

BILL

No. 2 of 2002

An Act respecting Emergency Protection for Victims of Child Sexual Abuse

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(Assented to , 2002)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*.

Interpretation

2 In this Act:

- (a) “**applicant**” means, except in section 4, a person who makes an application pursuant to section 5 for an order;
- (b) “**child**” means a person who is actually or apparently under 18 years of age;
- (c) “**child protection officer**” means an officer designated pursuant to clause 57(b) of *The Child and Family Services Act*;

- (d) “**child victim**” means a child who is the subject of an order or a person who is the subject of an application for an order;
- (e) “**court**” means the Court of Queen’s Bench;
- (f) “**department**” means the department over which the minister presides;
- (g) “**director**” means a director appointed pursuant to clause 57(a) of *The Child and Family Services Act*;
- (h) “**justice**” means a presiding justice of the peace who is designated for the purposes of this Act pursuant to section 15;
- (i) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (j) “**order**” means an emergency protective intervention order described in section 7;
- (k) “**parent**” means:
 - (i) the mother of a child;
 - (ii) the father of a child;
 - (iii) a person to whom custody of a child has been granted by a court of competent jurisdiction or by a deed or agreement of custody; or
 - (iv) a person with whom a child resides and who stands in the place of a parent to the child;
- (l) “**peace officer**” means:
 - (i) a member of the Royal Canadian Mounted Police;
 - (ii) a member of a police service, as defined in *The Police Act, 1990*; or
 - (iii) an employee of the Royal Canadian Mounted Police or a police service, as defined in *The Police Act, 1990*, who is employed in the area of telecommunications;
- (m) “**prescribed**” means prescribed in the regulations;
- (n) “**prescribed person**” means a person who is prescribed, or is a member of a class of persons that is prescribed, for the purpose of making applications for orders;
- (o) “**respondent**” means a person against whom an order is sought or has been granted.

Child sexual abuse

3 For the purposes of this Act, a child has been subjected to sexual abuse if the child has been, or is likely to be, exposed to harmful interaction for a sexual purpose, including involvement in prostitution and involvement in conduct that may amount to an offence pursuant to the *Criminal Code*.

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Duty to report

- 4(1) Subject to subsections (2) and (7), every person who has reasonable grounds to believe that a child has been or is likely to be subjected to sexual abuse shall report the information to a child protection 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.
- (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.
- (4) On an application for leave, leave shall be granted only if:
- (a) the minister has been served with notice; and
 - (b) the applicant satisfies the court, by affidavit evidence or otherwise, that there is sufficient evidence that the person made the report maliciously and without reasonable grounds for his or her belief to warrant proceeding with an action.
- (5) If leave is not granted, the court may order the applicant to pay all or any portion of the costs of the application.
- (6) An action against a person who makes a report pursuant to subsection (1) that is commenced without leave of the court is a nullity.
- (7) Every peace officer who has reasonable grounds to believe that a child has been or is likely to be subjected to sexual abuse shall immediately report the information to a child protection officer.

PART II
Emergency Protective Intervention Orders

Application for order

- 5(1) A child protection officer, a peace officer or a prescribed person may, on behalf of a director, make an *ex parte* application to a justice for an emergency protective intervention order with respect to a child where the applicant has reasonable grounds to believe that:
- (a) the child is under 18 years of age; and
 - (b) either:
 - (i) sexual abuse of the child by another person has occurred; or
 - (ii) contact between the child and another person has occurred, and the applicant has reasonable grounds to believe that further contact between the child and the other person will result in sexual abuse of the child.
- (2) An application for an order may be made in person or by telecommunication.

Hearing of application

6(1) At the hearing of an application for an order, a justice shall hear and consider the allegations of the applicant and the evidence of witnesses.

(2) At the hearing of an application for an order, a justice may do any of the following:

- (a) subject to subsection (3), adjourn the hearing:
 - (i) from time to time; or
 - (ii) to a time and place where the justice can hear the evidence in person, if the taking of evidence by telecommunication becomes unsatisfactory;
- (b) change the place of the hearing to accommodate any witness;
- (c) conduct the hearing in any manner that the justice considers appropriate and that is not inconsistent with this Act or the regulations.

(3) At the hearing of an application for an order:

- (a) a justice shall take the evidence under oath or pursuant to a promise to tell the truth in accordance with section 42 of *The Saskatchewan Evidence Act*; and
- (b) for the purposes of clause (a):
 - (i) an oath may be administered by telecommunication; and
 - (ii) an inquiry pursuant to section 42 of *The Saskatchewan Evidence Act* and a promise to tell the truth pursuant to that section may be made by telecommunication.

(4) At the hearing of an application for an order, a justice:

- (a) may admit evidence by affidavit or any other means authorized by The Queen's Bench Rules for the taking of evidence; and
- (b) may admit hearsay evidence if, in the opinion of the justice, the evidence is credible and trustworthy.

(5) At the hearing of an application for an order, a justice shall:

- (a) ensure that a record of the evidence of each witness is made in legible writing in the form of:
 - (i) the notes of the justice; or
 - (ii) a statement of the witness;
- (b) have each witness read the record containing the evidence of the witness or have the evidence read back to the witness; and
- (c) sign and date the record containing the evidence of each witness.

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(6) Where a justice begins to hear an application for an order and is unable to continue the hearing for any reason, another justice may:

- (a) continue the hearing if the evidence received by the justice who began the hearing has been recorded in accordance with subsection (5) and is available for review by the other justice; or
- (b) begin hearing the application as if no evidence had been taken, if the evidence has not been recorded in accordance with subsection (5) or is not available for review by the other justice.

Emergency protective intervention order

7(1) A justice may grant an emergency protective intervention order on an application pursuant to section 6 where the justice is satisfied, on a balance of probabilities, that:

- (a) either:
 - (i) sexual abuse of a child by another person has occurred; or
 - (ii) contact between a child and another person has occurred, and there are reasonable grounds to believe that further contact between the child and the other person will result in sexual abuse of the child; and
 - (b) by reason of seriousness or urgency, the order should be made without waiting for the next available sitting of a judge of the court in order to ensure the immediate protection of the child.
- (2) In determining whether an order should be made, a justice shall consider, but is not limited to considering, the following factors:
- (a) the nature of the sexual abuse or contact;
 - (b) the history, if any, of sexual abuse by the respondent of any child;
 - (c) the existence of immediate danger to the child victim;
 - (d) the best interests of the child victim.
- (3) An order may contain any or all of the following provisions:
- (a) a provision restraining the respondent from communicating with or contacting the child victim or attempting to communicate with or contact the child victim;
 - (b) subject to subsection (4), a provision restraining the respondent from communicating with or contacting the child victim or any other child, or attempting to communicate with or contact the child victim or any other child, within a specified geographical area;
 - (c) any other provision that the justice considers necessary to provide for the immediate protection of the child victim.

- (4) Where the justice is satisfied that some form of communication with or contact between the child victim and the respondent is necessary or appropriate, the justice may include in the order a provision restraining the respondent from communicating with or contacting the child victim, or attempting to communicate with or contact the child victim, unless the respondent complies with any other condition specified in the order that the justice considers necessary to provide for the immediate protection of the child victim.
- (5) An order is to be in the prescribed form.
- (6) The justice shall:
- (a) direct that a peace officer is to serve a copy of the order, as soon as is reasonably practicable, on the respondent by personal service; and
 - (b) immediately forward a sealed copy of the order and all supporting documentation, including the justice's notes, to the local registrar of the court at the nearest judicial centre.
- (7) The director shall arrange for a copy of the order to be provided:
- (a) to the child victim; and
 - (b) to a parent of the child victim if the child victim is less than 16 years of age.
- (8) Subject to subsection (10) and section 8, an order respecting a child who is less than 16 years of age takes effect immediately and terminates on the expiry of a period of 30 days following the day on which it takes effect unless, before the expiry of the 30-day period, the order is revoked by a judge pursuant to clause 11(5)(c).
- (9) Subject to subsection (10), an order respecting a child who is 16 years of age or more takes effect immediately and terminates on the expiry of a period of 30 days following the day on which it takes effect unless, before the expiry of the 30-day period:
- (a) the period is extended by a judge who confirms the order pursuant to clause 10(1)(a); or
 - (b) the order is revoked by a judge pursuant to clause 11(5)(c).
- (10) A respondent is bound by a provision of an order as soon as he or she:
- (a) has been served with the order in accordance with clause (6)(a) or is deemed to have been served pursuant to section 9; or
 - (b) receives a copy of the order by any means.
- (11) An order is not stayed by a direction for a rehearing pursuant to clause 10(1)(b) or an application for a review pursuant to subsection 12(1).
- (12) The failure to serve the child victim or a parent does not invalidate the order or any subsequent proceedings taken with respect to the order.

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Subsequent orders against respondent

8 Where an order has been made against a respondent pursuant to section 7, a justice, in any subsequent order pursuant to that section against the same respondent:

- (a) may include a provision restraining the respondent from entering or being found within a specified geographical area without lawful excuse; and
- (b) if the child victim is less than 16 years of age, may make an order for a period not exceeding 90 days.

Substitutional service of order

9(1) Where it is impracticable for any reason for a peace officer to serve a copy of an order on a respondent by personal service, a peace officer may apply *ex parte* to a justice, in person or by telecommunication, for an order that authorizes substitutional service of the emergency intervention order.

(2) An application for substitutional service:

- (a) must be supported by evidence that shows why personal service is impracticable; and
- (b) must propose a method of service that is likely to bring notice of the order to the respondent.

(3) In making an order that authorizes substitutional service of an order, the justice shall direct, on any terms that the justice considers appropriate, any of the following methods of substitutional service that the justice is satisfied is likely to bring notice of the order to the respondent:

- (a) posting in a public place a notice directed to the respondent that meets the requirements of subsection (4);
- (b) publishing in a newspaper a notice directed to the respondent that meets the requirements of subsection (4);
- (c) any other method the justice considers appropriate.

(4) For the purposes of clause (3)(a) or (b), a notice:

- (a) must state that an order has been made against the respondent;
- (b) subject to clause (c), must set out or summarize the terms of the order;
- (c) must not disclose the name of the child victim;
- (d) must indicate how the respondent may obtain a copy of the order; and
- (e) must set out or summarize the respondent's rights pursuant to sections 11, 12 and 13.

(5) In the absence of evidence to the contrary, service of an order pursuant to an order for substitutional service is deemed to have been effected on the third day following:

- (a) the posting of a notice in accordance with clause (3)(a);
- (b) the publication of a notice in accordance with clause (3)(b); or
- (c) the carrying out of a method specified by a justice pursuant to clause (3)(c).

Confirmation by judge

10(1) Within three working days after receipt of an order and all supporting documentation by the court, or, if a judge is not available within that period, as soon as one can be made available, a judge shall review the order in his or her chambers and:

(a) if the judge is satisfied that there was evidence before the justice to support the granting of the order:

(i) shall confirm the order; and

(ii) if the child victim is more than 16 years of age, may extend the application of the order for a further period not exceeding 60 days after the expiry of the original period of 30 days; or

(b) if the judge is not satisfied that there was evidence before the justice to support the granting of the order, shall direct a rehearing of the matter.

(2) For all purposes, including appeal or variation, an order that is confirmed by a judge pursuant to clause (1)(a) is deemed to be an order of the court granted on an *ex parte* application.

(3) Where a judge confirms an order pursuant to clause (1)(a), the local registrar shall immediately forward a copy of the order to a director.

Rehearing

11(1) Where a judge directs a rehearing:

(a) the local registrar shall:

(i) give notice of the rehearing to the applicant and a director; and

(ii) issue a summons in the prescribed form requiring the respondent to appear at a rehearing before the court;

(b) the applicant shall serve the summons on the respondent; and

(c) the director shall give notice of the rehearing to:

(i) a parent of the child victim if the whereabouts of a parent is known; and

(ii) the child victim if the child victim is 16 years of age or older.

(2) The evidence that was before the justice at the hearing of the application shall be considered as evidence at the rehearing, but the judge at the rehearing may receive any further evidence that the judge considers relevant.

(3) At a rehearing, the onus is on the respondent to demonstrate, on a balance of probabilities, why the order should not be confirmed.

(4) Where there is proof of service of a notice of a rehearing on a respondent and the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence.

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- (5) At a rehearing, the judge may:
 - (a) confirm the order in accordance with clause 10(1)(a);
 - (b) vary the order or any provision in the order; or
 - (c) revoke the order.
- (6) Where a judge confirms an order pursuant to clause (5)(a) or varies an order pursuant to clause (5)(b), the local registrar shall immediately forward a copy of the order to a director.
- (7) Where a judge varies an order pursuant to clause (5)(b), the applicant shall serve the respondent with a copy of the order.

Review of order

- 12(1) At any time after a respondent has been served with an order, a director or the respondent named in the order may apply to the court for a review of the order on the ground that there has been a change in circumstances.
- (2) The director shall give notice of the review to:
 - (a) a parent of the child victim if the whereabouts of a parent is known; and
 - (b) the child victim if the child victim is 16 years of age or older.
- (3) On a review of an order pursuant to subsection (1):
 - (a) if the court is satisfied that there has been a significant change in circumstances and that it would be in the best interests of the child victim, the court may:
 - (i) vary the order by amending provisions contained in the order, adding new provisions to the order or revoking provisions contained in the order;
 - (ii) decrease the period for which any provision in the order is to remain in force or extend the period for a further period not exceeding 60 days; or
 - (iii) revoke the order; or
 - (b) if the court is not satisfied that there has been a significant change in circumstances, or that it would not be in the best interests of the child victim to vary or revoke the order, the court shall dismiss the application.
- (4) On a review of an order pursuant to subsection (1), the evidence before the justice or the court on previous proceedings pursuant to this Act shall be considered as evidence, but the judge at the review may receive any further evidence that the judge considers relevant, including hearsay evidence if, in the opinion of the judge, the evidence is credible and trustworthy.
- (5) In determining whether it would be in the best interests of the child victim to vary or revoke an order, the judge shall take into account the factors set out in section 4 of *The Child and Family Services Act*.
- (6) The variation of one or more provisions of an order does not affect the other provisions in the order.

Appeal

13 With leave of a judge of the Court of Appeal, an appeal from any order made pursuant to this Act may be made to the Court of Appeal on a question of law.

Hearings in private

14 A justice, a judge of the court or a judge of the Court of Appeal, as the case may be, may order that the hearing of an application, a rehearing, a review or an appeal pursuant to this Part or any part of a hearing, rehearing, review or appeal be held in private.

PART III
General**Designation of presiding justices of the peace**

15(1) Notwithstanding subsection 13(2) of *The Justices of the Peace Act, 1988*, the chief judge of the Provincial Court of Saskatchewan may designate a presiding justice of the peace to hear and determine applications pursuant to this Act.

(2) Where the chief judge designates a presiding justice of the peace to hear applications pursuant to this Act, the chief judge shall specify the place at which and the period during which the justice may hear those applications.

(3) The chief judge may delegate the exercise of the power to designate a presiding justice of the peace to hear applications pursuant to this Act to a supervising justice of the peace appointed pursuant to *The Justices of the Peace Act, 1988*, and the exercise of that power by the supervising justice of the peace is deemed to be an exercise by the chief judge.

Search of vehicle

16(1) Where a peace officer has reasonable grounds to believe that there is evidence in a vehicle of child sexual abuse, the peace officer may:

- (a) request or signal to the person in charge of or operating the vehicle to stop the vehicle;
- (b) search the vehicle for evidence of child sexual abuse; and
- (c) seize anything that may be evidence of child sexual abuse.

(2) Where, due to the circumstances, time or location, there could reasonably be expected to be a high incidence of child sexual abuse in any area, a peace officer may:

- (a) request or signal to the person in charge of or operating a vehicle in the area to stop the vehicle;
- (b) search the vehicle for evidence of child sexual abuse; and
- (c) seize anything that may be evidence of child sexual abuse.

(3) The person in charge of or operating a vehicle shall, when requested or signalled by a peace officer pursuant to subsection (1) or (2):

- (a) immediately bring the vehicle to a safe stop; and
- (b) permit the peace officer to search the vehicle.

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Subpoena

- 17(1)** A justice or the court, on the application of a director or a respondent or on the motion of the justice or the court, may compel the attendance of any person at a hearing pursuant to this Act for the purpose of giving evidence, and may require the production of any document.
- (2) A subpoena issued pursuant to subsection (1) may be served:
- (a) by delivering it personally to the person to whom it is directed; or
 - (b) if the person to whom it is directed cannot be found, by leaving it for that person at his or her last or usual place of residence with a person at that place who appears to be a resident of that place and at least 16 years of age.
- (3) Service of a subpoena pursuant to subsection (2) may be proved by the affidavit of the person who served it.
- (4) Every subpoena issued pursuant to subsection (1) remains in force until the completion of the hearing of the matter for which it is issued.
- (5) Where a hearing is adjourned, a witness who has been served with a subpoena is required to attend the adjourned hearing.
- (6) The court may issue a warrant to compel the attendance of a person where:
- (a) the person fails to comply with the terms of a subpoena issued pursuant to subsection (1); and
 - (b) it is proved that the person was served with the subpoena.

Procedure

- 18(1)** Except as otherwise provided by this Act or the regulations, proceedings pursuant to this Act before a justice are governed, with any necessary modification, by the provisions of the *Criminal Code* relating to summary convictions insofar as they are applicable.
- (2) Except as otherwise provided by this Act or the regulations, proceedings pursuant to this Act before the court are governed, with any necessary modification, by The Queen's Bench Rules.
- (3) A justice or the court may waive any defect or irregularity in any proceedings pursuant to this Act.

Documents forwarded to director

- 19** A clerk, a local registrar of the court or the registrar of the Court of Appeal, as the case may require, shall forward to a director two certified copies of any order or decision made pursuant to this Act.

Confidentiality

20(1) The minister, officers, employees and agents of the department, peace officers, prescribed persons and all other persons who are employed in or assist with the administration of this Act:

- (a) shall preserve confidentiality with respect to:
 - (i) the name and any other information that may identify a child victim that comes to their attention pursuant to this Act; and
 - (ii) any files, documents, papers or other records dealing with the personal history or record of a child victim that have come into existence through anything done pursuant to this Act; and
- (b) shall not disclose or communicate the information mentioned in clause (a) to any other person except as required to carry out the intent of this Act or as otherwise provided in this section.

(2) The minister, a director, a child protection officer, a peace officer or a prescribed person may disclose or communicate information mentioned in subsection (1) relating to a child to:

- (a) the guardian, parent or foster parent of that child; or
- (b) the child to whom the information relates.

(3) On the request of a person, the minister or a director may disclose, or authorize a child protection officer, a peace officer or a prescribed person to disclose, information mentioned in subsection (1) relating to that person in any form that the minister or director considers appropriate.

(4) Any information that may be disclosed to the person to whom it relates may, with the written consent of that person, be disclosed to any other person.

(5) Information mentioned in subsection (1) may be released where, in the opinion of the minister, the benefit of the release of information clearly outweighs any invasion of privacy that could result from the release.

(6) The information mentioned in subsection (5) may be released in any form that the minister considers appropriate.

(7) Any disclosure of information pursuant to this section does not constitute a waiver of Crown privilege, solicitor-client privilege or any other privilege recognized in law.

Publication of certain information prohibited

21 No person shall publish or make public any information that has the effect of identifying a child as a child victim.

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Immunity

22 No action lies or shall be instituted against the minister, a director, a child protection officer, a peace officer, a prescribed person, an officer, employee or agent of the department, a court official or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them:

- (a) pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations; or
- (b) in the carrying out or supposed carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations.

Regulations

23 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of clause 2(n), prescribing persons or classes of persons who may make applications for orders;
- (c) respecting procedures to be followed in proceedings pursuant to this Act;
- (d) prescribing forms for the purposes of this Act;
- (e) subject to section 20, governing the access of any person or class of persons to any records made or kept pursuant to this Act or the regulations;
- (f) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Offences

24(1) No person shall expose a child to harmful interaction for a sexual purpose.

(2) No person who has reasonable grounds to believe that a child has been or is likely to be subjected to sexual abuse shall fail to report the information to a child protection officer or peace officer.

(3) Every person who contravenes any provision of subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than 24 months or to both.

Coming into force

25 This Act comes into force on proclamation.

