to access, is suspended until an agreement between the parents or a court order	55

otherwise provides.

Access	(6) The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.	5
Marriage of child	(7) The entitlement to custody of or access to a child terminates on the marriage of the child.	10
Alteration by agreement or order	(8) Any entitlement to custody or incidents of custody or to access under this section is subject to alteration by a court order or by an agreement between the parents or other persons seeking custody or access.	15
Appointment of custodian	18. (1) A person entitled to custody of a child may, in writing, appoint one or more persons to have any of the appointor's rights or responsibilities of custody in relation to the child.	20
Where appointor is a minor	(2) A person who is a minor may make an appointment under this section.	25
Appointment <i>inter vivos</i> or by will	(3) An appointment under this section may be made effective	30
	(a) during the lifetime of the appointor for such time as the appointor may specify;	35
	or	
	(b) after the death of the appointor if the appointment is made	
	(i) by valid will, or	
	(ii) by written appointment signed by the appointor, where the appointor is a minor and unmarried.	40
Where appointee is a minor	(4) An appointment of a person under this section is not effective while the person is a minor.	45
Consent of appointee	(5) No appointment under this section is effective without the consent or ratification of the person appointed.	50
Revocation	(6) A person who made an appointment under this section may revoke the appointment.	
	(a) if the appointment is or is to be effective during the lifetime of the appointor, in writing; or	55
	(b) if the appointment is to take effect after the death of the appointor.	

- (i) by valid will, or
- (ii) by written instrument signed by the appointor, where the appointor is a minor and unmarried.

Application or order under this Division (7) An appointment under this section does not prevent an application for or the making of an order under this Division in respect of custody and access.

Implied revocation (8) For greater certainty, an appointment made under this section by will is revoked if the will is revoked.

Application for order 19. (1) A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

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

Powers of court (3) On an application under subsection (1), the court may

- (a) grant the custody of or access to the child to one or more persons;
- (b) determine any aspect of the incidents of custody or the right to access and make such order in respect of the determination that the court considers appropriate; and
- (c) make such additional order as the court considers necessary and proper in the circumstances.

Application to fix times or days of access where order 20. (1) Where an order made under this Division in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

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

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Application to fix times or days of access where agreement	(3) Where an agreement provides for a person's access to a child without specifying times or days and the parties to the agreement cannot agree on the times or days, a party to the agreement may apply to a court to fix times or days for access.	5
Order	(4) On an application under subsection (3), the court may fix the times or days the court considers appropriate.	10
Variation of order	21. (1) A court shall not make an order under this Division that varies an order in respect of custody or access made by a court in the Territories unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.	15
Exception	(2) Subsection (1) does not apply in respect of an application made under section 20.	20
Supervision of custody or access	22. Where an order is made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access by a person who has consented to act as supervisor.	25
Application to enforce access	23. (1) A person in whose favour an order has been made for access to a child at specific times or on specific days, and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child, may make an application for relief under subsection (2) to the court that made the access order.	30
Order for relief	(2) Where the court is satisfied that the party against whom the application is brought wrongfully denied the applicant access to the child, the court may make such order as it considers appropriate.	40
Application respecting failure to exercise access, etc.	(3) A person in whose favour an order has been made for custody of a child, and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise access or to return the child as the order requires, may make an application for relief under subsection (4) to the court that made the access order.	45
Order for relief	(4) Where the court is satisfied that the party against whom the application is brought, without reasonable notice and excuse, failed to exercise	50
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access or to return the child as the order required, the court may make such order as it considers appropriate.

Effect of filing of separation agreement

(5) Where a parental agreement or separation agreement providing for access to a child at specific times or on specific days is filed in accordance with section 34(2) of the *Family Law Act*, subsections (1) and (3) of this section apply as if the agreement were an order of the court in which it is filed.

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Orders under *Divorce Act*

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

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Application

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

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Where written reasons required

24. Where, on an application under this Division, a court grants custody of a child to more than one person notwithstanding the objection of one party to such an order, the court shall provide written reasons for its decision.

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Jurisdiction of court

25. (1) A court shall only exercise its jurisdiction to make an order for custody of or access to a child where

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(a) the child is habitually resident in the Territories at the commencement of the application for the order; or

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(b) the child is not habitually resident in the Territories, but the court is satisfied that (i) the child is physically present in the Territories at the commencement of the application for the order.

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(ii) substantial evidence concerning the best interests of the child is available in the Territories.

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(iii) no application for custody of or access to the child is pending before an extra-territorial tribunal in another place where the child is habitually resident.

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(iv) no extra-territorial order in respect of custody of or access to the child has been recognized by a court in the Territories.

(v) the child has a real and substantial

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connection with the Territories, and
(vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Territories.

Habitual residence	(2) A child is habitually resident in whichever of the following places he or she last resided: (a) with both parents; (b) with one parent under an agreement or a court order or with the consent, implied consent or acquiescence of the other, if the parents are living separate and apart; or (c) with a person other than a parent on a permanent basis for a significant period of time.	5 10 15
Effect of removal or withholding	(3) The removal or withholding of a child without the consent of the person having custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process for the return of the child by the person from whom the child is removed or withheld.	20 25
Exercise of jurisdiction where serious harm may result	26. Notwithstanding sections 25 and 36, a court may exercise jurisdiction to make or to vary an order in respect of the custody of or access to a child where (a) the child is physically present in the Territories; and (b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if (i) the child remains in the custody of the person legally entitled to custody of the child, (ii) the child is returned to the custody of the person legally entitled to custody of the child, or (iii) the child is removed from the Territories.	30 35 40 45
Declining jurisdiction	27. A court having jurisdiction under this Division in respect of custody or access may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the Territories.	50
Date to be fixed for hearing	28. (1) Where an application under this Division in respect of custody of or access to a child has not been heard within six months after the proceeding was commenced, the clerk of the court shall	55

	(a) list the application for the court; and (b) give notice to the parties of the date and time when, and the place where, the court will consider whether a date should be fixed for the hearing of the application.	5
Fixing date, giving directions	(2) Where an application listed by the clerk of the court under subsection (1) is considered by the court, the court may, by order, (a) fix a date for the hearing of the application; and (b) give such directions in respect of the proceeding and make such order in respect of the costs of the proceeding as the court considers appropriate.	10 15
Early date for hearing	(3) Where the court fixes a date under subsection (2), the court shall fix the earliest date that, in the opinion of the court, is compatible with a just disposition of the application.	20
Disposal of application	(4) The court shall dispose of an application in respect of custody of or access to a child as soon as practicable after the hearing ends.	25
Assessment	29. (1) The court before which an application is brought in respect of custody of or access to a child may, by order, appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.	30 35
When order may be made	(2) An order may be made under subsection (1) on or before the hearing of the application in respect of custody of or access to the child and with or without a request by a party to the application.	40
Appointment	(3) The court shall appoint a person agreed on by the parties, but if the parties do not agree, the court shall choose and appoint a person it considers appropriate.	45
Consent to act	(4) The court shall not appoint a person under subsection (1) unless the person has consented to make the assessment and to report to the court within the period of time specified by the court.	50
Attendance for assessment	(5) In an order under subsection (1), the court may require the parties, the child or any other person who has been given notice of the proposed order to	55

attend for assessment by the person appointed by the order.

Inference from refusal	(6) Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the court may draw such inferences from the refusal in respect of the ability and willingness of any person to satisfy the needs of the child as the court considers appropriate.	5 10
Report	(7) The person appointed under subsection (1) shall file his or her report with the clerk of the court.	
Distribution of report	(8) On the filing of a report, the clerk of the court shall give a copy of it to each party and to the child's solicitor, if any.	15
Admissibility of report	(9) The report filed under subsection (7) is admissible in evidence in the application.	20
Attendance as witness	(10) Any party or the child's solicitor may require the person appointed under subsection (1) to attend as a witness at the hearing of the application.	25
Directions	(11) On application, the court may, by order, give such directions in respect of the assessment as the court considers appropriate.	30
Fees and expenses	(12) The court shall (a) require the parties to pay the fees and expenses of the person appointed under subsection (1); and (b) specify in the order the proportions or amounts of the fees and expenses that each party shall pay.	35 40
Other expert evidence	(13) The appointment of a person under subsection (1) does not prevent the parties or the child's solicitor from submitting other expert evidence as to the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.	45
Request for evidence from outside the Territories	30. (1) Where a court is of the opinion that it is necessary to receive further evidence from a place outside the Territories before making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside the Territories such supporting material as may be necessary together with a request that (a) the Attorney General, Minister of Justice or similar officer take such steps	50 55

	as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application; and	5
	(b) the Attorney General, Minister of Justice or similar officer or the tribunal send to the court a certified copy of the evidence produced or given before the tribunal.	10
Costs	(2) A court acting under subsection (1) may assess the cost of the action against one or more of the parties to the application or may order that the cost of the action is to be included as costs in the cause.	15
Request for evidence from outside the Territories	31. (1) Where the Attorney General for the Territories receives from an extra-territorial tribunal a request similar to that referred to in section 30 and such supporting material as may be necessary, the Attorney General shall refer the request and the material to the Supreme Court.	20
Evidence	(2) On receipt of a request under subsection (1), the Supreme Court shall require the person named in the request to attend before the Supreme Court and produce or give evidence in accordance with the request.	25
Order where child unlawfully held	32. (1) Where a court is satisfied on application by a person in whose favour an order has been made for custody of a child that there are reasonable grounds for believing that any person is unlawfully withholding the child from the applicant, the court may, by order, authorize the applicant or someone on his or her behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody.	30
Order to locate and apprehend child	(2) On application, a court may, by order, direct a peace officer to locate, apprehend and deliver a child to the person named in the order, where the court is satisfied that there are reasonable grounds for believing that	35
	(a) a person is unlawfully withholding a child from a person entitled to custody of the child; or	40
	(b) a person who is prohibited by court order from removing a child from the Territories, or who has made an	45

agreement that he or she will not remove a child from the Territories, proposes to remove the child or have the child removed from the Territories.

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Application without notice	(3) An order may be made under subsection (2) on an application without notice where the court is satisfied that it is necessary that the order should be made without delay.	10
Duty to act	(4) The peace officer directed to act by an order under subsection (2) shall do all things that can reasonably be done to locate, apprehend and deliver the child in accordance with the order.	15
Entry and search	(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a peace officer may, with such assistance and such force as is reasonable, enter and search any place where he or she has reasonable grounds for believing that the child may be.	20
Time for entry and search	(6) An entry or a search referred to in subsection (5) may be made only between 6 a.m. and 9 p.m. unless the court, in the order, authorizes entry and search at another time.	25
Expiration of order	(7) The court shall include in an order made under subsection (2) a date on which the order expires, which date shall be not later than six months after the order is made unless the court is satisfied that a longer period of time is necessary in the circumstances.	30
When application may be made	(8) An application under subsection (1) or (2) may be made in an application for custody or access or in a separate application.	35
Application to prevent unlawful removal of child	33. (1) Where, on application, a court is satisfied on reasonable grounds that a person who is prohibited by court order from removing a child from the Territories, or who has made an agreement that he or she will not remove a child from the Territories, proposes to remove the child from the Territories, the court, in order to prevent the removal, may make an order requiring a person to do any one or more of the acts listed in subsection (3).	40
Application to ensure return of a child	(2) Where, on application, a court is satisfied on reasonable grounds that a person entitled to access to a child proposes to remove the child from the Territories and is not likely to return the child to the	45
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Territories, the court, in order to prevent the removal or to secure the prompt, safe return of the child to the Territories, may make an order requiring a person to do any one or more of the acts listed in subsection (3).

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Order

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

(a) pay money into court, or transfer specific property to a named trustee, to be held subject to the terms and conditions specified in the order;

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(b) where payments have been ordered for the support of the child, make the payments into court or to a named trustee subject to the terms and conditions specified in the order;

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(c) post a bond or other similar instrument acceptable to the court, with or without sureties, payable to the applicant in such amount as the court considers appropriate;

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(d) deliver the person's passport, the child's passport and any other travel documents of the person or child to the court or to an individual or body specified by the court.

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Territorial Court

(4) The Territorial Court may not make an order under paragraph (3)(a).

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Terms and conditions

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

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Directions respecting safekeeping

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

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Holding of passport, travel document

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

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Order for access to information

34. (1) Where, on application brought by notice of motion, it appears to a court that, for the purpose of bringing an application under this Part in respect of custody or access or for the purpose of the

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	enforcement of an order for custody or access, the proposed applicant or person in whose favour the order is made needs to determine or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public body to provide the court with any information shown on a record in the possession or control of the person or public body that indicates the place of employment, address or location of the proposed respondent or person against whom the order is made.	5 10
Provision of information	(2) A person or body ordered to provide information under subsection (1) shall give the information to the court and the court may then give the information to such person or persons as the court considers appropriate.	15
Exception	(3) A court shall not make an order on an application under subsection (1) where it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, rather than to determine or confirm the whereabouts of the proposed respondent or for the enforcement of an order for custody or access.	20 25
Confidentiality	(4) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.	30
Government bound	(5) This section binds the Government of the Northwest Territories.	35
Orders where court does not exercise full jurisdiction	35. Where a court may not exercise jurisdiction under section 25, has declined jurisdiction under section 27 or subsection 37(2) or is satisfied that a child has been wrongfully detained in the Territories, the court may do any one or more of the following:	40
	(a) make such interim order in respect of custody or access as the court considers is in the best interests of the child;	45
	(b) direct a party to the application to promptly commence a similar proceeding before an extra-territorial tribunal or make such other order as the court considers appropriate and provide that, when the application is commenced and the order otherwise	50 55

complied with, the application under this Act is stayed;

- (c) order a party to return the child to such place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or at the hearing of the application or of witnesses at the hearing of the application.

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Recognition of
extra-territorial
orders

36. (1) On application by any person in whose favour an order for the custody of or access to a child has been made by an extra-territorial tribunal, the court shall recognize the order unless the court is satisfied

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- (a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
- (b) that the respondent was not given an opportunity to be heard by the extra-territorial tribunal before the order was made;
- (c) that the law of the place in which the order was made did not require the extra-territorial tribunal to have regard for the best interests of the child;
- (d) that the order of the extra-territorial tribunal is contrary to public policy in the Territories; or
- (e) that, under section 25, the extra-territorial tribunal would not have jurisdiction if it were a court in the Territories.

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Effect of
recognition of
order

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

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Conflicting
orders

(3) Where a court is presented with conflicting orders made by extra-territorial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1), the court shall recognize and enforce the order that appears to the court to be in the best interest of the child.

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Further orders

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

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Superseding order, material change in circumstances	37. (1) On application, a court may make an order that supersedes an extra-territorial order in respect of custody of or access to a child where the court is satisfied that there has been a material change in circumstances that affects or is likely to affect the best interests of the child and	5
	(a) the child is habitually resident in the Territories at the commencement of the application for the order; or	10
	(b) although the child is not habitually resident in the Territories, the court is satisfied that	
	(i) the child is physically present in the Territories at the commencement of the application for the order,	15
	(ii) the child no longer has a real and substantial connection with the place where the extra-territorial order was made,	20
	(iii) substantial evidence concerning the best interests of the child is available in the Territories,	
	(iv) the child has a real and substantial connection with the Territories, and	25
	(v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Territories.	
Declining jurisdiction	(2) A court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the Territories.	30
Territorial Court	(3) An application may not be made under this section to the Territorial Court for an order that supersedes an extra-territorial order of a superior court.	35 40
Superseding order, serious harm	38. (1) On application, a court may make an order that supersedes an extra-territorial order in respect of custody of or access to a child where the court is satisfied that the child would, on the balance of probability, suffer serious harm if	45
	(a) the child remains in the custody of the person legally entitled to custody of the child;	50
	(b) the child is returned to the custody of the person entitled to custody of the child; or	
	(c) the child is removed from the Territories.	55

Territorial Court	(2) An application may not be made under this section to the Territorial Court for an order that supersedes an extra-territorial order of a superior court.	5
Extra-territorial order as evidence	39. A copy of an extra-territorial order purporting to be certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is admissible in evidence without proof of the office or signature of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the making and content of the order.	10 15
Judicial notice	40. For the purposes of an application under this Part, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside the Territories and of a decision of an extra-territorial tribunal.	20
DIVISION B - GUARDIANSHIP AND PROPERTY OF A CHILD		25
Rights and responsibilities of guardian	41. (1) A guardian for a child has charge of and is responsible for the care and management of the child's estate and, as guardian, shall act in the best interests of the child.	30
More than one guardian	(2) Where there is more than one guardian for a child, (a) the guardians are jointly responsible for the care and management of the child's estate; and (b) any one of the guardians may exercise the rights and discharge the responsibilities of the guardianship without the consent of the other.	35 40
Where paragraph (2)(b) does not apply	(3) Paragraph (2)(b) does not apply where an order of the Supreme Court provides otherwise or to a guardian appointed under section 43 where the appointment provides otherwise.	45
Limit of liability	(4) No proceedings lie against a guardian in respect of an act of another guardian taken without his or her knowledge, acquiescence or consent.	50
Parents are guardians	42. (1) Except as otherwise provided in this Division, the father and the mother of a child are the guardians for the child.	55

Where parents live separate and apart	<p>(2) Where the parents of the child live separate and apart and the child lives with one parent with the consent, implied consent or acquiescence of the other parent,</p> <p>(a) the parent with whom the child lives is the sole guardian for the child; or</p> <p>(b) the parent with whom the child lives is a joint guardian for the child with</p> <p style="padding-left: 20px;">(i) the other parent, if the parents agree that the other shall be a joint guardian,</p> <p style="padding-left: 20px;">(ii) any person appointed guardian under section 43,</p> <p style="padding-left: 20px;">(iii) the other parent or any person appointed by the Supreme Court to be a guardian in addition to the parent with whom the child lives.</p>	<p>5</p> <p>10</p> <p>15</p>
Where one parent has died	<p>(3) Where one parent has died and the child lives with the surviving parent,</p> <p>(a) the surviving parent is the sole guardian for the child; or</p> <p>(b) the surviving parent is a joint guardian for the child with</p> <p style="padding-left: 20px;">(i) any person appointed guardian by the surviving parent under section 43,</p> <p style="padding-left: 20px;">(ii) a guardian appointed, in accordance with section 43, by the parent who died, if the child lived with that parent immediately before the death pursuant to a court order or an agreement or with the consent, implied consent or acquiescence of the surviving parent, or</p> <p style="padding-left: 20px;">(iii) any person appointed by the Supreme Court to be a guardian in addition to the surviving parent.</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
Where person other than parents have custody	<p>(4) Where a person other than a parent has custody of a child to the exclusion of the child's parents pursuant to a court order or an agreement</p> <p>(a) that person is the sole guardian for the child; or</p> <p>(b) that person is a joint guardian for the child with</p> <p style="padding-left: 20px;">(i) any person appointed guardian under section 43, or</p>	<p>45</p> <p>50</p>

	(ii) any person appointed by the Supreme Court to be a guardian in addition to the person who has custody of the child.	5
Appointment of guardian	43. (1) A guardian for a child may, in writing, appoint one or more persons guardians for the child.	10
Where appointor is a minor	(2) A person who is a minor may make an appointment under this section.	15
Appointment <i>inter vivos</i> or by will	(3) An appointment under this section may be made effective <ul style="list-style-type: none"> (a) during the lifetime of the appointor for such time as the appointor may specify; or (b) after the death of the appointor if the appointment is made <ul style="list-style-type: none"> (i) by valid will, or (ii) by written appointment signed by the appointor, where the appointor is a minor and unmarried. 	20
Where appointee is a minor	(4) An appointment of a person under this section is not effective while the person is a minor.	25
Consent of appointee	(5) No appointment under this section is effective without the consent or ratification of the person appointed.	30
Revocation	(6) A person who made an appointment under this section may revoke the appointment. <ul style="list-style-type: none"> (a) if the appointment is or is to be effective during the lifetime of the appointor, in writing; or (b) if the appointment was to take effect on the death of the appointor. <ul style="list-style-type: none"> (i) by valid will, or (ii) by written instrument signed by the appointor where the appointor is a minor and unmarried. 	35
Application or order under this Division	(7) An appointment under this section does not prevent an application for or the making of an order under this Division.	40
Implied revocation	(8) For greater certainty, an appointment made under this section by will is revoked if the will is revoked.	45

Application for order	44. (1) Any person, including a child, may apply to the Supreme Court for an order respecting guardianship for the child.	5
Order	<p>(2) In an application under subsection (1), the Supreme Court may</p> <ul style="list-style-type: none"> (a) grant a person who is a guardian under section 42 the authority to accept payment of a sum or delivery of personal property under subsection 52(3); (b) appoint one or more guardians for the child in addition to or in the place of any existing guardian; (c) determine any aspect of the incidents of the guardianship; (d) limit the length of time during which the guardianship may be exercised or the property in respect of which the guardianship may be exercised; and (e) make any other order the Supreme Court considers necessary and proper in the circumstances. 	10
Criteria	<p>(3) In deciding an application for the appointment of a guardian for a child, the Supreme Court shall consider all the relevant circumstances, including</p> <ul style="list-style-type: none"> (a) the ability of the proposed guardian to manage the child's estate; (b) the merits of any plans of the proposed guardian for the care and management of the child's estate; (c) the child's views and preferences, if they can reasonably be ascertained; and (d) the relationship, by blood or through adoption, between the child and each person seeking guardianship. 	15
Exercise of joint guardianship	45. (1) Subject to the terms of the appointment or order of the Supreme Court, a person appointed under section 43 or 44 as guardian for a child is entitled to act jointly with any other guardian for the child.	20
Dispute	(2) Where there is a dispute between joint guardians for a child, the Supreme Court may, on the application of a guardian, make any order or give any directions the Supreme Court considers necessary to resolve the dispute.	25
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Security	46. The Supreme Court may require a guardian for a child to post a bond or other similar instrument acceptable to the Supreme Court, with or without sureties, payable to the child in the amount the Supreme Court considers appropriate in respect of the care and management of the child's estate.	5
Accounts	47. The Supreme Court may require a guardian for the child to pass the accounts, or a guardian for the child may voluntarily pass the accounts, in respect of the care and management of the child's estate in the same manner as a trustee under a will may be required to account or may pass the accounts of the trusteeship.	10
Management fees and expenses	48. (1) A guardian for a child is entitled to payment of a reasonable amount for fees for and expenses of management of the child's estate, and the Supreme Court may make the fees and expenses a charge on the child's estate.	20
Parent, custodian not entitled	(2) Notwithstanding subsection (1), a parent of the child or a person who has custody of the child pursuant to an agreement or court order is not entitled to fees for or expenses of management of the child's estate.	25
Termination of guardianship	49. (1) The guardianship for a child ends when the child attains the age of 19 years.	30
Application to terminate	(2) On application by a child, the Supreme Court may end the guardianship for a child if the child has a legal obligation to support another person.	35
Transfer of property to child	50. A guardian for a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of 19 years.	40
Removal of guardian	51. (1) A guardian for a child may be removed by the Supreme Court for the same reasons for which a trustee may be removed.	45
Resignation where appointor living	(2) A guardian appointed under section 43 may resign as guardian, if the person who appointed him or her is still living, by giving reasonable notice of the resignation to that person.	50
Resignation in other cases	(3) A guardian appointed under section 43 or 44 may resign as guardian with leave of the Supreme Court on notice to the Public Trustee and on such terms as the Supreme Court considers appropriate.	55

Payment of debt owed to child	52. (1) Subject to subsection (2), where a person is under a duty to pay money or to deliver personal property to a child, the payment to a guardian for the child of not more than \$2,000 in a year or the delivery of personal property to a value of not more than \$2,000 in a year discharges the duty to the extent of the amount paid or the value of the personal property delivered.	5
Limit	(2) The total amount paid and total value of property delivered to a guardian under subsection (1) in respect of the same obligation may not exceed \$5,000.	10
Payment of debt over \$2,000 owed to child	(3) Where a person is under a duty to pay to a child money in an amount, or to deliver to a child personal property to a value, exceeding \$2,000 in a year or a total of \$5,000, the payment or delivery may be made	15
	(a) to a person granted authority to accept such payment or delivery under paragraph 44(2)(a) or a guardian appointed under paragraph 44(2)(b); or	20
	(b) to the Public Trustee if no person has been granted authority to accept such payment or delivery under paragraph 44(2)(a) or no guardian has been appointed under paragraph 44(2)(b).	25
Duty discharged	(4) A payment made in accordance with subsection (3) discharges the duty to the extent of the amount paid or the value of the personal property delivered.	30
Where subsections (1) to (4) do not apply	(5) Subsections (1) to (4) do not apply in respect of	35
	(a) wages and salary owing to a child; or	40
	(b) an amount payable or personal property that is to be delivered under a judgment or court order.	45
Disposition of child's property	53. (1) On application, the Supreme Court may require or approve	50
	(a) the disposition or encumbrance of all or part of the interest of the child in land;	55
	(b) the disposition or encumbrance of all or part of the interest of the child in personal property; or	
	(c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.	55

Criteria	(2) An order may be made under subsection (1) only where the Supreme Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child.	5
Conditions	(3) An order under subsection (1) may be made subject to such conditions as the Supreme Court considers appropriate.	10
Application by next friend or guardian	(4) An application shall be made in the name of the minor by the next friend or guardian for the child but shall not be made without the consent of the child if the child has attained the age of 12 years unless the Supreme Court otherwise directs or allows.	15
Limitation	(5) The Supreme Court may not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.	20
Execution of documents	(6) The Supreme Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment.	25
Directions, other orders	(7) The Supreme Court may give such directions and make such other orders, including vesting orders, as it considers necessary and proper for the carrying out of an order made under subsection (1).	30
Validity of documents	(8) A document executed in accordance with an order made under this section is as effectual as if, at the time the document was executed, the child by whom it was executed had attained the age of 19 years or, if executed by another person in accordance with the order, as if the child had executed it and had attained the age of 19 years.	35
Application of proceeds of sale	(9) The money arising from the disposition or encumbrance of an interest of a child referred to in paragraph (1)(a) or (b) and the money referred to in paragraph (1)(c) shall be paid out, applied and disposed of in the manner that the Supreme Court directs.	40
Liability	(10) No person incurs or shall be deemed to incur liability by making a payment in accordance with an order made under subsection (1).	45

Order for maintenance from property 54. (1) On application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his or her children, the Supreme Court may order that such part of the proceeds of the property as the Supreme Court considers proper be used for the support, education or benefit of one or more of the children. 5

Where specific provisos in case of no children (2) An order may be made under subsection (1) whether or not 10
(a) there is a gift over in the event that there are no children to take under the power; or 15
(b) any person could dispose of the property in the event that there are no children to take under the power. 20

DIVISION C - GENERAL

Rule of construction 55. (1) For the purposes of construing any instrument or enactment, a reference to a guardian with respect to the person of a child shall be construed to refer to custody of the child and a reference to a guardian with respect to the estate of a child shall be construed to refer to guardianship for a child. 25

Application (2) Subsection (1) applies to any instrument or enactment made before, on or after the day this Act comes into force. 30

Consent of minor 56. A consent in respect of a matter provided for by this Part is not invalid by reason only that the person giving the consent is a minor. 35

Right of child to withdraw 57. Nothing in this Part abrogates the right of a child who has attained the age of 16 years to withdraw from parental control. 40

Rules of equity 58. The rules of equity, to the extent that they do not conflict with this Act, prevail in questions relating to the custody and education of children. 45

PART IV

CHILD SUPPORT

Definitions 59. In this Part, 55
"child" includes a person for whom another person stands in the place of a parent, except under an arrangement where the child is placed for valuable

consideration in a foster home by a person having lawful custody;

"parent" includes a person who stands in the place of a parent, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody.

Obligation of parent to support child	60. (1) A parent has an obligation to provide support for his or her child who is a minor and unmarried where the parent is capable of doing so.	10
Limitation	(2) The obligation under subsection (1) does not extend to a child who has attained the age of 16 years and has withdrawn from parental control.	15
Extended support	(3) A court may require a parent to provide support, in accordance with need, for his or her unmarried child who has attained the age of 19 years and is enrolled in a full time program of education.	20
Order for support	61. (1) A court, on application, may order a parent to provide support for his or her child and determine the amount of support.	25
Applicants	(2) An application for an order under subsection (1) may be made by (a) another parent or a person who has lawful custody of the child or with whom the child lives; (b) the child for whom support is requested; or (c) the Minister responsible for the <i>Social Assistance Act</i> , where assistance has been requested, is being provided or has been provided under that Act for the child's support.	30 35 40
Setting aside provision in domestic contract	(3) A court may set aside a provision respecting support for a child in a domestic contract and may determine and order support for the child in an application under this section notwithstanding that the domestic contract may contain an express provision excluding the application of this section, where (a) the provision results in unconscionable circumstances; (b) the provision is in respect of a child who qualifies for an allowance for support out of public money; (c) there is default in the payment of	4 5 5

	support under the domestic contract at the time the application is made; or	
	(d) the court is not satisfied that reasonable arrangements have been made for the support of the child.	5
Adding third party	(4) In an application under this section the respondent may add as a third party another person who may have an obligation to provide support for the child.	10
Goals of support order	(5) An order for the support of a child should	15
	(a) recognize each parent's obligation to provide support for the child under this Act;	
	(b) recognize that the obligation of a natural or adoptive parent outweighs the obligation of a parent who is not a natural or adoptive parent;	20
	(c) recognize, in the case of a minor, unmarried child, that the child is entitled to share in the wealth of his or her parents; and	25
	(d) apportion the obligation according to the capacities of the parents to provide support.	
Considerations in determining amount	(6) In determining the amount of support, the court shall consider all the circumstances of the parents of the child who are parties to the application and of the child in respect of whom support is sought, including the following:	30
	(a) the current assets and means of each parent;	
	(b) the assets and means that each parent is likely to have in the future;	
	(c) any diversion or disposal of income or assets by a parent that appears to the court to be for the purpose of affecting the amount of child support;	40
	(d) where a parent is unemployed or underemployed, the parent's earning capacity;	45
	(e) the desirability of a parent remaining at home to care for a child;	
	(f) the child's capacity to contribute to his or her own support, where the child has attained the age of 16 years and is no longer enrolled in a full time program of education;	50
	(g) the capacity of each parent to provide support;	55

- (h) the amount required by each parent to achieve subsistence;
- (i) the child's needs, in determining which the court shall have regard to the accustomed standard of living while the child lived with the respondent; 5
- (j) the respondent's standard of living if it is higher than that of the child;
- (k) any legal obligation of either parent to provide support for another person; 10
- (l) the child's need for a stable environment; and
- (m) any other legal right of the child to support, other than out of public money. 15

Considerations
respecting
order under
subsection
60(3)

- (7) In determining whether support should be ordered under subsection 60(3) and the amount and duration of such support, the court shall consider all the circumstances of the parents of the child who are parties to the application and of the child in respect of whom support is sought, including the following: 20
- (a) those circumstances set out in paragraphs (6)(a) to (e), (g) to (i) and (k) to (m); 25
 - (b) the child's capacity to contribute to his or her own support;
 - (c) the child's aptitude for and reasonable prospects of obtaining an education. 30

Powers of
court

62. (1) In an application under section 61, the court may make an order
- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event; 35
 - (b) requiring that a lump sum be paid or be held in trust; 40
 - (c) requiring that property be transferred to or in trust for or vested in the child, whether absolutely, for life or for a term of years;
 - (d) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the child's benefit; 45
 - (e) requiring that support be paid in respect of any period before the date of the order; 50
 - (f) requiring payment to the Minister responsible for the *Social Assistance Act*

	of an amount in reimbursement for assistance provided to the child under that Act before the date of the order;	
	(g) requiring payment of expenses in respect of a child's prenatal care and birth;	5
	(h) requiring that a parent who has a policy of life insurance as defined in the <i>Insurance Act</i> designate the child as the beneficiary irrevocably;	10
	(i) requiring that a parent who has an interest in a pension plan or other benefit plan designate the child as beneficiary under the plan and providing that the parent may not change that designation; and	15
	(j) requiring the securing of payment under the order by a charge on property or otherwise.	20
Territorial Court	(2) The Territorial Court may not make an order under paragraph (1)(b), (c), (h), (i) or (j).	20
Assignment of support	(3) An order for support may be assigned to the Minister responsible for the <i>Social Assistance Act</i> where assistance is or will be provided for the child's support under that Act.	25
Order binds estate	(4) An order for support binds the estate of the person having the support obligation unless the order provides otherwise.	30
Indexing	(5) In an order made under paragraph (1)(a), the court may	35
	(a) require that the amount payable be increased annually to offset inflation; and	40
	(b) specify the day on which and the indexing factor by which the amount payable is to be increased.	
Where day of increase or indexing factor not specified	(6) Where the court requires that an amount payable be increased annually, if the court does not otherwise specify,	45
	(a) the anniversary of the day on which the order was made shall be deemed to be the day on which the amount is to be increased; and	50
	(b) the indexing factor for a given day shall be deemed to be the percentage change in the Consumer Price Index for Canada	55

for prices of all items between that month preceding the month in which the day occurs and the same month in the previous year, as published by Statistics Canada.

Provision for support in domestic contract

63. (1) A provision for support for a child contained in a domestic contract filed under section 34(2) of the *Family Law Act* may be

- (a) enforced as if it were an order of the court in which it is filed;
- (b) varied under section 64 or increased under section 65 as if it were an order of the court in which it is filed; or
- (c) set aside under subsection 61(3).

Effect of waiver

(2) Paragraphs (1)(a) and (c) apply notwithstanding an agreement to the contrary.

Application to existing domestic contract

(3) Subsection (1) applies to a domestic contract made before the day on which this Act comes into force.

Application to existing arrears

(4) Paragraph (1)(a) applies to arrears accrued before the day on which this Act comes into force.

Application to vary order

64. (1) The following persons may apply to the court that made an order under this Part for variation of the order:

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

Powers of court

(2) Where the court is satisfied that evidence not available on the previous hearing has become available or that there has been a material change in the circumstances of the child, of a parent who was a party to the previous proceeding or of a person who has lawful custody of the child or with whom the child lives, the court may

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;

	(b) relieve the respondent from the payment of part or all of the arrears or any interest due on the arrears; and	
	(c) make any other order under section 62 that the court considers appropriate after considering the circumstances referred to in subsection 61(6) or (7), as the case may be.	5
Limitation on applications for variation	(3) No application for variation may be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court.	10
Indexing of existing orders	65. (1) Where an order made under this Part is not indexed under subsection 62(5), the following persons may apply to the court that made the order to have the order indexed in accordance with this section:	20
	(a) a person who was a party to the proceeding in which the order was made, who has lawful custody of the child or with whom the child lives;	25
	(b) a child in respect of whom the order was made;	
	(c) the Minister responsible for the <i>Social Assistance Act</i> where assistance has been requested or is being provided under that Act for the support of a child in respect of whom the order was made.	30
Power of court	(2) The court shall, unless the respondent shows that his or her income, assets and means have not increased sufficiently to permit the increase, order that the amount payable be	35
	(a) increased on the day and by the indexing factor determined by the court; and	40
	(b) increased annually after the order is made on the anniversary of the day on which it is made and may specify the indexing factor by which the amount payable is to be increased.	45
Deemed indexing factor	(3) Where the court does not specify the indexing factor in an order under this section, the indexing factor shall be deemed to be the percentage change in the Consumer Price Index for Canada for prices of all items between that month preceding the month in which the order was made and the same	50

month in the previous year, as published by Statistics Canada.

Application of sections 64 to 65 to previous orders	66. Sections 64 and 65 also apply to orders for maintenance made under the <i>Child Welfare Act</i> , the <i>Domestic Relations Act</i> or the <i>Maintenance Act</i> before the day on which this section comes into force and to orders made in proceedings commenced under any of those Acts before the day on which this section comes into force.	5 10
Financial statements	67. In an application under section 61 or 64, each party shall, in accordance with the regulations, serve on the other and file with the clerk of the court a financial statement.	15
Order for return by employer	68. (1) In an application under section 61 or 64, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding 12 months.	20 25
Return as evidence	(2) A return purporting to be signed by an employer is admissible in evidence without proof of the signature of the employer and, in the absence of evidence to the contrary, is proof of its contents.	30
Order for access to information	(3) Where, on application brought by notice of motion, it appears to a court that, for the purpose of bringing an application under section 61 or 64, the proposed applicant needs to determine or confirm the whereabouts of the proposed respondent, the court may order any person or public body to provide the court with any information shown on a record in the possession or control of the person or public body that indicates the proposed respondent's place of employment, address or location.	35 40
Provision of information	(4) A person or public body ordered to provide information under subsection (3) shall give the information to the court and the court may then give the information to such person or persons as the court considers appropriate.	45 50
Confidentiality	(5) The giving of information in accordance with an order under subsection (3) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.	55

Government bound	(6) This section binds the Government of the Northwest Territories.	
Arrest of absconding respondent	69. Where an application is made under section 61 or 64 and the court is satisfied that the respondent is about to leave the Territories and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Part, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court.	5 10
Order restraining depletion of property	70. The Supreme Court may, on application, make an order restraining the depletion of a respondent's property that would impair or defeat a claim under this Part.	15 20
Order for sale	71. Where the Supreme Court makes an order requiring that payment under an order for support be secured by a charge on property or otherwise, the Supreme Court may, on application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the charge or other security.	25
Liability for necessities of minor	72. (1) Where a person is entitled to recover against a minor in respect of the provision of necessities for the minor, a parent who has an obligation to support the minor is liable for them jointly and severally with the minor.	30
Where persons jointly liable	(2) Where persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support.	35 40
PART V		
GENERAL		
Domestic Contracts		
Incorporation of contract in order	73. (1) A provision of a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act.	45 50
Contract prevails	(2) Where there is a conflict or inconsistency between a provision of a domestic contract and a provision of this Act, the domestic contract shall prevail to the extent of the conflict or inconsistency unless this Act provides otherwise.	55

Domestic contracts	(3) In the determination of a matter respecting the support, education, moral training, custody of a child, access to a child or guardianship for a child, the court may disregard any provision of a domestic contract pertaining to the matter where, in the opinion of the court, to do so is in the best interests of the child.	5
Setting aside domestic contract	(4) A court may, on application, set aside a provision in a domestic contract respecting a child	10
	(a) where a party failed to disclose to the other party significant assets or significant debts or other liabilities existing when the provision was made;	15
	(b) where a party did not understand the nature or consequences of the provision;	
	or	
	(c) otherwise in accordance with the law of contract.	20
Mediation		
Mediation	74. (1) On an application for custody of, access to or support for a child under this Act, the court may, at the request of the parties, appoint a person selected by the parties to mediate any matter that the court specifies.	25
Consent to act	(2) The court shall appoint only a person who	30
	(a) has consented to act as mediator; and	
	(b) has agreed to file a report with the court within the period of time specified by the court.	35
Duty of mediator	(3) The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties.	40
Full or limited report	(4) Before entering into mediation, the parties shall decide whether	45
	(a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant to the matter specified for mediation; or	
	(b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement.	50

Filing and copies of report	(5) The mediator shall file with the clerk of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties.	5
Admissions, etc., in the course of mediation	(6) Where the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed.	10
Payment of fees and expenses	(7) The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.	15

Restraining Order

Restraining order	75. (1) On application, a court may	25
	(a) make an order restraining a person who is the applicant's spouse or former spouse or the parent, or a person who claims to be the parent, of children in the applicant's lawful custody from	30
	(i) molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or	35
	(ii) communicating with the applicant or children, except as the order provides; and	35
	(b) require the person to enter into the recognizance that the court considers appropriate.	40
Order of Territorial Court	(2) The Territorial Court may not make an order under subsection (1) unless an application has been made to the Territorial Court for custody of or access to or for support for a child.	45
Offence and punishment	(3) Every person who contravenes a restraining order made under subsection (1) is guilty of an offence and is liable on summary conviction,	50
	(a) for a first offence, to a fine not exceeding \$1,000, to imprisonment for a term not exceeding three months or to both; or	55
	(b) for each subsequent offence, to a fine not exceeding \$5,000, to imprisonment for a term not exceeding two years or to both.	55

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

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Contempt of Orders of Territorial Court

Contempt of orders of Territorial Court 76. (1) In addition to its powers in respect of contempt, the Territorial Court may punish a person for any wilful contempt of or resistance to its process or orders under this Act by imposing on the person a fine not exceeding \$5,000, a term of imprisonment not exceeding 90 days or both.

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Order for imprisonment (2) An order for imprisonment under subsection (1) may be made conditional on default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

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Procedure

Application of Rules of the Supreme Court 77. The Rules of the Supreme Court apply to the proceedings under this Act except where they are inconsistent with this Act.

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Commencement of application 78. (1) An application under this Act shall be commenced by originating notice.

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

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Parties (3) The following must be included as parties to an application under Part III:
(a) the mother and father of the child;
(b) a person who had the actual care and upbringing of the child immediately before the application is commenced;
(c) any other person whose presence as a party is necessary to determine the matters in issue.

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Application or response by minor (4) A minor who is a parent may make an application under this Act without a next friend and may respond without a guardian *ad litem*.

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Substitutional service 79. Where there is no presumption of paternity and the identity of the father is not known or is not reasonably capable of being ascertained, the court may order substitutional service or may dispense with service of documents on the father in the

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proceeding.

Adjournment of application	80. Where, in an application under this Act, it appears to the court that it is necessary or desirable for the appropriate determination of the matters in issue or in the best interests of the child to have other matters determined first or simultaneously, the court may adjourn the application until such other application is brought or determined as the court considers appropriate.	5 10
Proceedings in one court	81. (1) Where an application has been made to a court under this Act, a party to the application may not make another application under this Act in respect of a matter in issue in the proceeding to another court having jurisdiction under this Act.	15
Exception	(2) Subsection (1) does not apply in respect of (a) an application for an order referred to in paragraph 33(3)(a); or (b) an application to the Supreme Court for an order under subsection 37(1) or 38(1), section 70 or subsection 82(3) or (4).	20 25
Transfer of proceeding	(3) A court may order that a proceeding be transferred to another court having jurisdiction under this Act where, in the opinion of the court, the other court is more appropriate to determine the matters in issue that should be determined at the same time.	30
Where transfer to Supreme Court required	(4) Where a party to an application made under this Act to the Territorial Court advises the Territorial Court that he or she wishes to apply for an order referred to in subsection 44(1) or paragraph 62(1)(b), (c), (h), (i) or (j), the Territorial Court shall order that the proceeding be transferred to the Supreme Court.	35 40
Effect of divorce action on application for custody, access	82. (1) Subject to subsection (3), where an action for divorce is commenced under the <i>Divorce Act</i> , any application under this Act in respect of custody of or access to a child that has not been adjudicated is stayed.	45 50
Effect of divorce action on application for support	(2) Subject to subsections (3) and (4), where an action for divorce is commenced under the <i>Divorce Act</i> , any application under Part IV in respect of a child that has not been adjudicated is stayed.	55

Leave to continue separately	(3) The Supreme Court may grant leave for the application under this Act referred to in subsection (1) or (2) to be continued separately from the action for divorce.	5
Arrears	(4) Where an order of support has been made under Part IV before the commencement of an action for divorce under the <i>Divorce Act</i> , the Supreme Court may determine the amount of arrears owing under the order and make an order respecting that amount at the same time it makes an order under the <i>Divorce Act</i> .	10
Where question of support not adjudicated	(5) Where a marriage is terminated by divorce or judgment of nullity and the question of support is not adjudicated in the divorce or nullity proceedings, an order for support made under Part IV continues in force according to its terms.	15 20
Application of section to previous orders	(6) This section applies to orders for maintenance made under the <i>Child Welfare Act</i> , the <i>Domestic Relations Act</i> or the <i>Maintenance Act</i> before the day on which this section comes into force and to orders made in proceedings commenced under any of those Acts before the day on which this section comes into force.	25
Interim order	83. (1) In a proceeding under this Act, the court may make such interim order as it considers appropriate.	30
Application for interim order	(2) An application for an interim order shall be made to the court in which the original proceeding was commenced.	35
Application to vary	84. An application to vary an order made under this Act shall be made to the court that made the order.	40
Interview by court	85. (1) In considering an application under Part III, a court may interview the child to determine the views and preferences of the child.	45
Conduct of interview	(2) Where the court interviews the child, the interview shall be recorded.	50
Regulations		
Regulations	86. The Commissioner, on the recommendation of the Minister, may make regulations (a) setting out guidelines, a formula or tables or incorporating by reference	55

guidelines, a formula or tables for the use of a court in determining support; and

- (b) respecting the service, filing, contents and form of the financial statement referred to in section 67.

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Coming into Force

Coming into force

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

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