

J.W. v British Columbia (Director of Child, Family and Community Service), 2023 BCSC 512.

SUMMARY

J.W. and N.W. (the W's), cared for the children for multiple years under multiple care agreements as their foster parents. After multiple concerns arise, specifically in relation to the W's efforts to assimilate the children into Catholicism, they are removed and placed with extended family within their Nation. The W's seek an order for parenting time, amongst other things. The Court agrees with the position of the Society and Nation and dismisses the petitions.

JURISDICTION	British Columbia
COURT	Supreme Court of British Columbia
JUDGE	Walkem J
PARTIES	Petitioners 1. J.W. Former Foster Parent 2. N.W. Former Foster Parent Respondent 1. British Columbia (Director of Child, Family and Community Services) [the Director]
TREATY TERRITORY	None.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Aitchelitz First Nation Cheam First Nation Katzie First Nation Kwantlen First Nation Kwaw-kwaw-Apilt First Nation Kwikwetlem First Nation Leq' a: mel First Nation Lummi Tribe of the Lummi Reservation Matsqui First Nation Nooksack Indian Tribe Popkum First Nation Seabird Island Band Semiahmoo First Nation Shxwhá:y Village Skowkale First Nation Skwah First Nation Soowahlie Indian Band Sq'éwlets (Scowlitz First Nation) Sumas First Nation Tzeachten First Nation

	Yakwekwioose First Nation
APPLICABLE INDIGENOUS LAW	None.
TOPICS	Access Best Interest Cultural Continuity Foster Parents Priority Placement
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24. Preamble; Sections 7; 9; 10; 11; 12; 13; 14; 15; 16; 17 <i>Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.</i> Section 35(1) <i>Child, Family and Community Service Act</i>, RSBC 1996, c 46. Sections 2(b.1); 4; 4.1; 13; 50(1); 54.01; 54.1; 56; 92(1) <i>Family Law Act</i>, SBC 2011, c 25. Sections 37; 59; 203(1); 211
CASE LAW CONSIDERED	<i>Anderson v Alberta</i>, 2022 SCC 6. <i>R v Ipeelee</i>, 2012 SCC 13. <i>Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v Public Safety Canada</i>, 2022 CHRT 4. <i>Servatius v Alberni School District No. 70</i>, 2020 BCSC 15, aff'd 2022 BCCA 421. <i>JP v British Columbia (Children and Family Development)</i>, 2017 BCCA 308. <i>Kalafchi v Yao</i>, 2015 BCSC 1152 aff'd 2015 BCCA 524. <i>British Columbia (Superintendent of Family & Child Serve) v DS</i>, 1985 CanLII 452 (BCCA). <i>JDS v WS</i>, 1984 CanLII 297 (BCCA). <i>KB v MSB</i>, 2021 BCSC 1283. <i>TL v British Columbia (Attorney General)</i>, 2021 BCSC 2203.

	<u><i>JMS v British Columbia (Director of Child, Family and Community Services)</i>, 2021 BCSC 2104.</u> <u><i>SMC v CB</i>, 2020 BCSC 994.</u> <u><i>Nijar v Gill</i>, 2017 BCSC 1362.</u> <u><i>LJG v NB</i>, 2017 BCSC 350.</u> <u><i>Fawcet v Read</i>, 2016 BCSC 310.</u> <u><i>Smith v Smith</i>, 2014 BCSC 61.</u> <u><i>CK v British Columbia (Ministry of Children and Family Development)</i>, 2003 BCSC 785.</u> <u><i>Chapman v Chapman</i>, 1993 CanLII 2598 (BCSC).</u> <u><i>D (CJ) v Superintendent of Family and Child Service</i>, 1989 CanLII 2946 (BCSC).</u> <u><i>BPG v British Columbia (Superintendent of Family and Child Service)</i>, 1981 CanLII 783 (BCSC).</u> <u><i>First Nation A v AB</i>, 2020 BCPC 279.</u> <u><i>British Columbia (Child, Family and Community Service) v SH</i>, 2020 BCPC 82.</u> <u><i>Brown v Canada (Attorney General)</i>, 2017 ONSC 251.</u>
CASE HISTORY	None.

CASE BRIEF

DECISION

- Petitions are dismissed
- Decline access order - not in the best interests of the children, largely for potential to disrupt their relationships built within their Indigenous community.
- Test for appointment of a lawyer for X is not met.
- Not in best interest to order s. 211 report.

FACTS

- The children in this matter are X, Y and Z (collectively, 'the children').
- All children have Indigenous heritage from both parents.
- All children are under guardianship of the Director.
- The W's are petitioning the court for
 - A contact order
 - A "section 211" order under the (FLA) requiring assessment of children's needs
 - Appointment of a lawyer for X
- Agency B removes the children from biological parents and places them in the care of the W family.
- The W's are a non-Indigenous foster family.
- Agency B reported that the children's Indigenous heritage was incorporated in their everyday lives and the W's were fostering connections with the children's extended family members.
- The W's move and Agency A takes over the family's file.
- Agency A is delegated to provide services to Indigenous children and families.
- In review of the file, Agency A finds reports of the W's physically punishing the children and sexually abusing them. Furthermore, the children were found to be isolated from broader cultural experiences and social connections.
- There is no evidence that this information was provided to anyone (ex. The First Nation), by Agency B.

- Agency A also finds evidence of Mr. W ‘preaching’ that Indigenous Peoples need to be ‘ministered to’, do not know their own spiritual traditions, and that he is ‘forced’ to instil Indigenous practices in his foster children by the Agency.
- The Nation expresses concern regarding the children being raised under these beliefs.
- In March 2022, children are removed from W’s care by Agency A and placed with extended family in their Indigenous cultural community.
- Agency A is seeking a sealing order, as members of W’s church begin to contact them with questions regarding confidential information of the family.
- Agency A opposes the orders sought by the W’s, and the First Nation agrees with their position.
- After removal by Agency A, the W’s show up at children’s home, at their territory, at school, events, etc. – leads to BCR and RCMP involvement.
- BCR = Band Council Resolution – BCR here states the W’s are not welcome in the community.

ISSUE

1. Whether the orders sought by the W’s are in the best interests of the Indigenous Children.

ANALYSIS

First Order Sought: Access Order

- All orders for contact made under section 59 of the FLA must be made according to the best interests of the child.
- Application for contact by non-parent can only be granted if it is in best interest.
- *KB v MSB*, 2021 BCSC 1283.
 - Principles to be applied when granting a contact order under section 59 of the FLA
 - The onus is on the applicant to demonstrate that the proposed access is in the child’s best interests.
 - The custodial parent has a significant role. Courts should be reluctant to interfere with custodial parent’s decision – should only do so in child’s best interests.
 - It is not in the best interest of the child to be placed in conflict between the custodial parent and a non-parent – in extreme conflict an access order may not be in the best interests.
 - Custodial parent’s views inform, but do not trump, the child’s best interests.

- If custodial parent denies access that is in the best interest, best interest of the child will be the only consideration.
 - Time since last contact is not necessarily relevant, in the case of a biological parent who is a non-parent.
- Section 9(3)(b) of the Federal Act
 - Children have the right to be cared for according to Indigenous laws of their people.
 - While this attachment is part of the best interest of the child analysis, the Federal Act and the substantial amendments to the CFCSA regarding Indigenous children require the best interest of the child analysis to be more nuanced.
- *JMS v British Columbia (Director of Child, Family and Community Services)*, 2021 BCSC 2104.
 - Not properly acknowledging the temporary nature of foster parents' role could be against the child's best interest.
- *Brown v Canada (Attorney General)*, 2017 ONSC 251 & Federal Act
 - Cultural bonds and connections grown increasingly important as children progress into adulthood.
- *JP v British Columbia (Children and Family Development)*, 2017 BCCA 308.
 - Where there is conflict or overlap with other legislation, the CFCSA is paramount.
- Granting an access order would disrupt the Children's other relationships and stability.
- W's post removal conduct (attending homes and reserve uninvited, etc.) indicates access would exacerbate conflict.
- W's have damaged relationship with Agency A, the Nation and the Children's great aunt and uncle, weighing against access.

Second Order Sought: Appointment of Lawyer for X

- FLA section 203(1) – appointment for a lawyer reserved for severe conflict that impairs ability of the parties to act in the child's best interest.
 - This onus is not met.
- If the court were to make an appointment for a lawyer, they would find it useful to have guidance from the Indigenous Nation itself as to how the voice of the child is heard according to their laws and traditions.
- Further that any lawyer appointed should be well-versed in the purposes of the Federal Act.

Third Order Sought: S 211 Report

- SMC v CB, 2020 BCSC 994
 - Ordering report is exercise of discretion and should not be ordered when it contradicts best interests.
- Children are settling in with family and community well – ordering report would disrupt this.

RELEVANT EXCERPTS

[52] On November 24, 2022, several amendments were made to the CFCSA. These amendments include provisions intended to align with the Federal Act and to support Indigenous children in remaining connected to their families, communities and culture. Amendments included the addition of s. 2(b.1) to the guiding principles: “Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children.”

[72] Section 16(3) requires an ongoing reassessment, over the course of a child’s time in care, of whether placing a child with a parent or family member (understood according to their Indigenous traditions) is a possibility and whether the child’s need for cultural connection and continuity are being met. It is not sufficient to remove an Indigenous child from their family for their protection, and then care for them as though they are not Indigenous, and as though their attachment to their Indigenous culture(s), extended family and community(ies) and territory(ies), are not important to preserving their best interests.

[93] In considering plans for the Children’s care, the Federal Act and CFCSA each require that the BIOIC analysis be done in accordance with the customs and traditions of the Indigenous group to which the Children belong. It is an important factor that the Indigenous Nation supports Agency A’s position in opposing the access order. The framework of the Federal Act reflects an understanding that the Indigenous Nations that children are members of speak for, and hold, the best interests of their child members.

LEGISLATION CITED

[An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.](#)

Preamble

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas Canada ratified the United Nations Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination;

Whereas Parliament recognizes the legacy of residential schools and the harm, including intergenerational trauma, caused to Indigenous peoples by colonial policies and practices;

Whereas Parliament recognizes the disruption that Indigenous women and girls have experienced in their lives in relation to child and family services systems and the importance of supporting Indigenous women and girls in overcoming their historical disadvantage;

Whereas Parliament recognizes the importance of reuniting Indigenous children with their families and communities from whom they were separated in the context of the provision of child and family services;

Whereas the Truth and Reconciliation Commission of Canada's Calls to Action calls for the federal, provincial and Indigenous governments to work together with respect to the welfare of Indigenous children and calls for the enactment of federal legislation that establishes national standards for the welfare of Indigenous children;

Whereas Parliament affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services;

Whereas Parliament affirms the need

to respect the diversity of all Indigenous peoples, including the diversity of their laws, rights, treaties, histories, cultures, languages, customs and traditions,

to take into account the unique circumstances and needs of Indigenous elders, parents, youth, children, persons with disabilities, women, men and gender-diverse persons and two-spirit persons,

to address the needs of Indigenous children and to help ensure that there are no gaps in the services that are provided in relation to them, whether they reside on a reserve or not,

to eliminate the over-representation of Indigenous children in child and family services systems, and

to enact legislation for the benefit of Indigenous children, including First Nations, Inuit and Métis Nation children;

Whereas the Government of Canada is committed

to working in cooperation and partnership with Indigenous peoples to support the dignity and well-being of Indigenous children and youth and their families and communities, as well as the achievement of their full potential, and to respecting, strengthening and building on the accomplishments of Indigenous peoples in this regard,

to achieving reconciliation with First Nations, the Inuit and the Métis through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, cooperation and partnership, and

to engaging with Indigenous peoples and provincial governments to support a comprehensive reform of child and family services that are provided in relation to Indigenous children;

And whereas the Government of Canada acknowledges the ongoing call for funding for child and family services that is predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities;

Section 7 – Binding on Her Majesty

This Act is binding on Her Majesty in right of Canada or of a province.

Section 9 - Principle

Principle — best interests of child

(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 Interest of the Indigenous Child

(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 11 – Effect of Services

Child and family services provided in relation to an Indigenous child are to be provided in a manner that

- (a) takes into account the child's needs, including with respect to his or her physical, emotional and psychological safety, security and well-being;
- (b) takes into account the child's culture;
- (c) allows the child to know his or her family origins; and

(d) promotes substantive equality between the child and other children.

Section 12 – Notice

(1) In the context of providing child and family services in relation to an Indigenous child, to the extent that doing so is consistent with the best interests of the child, before taking any significant measure in relation to the child, the service provider must provide notice of the measure to the child's parent and the care provider, as well as to the Indigenous governing body that acts on behalf of the Indigenous group, community or people to which the child belongs and that has informed the service provider that they are acting on behalf of that Indigenous group, community or people.

Personal information

(2) The service provider must ensure that the notice provided to an Indigenous governing body under subsection (1) does not contain personal information about the child, a member of the child's family or the care provider, other than information that is necessary to explain the proposed significant measure or that is required by the Indigenous governing body's coordination agreement.

Section 13 – Representations and Party Status

In the context of a civil proceeding in respect of the provision of child and family services in relation to an Indigenous child,

(a) the child's parent and the care provider have the right to make representations and to have party status; and

(b) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which the child belongs has the right to make representations.

Section 14 – Priority to Preventative Care

(1) In the context of providing child and family services in relation to an Indigenous child, to the extent that providing a service that promotes preventive care to support the child's family is consistent with the best interests of the child, the provision of that service is to be given priority over other services.

Prenatal care

(2) To the extent that providing a prenatal service that promotes preventive care is consistent with what will likely be in the best interests of an Indigenous child after he or she is born, the provision of

that service is to be given priority over other services in order to prevent the apprehension of the child at the time of the child's birth.

Section 15 – Socio-economic Conditions

In the context of providing child and family services in relation to an Indigenous child, to the extent that it is consistent with the best interests of the child, the child must not be apprehended solely on the basis of his or her socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider.

Section 16 – Priority

(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.

Customs and traditions

(2.1) The placement of a child under subsection (1) must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption.

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).

Section 17 – Attachment and Emotional Ties

In the context of providing child and family services in relation to an Indigenous child, if the child is not placed with a member of his or her family in accordance with paragraph 16(1)(a) or (b), to the extent that doing so is consistent with the best interests of the child, the child's attachment and emotional ties to each such member of his or her family are to be promoted.

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

Section 2(b.1) - 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:

(b.1) Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children

Section 4 – Best Interests of Child

(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 4.1 - Self-Government Principles

This Act must be interpreted and administered in accordance with the following principles:

(a) Indigenous peoples have an inherent right of self-government, including self-determination, that is recognized and affirmed by [section 35](#) of the Constitution Act, 1982 and by the United Nations Declaration on the Rights of Indigenous Peoples;

(b) the inherent right of self-government includes jurisdiction in relation to Indigenous child and family services, law-making authority in relation to those services and authority to administer and enforce laws made under that law-making authority;

(c) Indigenous laws have the force of law in British Columbia.

Section 13 – When Protection is Needed

(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.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

(a) encouraged or helped to engage in prostitution, or

(b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases

when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

- (a) anxiety,
- (b) depression,
- (c) withdrawal, or
- (d) self-destructive or aggressive behaviour.

(3) For certainty, a child does not need protection in the circumstances described in subsection (1) (d) or (h) solely on the basis of socioeconomic conditions, including the following:

- (a) poverty;
- (b) the lack of adequate housing or infrastructure;
- (c) the state of health of a parent of the child.

Section 50(1) - Effect of Continuing Custody Order

(1) When an order is made placing a child in the continuing custody of a director,

- (a) the director becomes the sole personal guardian of the child and may consent to the child's adoption,
- (b) the Public Guardian and Trustee becomes the sole property guardian of the child, and
- (c) the order does not affect the child's rights respecting inheritance or succession to property.

Section 54.01 - Permanent Transfer of Custody Before Continuing Custody Order

(1) If a child is in the care or custody of a person other than the child's parent under

- (a) an agreement made under [section 8](#), or
- (b) a temporary custody order made under section 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or subsection (9) (b) of this section,

a director may, before the agreement or order expires, apply to the court to permanently transfer custody of the child to that person.

(2) At least 30 days before the date set for hearing the application, notice of the hearing must be served on each person who has access to the child under an order made under section 55 (4) or (5).

(3) At least 10 days before the date set for hearing the application, notice of the time, date and place of the hearing must be served on the following:

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

(b) each parent;

(c) if the child is a First Nation child, a designated representative of the First Nation;

(d) if the child is a Nisga'a child, a designated representative of the Nisga'a Lisims Government;

(e) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(f) if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

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

(ii) the parent, if the child is under 12 years of age;

(g) any person who has been made a party under section 39 (4);

(h) the person to whom the court has been requested under subsection (1) of this section to transfer custody;

(i) the Public Guardian and Trustee, if appointed the child's property guardian under [section 58](#).

(4) If a person referred to in subsection (3) (b) to (h) appears at the commencement of the hearing, that person is entitled

(a) to be a party at the hearing, and

(b) to notice of a hearing under [section 42.2](#) or [57](#) and, if the person appears at the commencement of the hearing, to be a party at that hearing.

(5) A court may make an order permanently transferring custody of a child to the person other than the child's parent referred to in subsection (1) if

(a) there is no significant likelihood that

(i) the circumstances that led to the making of the agreement under [section 8](#) or to the child's removal, as applicable, will improve within a reasonable time, or

(ii) the parent will be able to meet the child's needs,

(b) in respect of a child in the care or custody of a person other than the child's parent under

(i) an agreement made under [section 8](#), the persons referred to in subsection (3) (a), (b) and (h) of this section have consented to the transfer of custody, or

(ii) a temporary custody order referred to in subsection (1) (b), the persons referred to in subsection (3) (a), (h) and (i) have consented to the transfer of custody, and

(c) the child has been residing with the person referred to in subsection (3) (h) under the agreement referred to in subsection (1) (a) or the temporary custody order referred to in subsection (1) (b) for at least 6 consecutive months immediately before the application under subsection (1).

(6) Before making an order transferring custody under subsection (5), the court must consider

(a) the past conduct of the parent towards any child who is or was in the parent's care,

(b) the plan of care, and

(c) the child's best interests.

(7) A court may rely on the consent given under subsection (5) (b) (i) or (ii) by persons referred to in subsection (3) (a) and (h) if the court is satisfied that each person

(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 transferring custody under this section.

(8) The court may dispense with the residency requirement set out in subsection (5) (c) if the court determines it is in the child's best interests to do so.

(9) If, with respect to a child who is the subject of a temporary custody order referred to in subsection (1) (b), the court does not make an order under subsection (5), the court must make one of the following orders:

(a) that the child be returned to the custody of the parent apparently entitled to custody;

(b) that the child remain in the temporary custody of the person other than the parent for a specified period of up to 6 months, but not beyond the period permitted under [section 45](#);

(c) that the child be placed in the custody of the director for a specified period of up to 6 months, but not beyond the period permitted under [section 45](#).

(10) If the court makes an order under subsection (9) (a) or (b), it may order that the director supervise the child's care for a specified period of up to 6 months.

Section 54.1 - Permanent Transfer of Custody After Continuing Custody Order

(1) Subject to subsection (1.1), a director may apply to the court to permanently transfer the custody of a child who is in the custody of the director under a continuing custody order to a person other than the child's parent.

(1.1) An application under subsection (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.

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

(a) each person to whom the court has been requested under subsection (1) to transfer custody;

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

(c) if the child is a First Nation child, a designated representative of the First Nation;

(d) if the child is a Nisga'a child, a designated representative of the Nisga'a Lisims Government;

(d.1) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(e) if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

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

(ii) the parent, if the child is under 12 years of age;

(f) the Public Guardian and Trustee;

(g) each person who has access to the child under an order made under section 56 (3).

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

(3) Subject to subsection (4), a court may permanently transfer custody of a child from the director to a person other than the child's parent if

(a) the persons referred to in subsection (2) (a), (b) and (f) have consented to the transfer of custody, and

(b) the court is satisfied that it is in the child's best interests.

(4) A court may rely on the consent given under subsection (3) by persons referred to in subsection

(2) (a) and (b) if the court is satisfied that each person

(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 transferring custody under this section.

Section 56 – Access in Continuing Custody of Director

(1) If a continuing custody order is in effect, a parent or any other person may apply to the court for access to the child.

(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, and

(c) the parties to the proceeding in which the continuing custody order was made.

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

(3) The court may order that the applicant be given access to the child if access

(a) is in the child's best interests,

(b) is consistent with the plan of care, and

(c) is consistent with the wishes of the child, if 12 years of age or over.

Section 92(1) - Director's Power to Delegate

(1) Subject to the regulations, a director may delegate to any person or class of person any or all of the director's powers, duties or functions under this Act.

[Constitution Act, 1982, Schedule B to the Canada Act 1982 \(UK\), 1982, c 11.](#)

Section 35(1) - Recognition of Existing Aboriginal and Treaty Rights

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Section 37 – Best Interests of Child

(1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

(3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

Section 59 – Orders Respecting Contact

(1) On application, a court may make an order respecting contact with a child, including describing the terms and form of contact.

(2) A court may grant contact to any person who is not a guardian, including, without limiting the meaning of "person" in any other provision of this Act or a regulation made under it, to a parent or grandparent.

(3) The court may make an order to require the parties to transfer the child under the supervision of, or require contact with the child to be supervised by, another person named in the order if the court is satisfied that supervision is in the best interests of the child.

(4) An access order referred to in [section 54.2 \(2.1\)](#) or [\(3\)](#) of the [Child, Family and Community Service Act](#) is deemed, for the purposes of this Act, to be an order made under subsection (1) of this section for contact with a child.

Section 203(1) - Children's Lawyer

(1) The court may at any time appoint a lawyer to represent the interests of a child in a proceeding under this Act if the court is satisfied that

- (a) the degree of conflict between the parties is so severe that it significantly impairs the capacity of the parties to act in the best interests of the child, and
- (b) it is necessary to protect the best interests of the child.

Section 211 – Orders Respecting Costs

(1) A court may appoint a person to assess, for the purposes of a proceeding under Part 4 [Care of and Time with Children], one or more of the following:

- (a) the needs of a child in relation to a family law dispute;
- (b) the views of a child in relation to a family law dispute;

(c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.

(2) A person appointed under subsection (1)

(a) must be a family justice counsellor, a social worker or another person approved by the court, and

(b) unless each party consents, must not have had any previous connection with the parties.

(3) An application under this section may be made without notice to any other person.

(4) A person who carries out an assessment under this section must

(a) prepare a report respecting the results of the assessment,

(b) unless the court orders otherwise, give a copy of the report to each party, and

(c) give a copy of the report to the court.

(5) The court may allocate among the parties, or require one party alone to pay, the fees relating to an assessment under this section