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c 71 Children's Residential Services Act

Ontario

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CHAPTER 71

Children's Residential Services Act

1. In this Act,

Interpre-
tation

- (a) "Board" means The Children's Services Review Board;
- (b) "child" means a boy or girl actually or apparently under eighteen years of age;
- (c) "children's residence" means all or any part of a building or buildings in which three or more children not of common parentage reside away from the home of their parents or guardians primarily for the purpose of receiving residential care, and includes a foster home or any other home or institution in which three or more children not of common parentage reside and that is supervised or operated by a children's aid society under the *Child Welfare Act*, whether or not the children are Crown wards or wards of the society, but does not include,
 - (i) a house that is licensed under the *Private Hospitals Act*, R.S.O. 1980,
c. 389
 - (ii) a day nursery within the meaning of the *Day Nurseries Act*, R.S.O. 1980,
c. 111
 - (iii) a summer camp under the *Public Health Act*, R.S.O. 1980,
c. 409
 - (iv) a home for special care under the *Homes for Special Care Act*, R.S.O. 1980,
c. 202
 - (v) part of a public school, separate school, private school or a school for trainable retarded children under the *Education Act*, R.S.O. 1980,
c. 129

- (vi) a hostel intended for short-term accommodation, or
- (vii) a hospital that is in receipt of financial aid from the Province of Ontario;
- (d) "Director" means an employee of the Ministry appointed by the Minister as a director for all or any of the purposes of this Act;
- (e) "licence" means a licence issued under this Act;
- (f) "Minister" means the Minister of Community and Social Services;
- (g) "Ministry" means the Ministry of Community and Social Services;
- (h) "operator" means a person who has control or management of a children's residence and "operate" has a corresponding meaning;
- (i) "regulations" means the regulations made under this Act;
- (j) "residential care" means boarding or lodging, or both, and may include specialized, sheltered or group care in conjunction with the boarding or lodging, or both. 1978, c. 70, s. 1.

**Appointment
of Director**

2.—(1) The Minister may appoint one or more persons to act as a Director.

**Duties of
Director**

(2) A Director shall perform the duties imposed and may exercise the powers conferred upon a Director by this Act or the regulations or by any other Act or regulation thereunder.

**Acting
Director**

(3) Where a Director is absent or there is a vacancy in the office of a Director, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry as the Minister designates. 1978, c. 70, s. 2.

3.—(1) The Lieutenant Governor in Council may appoint a board to be known as The Children's Services Review Board composed of such number of members as is prescribed by the regulations. Appointment of Children's Services Review Board

(2) A member of the Board may be appointed for a term not exceeding three years. Term of office

(3) Three members of the Board constitute a quorum. Quorum

(4) One of the members of the Board shall be appointed by the Lieutenant Governor in Council to be chairman of the Board and one or more other of the members of the Board may be appointed by the Lieutenant Governor in Council to be vice-chairman of the Board. Chairman and vice-chairman

(5) Each member of the Board shall be paid such *per diem* allowance as the Lieutenant Governor in Council from time to time determines and each member is entitled to the member's reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board. Remuneration

(6) Where, Absence, etc., of chairman

(a) the chairman of the Board is absent or is unable to act, a vice-chairman designated by the chairman; or

(b) the office of the chairman of the Board is vacant, a vice-chairman designated by the Minister,

has and shall exercise the jurisdiction and power of the chairman, including the power to complete any unfinished matter.

(7) The chairman shall from time to time assign various members of the Board to its various hearings. 1978, c. 70, s. 3. Assignment of members for hearings

4.—(1) No person shall, Licence required

(a) establish, operate or maintain a children's residence; or

(b) provide, directly or indirectly, residential care for three or more children not of common parentage in a place or places away from the home of their parents or guardians that is not a children's residence,

except under the authority of a licence issued by a Director under this Act.

Issuance
of licence

(2) Subject to section 5, any person who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain a children's residence or to provide the residential care referred to in clause (1) (b), as the case may be, and pays the prescribed fee is entitled to be issued a licence by a Director subject to such terms and conditions as the Director may prescribe.

Idem

(3) Notwithstanding subsection (2), a licence to establish, operate or maintain a children's residence or to provide the residential care referred to in clause (1) (b), shall not be issued to a partnership or association of persons.

Renewal
of licence

(4) Subject to section 5, a Director shall renew a licence of a children's residence or for the provision of residential care, as the case may be, on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee, and the renewal shall be subject to such terms and conditions as the Director may prescribe.

Provisional
licence

(5) Subject to section 5, where an applicant for a licence or a renewal of a licence does not meet all the requirements for the issuance of a licence or renewal thereof and requires time to meet such requirements, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for such period or periods as the Director considers necessary to afford the applicant an opportunity to meet the requirements.

Not
transferable

(6) A licence is not transferable.

Notice of
change

(7) Where the licensee is a corporation, the licensee shall notify a Director in writing within fifteen days of any change in the officers or directors of the corporation. 1978, c. 70, s. 4.

Grounds for
refusal

5.—(1) Subject to section 6, a Director may refuse to issue a licence where in the Director's opinion,

(a) the applicant or any employee of the applicant or, where the applicant is a corporation, its officers, directors or employees is or are not competent to establish, operate or maintain a children's residence or to provide the residential care referred to

in clause 4 (1) (b), as the case may be, in a responsible manner in accordance with this Act and the regulations;

- (b) the past conduct of the applicant or any employee of the applicant or, where the applicant is a corporation, of its officers, directors or employees, affords reasonable grounds for belief that the children's residence will not be established, operated or maintained or the residential care provided, as the case may be, in accordance with this Act and the regulations; or
- (c) the building or buildings or accommodation in which the applicant proposes to establish, operate or maintain the children's residence or to provide the residential care referred to in clause 4 (1) (b), as the case may be, does not comply with the requirements of this Act and the regulations.

(2) Subject to section 6, a Director may refuse to renew or may revoke a licence issued to a children's residence or for the provision of residential care, where in the Director's opinion,

Revocation
or refusal
to renew

- (a) the licensee or any employee of the licensee, or where the licensee is a corporation, any officer, director or employee thereof, has contravened or has knowingly permitted any person under the control or direction of or associated with the licensee, officer, director or employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations or of any other Act or the regulations thereunder applying to the establishing, operating or maintaining of the children's residence or the providing of residential care, as the case may be, or
 - (ii) any term or condition of the licence;
- (b) the building or buildings or accommodation in which the children's residence is established, operated or maintained or the residential care is provided, does not comply with the requirements of this Act and the regulations;

- (c) the children's residence is established, operated or maintained or the residential care is provided in a manner that is prejudicial to the health, safety or welfare of the children cared for in the children's residence or place or places where the residential care is provided;
- (d) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the children's residence or the provision of residential care, as the case may be; or
- (e) a change in the officers or directors of the applicant would, if the applicant were applying for the licence in the first instance, afford grounds for refusing to issue a licence under clause (1) (b). 1978, c. 70, s. 5.

Notice of proposal to refuse to issue or to revoke

6.—(1) Where a Director proposes under section 5 to refuse to issue a licence or to refuse to renew or revoke a licence issued under that section, the Director shall cause notice to be served of the Director's proposal, together with written reasons therefor, on the applicant or the licensee, as the case may be.

Notice requiring hearing

(2) A notice under subsection (1) shall inform the applicant or licensee, as the case may be, that the applicant or licensee is entitled to a hearing by the Board if the applicant or licensee mails or delivers, within fifteen days after the notice is served on the applicant or licensee, notice in writing to the Director and to the Board, requiring a hearing and the applicant or licensee, as the case may be, may so require such a hearing.

Powers of Director where no hearing

(3) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposal stated in the Director's notice under subsection (1) without a hearing.

Powers of Board where hearing

(4) Where an applicant or licensee requires a hearing by the Board in accordance with subsection (2), the Board shall appoint a time for and hold the hearing and, at the hearing, may by order direct the Director to carry out the Director's proposal or refrain from carrying out the Director's proposal and to take such action as the Board considers the Director ought to take in accordance with this Act and the

regulations, and, for such purposes, the Board may substitute its opinion for that of the Director. 1978, c. 70, s. 6.

7.—(1) Where a licensee is dissatisfied with the terms and conditions prescribed by a Director under subsection 4 (2), (4) or (5), the licensee may, within fifteen days after the licence is received by the licensee, by written notice given to the Director and the Board, require a hearing by the Board and the Board shall appoint a time for and hold a hearing. Review of terms of licence by Board

(2) The Board, pursuant to a hearing under subsection (1), may affirm the terms and conditions prescribed for the licence by a Director under subsection 4 (2), (4) or (5) or may cancel such terms and conditions or may prescribe such other terms and conditions for the licence in lieu of those prescribed by the Director as it considers proper. Decision of Board

(3) For the purposes of subsection (1), a licence shall be deemed to be received by a licensee on the tenth day after the day of mailing of the licence unless the person to whom the licence is issued establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the licence until a later date. 1978, c. 70, s. 7. Receipt of licence

8.—(1) The Board may extend the time for requiring a hearing under section 6 or 7, either before or after expiration of the time fixed in section 6 or 7, as the case may be, where it is satisfied that there are *prima facie* grounds for granting relief to the applicant or licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension, and may give such directions as it considers proper consequent upon the extension. Extension of time for requiring hearing

(2) Subject to section 9, where, within the time prescribed therefor or, if no time is prescribed, before expiration of a licence, a licensee has applied for renewal of a licence and paid the prescribed fee, the licence shall be deemed to continue, Continuation of licence pending renewal

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision. 1978, c. 70, s. 8.

Provisional suspension, etc.

9. Notwithstanding section 6, a Director may, by causing notice to be served on a licensee and without a hearing, provisionally suspend the licence of the licensee where in the opinion of the Director the operation of the children's residence or the provision of residential care is an immediate threat to the health, safety or welfare of the children cared for in the children's residence or the place or places where residential care is provided, as the case may be, and the Director so states in such notice giving reasons therefor, and, upon suspension, the provisions of section 6 apply as if the notice given under this section were a notice of a proposal under subsection 6 (1) to revoke the licence. 1978, c. 70, s. 9.

Parties

10.—(1) The Director referred to in section 6 or 9, as the case may be, the applicant or licensee who has applied for the hearing and such other persons as may be specified by the Board are parties to proceedings before a Board under this Act.

Members holding hearing not to have taken part in investigation, etc.

(2) A member of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate, directly or indirectly, in relation to the subject-matter of the hearing with any person or with any party or the parties' representative except upon notice to and giving opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Examination of documentary evidence

(3) An applicant or licensee who is a party to proceedings under section 6 or 7 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.

Recording of evidence

(4) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Divisional Court.

Findings of fact

R.S.O. 1980, c. 484

(5) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Only members at hearing to participate in decision

(6) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present

throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(7) Notwithstanding section 21 of the *Statutory Powers Procedure Act*, the Board shall reach a final decision or order and send notice thereof within ninety days from the date that the notice under section 6 or 7, as the case may be, requesting the hearing, has been received by the Board. 1978, c. 70, s. 10.

Final decision of Board
R.S.O. 1980, c. 484

11.—(1) Any party to the proceedings before the Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Appeal to court

(2) Where notice of an appeal is served under this section, the Board shall forthwith file with the Registrar of the Supreme Court the record of the proceedings before it in which the decision or order appealed from was made, which, together with the transcript of evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

Record to be filed in court

(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section.

Minister entitled to be heard

(4) The Divisional Court may affirm the decision of the Board appealed from or may rescind it and make such new decision as the court considers proper and, for such purpose, the court may exercise all the powers of the Board after a hearing before it and may substitute its opinion for that of the Board. 1978, c. 70, s. 11.

Powers of court on appeal

12. Where the licence to operate a children's residence or to provide residential care, as the case may be, is suspended or revoked, the parent or guardian of each child in the children's residence or in receipt of residential care shall arrange for the removal of the child as soon as is practicable having regard to the best interests of the child, and the Minister may assist in finding alternative residential care for the child. 1978, c. 70, s. 12.

Removal of children

13.—(1) The Minister may, at any time,

(a) during the course of proceedings under sections 6 to 11; or

(b) where a licence to operate a children's residence or to provide residential care, as the case may be, is suspended or revoked,

Warrant for entry and occupation

apply *ex parte* to the county or district court of the county or district in which the children's residence is situate, or where the residential care is provided, for a warrant directing the sheriff to put the Minister or persons authorized by the Minister in occupation of the children's residence or the place or places where the residential care is provided, pending the outcome of the proceedings, or when the revocation becomes final, as the case may be, until alternative accommodation may be found for the children who are being cared for and where the court is satisfied that it is necessary for the health, safety or welfare of the children being cared for, the court may issue a warrant and the sheriff shall forthwith execute the warrant and make a return to the court of the execution thereof.

Interim
manage-
ment

R.S.O. 1980,
c. 148

(2) Where a warrant has been issued under subsection (1), the Minister may, notwithstanding sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation by a person designated by the Minister of the children's residence or place or places where the residential care is provided for a period not exceeding six months, but all the rights of the owner under that Act, except those rights necessary to permit occupation and operation of the residence, including occupation and operation beyond the expiration of the term of any lease, are preserved.

Records

(3) Where a licence to operate a children's residence or to provide residential care, as the case may be, is revoked, the operator and owner of the residence shall, where requested by the Minister, hand over to the Minister, or a person designated by the Minister, all the records that are in the possession or control of the operator or owner, as the case may be, and that pertain to the children in the residence. 1978, c. 70, s. 13.

Program
adviser

14.—(1) The Minister may designate in writing any person to be a program adviser with such powers and duties for the purposes of this Act and the regulations and subject to such limitations, restrictions, conditions and requirements as the Minister may set out in the designation.

Remunera-
tion and
expenses

(2) The remuneration and expenses of any person appointed under subsection (1) who is not in the employ of the public service of Ontario shall be fixed by the Minister and shall be paid out of the moneys appropriated therefor by the Legislature.

Powers of
program
advisers

(3) A program adviser may, at all reasonable times and upon producing proper identification, enter any children's residence or premises where the residential care described

in clause 4 (1) (b) is provided that the program adviser on reasonable and probable grounds believes is being used as a children's residence or to provide residential services and inspect the facilities, the services provided and the books of account, and other records therein.

(4) Every person when requested so to do by a program adviser shall permit the entry and inspection by the program adviser of the premises referred to in subsection (1) and shall produce and permit inspection of the books of account and other records therein and supply extracts therefrom. ^{Access for inspections}

(5) No person shall hinder or obstruct a program adviser in the performance of the program adviser's duties or refuse to permit the program adviser to carry out such duties or refuse to furnish the program adviser with information or furnish the program adviser with false information. 1978, c. 70, s. 14. ^{Obstructing inspection}

15.—(1) A Director may apply to the Supreme Court by originating notice for an order enjoining any person, ^{Injunction proceedings}

(a) acting in contravention of subsection 4 (1); or

(b) operating a children's residence or providing residential care where the person's licence has been provisionally suspended under section 9,

and the court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

(2) Any person may apply to the Supreme Court for an order varying or discharging any order made under subsection (1). 1978, c. 70, s. 15. ^{Idem}

16. The Lieutenant Governor in Council may make regulations governing the management, operation and use of children's residences, and premises where residential care is provided under the authority of a licence and classes of either of them, and, without limiting the generality of the foregoing, may make regulations, ^{Regulations}

(a) defining "common parentage" for the purposes of clause 1 (c) and clause 4 (1) (b);

(b) prescribing additional powers and duties of a Director;

- (c) prescribing additional powers and duties of program advisers;
- (d) governing the issuance, renewal and expiration of licences referred to in section 4 and the fees payable by an applicant for a licence or renewal thereof;
- (e) governing the establishment of and the accommodation, facilities, equipment and services to be provided in,
 - (i) a children's residence, and
 - (ii) premises where residential care is provided under the authority of a licence,or any class thereof;
- (f) exempting designated,
 - (i) children's residences, or
 - (ii) premises where residential care is provided under the authority of a licence,or any class thereof from specified provisions of this Act or the regulations for such period or periods of time as the regulations prescribe;
- (g) prescribing the accounts and records to be kept and the returns and reports by licensees;
- (h) prescribing the qualifications of persons supervising children in,
 - (i) a children's residence, or
 - (ii) premises where residential care is provided under the authority of a licence,or any class thereof and prescribing the powers and duties of such persons;
- (i) governing the admission to and discharge of children from,
 - (i) children's residences, or
 - (ii) premises where residential care is provided under the authority of a licence,or any class thereof and procedures for such admission and discharge;

(j) requiring the operators of children's residences, or premises where residential care is provided under the authority of a licence to provide such information as is prescribed and prescribing the persons to whom such information is to be given;

(k) prescribing additional powers, duties and procedures of the Board;

(l) prescribing forms and providing for their use. 1978, c. 70, s. 16.

17.—(1) Unless otherwise provided for in this Act or the regulations, any notice required to be given, delivered, filed or served under this Act or the regulations is sufficiently given, delivered, filed or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last known address. Service

(2) Where service is made by mail, the service shall be deemed to be made on the tenth day after the day of mailing unless the person on whom service is being made establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 1978, c. 70, s. 17. Idem

18.—(1) Every person who, Offence

(a) contravenes any provision of subsection 4 (1);

(b) contravenes any term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or place where residential care is provided; or

(c) causes a child to be cared for in a children's residence or place where residential care is provided that is required to be licensed and that is not licensed under this Act and every parent or guardian or other person who is under a legal duty to provide for a child and who permits the child to be cared for in such a residence or place,

and every director, officer or employee of a corporation who knowingly concurs in such contravention or causing by the corporation is guilty of an offence and on conviction by the court is

liable to a fine of not more than \$1,000 for each day on which such offence continues or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Every person who,

- (a) knowingly furnishes false information in any application under this Act or in any statement, report or return required to be furnished under this Act or the regulations;
- (b) fails to comply with a warrant, order or direction made by any court of competent jurisdiction under this Act; or
- (c) contravenes any provision of section 14,

and every director, officer or employee of a corporation who knowingly concurs in such furnishing of false information, failure or contravention by the corporation is guilty of an offence and on conviction by the court is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both. 1978, c. 70, s. 18.