

ACTION TO BE CONSIDERED

**CHILDREN AND FAMILY SERVICES ACT CHECKLIST  
INTRODUCTION**

**Currency of checklist.** This checklist is current to October, 2004. It is reprinted with the kind permission of Justice M. Clare MacLellan. During 2004 the Department of Community Services began public consultations regarding adoptions. The results may have an impact on the prohibition on adoptions in cases where the child to be adopted is the subject of an access order under the CHILDREN AND FAMILY SERVICES ACT. All citations are to the CHILDREN AND FAMILY SERVICES ACT, S.N.S. 2001, c. as amended.

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**CHECKLIST**

**1. INVESTIGATION AND ALTERNATIVES TO PROTECTION PROCEEDINGS**

- 1.1 Investigative Orders (*ex parte*) s. 26
  - .1 Orders for production of documents and records for inspection.
  - .2 Orders for entry of premises, physical examinations, interviews, searches and removals for interview or medical examination.
- 1.2 Detention by Peace Officer s. 27
  - .1 Detention for apprehension where child in need of protective services.
  - .2 Detention where child under 12 commits offence.
- 1.3 Temporary Custody of Abandoned Child s. 28

LEGEND -- NA = Not applicable L= Lawyer LA = Legal assistant or secretary	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>ACTION TO BE CONSIDERED</b></p> <p>.1 Temporary agency custody for up to 72 hours until parent, guardian or relative located.</p> <p>1.4 Order to detain runaway child s. 29</p> <p>.1 Order to locate, detain and return runaway child where health or safety may be at risk.</p> <p>1.5 Protective Intervention Order</p> <p>.1 Supreme Court order, of up to six months' duration ,that a person cease to reside with and /or not contact child, where contact is causing or likely to cause child to be in need of protective services.</p> <p>1.6 Mediation s. 21</p> <p>.1 Mediation by agreement re: matters relating to the child who is or may be in need of protective services.</p> <p>.2 Stays of up to three months available to permit mediation.</p> <p><b>2. COMMENCING PROTECTION PROCEEDINGS</b></p> <p>2.1 Application s. 32</p> <p>.1 Application may be made without apprehension.</p> <p>.2 Application must be made with apprehension.</p> <p>2.2 Apprehension or "Taking into Care" s. 33</p> <p>.1 No warrant or court order required.</p> <p>.2 "Reasonable and probable grounds to believe that the child is in need of protective services" AND "the child's health or safety cannot be protected adequately otherwise than by taking the child into care".</p> <p>.3 Notice of taking into care served upon parent or guardian, if known and available. s. 33(2)</p> <p>.4 Temporary care and custody in agency until order or return. s. 33(4)</p> <p>2.3 Order to Enter and Search s. 34</p> <p>.1 Where access or entry refused, <i>ex parte</i> order to enter and search.</p> <p>.2 No order necessary where child "in immediate jeopardy". s. 34(3).</p> <p>SMSSW14312741 Return Before Hearing s. 35</p>					

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ACTION TO BE CONSIDERED		NA	L	LA	DATE DUE	DATE DONE
.1	Agent may return child before first hearing.					
.2	Not inconsistent with purpose of Act.					
.3	Not contrary to court order or agreement, agency may withdraw application. CHECK THIS					
<b>3.</b>	<b>INTERIM HEARINGS AND ORDERS</b>					
3.1	Parties and Standing ss 36 & 37					
.1	Agency.					
.2	Parent or guardian s. 3(r) defines.					
.3	Child: 16 and over s. 37(1).					
.4	Child: 12 and over s. 37(2).					
.5	Child: under 12, by guardian s. 37(3).					
.6	Any other person added as party.					
.7	Minister, upon application.					
.8	Foster parents: limited standing on review or termination (s. 36(4)) child in care six months prior.					
3.2	Agency Disclosure s. 38					
.1	"Full, adequate and timely disclosure".					
.2	Discovery is available.					
3.3	Five Day Hearing s. 39(1), (2), (3)					
.1	Hearing no later than five working days in every case.					
.2	Court must determine whether reasonable and probable grounds s. 39(2).					
.3	Court may adjourn and make interim, interim order s. 39(3).					
.4	Court may make any one of orders available under s. 39(4).					
3.4	Interim Hearing s. 39					
.1	Court must complete hearing and make interim order within thirty days. s. 39(4)					
.2	Court may admit and act on "credible and trustworthy" hearsay. s. 39(11)					
.3	Possible orders: s. 39(4)					

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<p style="text-align: center;">ACTION TO BE CONSIDERED</p> <p>a. care and custody to parent.</p> <p>b. supervision order to parent.</p> <p>c. no contact order.</p> <p>d. supervision order to non-parent.</p> <p>e. interim care and custody to agency.</p> <p>f. access, with presumption in favour of the parents.</p> <p>g. referral of child or parent for examination or assessment.</p> <p>h. removal from parental care only if reasonable and probable grounds to believe substantial risk to child's health or safety AND no less restrictive alternative. s. 39(7)</p> <p>.4 Five day hearing, if subsequent apprehension. s. 39(5)</p> <p>.5 May be varied prior to disposition order. s. 39(9)</p> <p><b>4. PRE-TRIAL MATTERS: CHAMBERS APPLICATIONS</b></p> <p>4.1 Variation of Interim Orders s. 39(9)</p> <p>.1 Variation of orders, including access.</p> <p>4.2 Evidentiary Matters.</p> <p>.1 Photos, notes, hospital or other records, experts' reports, pre-filed agency records to other parties, may also be filed as business records.</p> <p>.2 Affidavits of witnesses.</p> <p>4.3 Examinations and Assessments</p> <p>.1 Subsequent applications for examinations or assessments of a parent or child. s. 39(4)(g)</p> <p>4.4 Pre-Trial Conference</p> <p>.1 Settlement-oriented pre-trial conferences.</p> <p>.2 Trial management pre-trial conferences.</p> <p><b>5. THE PROTECTION HEARING</b></p> <p>5.1 Timing s. 40(1)</p> <p>.1 Held and decided within ninety days of application..</p> <p>SMSS\14315721 Evidence s. 40(2)</p>					



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.5 Temporary care and custody, followed by supervision.					
.6 Permanent care and custody to agency .					
7.2 Substantive Considerations s. 42					
.1 The child's best interest, as defined in s. 3(2). s. 42(1)					
.2 Less intrusive alternatives to removal. s. 42(2)					
.3 Possible placement with relative or community before agency care. s. 42(3)					
.4 No permanent wardship order unless circumstances unlikely to change within reasonably foreseeable time not exceeding maximum time limits. s. 42(3)					
7.3 Supervision Order s. 43					
.1 Maximum time period: 12 months. s. 43(4)					
.2 Reasonable terms and conditions. s. 43(1) a. Includes no contact orders. s. 43(1)(d)					
.3 Right of agency entry. s. 43(2)					
.4 Apprehension for non-compliance with major conditions. s. 43(3)					
.5 Five day hearing where apprehension during supervision. s. 43(3)					
7.4 Temporary Care and Custody Order ss 44, 45					
.1 Maximum time periods total: s. 45(1)					
a. Child under six: twelve months					
b. Child six to twelve: eighteen months					
c. Child twelve or over: no time limit					
.2 Duration of individual orders: s. 45(2)					
a. Child under six: three months					
b. Child six to twelve: six months					
c. Child twelve or over: twelve months					
.3 Reasonable terms and conditions: s. 44(1)					
.4 Possible reservation of medical consent: s. 44(2)					
.5 Placement considerations s. 44(3)					

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7.5	Review ss 46					
	.1 Review of supervision or temporary care and custody orders at any time, but agency must apply before or after apprehension. s. 46(1)					
	.2 Custodial <i>status quo</i> presumed to continue pending review. s. 46(3)					
	.3 Considerations of review. s. 46(4), (5), (6)					
	a. Change of circumstances.					
	b. Plan carried out.					
	c. Least intrusive alternative.					
	d. Foreseeability of change. s. 46(6)					
	e. Best interests. s. 46(5)					
	.4 Available orders. s. 46(5), s. 42(1)					
7.6	Permanent Care and Custody Order s. 47					
	.1 Agency becomes legal guardian of child. s. 47(1)					
	.2 Access after permanent wardship possible, with burden on parent, subject to notice of proposed adoption. s. 47(2), s. 47(3)(a)					
	.3 Placement in accordance with religion (s. 47(4)) and culture, race and language (s. 47(5)).					
8.	<b>TERMINATION OF PERMANENT CARE AND CUSTODY ORDER</b>					
8.1	Variation and Termination of Access					
	.1 Access may be varied on application. ss 47(3), 48(3)					
	.2 Court may confirm, vary or terminate access. s. 48(7)					
	.3 Access must be terminated before adoption placement. s. 70(3)					
8.2	Status to Apply s. 48(3)					
	.1 Any party (see s. 36), including child of 16 or more.					
	.2 New party may seek to be added under s. 36(1)(f) to make termination application.					
8.3	Bars to Application s. 48(4), (6)					





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	.2	Appeal may be made by a party.				
	.3	Give Notice of Appeal within thirty days of the "order". s. 49(1)				
	.4	Minister responsible for timely preparation of transcript. s. 49(1)				
	.5	Appeal shall be heard within ninety days of Notice of Appeal.				
9.2	Stays	s. 49(2), (3)				
	.1	No automatic stay.				
	.2	Ten day "holding" stay may be issued by Court s. 49(2).				
	.3	Further stay to be obtained in Court of Appeal. s. 49(3)				
9.3	Further Evidence	s. 49(5)				
	.1	Discretion to receive "further evidence relating to events after the appealed order".				
	.2	Methods: CPR 62.22.				
9.4	Appeal Orders	s. 49(6)				
	.1	Confirm order.				
	.2	Rescind or vary the order.				
	.3	Make any order the original court could have made.				