

British Columbia (Children and Family) v A.B., 2020 BCPC 278.

SUMMARY

Baby A was removed from her parents' care when she was three months old after medical evidence showed that she had sustained twelve fractures while in her parents' primary care. The Director argued that Baby A needed protection because she had been physically harmed by her parents and remained at risk of future harm. The parents opposed the application and sought Baby A's return, either immediately or under a supervision order. The Court also had to consider that Baby A is an Indigenous child, meaning both the *Child, Family and Community Service Act* (CFCSA) and *An Act respecting First Nations, Inuit and Metis children, youth and families* (Federal Act) applied. The Court accepted the evidence of the medical and social worker witnesses and found that Baby A had been harmed by her parents. The Court found that both parents had failed to provide timely and honest information to health professionals, which delayed proper medical treatment. The Court concluded that Baby A was in need of protection, that returning her to either parent under supervision would not adequately protect her, and that a temporary custody order would only delay the inevitable. The Court granted the Director's request for a continuing custody order, while adjourning entry of the order briefly so the Nation could submit a cultural plan.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Smith J
PARTIES	Applicant 1. Ministry of Children and Family Development [Director] Respondents 1. A.B. Father 2. S.B. Mother
TREATY TERRITORY	Omitted from publication.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Omitted from publication.
APPLICABLE INDIGENOUS LAW	None.

TOPICS	Application of the Act Interpretation of the Act Best interests of the child Continuing custody order
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Metis children, youth and families</i>, SC 2019, c 24. Sections 4; 8; 9; 10; 16 <i>Child, Family and Community Service Act</i>, RSBC 1996, c 46. Sections 2; 3; 4; 40; 41; 68
CASE LAW CONSIDERED	<i>R v Khelowan</i>, 2006 SCC 57. <i>Bradshaw v Stenner</i>, 2010 BCSC 1398. <i>British Columbia (Child, Family and Community Service) v S.H.</i>, 2020 BCPC 82. <i>Director v B. and B.</i>, 2011 BCPC 72.
CASE HISTORY	<i>First Nation A. v A.B.</i>, 2020 BCPC 279.

CASE BRIEF

DECISION

- The Director's application for a continuing custody order, pursuant to section 41(1)(d) of the *CFCSA*, is granted
 - The entry is adjourned for two weeks so the Nation can submit a cultural plan, and so counsel can provide brief written submissions stating their position regarding the plans being appended to, referred to, or incorporated by reference, in the order.
- A cultural plan was likely in Baby A's best interests, especially because the plan of care involved Baby A leaving the Nation's territory.

FACTS

- The child in this matter is Baby A. She was born in early 2018.
 - Both her parents A.B. and S.B., are members of a Nation which was omitted for publication.
 - Baby A is registrable with the Nation.
- When Baby A was about three months old, medical evidence showed that she had sustained twelve fractures while in her parents' primary care.
 - These included injuries to her arm, ribs, wrist, knees, and ankles.
 - Baby A was removed from her parents' care on May 8, 2018, and has been in foster care since.
- The Director seeks a continuing custody order (COO). The parents oppose the application and seek Baby A's return to their care.
- The Nation participated in the hearing, did not take a position on the application, but emphasized that Baby A's cultural connection and identity had to be considered.
- The Director called many witnesses, including medical professionals, social workers, and a community health nurse.
 - The Court accepted the evidence of the medical and social worker witnesses as credible and reliable.

- The medical evidence established that the fractures occurred at different times and were not consistent with the explanations offered by the parents, such as tight swaddling, co-sleeping, falling on a bus, or routine handling.
 - The medical experts testified that the injuries were highly concerning and were consistent with non-accidental injury.
- The Court found that some of the parents' evidence was truthful, but some of it was fabricated.
 - The Court found that A.B. and S.B. had colluded to mislead social workers and the Court.
- A key witness was K.J., Baby A's maternal grandfather who the Court found very credible and reliable.
 - His evidence differed from the parents' evidence in important ways. In particular, he testified that S.B. and Baby A had stayed with him for almost three weeks in April 2018, and that shortly after returning to the trailer with A.B., S.B. called him in distress about Baby A's arm.
- The Court found that the parents knew Baby A had been hurt and failed to promptly and honestly seek proper medical treatment, and that the parents gave false or incomplete histories to health professionals.
- The Director's plan was for Baby A to be placed with family, if possible. In particular, with the paternal grandmother, I.J., where Baby A's younger sister was also living.
- The Director also supported the parents moving closer to their children.
 - However, the Court had concerns about whether I.J. would prioritize Baby A's safety over loyalty to A.B.

ISSUES

1. Is Baby A in need of protection?
 - If she is not in need of protection, she must be returned to her parents as soon as possible as per s.40(2)(a) of CFCSA.
 - If she is in need of protection the following issues must be decided.
2. Which of the four orders available under subsection 41(1)(a) – (d) should be made, as being in her best interest?

3. Is the nature and extent of the harm that Baby A has suffered or the likelihood that she will suffer harm such that there is little prospect that it would be in her best interest to be returned to the parent?

ANALYSIS

The Parties' Positions

The Director

- The Director argues that Baby A is in need of protection because she had been or was likely to be physically harmed by her parents.
- This position supports a COO because other possible orders would not adequately protect Baby A.

S.B. (Mother)

- S.B. argues that the evidence does not show she caused the injuries or participated in causing them.
- S.B. seeks the return of Baby A to her care, under a supervision order.
- Alternatively, S.B. seeks a temporary custody order so she can engage in services and address any protection concerns.
- S.B. argues that Baby A being placed in a non-Indigenous foster home, away from her community, is contrary to the Federal Act.

A.B. (Father)

- A.B. argues that the evidence does not prove the injuries were intentionally or knowingly caused by the parents.
- A.B. seeks the return of Baby A to the care of her parents.
- Alternatively, A.B. seeks the return of Baby A to the care of her parents under supervision or that A.B. placed under a short temporary custody order.
- A.B. also argues that the concerns would lessen as Baby A got older and became more able to communicate.

The Nation

- The Nation takes no position on the Director's application because of the complexity of the evidence.
- The Nation asks the court to consider Baby A's cultural connection and identity. If a COO is granted, the Nation asks for a cultural plan to be prepared and attached to the order.

Application and Interpretation of The Federal Act

- Since Baby A is an Indigenous child, the Federal Act also applies.
 - The court accepted that the Federal Act applies even though it came into force after most of the hearing had finished.
 - The court found that the Federal Act and CFCSA could operate together.
- The Federal Act states that Baby A's best interests are the paramount consideration and requires primary consideration to be given to her physical, emotional, and psychological safety, security, and well-being, as well as her relationship with her family, Indigenous group, community, and culture.
- Section 4 of the Federal Act establishes that nothing in the Act effects the application of provincial legislation, to the extent that the provincial act does not conflict with or is not inconsistent with a provision of the Federal Act.
- The purpose of the Federal Act is set out in section 8.
- Section 9 requires that the Federal Act is interpreted in accordance with the principles of the best interests of the child, cultural continuity, and substantive equality.
- Section 10 of the Federal Act requires that Baby A's best interests be the paramount consideration here. S.10(2) requires the primary consideration be given to her "physical, emotional and psychological safety and well-being".
- The court also considered the Federal Act's placement priorities under section 16. Placement considerations should begin at a parent, then move down in priority to another adult family member, an adult from the same Indigenous group, an adult from another Indigenous group, or another adult, all within the child's best interests.
- *BC (Child, Family and Community Services) v SH*
 - The factors set out in section 10(3) of the Federal Act must be given primary consideration when determining the best interests of an Indigenous child.
 - Section 4 of the CFCSA and section 10 of the Federal Act are not inconsistent and thus paramountcy considerations do not arise.

Credibility and Reliability

Credibility

- *Bradshaw v Stenner*

- Credibility involves the assessment of the trustworthiness of a witness' testimony upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides.
- Credibility was important because the court had to decide whether to accept the parents' explanations for Baby A's injuries.

Reliability

- Whether witnesses can accurately observe, remember, and describe events.
 - Can consider whether a witness had notes, whether their evidence was consistent, and whether there was confirmatory evidence

Hearsay

- Section 68(2) of the CFCSA allows reliable hearsay and relevant oral or written statements or reports in the CFCSA proceedings.

Decision and Reasoning

- The evidence of the medical and social worker witnesses is credible and reliable.
 - Did not appear to have an interest in any particular outcome.
- Some of A.B. and S.B.'s testimony was accurate and some was fabricated.
 - Worked together to present false explanations and mislead the Director and the Court.
- K.J. is mainly credible and reliable.
 - K.J. testified to matters that were difficult and contrary to his daughter's desired outcome.
 - Where K.J.'s evidence conflicted with A.B., S.B., or hearsay evidence from I.J., the Court preferred K.J.'s evidence.

1. Is Baby A in need of protection?

The Law

- The Director applied to the Court under section 41(1)(d) of the CFCSA for a continuing custody order (COO).
- Before making any order under section 41(1), the Court first had to decide whether Baby A was in need of protection under section 40 of the CFCSA.
 - If she was not in need of protection, she had to be returned to her parents.
 - If she was in need protection, the court had to decide which order under section 41(1) was in her best interests.

- The Director relied mainly on section 13(1)(a), which says a child needs protection if the child has been, or is likely to be, physically harmed by the child's parent.
 - The need for protection is assessed at the time of the child's removal and at the time of trial.
- Risk of future harm is a basis for finding that Baby A is in need of protection.
 - This is in accordance with the principles of section 9 of the Federal act, her best interests determined by factors in section 10 of the Federal Act, and her best interests determined by factors in section 4 of the CFCSA.
- Where the possible harm is very serious, the Court can tolerate a lower level of risk.

Past Harm

- Baby A had suffered serious physical harm while in her parents' care.
 - The fractures happened in the privacy of the parents' home.
 - The parents were aware of each other's treatment of Baby A and were aware when she was hurt.
 - Both parents failed and neglected to seek timely medical treatment, failed to honestly disclose the history of the injuries to health professionals.
 - This delayed proper diagnosis and care.
 - **These facts and findings support a finding that Baby A was in need of protection under section 13(1)(f) and 13(1)(h).**
- The Court acknowledges the parents' poverty, S.B.'s foster care history, the history of children being removed from First Nations communities, and the difficulties of caring for a newborn. However, these factors do not change the protection finding.

Risk of Future Harm

- The parents argue that the risk was reduced because Baby A was older and better able to communicate.
 - The Court determined that there was no evidence that the risk had been sufficiently reduced.
- Baby A could not rely on either parent to report the other parent's mistreatment, protect her from harm, or seek immediate medical care if she was harmed.
- **Baby A remains at risk of future harm if returned to her parents and therefore is in need of protection.**

2. If protection is required, make one of the following orders in the child's best interest under section 41(1)(a)-(c) .

(a) Return Baby A to her parents' care, under supervision for up to six months - NO

- Returning Baby A to her parents' care would support family and cultural connection.
- A supervision order would not protect Baby A's physical, emotional, and psychological safety.
 - Proper supervision would have to be constant to protect Baby A from the risk of serious harm.
 - This was not practical and would not adequately protect her.

(b) Place Baby A with another person, with their consent and under supervision – NO

- There is not enough evidence to make an order placing Baby A with another person under supervision.
- Neither the parents nor the Nation argued strongly for this type of order.

(c) A Temporary Custody Order – NO

- Baby A had already been in temporary care for more than two years.
- The Court found that a further temporary order would only delay the inevitable
- The parents had not engaged in services in a way that would change the protection concerns, and the Court found further delay was not in Baby A's best interests

(d) Consider under section issue 3

3. Is the Nature And Extent Of The Harm The Child Has Suffered Or The Likelihood That The Child Will Suffer Harm Such That There Is Little Prospect It Would Be In Her Best Interests To Be Returned To The Parent?

- Baby A had suffered serious harm, and the harm was worsened because both parents concealed the harm, neglected, and delayed proper medical treatment.
- The parents put their own interests as a couple, ahead of Baby A's safety, well-being, and did not take steps that sufficiently reduced the risk of future harm.
- It would not be in the child's best interests to return to both parents, or to S.B. alone, because it would not keep her safe.
- The nature and extent of the harm the child suffered, and the likelihood of future harm, meant there was little prospect that returning her to the parents would be in her best interests.

Plan of Care and Cultural Plan

- The Director's updated plan was for Baby A to live with paternal grandmother I.J., where Baby A's younger sister was also living.

- The Director supported the parents' plan to move closer to the children and intended to seek family placement if I.J. could not care for Baby A permanently.
- The plan of care is generally consistent with the Federal Act's principles of cultural continuity and placement priorities, as well as the CFCSA's guiding principles and best-interests factors.
- There are concerns about whether Baby A's safety, security, and well-being would remain at risk if placed with I.J., because I.J. has a close relationship with A.B. and may have placed A.B.'s interests above Baby A's.

RELEVANT EXCERPTS

[8] Because Baby A is an Indigenous child, new federal legislation, *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families*, (“the Federal Act,) also applies to this application for a CCO. The Federal Act came into force in January, 2020, after most of this hearing had concluded, but its application to the case is agreed to by all the parties.

[9] Section 4 of the Federal Act establishes that nothing in it effects the application of provincial legislation such as the *CFCSA*, to the extent that the provincial act does not conflict with, or is not inconsistent with, a provision of the Federal Act. Where such a conflict or inconsistency exists, the Federal Act is paramount.

[10] The purposes of the Federal Act, set out in section 8, include affirming the inherent right of self-government, including jurisdiction in child and family services matters; establishing, on a national level, principles applicable to the provision of child and family services in relation to Indigenous children, and contributing to the implementation of the UN Declaration on the Rights of Indigenous Peoples.

[11] Section 9 requires that the Act be interpreted and administered in accordance with the principles of (i) the best interests of the child; (ii) cultural continuity, as reflected in five listed concepts, (see: ss. 9(2)(a) – (e).), and (iii) substantive equality, as reflected in five listed concepts, (see: ss. 9(3)(a) – (e)).

[12] I will turn to section 10 shortly.

[13] Section 11 provides that the manner in which child and family services are to be provided in relation to an Indigenous child are to (a) take into account the child’s needs, including the child’s physical, emotional and psychological safety, security and well-being; (b) take into account the child’s culture; (c.) allow the child to know his or her family of origin and (d) promote substantive equality between the child and other children.

[14] Section 16 provides for the preferred placement of children in the context of providing child and family services: (a) with a parent; (b) with another adult family member; (c) with an adult of the same Indigenous group, community or people; (d.) an adult who belongs to a different Indigenous group, community or people than the child’s, or (e.) with any other adult, all considered in the context of the best interest of the child. Section 16 also provides for placement with or near other children of the child’s family, taking account of customs and traditions; family unity.

[15] I agree with Director's counsel that these sections of the Federal Act, just discussed, are consistent with the guiding principles and service delivery principles set out in sections 2 and 3 of the *CFCSA*.

[16] Returning to section 10 of the Federal Act, it addresses the "best interests" factor.

[17] Subsection 10(1) requires that Baby A's best interests be the paramount consideration here, given that this decision is related to child apprehension.

[18] Section 10(2) requires primary consideration be given to her "physical, emotional and psychological safety, security and well-being" in considering the subsection (3) factors, as well as to the importance of her ongoing relationship with her family, Indigenous group, community and preserving her cultural connections.

[19] Subsection 10(3) sets out a non-exhaustive list of factors that must be considered in determining an Indigenous child's best interests on an application such as this:

- (a) The child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (b) The child's needs, given the child's age and stage of development, such as the child's need for stability;
- (c) The nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;
- (d) The importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;
- (e) The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) Any plans for the child's care, including care in accordance with customs or traditions of the Indigenous group, community or people to which the child belongs;
- (g) Any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and
- (h) Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[20] The first five factors largely coincide with factors found in section 4 of the *CFCSA*; the last three, however, ((f) – (h), above), are additional factors that must be considered.

[21] In **BC (Child, Family and Community Services) v. SH**, [2020 BCPC 82](#), Judge Whyte concluded that the factors set out in subsection 10(3) of the Federal Act must be given "primary consideration....

when determining the best interests of an Indigenous child,” (at para. 124). He also concluded that section 4 of the *CFCSA* and section 10 of the Federal Act are not inconsistent and thus paramountcy considerations do not arise. I respectfully agree with both conclusions.

[237] I have regard to SB’s experience in foster care and her fear at having Baby A taken from her and AB; I have regard to the history of children’s removal from First Nations communities and families; I have regard to the terrible challenges facing families in poverty and the taxing job it is to care for a newborn even in the best of circumstances.

[239] Baby A has been harmed by her parents, (see: s. 13(1)(a)); she has suffered abuse and neglect at their hands, (see: section 2(a)).

[240] Baby A was also deprived of necessary health care, as a result of both AB and SB’s failure to disclose the presence and history of her injuries and seek timely and appropriate medical treatment for her injuries, of which they were both aware. This is a further basis upon which to find a need for protection exists under subsection 13(f).

[241] Given this, and given both AB and SB’s individual decision to not provide adequate care for Baby A by protecting her from the other, including their individual decisions to collude when presenting her history to the various health professionals they dealt with before Baby A’s removal, I am satisfied that both parents are unable or unwilling to care for her and did not make adequate provision for her care. This is a further basis upon which to find that she needs protection; see: section 13(1)(h).

[253] I am satisfied that the Plan of Care is consistent with the principle of cultural continuity as set out in section 9 of the Federal Act as well as section 16 and with the guiding principles in the *CFCSA*, as well as the best interest factors in section 4 of the provincial act.

[254] However, I have concern that the plan does not make paramount Baby A’s physical, emotional and psychological safety, security and well-being, and that these remain at risk, (see: s. 10(2) of the *Federal Act*). I have found that she has been directly impacted by family violence and, while I have limited my findings to physical harm, I have no doubt that further physical harm will harm her psychologically and emotionally.

[257] While a return to her parents would address best interest factors such as familial and cultural connection, given my findings above, I am not at all satisfied that a supervision order would protect the child’s physical, emotional and psychological safety, (s. 10(2) of the Federal Act) or adequately ensure her protection as required by subsection 2(a) of the *CFSA*.

[258] I agree with the Director that such an order would require that the supervision be constant, in order to provide the necessary vigilance warranted by the nature of the risk of harm. It is neither a sufficient means of protecting Baby A's best interests nor a practical one.

[259] While the parents have said that they would work with the Director going forward, they have a protracted history of putting their individual and collective interests above their baby's. As well, there is the gravity of the harm and its repetition to consider. Their supervision might result in the detection of future harm, but I have no confidence that it would necessarily prevent it.

[265] In my respectful view, a temporary custody order would simply delay the inevitable. Further delay is not in Baby A's best interests.

[268] I have described the nature of the harm in detail, above: twelve broken bones, all resulting in pain; one resulting in deformity, (albeit now largely resolved); caused at different times over the first three months of the infant's life; some, requiring an unthinkable amount of force being applied to this newborn baby.

[269] The harm was exacerbated by both AB and SB's individual and collective decisions to conceal the harm, thereby delaying her receiving timely and appropriate medical treatment. They put their own individual interests ahead of Baby A's and they put their interest, as a couple, ahead of Baby A's.

[270] There have been no steps taken by either that would ameliorate what I find to be the very real risk that she will suffer harm if returned to both of them or to SB alone. It would not be in her best interest to do so, as it would not keep her safe.

[271] The nature and extent of the harm that Baby A has suffered is such that there is little prospect that it would be in her best interests to be returned to AB and SB, or to SB alone. Further, the likelihood that she will suffer such harm is such that there is little prospect that it would be in her best interests for such a return to occur.

[272] For the reasons above, the Director's application is granted: a continuing custody order pursuant to section 41(1)(d) of the *CFCSA* will be entered in this matter in two weeks' time, on July 14, 2018.

[273] The entering of the order is adjourned to permit the [omitted for publication] Nation to submit a Cultural Plan and for counsel to provide brief written submissions stating their position with regard to such a plan's being appended to or referred to, or incorporated by reference, in the order.

LEGISLATION CITED

An Act respecting First Nations, Inuit and Metis children, youth and families, SC 2019, c 24.

Section 4

Minimum standards

4 For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or is not inconsistent with, the provisions of this Act.

Section 8

Purpose

8 The purpose of this Act is to

- (a) affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services;
- (b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and
- (c) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Section 9

Principle – best interests of child

9 (1) This Act is to be interpreted and administered in accordance with the principle of the best interests of the child.

Principle – cultural continuity

(2) This Act is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:

(a) cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people;

(b) the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;

(c) a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;

(d) child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and

(e) the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

Principle — substantive equality

(3) This Act is to be interpreted and administered in accordance with the principle of substantive equality as reflected in the following concepts:

(a) the rights and distinct needs of a child with a disability are to be considered in order to promote the child's participation, to the same extent as other children, in the activities of his or her family or the Indigenous group, community or people to which he or she belongs;

(b) a child must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she

must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(c) a child's family member must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(d) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which a child belongs must be able to exercise without discrimination the rights of the Indigenous group, community or people under this Act, including the right to have the views and preferences of the Indigenous group, community or people considered in decisions that affect that Indigenous group, community or people; and

(e) in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

Section 10

Best interests of Indigenous child

10 (1) The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration.

Primary consideration

(2) When the factors referred to in subsection (3) are being considered, primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.

Factors to be considered

(3) To determine the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including

- (a) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (b) the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (c) the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;
- (d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs;
- (g) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and
- (h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Consistency

(4) Subsections (1) to (3) are to be construed in relation to an Indigenous child, to the extent that it is possible to do so, in a manner that is consistent with a provision of a law of the Indigenous group, community or people to which the child belongs.

Section 16

Priority

16 (1) The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:

- (a) with one of the child's parents;
- (b) with another adult member of the child's family;
- (c) with an adult who belongs to the same Indigenous group, community or people as the child;
- (d) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or
- (e) with any other adult.

Placement with or near other children

(2) When the order of priority set out in subsection (1) is being applied, the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of the child's family, must be considered in the determination of whether a placement would be consistent with the best interests of the child.

Custom and traditions

(2.1) The placement of a child under subsection (1) must take into account the customs and traditions of Indigenous

Family unity

(3) In the context of providing child and family services in relation to an Indigenous child, there must be a reassessment, conducted on a ongoing basis, of whether it would be appropriate to place the child with

- (a) a person referred to in paragraph (1)(a), if the child does not reside with such a person; or
- (b) a person referred to in paragraph (1)(b), if the child does not reside with such a person and unless the child resides with a person referred to in paragraph (1)(a).

Child, Family and Community Service Act, RSBC 1996, c 46.

Section 2

Guiding principles

2 This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;
- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
 - (b.1) Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children;
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- (d) the child's views should be taken into account when decisions relating to a child are made;
- (e) kinship ties and a child's attachment to the extended family should be preserved if possible;
- (f) Indigenous children are entitled to
 - (i) learn about and practise their Indigenous traditions, customs and languages, and
 - (ii) belong to their Indigenous communities;

(g) decisions relating to children should be made and implemented in a timely manner.

Section 3

Service delivery principles

3 The following principles apply to the provision of services under this Act:

(a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;

(b) in the planning and delivery of services to Indigenous children and families, there should be consultation and cooperation with Indigenous peoples and Indigenous governing bodies;

(b.1) services should be planned and provided in ways that prevent discrimination prohibited by the [Human Rights Code](#) and that promote substantive equality, respect for rights and culture and, in the case of Indigenous children, cultural continuity;

(c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;

(c.1) the impact of residential schools on Indigenous children, families and communities should be considered in the planning and delivery of services to Indigenous children and families;

(d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and Community Living British Columbia established under the [Community Living Authority Act](#);

(d.1) services to Indigenous children and families should be provided in a coordinated manner with Indigenous child and family services provided by Indigenous authorities;

(e) the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children;

(f) services for specified adults should be planned and provided

(i) using an approach that is strengths-based, trauma-informed and led by the specified adult and, in the case of an Indigenous specified adult, supports cultural continuity and a connection to the land, and

(ii) in a way that recognizes the importance of housing, mental health and lived experience and makes all reasonable efforts to connect specified adults to services.

Section 4

Best interests of child

4 (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:

(a) the child's safety;

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

(c) the importance of continuity in the child's care;

(d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;

(e) the child's cultural, racial, linguistic and religious heritage;

(f) the child's views;

(g) the effect on the child if there is delay in making a decision.

(2) If the child is an Indigenous child, in addition to the relevant factors that must be considered under subsection (1), the following factors must be considered in determining the child's best interests:

(a) the importance of the child being able to learn about and practise the child's Indigenous traditions, customs and language;

(b) the importance of the child belonging to the child's Indigenous community.

Section 13

When protection is needed

13 (1) A child needs protection in the following circumstances:

- (a) if the child has been, or is likely to be, physically harmed by the child's parent;
- (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
- (e) if the child is emotionally harmed by
 - (i) the parent's conduct, or
 - (ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;
- (f) if the child is deprived of necessary health care;
- (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care;

(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

Section 40

Protection hearing

40 (1) At the protection hearing the court must determine whether the child needs protection.

(2) If the court finds that the child does not need protection, it must

(a) if the child was removed, order the director to return the child as soon as possible to the parent apparently entitled to custody unless the child has already been returned, and

(b) terminate any interim order made under sections 33.2 (2), 35 (2) and 36 (3).

(3) If the court finds that the child needs protection, it

(a) must consider the plan of care presented by the director, and

(b) may hear any more evidence the court considers necessary to help it determine which order should be made under section 41.

Section 41

Orders made at protection hearing

41(1) Subject to subsection (2.1), if the court finds that the child needs protection, it must make one of the following orders in the child's best interests:

(a) that the child be returned to or remain in the custody of the parent apparently entitled to custody and be under the director's supervision for a specified period of up to 6 months;

(b) that the child be placed in the custody of a person other than a parent with the consent of the other person and under the director's supervision, for a specified period in accordance with section 43;

(c) that the child remain or be placed in the custody of the director for a specified period in accordance with section 43;

(d) that the child be placed in the continuing custody of the director.

Section 68

Evidence of others

68 (1) Before ordering that a child be placed in or returned to the custody of a person other than a director, the court may consider the person's past conduct toward any child who is or was in that person's care.

(2) In a proceeding under this Act, the court may admit as evidence

(a) any hearsay evidence that the court considers reliable, or

(b) any oral or written statement or report the court considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding.