

**FAMILY CROWN SERVICES OPERATIONAL MANUAL**

HEARING ON THE APPLICATION	New	Office of the Attorney General / Family Crown Services	Policy 26
Policy Title	New or Amended	Division / Branch / Section	Policy #

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**HEARING ON THE APPLICATION  
(Child Protection)**

**1. Introduction**

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Family Crown Counsel have different avenues to ensure the security and/or development of the child is not in danger. Upon recommendations from the Minister of Social Development, Family Crown Counsel will seek from the court a:

- Supervisory Order;
- Protective Intervention Order;
- Place of Safety Order
- Custody Order; or
- Guardianship Order.

**2. Supervisory Order**

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**2.1 Purpose**

The purpose of a Supervisory Order is to give family members a chance to work on their skills to eventually be able to care for a child under their care. For a period of up to 6 months, the Minister of Social Development will exercise supervision, make recommendations and refer parents to various programs and services.

**2.2 Effect**

When a child is subject to an Application, pursuant to section 54(1) of the *Family Services Act*, the Court may make a Supervisory Order authorizing the Minister of Social Development to exercise supervision of a child, a child's family, the management of their property and other affairs, having a substantial bearing on the child's security and development.

Section 54(3) provides that the guardianship and custody of the child remains with the parent(s), but the Minister of Social Development has access to the child and to the home in order to supervise the conditions of the order. Section 54(2) provides that a Supervisory Order may be extended for further periods of up to 6 months each.

### **2.3 Expiration of Supervisory Order**

If the Court does not dispose of an Application before the expiration of the Supervisory Order, section 54(2.1) provides that the order remains in effect and the Minister of Social Development continues to have supervision of the child, the child's family, the management of their property and other affairs having a substantial bearing on the child's security and development.

## **3. Place of Safety Order**

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When a child under the custody or the guardianship of the Minister of Social Development is likely to do harm, to himself or to another, subsection 57(1) provides that, upon the application of the Minister of Social Development, the court may make an order authorizing the Minister to place the child in a place of safety for a period of up to 6 months. That period of 6 months may be extended for additional periods of up to 6 months each, pursuant to subsection 57(2).

The authority of the Minister of Social Development to place a child in a place of safety is only in effect as long as the child remains in the custody or guardianship of the Minister. It is to be noted that at this time there are no designated places of safety in New Brunswick. In order to seek such an order, the Minister of Social Development must first identify and provide a location which will serve as a place of safety.

It is to be noted that a child who absconds from a place of safety may be charged with the criminal offence of breaching a court order.

## **4. Protective Intervention Order**

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### **4.1 Purpose**

The purpose of a Protective Intervention Order is to remove an offending party from the residence of the child and to prevent communication between the child and the offending party. This type of order is frequently requested in cases where domestic violence has occurred and/or to give family members a chance to work on their skills to eventually be able to care for a child under their care.

### **4.2 Effect**

Subsection 58(1) of the *Family Services Act* provides that the court may make a Protective Intervention Order directed to any person who, in the opinion of the court, is a source of danger to a child's security and development. An order made under subsection 58(1) shall remain in force for a period stated in the order, not to exceed twelve months and can subsequently be extended for additional periods of up to 12 months each pursuant to subsection 58(4).

Pursuant to subsection 58(2), a Protective Intervention Order may contain such provisions as the court considers to be in the best interests of the child, including a direction to the person named in the order to do either or both of the following:

- (a) to cease to reside in the same premises in which the child resides,
- (b) to refrain from any contact or association with the child.

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## 5. Custody Order

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### 5.1 Purpose

The purpose of a Custody Order is also to give family members a chance to work on their skills to eventually be able to care for a child under their care. However, a Custody Order transfers the custody, care and control of the child to the Minister of Social Development for a period of up to 6 months. The Minister of Social Development will work with family members by making recommendations and refer them to programs and services. Parents will have reasonable access to the child.

### 5.2 Effect

Subsection 55(1) of the *Family Services Act* provides that the court may make a Custody Order transferring the custody, care and control of the child to the Minister of Social Development for a period of up to 6 months. An order made under subsection 55(1) can subsequently be extended for additional periods of up to 6 months, up to a maximum of 24 consecutive months pursuant to subsection 55(2).

### 5.3 Responsibilities and obligations of the Minister

Pursuant to subsection 55(3) when a child is under a Custody Order, the Minister of Social Development shall meet the obligations set out in subsection 45(1).

When the child is in care under a custody order, the Minister of Social Development:

- (a) may place the child in any facility he considers to be appropriate and prescribe any plan he considers suitable for the child, but before doing so he shall consider the wishes of the child and the parent(s);
- (b) shall allow the parent reasonable access to the child; and
- (c) may return the child to the parent or place the child with a member of the child's immediate family.

### 5.4 Support obligations

Pursuant to subsection 55(5), when the Custody Order is made, the court shall determine the support obligations of the parent and may make any order with respect to the support of the child. It is to be noted that this section has rarely been applied by the courts.

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## 6. Guardianship Order

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### 6.1 Purpose

The purpose of a Guardianship Order is to transfer the custody, care and control of the child to the Minister of Social Development. The Guardianship Order is permanent and therefore the child will remain under the care of the Minister of Social Development until he /she is adopted, he / she marries or he / she reaches the age of majority, and that, pursuant to section 56(4) of the *Family Services Act*. In exceptional circumstances, a child may retain a post-guardianship right of access to one or more parents.

### 6.2 Effect

Subsection 56(1) of the *Family Services Act* provides that the court may make a Guardianship Order transferring from a parent to the Minister of Social Development on a permanent basis the guardianship of a child, including the custody, care and control of, and all parental rights and responsibilities with respect to the child.

### **6.3 Post-guardianship access**

Prior to a Guardianship application being filed, the Minister of Social Development shall convey to Family Crown Counsel a position with respect to post-guardianship access for a child to any or all of his former parents. This is a clinical social work decision based on the best interests of a child. However, Family Crown Counsel shall provide legal advice to the Minister as to the applicable law. The Supreme Court of Canada has clearly stated that post-guardianship access is an exception and should not be granted if it will impede future adoption prospects for a child.

#### **6.3.1 Wording of post-guardianship access**

When a post-guardianship right of access is reserved for a child it is very important to consider what impact such wording will have on a future Adoption Application should the child be adopted at a later date. The Minister of Social Development does not want to maintain any discretionary role with respect to access post-adoption. In other words, the Minister generally does not want to get involved in “policing” the access once the child is adopted. It is very important to address this point with a presiding justice in guardianship hearings and pre-trial briefs. Failure to address this point may result in an Adoption Application being delayed and having to seek a variation of the original Guardianship Order.

### **6.4 Responsibilities and obligations of the Minister**

Pursuant to subsection 56(2) when a child is in care under a Guardianship Order, the Minister of Social Development shall meet the obligations set out in subsection 45(3). Those obligations are:

- (a) provide care for the child that will meet his physical, emotional, religious, educational, social, cultural and recreational needs;
- (b) provide for the support of the child; and
- (c) consider any wishes that the child expresses with regard to any placement or planning the Minister of Social Development proposes.

Subsection 45(3) also provides that the Minister of Social Development has full parental rights and shall exercise full parental responsibilities with respect to the child.

### **6.5 Return to the former parent(s)**

Pursuant to subsection 56(3) the Minister of Social Development may return the child to the former parent periodically but such action shall not be constructed as a release or waiver by the Minister of any rights and obligations under the order with respect to the custody, care and control of the child.

## **7. Related documents**

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*Family Services Act*, S.N.B. 1980, c. F-2.2