

British Columbia (Child, Family and Community Service) v T.J.T., 2022 BCPC 193.

SUMMARY

The three children in this matter are M.V.F, M.G.F and G.C.F, referred to as “the children”. The biological mother and father of the children are T.J.T (mother) and M.G.I.F (father). The Director is applying for a six-month extension of a temporary custody order keeping the children placed with their current caregivers, C.M.W. and J.W. This hearing takes place under section 44 of the [Child, Family and Community Service Act, RSBC 1996, c 46](#) (CFCSA). The Court determined that they can only make one of two decisions during section 44 hearings: to extend the temporary custody order or not. The issue is that T.J.T. wanted the Court to consider placing the children with alternate caregivers she was proposing. Since that was outside the scope of the Court’s power during a section 44 hearing, the Court could not consider the alternate caregivers. The Court did confirm that they could make an order T.J.T. is seeking if she applied under section 57 of the CFCSA.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Dunn J
PARTIES	Applicant 1. Director of Child, Family and Community Service [the Director] Respondents 1. T.J.T. Mother 2. M.G.I.F. Father 3. C.M.W. and J.W Current Caregivers
TREATY TERRITORY	None
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Unknown
APPLICABLE INDIGENOUS LAW	None
TOPICS	Alternative placement Temporary care and custody
LEGISLATION CITED	Child, Family and Community Service Act, RSBC 1996, c 46. Sections 1(1); 44(3)(b); 45; 57; 60 Provincial Court (Child, Family and Community Service Act), BC Reg 533/95.

	Rule 1(2)
CASE LAW CONSIDERED	<u><i>British Columbia (Director of Child, Family and Community Service) v D.O.S., 2022 BCSC 168.</i></u>
CASE HISTORY	None

CASE BRIEF

DECISION

- During a section 44 hearing, the hearing judge has two options, extend the order or not extend the order.
- A section 44 hearing does not allow for a third option of making a new order under s. 41(1)(b).
- The remedy T.J.T. seeks is not available under section 44(3)(b). However, it is available under section 57.

FACTS

- This case involves three children; M.V.F., M.G.F., and G.C.F.
- T.J.T. is the children's mother, and M.G.I.F. is their father.
- March 4, 2021, the children were removed from T.J.T. and M.G.I.F.'s care due to serious allegations including manslaughter of a child in their care. T.J.T. and M.G.I.F.
- April 13, 2021, the children were placed in the interim care of the Director.
- June 1, 2021, with the consent of T.J.T. and M.G.I.F., the children were placed in the temporary care and custody of C.M.W. and J.W. (the current caregivers) for three months, under the Director's supervision. (Section 41(1)(b) of the CFCSA).
- October 26, 2021, the temporary care and custody order was extended for three months.
- January 25, 2022, the Directed filed for another three-month extension.
- May 26, 2022, the Director amended their filing to seek a six-month extension under section 44(3)(b) of the CFCSA.
 - This application remains outstanding.
- Although the parents initially consented to the children being placed with the current caregivers, T.J.T. opposes the Directors current application to extend temporary care and custody another six-months.
 - T.J.T. is not seeking that the children are returned to her care. T.J.T. is proposing alternative caregivers.
 - The Director's current application is supported by M.G.I.F.
- The Director is arguing that the Court cannot consider the alternate caregivers proposed by T.J.T. under section 44 of the CFCSA. The Director suggests that the Court may consider the alternate caregivers if T.J.T. under section 57 of the CFCSA (apply to cancel the order placing

the children with the current caregiver in favour of an order placing the children with her proposed caregivers).

ISSUE

1. Whether this Court has jurisdiction to consider an alternative caregiver at a hearing under section 44(3)(b) of the *CFCSA*?

ANALYSIS

- The Court **was not** deciding whether the children should stay with the current caregivers or move to the mother's proposed caregivers.
- The Court **was** deciding whether the Court has the legal power to consider alternate caregivers at a section 44(3)(b) hearing.
 - A Court can only make orders that the legislation allows it to make.
- Section 44(3)(b) of the *CFCSA* states that if the Court is satisfied that:
 - the circumstances that caused the child to need protection are likely to improve within a reasonable time; and
 - It is in the child's best interests,then the Court can extend the term of the temporary custody order, but not beyond the period permitted under section 45.
 - This gives the court only two options:
 1. Extend the existing temporary custody order, or
 2. Do not extend the existing temporary custody order.
- *British Columbia (Director of Child, Family and Community Service) v D.O.S.*
 - Provincial court is a statutory court, meaning it can only use the powers given to it by legislation.
- Section 44 **does not** give the court a third option to make a new order.
- Since T.J.T. wanted a new order that the children be placed with alternative caregivers, the Court did not have the option to order this during a section 44 hearing.
- Under section 57, if circumstances have changed significantly since the order was made, the Court can cancel the old order and make a different order.
 - This is the section under which the Court could consider T.J.T.'s alternative caregivers.
 - T.J.T. argued that section 57 was not available yet because a full protection hearing had not happened, but the Court rejected that idea.

- Once an order under section 41 has been made, the parties can file an application under section 57.
 - It would be unfair to the other parties if alternate caregivers were raised at a section 44(3)(b) hearing.
 - A section 57 application gives the other parties proper notice of the order being requested and that allows everyone to prepare to take a position, whereas section 44 does not.

RELEVANT EXCERPTS

[17] As this was not the substantive hearing of the Director's application for an extension of the existing temporary custody order, I was not asked to rule on the merits of same nor the application of the *Act respecting First Nations, Inuit, and Métis children, youth and families*, SC 2019, c 24. If the Director's application proceeds to hearing, these issues will be before the hearing judge.

Commented [MM1]: None provided in case brief nor excel sheet

LEGISLATION CITED

[*Child, Family and Community Service Act*, RSBC 1996, c 46.](#)

Section 1(1)

Definitions and interpretation

1 (1) In this Act:

"temporary custody order" means an order made under section 41 (1) (b) or (c), 42.2 (4) (b) or (c), 49 (7) (b) or (c) or 54.01 (9) (b) or (c) placing a child for a specified period in the custody of a director or another person, and includes any extension of or change to that order;

Section 44(3)(b)

Extension of supervision orders and temporary orders

(3) If satisfied that the circumstances that caused the child to need protection are likely to improve within a reasonable time, the court may, in the child's best interests,

(b) extend the term of the temporary custody order, but not beyond the period permitted under section 45.

Section 45

Total period of temporary custody

45 (1) The total period during which a child is in the temporary custody of a director or a person other than the child's parent must not exceed, from the date of the initial order until the child is returned to the parent, an order transferring custody of the child under section 54.01 (5) is made or a continuing custody order is made,

(a) 12 months, if the child or the youngest child who was the subject of the initial order was under 5 years of age on the date of that order,

(b) 18 months, if the child or the youngest child who was the subject of the initial order was 5 years of age or over but under 12 years of age on the date of that order, and

(c) 24 months, if the child or the youngest child who was the subject of the initial order was 12 years of age or over on the date of that order.

(1.1) On application the court may extend, by a specified period, a time limit in subsection (1) if the court considers it in the child's best interests to do so.

(2) In this section, "**initial order**" means a temporary custody order made under section 41 (1) (b) or (c) or 42.2 (4) (b) or (c).

Section 57

Changes to supervision, temporary custody and access orders

57 (1) If circumstances have changed significantly since the order was made, any party may apply to the court for a change to

- (a) a supervision order other than one that is an interim order,
- (b) a temporary custody order, or
- (c) an access order, except an order made under section 57.01 (3).

(2) At least 10 days before the date set for hearing the application, notice of the hearing must be served on

- (a) the child, if 12 years of age or over,
- (b) the director,
- (c) the Public Guardian and Trustee, if the order is a temporary custody order and the Public Guardian and Trustee has been appointed as the child's property guardian under section 58, and
- (d) in addition,
 - (i) if the application is for an access order and is made before the protection hearing, the persons mentioned in section 34 (3) (b), (d), (e) and (f),
 - (ii) if the application is for any order referred to in subsection (1) of this section and is made after the protection hearing, the persons who under section 39, 49 (3) or 54.01 (4) are entitled to notice, and

(iii) if the application is for a change to a temporary custody order, the persons listed in section 38 (1) (b) to (d) who are not already entitled to notice under subparagraph (ii) of this paragraph.

(2.1) If a person referred to in subsection (2) (b) or (d) (i) or (iii) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(3) If the court finds that circumstances have changed significantly since the order was made, the court, in the child's best interests, may cancel the order and make no other order or may cancel the order and do one of the following:

(a) if the order was made under section 42.2, 44, 46 or 54.01 (9) (b) or (c) or (10), make an order under section 41;

(b) in any other case, make any order provided for at the hearing where the order was made.

(4) If the court finds that circumstances have not changed significantly since the order was made, the court may confirm the order.

(5) This section does not apply if the change of circumstances relates to an application to transfer custody under section 54.01 (1) or 54.1, whether or not custody is transferred under section 54.01 (5) or 54.1, as applicable.

Section 60

Consent Orders

60 (1) With the written consent of the following, the court may, at any time after a presentation hearing, make any custody or supervision order that is provided for in this Part, other than a transfer of custody under section 54.1, but including an order transferring custody of a child under section 54.01 (5) and a continuing custody order:

(a) the director;

(b) the child, if 12 years of age or over;

(c) each parent of the child;

(d) if the child is to be placed for a specified period in the custody of a person other than a director, that person;

(d.1) any person who has been made a party under section 39 (4);

(e) if the child is an Indigenous child, the person who is or would have been entitled under section 38 (1) (c), (c.1), (c.2) or (d) to notice of any protection hearing concerning the child.

(1.1) Despite subsection (1), if a child is in the care of a person other than the child's parent under an agreement made under section 8, the court may, with the written consent of the persons referred to in subsection (1) of this section, make an order under section 54.01 (5) transferring custody of the child to the person other than the child's parent.

(2) Despite any other provision of this Act, the court may make an order under this section without a hearing, the completion of a hearing or the giving of evidence, but it must be satisfied that each person whose consent is required, other than those mentioned in subsection (1) (a) and (e)

(a) has been advised to consult with independent legal counsel before signing the consent,

(b) understands the nature and consequences of the consent, and

(c) has given voluntary consent to the order sought.

(3) The court may dispense with any consent required under subsections (1) and (6), if the court considers it in the child's best interests to do so.

(4) An order may be made under this section without the court finding that the child needs protection.

(5) A consent by a parent to an order under this section is not an admission by the parent of any grounds alleged by a director for removing the child.

(6) In addition to its powers under subsection (1) and subject to subsection (7), the court may, with the written consent of the parties, make any other order mentioned in this Act, including a transfer of custody under section 54.1.

(7) An order under subsection (6) to transfer custody under section 54.1 must not be made unless

(a) the continuing custody order was made by consent,

(b) the time limit under section 81 (2) in relation to the continuing custody order has expired and no extension under section 81 (8) has been granted, or

(c) all appeals related to the continuing custody order have been heard and the continuing custody order has been upheld.

[Provincial Court \(Child, Family and Community Service Act\), BC Reg 533/95.](#)

Rule 1(2)

Making Applications Other Than Applications Under Rule 1.1

Applications for other orders

(2) To apply for an order, other than an order made at a presentation hearing, a person must complete and file with the court an Application for an Order (Form 2) or an Application to Change Method of Attendance (Form 10.5), as applicable, unless a judge permits otherwise.