



## THE NUNAVUT COURT OF JUSTICE

### PRACTICE DIRECTIVE #21

### **CHILD PROTECTION APPLICATIONS**

Explanatory Note:

The Supreme Court of Canada in *Winnipeg Family and Child Services v. K.L.W.* 2000 SCC 48 ruled that a prompt post apprehension hearing was necessary to ensure that the section 7 Charter right engaged by a warrantless apprehension of a child was not breached. This directive is necessary to bring the child protection practice in this jurisdiction in line with this jurisprudence.

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Effective February 1<sup>st</sup> 2010 The Director of Child and Family Services shall file any application to have a child found in need of protection within four clear business days of the apprehension.

This application must be made returnable in a Court within nine days of the matter being filed.

If the Nunavut Court of Justice is not available in the originating community within this 9 day period, there must be an oral hearing arranged in Justice of the Peace Court (if available in the originating community) or by telephone in a Justice of the Peace Court or the Nunavut Court of Justice at a different location.

The issues to be determined at this “first stage hearing” are:

1. Whether reasonable and probable grounds existed at the point of apprehension to believe that the child or children were in need of protection;
2. Whether the children were in fact in need of protection when apprehended.

If either of these findings are contested, immediate arrangements must be made for a hearing on an expedited basis. This hearing must take place within 30 days of the first appearance in court unless counsel for the parent consents to a later date or the Court orders a later hearing date by reason of exceptional circumstances.

If the First Stage findings are contested, arrangements will be made to either have the hearing heard by a Justice of the Peace in the originating community, or a hearing will be set in Iqaluit with witnesses and Respondent(s) to appear by videoconferencing.

If the first stage hearing is not contested, the Judge or Justice may issue a First Stage Hearing order in Form 21A and adjourn the matter to a different date to determine what order is now in the best interests of the child(ren).

If the Director's application is for a supervision order or a temporary care order, this "second stage hearing" may proceed in Justice of the Peace Court if the Director and Counsel for the parent(s) consent. If the Director is seeking a permanent order of custody, the second stage hearing must proceed before the Nunavut Court of Justice at such time as the Court directs. A second stage order will be in Form 21B.

Issued this 21st day of December 2009 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey