

The Child and Family Services Act –
Overview of Legislative
Requirements and Process Issues

The Child and Family Services Act

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Chapter C-7.2 of the *Statutes of Saskatchewan, 1989-90* (consult *Table of Saskatchewan Statutes* for effective date) as amended by the *Statutes of Saskatchewan, 1990-91, c.10* and *c.C-8.1*; 1992, *c.21*; 1994, *c.27* and *35*; 1996, *c.11*; 1999, *c.14*; 2000, *c.6*; 2001, *c.33*; 2004, *c.5* and *65*; and 2006, *c.19*.

Every minute of every day, our children are facing new risks.

The Ministry of Social Services child protection worker is the primary point of contact between the families and individuals concerned about child abuse and neglect.

Purpose of Legislation

Sec. 3 The purpose of this Act is to promote the well-being of children in need of protection by offering, wherever appropriate, services that are designed to maintain, support and preserve the family in the least disruptive manner.

Child Safety and Family Support

Children and youth should have enduring relationships which promote their safety, security, and sense of identity, preferably within their own families.

The predominant goal for the Ministry in exercising its child protection mandate is to provide for the safety and best interests of children and youth, while providing families with the services and support necessary to preserve and strengthen the family and avoid out-of-home care.

Core Values

The primary investment of time and resources should be made in the care and treatment of children and youth in their own homes whenever possible

The court process may place the child protection worker in an adversarial position with the family.

Despite this, the caseworker is still expected to work with the family to reduce the safety/risk factors which may necessitate intervention and, ultimately, a court hearing.

Education Requirements

All Ministry staff must have a Bachelor of Social Work from an accredited university.

Training for Ministry Staff

- There is a mandatory 6 week training course for all new Ministry staff. It is called CORE training.
- This training covers topics such as:
The Legal Basis for Child Welfare
including *The Child and Family Services Act*

Training cont.

- Family Centered Case Management provides the framework that is based on the belief that the best way to protect children is to strengthen families
- Identifying abuse and neglect including a focus on child sexual abuse
- Strong emphasis on Critical Thinking in Child Welfare

Structured Decision Making[®]

- Provincially in 2011, a new assessment process was implemented: the Structured Decision Making System. This is a researched based set of assessment tools that enable caseworkers to apply critical thinking while accurately assessing the strengths and needs of a family.

Child's Best Interests

Sec 4 Where a person or court is required by any provision of this Act other than subsection 49(2) to determine the best interests of a child, the person or court shall take into account:

(a) the quality of the relationships that the child has with any person who may have a close connection with the child;

(b) the child's physical, mental and emotional level of development;

(c) the child's emotional, cultural, physical, psychological and spiritual needs;

Child's Best Interests Cont.

- (d) the home environment proposed to be provided for the child;
- (e) the plans for the care of the child of the person to whom it is proposed that the custody of the child be entrusted;
- (f) where practicable, the child's wishes, having regard to the age and level of the child's development;
- (g) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (h) the effect on the child of a delay in making a decision.

Child in Need of Protection

11 A child is in need of protection where:

(a) as a result of action or omission by the child's parent:

(i) the child has suffered or is likely to suffer physical harm

(ii) the child has suffered or is likely to suffer a serious impairment of mental or emotional functioning;

(iii) the child has been or is likely to be exposed to harmful interaction for a sexual purpose, including involvement in prostitution and including conduct that may amount to an offence within the meaning of the *Criminal Code*;

Sec 11. Cont.

(iv) medical, surgical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner has not been or is not likely to be provided to the child;

(v) the child's development is likely to be seriously impaired by failure to remedy a mental, emotional or developmental condition;

or

(vi) the child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child;

Sec. 11 Cont.

(b) there is no adult person who is able and willing to provide for the child's needs, and physical or emotional harm to the child has occurred or is likely to occur; or

Section 11 cont.

(c) the child is less than 12 years of age and:

(i) there are reasonable and probable grounds to believe that:

(A) the child has committed an act that, if the child were 12 years of age or more, would constitute an offence under the *Criminal Code*, the *Narcotic Control Act* (Canada) or Part III or Part IV of the *Food and Drug Act* (Canada); and

(B) family services are necessary to prevent a recurrence; and

(ii) the child's parent is unable or unwilling to provide for the child's needs.

Duty to Report

12(1) Subject to subsections (2) and (3), every person who has reasonable grounds to believe that a child is in need of protection shall report the information to an officer or peace officer.

(2) Subsection (1) applies notwithstanding any claim of confidentiality or professional privilege other than:

- (a) solicitor-client privilege; or
- (b) Crown privilege.

Duty to Report Cont.

(3) No action shall be commenced against a person with respect to making a report pursuant to subsection (1) except with leave of the Court of Queen's Bench.

(3.1) An application for leave shall be commenced by notice of motion served on the respondent and the minister in any manner set out in Part Three of the Queen's Bench Rules.

Duty to Report Cont.

(3.2) On an application for leave, leave shall be granted only if the applicant establishes, by affidavit evidence or otherwise, a case that the person *prima facie* made the report maliciously and without reasonable grounds for his or her belief.

(3.3) If leave is not granted, the court may order the applicant to pay all or any portion of the costs of the application.

(3.4) An action against a person who makes a report pursuant to sub-section (1) that is commenced without leave of the court is a nullity.

(4) Every peace officer who has reasonable grounds to believe that a child is in need of protection shall immediately report the information to an officer.

Duty to Investigate

13 Where a report is made pursuant to subsection 12(1) or (4), an officer or peace officer shall investigate the information set out in the report if, in the opinion of the officer or peace officer, reasonable grounds exist to believe that a child is in need of protection.

Duty to Offer Family Services

14(1) Where, on investigation, an officer concludes that a child is in need of protection, the officer shall:

- (a) notify the parent in writing of the officer's conclusion; and
- (b) offer family services to the parent.

(2) Where a parent acknowledges the need for family services and agrees to the provision of those services, a director may enter into an agreement with the parent for the provision of family services.

(3) Section 9 applies, with any necessary modification, to an agreement for residential services made pursuant to this section.

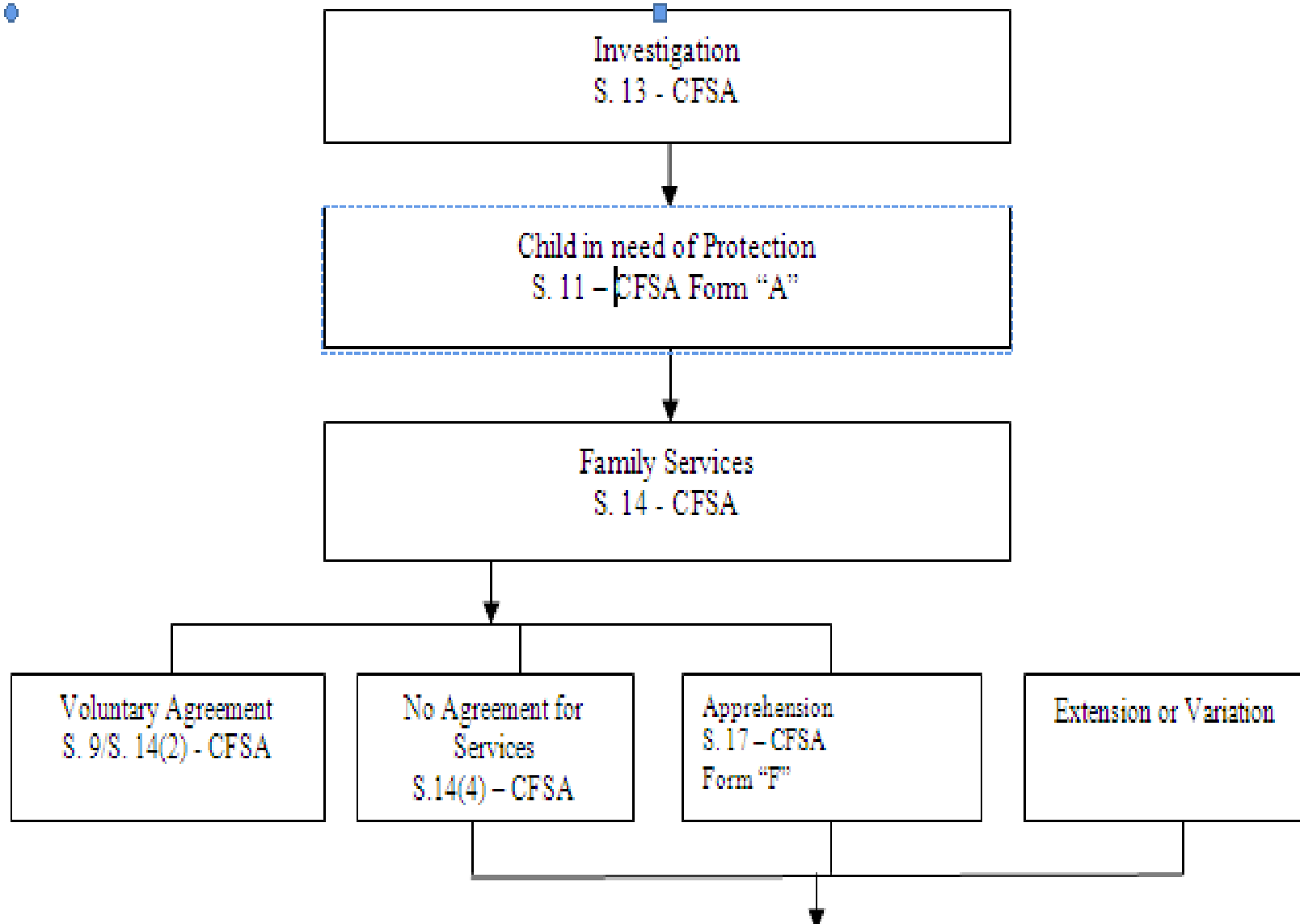
Offer Family Services Cont.

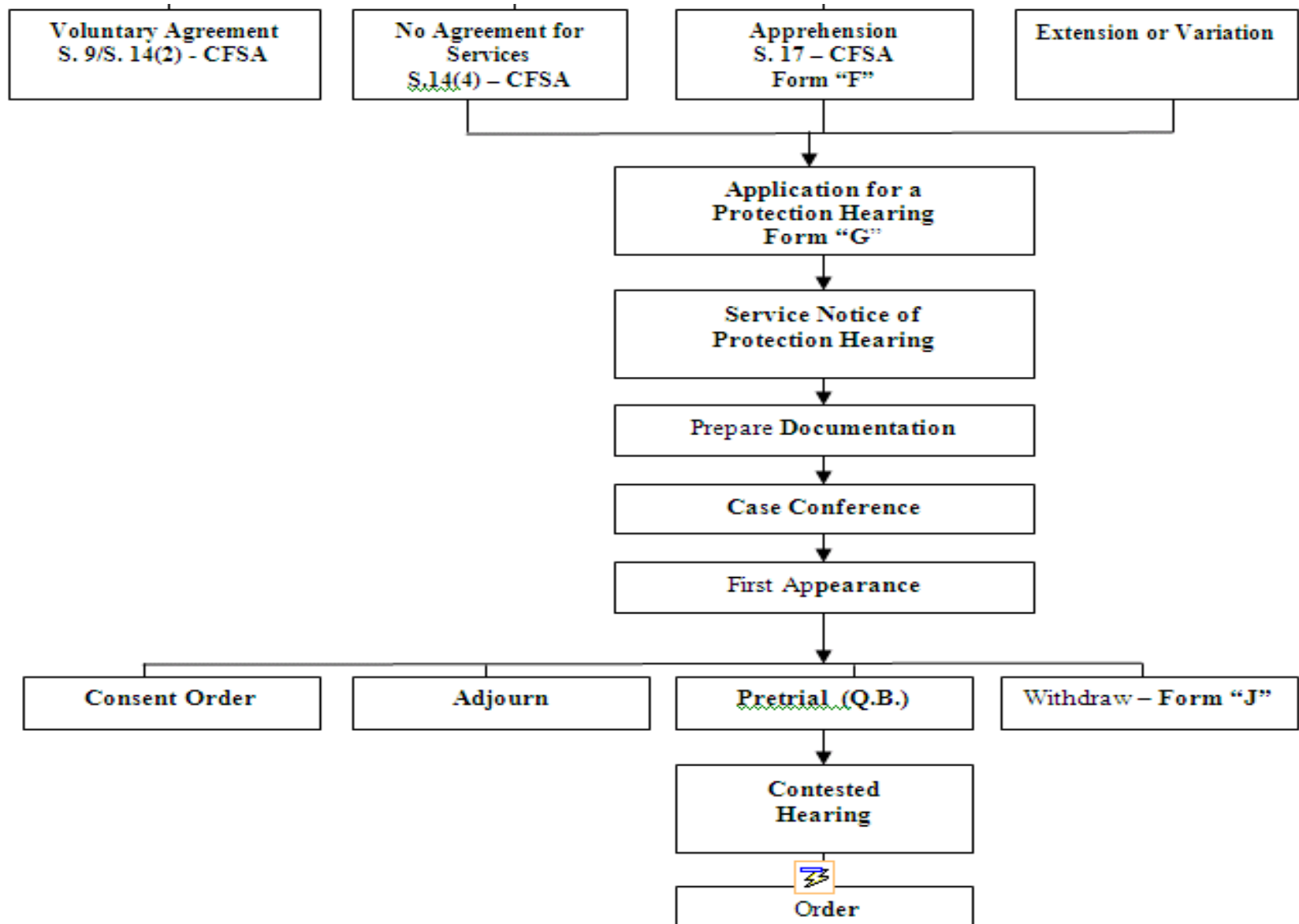
(4) Where the parent and the director do not enter into an agreement pursuant to subsection (2) and an officer believes that the child is in need of protection, the officer shall, within 30 days of giving notice to the parent pursuant to clause (1)(a):

- (a) apply to the court for a protection hearing; or
- (b) submit the officer's reasons for that belief to a mediator pursuant to section 15.

(5) An application pursuant to clause (4)(a) may be made by telephone in accordance with the regulations.

PROCEDURAL FLOW CHART





Agreements for Residential services

9(1) Subject to subsection 68(2), a parent who:

(a) through special circumstances is unable to care for his or her child; or

(b) because of the special needs of his or her child is unable to provide the services required by the child;

may enter into an agreement with the director for a term not exceeding one year for the purpose of providing residential services for the child.

Agreements for Services Cont.

2) Unless an agreement pursuant to subsection (1) provides otherwise, the parent remains the guardian of the child for the duration of the agreement.

(3) Every agreement pursuant to subsection (1) shall include a provision stating that the parent may seek advice from an independent third party prior to entering into the agreement.

(4) Subject to subsection (5), an agreement pursuant to subsection (1) may be renewed from time to time.

Agreements Cont.

(5) The total period of all agreements pursuant to subsection (1) shall not exceed **24 months**, unless the director, having regard to the best interests of the child, rules that an extension is required.

(6) If the child who is the subject of an agreement pursuant to subsection (1) has attained 12 years of age, an officer shall explain the agreement to the child and, where practicable, take the views of the child into account

Apprehension

17(1) Where an officer or peace officer concludes, on reasonable and probable grounds, that a child is in need of protection and at risk of incurring serious harm, the officer or peace officer shall:

(a) take all reasonable steps that he or she considers necessary to provide for the safety or welfare of the child, including, in the case of an officer, the offer of family services where practicable; or

(b) where no other arrangements are practicable, apprehend the child and remove the child to a place of safety.

Apprehensions Cont.

(2) Where a peace officer apprehends a child pursuant to subsection (1), the peace officer shall immediately report the matter to an officer who shall be responsible for the care of the child.

(3) Where at any time an officer no longer believes that a child apprehended pursuant to subsection (1) would be at risk of incurring serious harm if returned, the officer shall return the child to a person who has a right to custody of the child.

Apprehensions

(4) If a child apprehended pursuant to subsection (1) is not returned to a person who has a right to custody of the child within 48 hours of being apprehended, an officer shall:

(a) if a family review panel has been appointed in the region or locality where the apprehension occurred, apply for a review pursuant to section 20 of the reasons for the apprehension; and

(b) **within seven days**, not including the day on which the child was apprehended, make an application to the court for a protection hearing.

Apprehensions Cont.

(5) If a child apprehended pursuant to subsection (1) is returned to a person who has a right to custody of the child prior to the review pursuant to section 20, an officer shall withdraw the application for review.

(6) Applications pursuant to subsection (4) may be made by telephone in accordance with the regulations.

(7) The director may, prior to a protection hearing, grant access to a child apprehended pursuant to subsection (1) to his or her parent or any other person on any terms and conditions that, in the opinion of the director, would be in the best interests of the child.

Notification

19(1) Where a peace officer or officer apprehends a child pursuant to subsection 17(1), an officer shall, as soon as is practicable, in writing or orally:

- (a) notify the parent of the grounds for the apprehension of the child;
- (b) provide the parent with the office address and office telephone number of the officer; and
- (c) inform the parent of the advisability of consulting legal counsel.

(2) Where the officer mentioned in subsection 17(4) has applied for a review pursuant to clause 17(4)(a), an officer shall, as soon as is practicable, in writing or orally, notify the parent of the place, date and time of the review.

Two Court Systems

- The Provincial Court and the Court of Queen's Bench have concurrent jurisdiction over child protection matters throughout the province EXCEPT in Regina, Saskatoon and Prince Albert where the Court of Queen's Bench has exclusive jurisdiction.

Parties to a Protection Hearing

- Parents – as defined in the Act, s. 2(1)(n)
 - Mother/Father
 - Person with a right of custody by way of court order or agreement
 - Person who resides with child and who stands *in loco parentis*
- PSI – s. 23
- Chief of band, chief's designate or agency – s. 37(11)
- Child is not a party – s. 29(2)

INITIAL SUMMARY

FSMNO.:

Child's Name	Date of Birth	Mother	Father

CUMULATIVE TIME OUT OF PARENTAL CARE:

Dates (date) to (date)	Legal Status (Apprehended, Section 9, Private Placement)	Time Out of Parental Care (in year, month format)

**CIRCUMSTANCES LEADING TO THE APPLICATION:
ORDER RECOMMENDED:**

<p>___ s. 37(1)(a) – Placement with Parent Under supervision? Term: Parent:</p> <p>___ s. 37(1)(b) – Person of Sufficient Interest Term: PSI: Date of Homestudy:</p> <p>___ s. 37(1)(c) – Short Term Wardship Term:</p> <p>___ s. 37(2) – Permanent Wardship Date of Panel Approval:</p> <p>___ s. 37(3) – Long Term Wardship to Age 18 Date of Panel Approval:</p> <p>Conditions to attach:</p>
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WORKER'S SIGNATURE

Two Questions to be Determined

1. Is the child in need of protection? (s. 11)
2. If so, what is the appropriate disposition?
(s. 37)

General Process

- Application and initial summary filed by MSS
- Court sets hearing date – s. 22
- MSS counsel will typically file an affidavit from the caseworker summarizing:
 - any prior CFSA history
 - reasons for CFSA involvement at this stage
 - current circumstances of the children and other relevant parties
 - CFSA's recommendation

General Process cont'd

- Matter may be adjourned for various reasons
 - for MSS to complete service on all parties, for party to retain counsel, for further discussions to take place
- Matter may be resolved by consent or, if in QB, may go to a pre-trial conference
- If not resolved at pre-trial, matter will be set for trial

Types of Orders

- Section 37 of the CFSA provides for 5 types of orders:
 - 37(1)(a) – parental custody order or supervision order
 - 37(1)(b) – PSI order
 - 37(1)(c) – temporary order
 - 37(2) – permanent order
 - 37(3) – long term order

s. 37(1)(a)

- Order that the child remain with, be returned to or be placed in the custody of his or her parent.
- MSS may seek a period of supervision pursuant to s. 37(6).
- S. 38(10) provides that the total of all periods of supervision not exceed 18 months unless the court orders an extension in the best interests of the child.

s. 37(1)(b)

- Order that the child be placed in the custody of a person having a sufficient interest in the child.
- S. 23 allows the Court to designate a person having a sufficient interest in a child in the course of a protection hearing.
- If so designated, the PSI is a party to the protection hearing.
- Order may be indefinite or may be for a defined period of time.

s. 37(1)(c)

- Order that the child remain in or be placed in the custody of the minister for a temporary period not exceeding six months.
- 38(9) Subject to subsection 68(1), the total of the periods of all orders made pursuant to clause 37(1)(c) shall not exceed **24 months** unless the court determines, after considering the best interests of the child, that an extension is required.

s. 37(2)

- Order permanently committing child to the minister.
- Allows for child to be placed for the purposes of adoption.
- No conditions on a permanent order.
- Once time for appealing has expired and adoption order made or child placed for purposes of adoption permanent order cannot be challenged. s. 66

s. 37(3)

- Child may be placed in the custody of the minister until the age of 18 years if:
 - Child is in need of protection; and
 - By reason of the child's age or other circumstances it is unlikely an adoption plan would be made if a permanent committal were granted

What is the appropriate order?

- Helpful case – see *Saskatchewan (Minister of Social Services) v. E.K.S.* [1996 CanLII 7131 \(SK QB\)](#), (1996), 146 Sask. R. 46 (Q.B.)

1. The welfare of the child is the paramount (but not the sole) consideration. The wishes of the parent must be given independent subordinate weight. The weight will depend on the circumstances in each case.

2. Section 37(4)(a) does not declare that only the best interests of the child shall be considered. The implication is that the court may be mindful of other matters. As well, the list in [s. 4](#) is not exhaustive in determining the best interests of the child.

3. Any determination made must be in the context of the objective of the [Act](#), set out in [s. 3](#).

4. The court may consider the recommendation of the officer (representative of the Department) but is not bound thereby.

5. The court, having determined the child to be in need of protection, has determined that the level of parenting care is below the minimum tolerated by society. Therefore, in determining whether an order under [s. 37\(1\)](#) is appropriate, including conditions which could be attached, the court must be satisfied either:

(a) The parent or parents have altered his or her ways such that the circumstances which gave rise to the determination that the child was in need of protection no longer exist, or

(b) The court is satisfied that there is a realistic plan or a reasonable basis upon which to conclude that the necessary changes can occur within a reasonable time whereby the children can be safely returned to the care of their parent or parents.

[50] The court must look at various factors including (without meaning to be exhaustive of the possibilities) any changes in circumstance or conduct of the parent that has occurred or is proposed, any plan of corrective action that is being advanced, the nature of any resources suggested and the time frames which may be involved. The options in [s. 37\(1\)](#) are premised upon a reasonable prospect of change, within a reasonable length of time and a reasonable use of resources if needed.

[51] In making an assessment as to whether an order under [s. 37\(1\)](#) is appropriate the court must do so on the basis of the evidence before it. As noted by the Court of Appeal in *Saskatchewan (Minister of Social Services) v. A.J. and C.J.*, supra, p. at 251:

“However, the following is self-evident. Where, as here, children have been placed into the temporary custody of the Minister, and the parents wish to have the children returned to them, they must make efforts to improve or remove the conditions or circumstances in the home which have resulted in the children being taken from the parents ...”

Placement Considerations

53 In any case where an officer is arranging residential services for a child or an order is to be made by the court pursuant to subsection 37(1), the officer or court shall, having regard to the best interests of the child:

(a) consider the feasibility of placing the child with a member of the child's extended family; and

(b) where practicable, attempt to maintain the child in an environment that is consistent with the child's cultural background.