

*British Columbia (Director, Ministry of Children and Families) v
S.L.J., 2024 BCPC 260.*

SUMMARY

The society seeks an interim order pursuant to s. 35(2)(d) of the [Child Family and Community Service Act](#) (CFCSA) that the children remain in the care of the society until a protection hearing is held. S.L.J. provides evidence that the concerns of the society were mitigated. Thomas J. orders there was sufficient reason to apprehend, but it is in best interest of the children to be placed back with S.L.J., with direct supervision of society, while awaiting protection hearing.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Thomas J
PARTIES	Applicant 1. Director of Ministry of Children and Family Development [Director] Respondents 1. S.L.J. Biological Mother 2. K.D. Biological Father of N.R.J. 3. C.S. Biological Father of A.E.J.
TREATY TERRITORY	None.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Omitted for publication.
APPLICABLE INDIGENOUS LAW	None.
TOPICS	Best Interests Cultural Continuity Interim Order Priority Placement

LEGISLATION CITED	<u><i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24.</u> (Federal Act) Sections 9; 10; 11; 12; 13; 14; 15; 16; 17 <u><i>Children, Family and Community Service Act</i>, RSBC 1996, c 46.</u> (CFCSA) Sections 2; 3; 13; 30; 35; 37; 68(2)(a)
CASE LAW CONSIDERED	<u><i>BB v British Columbia (Director of Child, Family and Community Services)</i>, 2005 BCCA 46.</u> <u><i>BC (Child, Family and Community Service) v SB and DMB</i>, 2022 BCPC 140.</u> <u><i>British Columbia (Child & Family Services) v KS</i>, 2020 BCPC 97.</u> <u><i>British Columbia (Director of Child, Family and Community Service) v SG</i>, 2019 BCPC 258.</u> <u><i>BR v KK</i>, 2015 BCSC 1658.</u> <u><i>BS v British Columbia (Director of Child, Family and Community Service)</i>, 1998 CanLII 5958 (BCCA).</u> <u><i>Director, Child, Family and Community Service Act v H</i>, 2008 BCSC 701.</u> <u><i>JW v British Columbia (Director of Child, Family and Community Service)</i>, 2023 BCSC 512.</u> <u><i>TL v British Columbia (Attorney General)</i>, 2021 BCSC 2203.</u>
CASE HISTORY	None.

CASE BRIEF

DECISION

- Director has met the evidentiary threshold for removing the children on April 25, 2024.
- Parent's and grandparent's access ensured preservation of the children's relationship with family and cultural connections.
- It is in best interest of the children to be returned to the care of their primary caregiver, S.L.J. under the Director's supervision, pursuant to s 35(2)(b) of CFCSA
- S.L.J. must maintain the home, ensure her and the children's attendance of appointments, allow access to their fathers and allow unannounced society visits.

FACTS

- S.L.J. is biological mother of both children (N.R.J. and A.E.J.)
- K.D. is biological father of N.R.J.
- C.S. is the biological father of A.E.J.
- C.S. opposes Director's application.
- Children are removed from S.L.J. for concerns of neglect, parental cognitive capacity, caregiver fabricated illness, and history of non-collaboration.
- On April 24, 2024, A.E.J. is brought by ambulance to hospital – is severely malnourished, dehydrated, lethargic, and had 50% of expected heartbeat.
- N.R.J.'s daycare expresses concerns with autism diagnosis not being followed up with, lack of social, language and toilet skills, and inconsistent attendance.
- House is in complete disarray, garbage and feces everywhere, including children's bed.
- S.L.J. advises she suffered from a traumatic brain injury (TBI) at 10 months old, and what the Society discovered is a result of this injury.
- S.L.J. alleges removal by the Director is not justified under CFCSA.
- Seeking return of the children or, in alternative, return with supervision order pending protection hearing.
- C.S., and child A.E.J., are Indigenous. K.D. is not Indigenous and says neither is S.L.J.
- S.L.J. says she is Indigenous.

- The Society speaks to Indigenous Services Canada to try to locate family history. No information on N.R.J.'s ancestry is collected because S.L.J. will not engage with the Society.
- Family social worker contacts the tribe chief of A.E.J. to ensure they were aware of presentation hearing.
- The Director submits they have satisfied s. 10 of the [*An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24*](#) (Federal Act) (reasonable efforts to determine Indigenous heritage) but the family will not cooperate.
- Since removal, S.L.J. has cleaned the home, engaged in Canadian Mental Health Services, etc.

ISSUES

1. Was the Director justified in removing the children on April 25, 2024?
2. If the court determines removal was justified, what is the best way to care for the children, pending the conclusion of the protection hearing?

ANALYSIS

Legislative Framework

- S 35 CFCSA - Removal of the children triggers 2 step proceeding in court:
- Presentation hearing (aka screening process, deciding where children will reside until protection hearing occurs).
- If removal is ordered, plan for care must include plan to maintain connections to Indigenous community.
- Protection hearing (justifying the child's removal, determine if children are in need of protection).
- S. 68(2)(a) CFCSA – specific types of hearsay evidence may be admissible in court
- In this case, information given by unidentified callers is hearsay, but is admissible.
- S. 2 CFCSA – the act must be interpreted so that the safety and wellbeing of the children are paramount, Indigenous children are entitled to practice their traditions, customs and languages.
- S 3 CFCSA – Indigenous People should be involved in the planning and delivery of services to Indigenous families and their children.
- Steps have been taken to confirm N.R.J.'s Indigenous identity through S.L.J.'s heritage

- Court acknowledges that, due to colonization and assimilation, it can be difficult to find connections to heritage.
- Because of this, the court accepts both children as Indigenous.
- The CFCSA and the *Federal Act* apply concurrently.
- In the case of conflict, the *Federal Act* applies.
- *Federal Act* – best interests of Indigenous children (BIOIC) must consider the need to care for Indigenous children in a way that preserves and protects cultural connections.
- S. 10(3) – factors to consider in BIOIC, considered in context of preserving relationship with family and Indigenous group/community.
- S. 16(1) – all possible placements with members of the child’s Indigenous group must be exhausted prior to placing with a non-Indigenous adult.

Was the Director Justified in Removing the Children on April 25, 2024?

- S 13 – CFCSA creates a non-exhaustive list of circumstances in which a child may need protection. The list includes:
 - Has been, or there is likely to be, physical harm, sexual abuse or exploitation
 - Neglect
 - Deprivation of necessary health care
 - Etcetera
- The Children are vulnerable and still wholly depend on their caretakers to help them meet their daily needs.
- The role of the court at this stage is to determine if the evidence supports the Director’s concerns that the Children should remain in care.
 - Does the evidence suggest a risk of harm to the Children, on a balance of probabilities?
 - The Director *has met* the evidentiary threshold to justify removing the Children – in other words, the court finds the Director had objectively reasonable grounds to believe the children were likely to be physically harmed because of the neglect they were experiencing.

What is the Best Way to Care for the Children Until a Protection Hearing Can Take Place?

- There are four possible orders to make at a presentation hearing – one of them MUST be made
 - Interim order placing child in custody of the Director

- Interim order returning child to their parent(s) with Director supervision
- An order returning the child to the parent apparently entitled to custody
- An interim order placing the child in the custody of someone other than their parent, with Director supervision.
- In determining which of the above orders to make, the court notes that the Society has not provided any evidence that they have met the priority placement obligations under s. 16 of the *Federal Act*.
- It is in the best interest of the children to be returned to S.L.J.'s care, under Director supervision.
 - There is no prior Society history with S.L.J.
 - S.L.J. has engaged services, such as the *Canadian Mental Health Association (CMHA)*.
 - She provided evidence that N.R.J. is on waitlist for autism assessment and speaks to the work on language she has been doing with the children.
 - The state of the home has been addressed.
- Any other society concerns can be mitigated with supervision while waiting 45-day period for protection hearing.
- The parents on the file are reminded that it is in the best interest of the children to have a 'positive working relationship with the Ministry social workers'.
 - Remaining adversarial may risk more intrusive actions from the Director.

RELEVANT EXCERPTS

[61] With both the Children identified by S.L.J. and C.S. as Indigenous, I am satisfied that the Children are “Indigenous children” as set out in the definition of the CFCSA and the Federal Act. While the Director has taken some steps to confirm N.R.J.’s Indigenous identity, the investigations are ongoing. I recognize that Canada’s colonial history and assimilationist policies caused many Indigenous people to become displaced and disconnected from their communities so it may be more challenging to find those connections. Canada’s assimilationist policies created categories of Indigenous people who are recognized by government and those who are not. For these reasons, this may make it more challenging to establish or locate those connections to confirm Indigenous identity.

[62] The Federal Act calls for a new approach in the delivery of child protection services; which recognizes the tragic history of residential school and the 60’s scoop, and the intergenerational impact of colonization and promotes the significance of cultural connections for the children. The Federal Act imposes national standards for the care of Indigenous children, and applies to the provision of child and family services to Indigenous children. The CFCSA applies concurrently to the Federal Act, subject to the doctrine of federal paramountcy. (see: *T.L. v. British Columbia (Attorney General)*, 2021 BCSC 2203 at para 21.) In the case of conflict between the CFCSA and the Federal Act, the Federal Act applies.

[63] Sections 10-17 of the Federal Act set out the national minimum standards for the care of Indigenous children. National standards must be interpreted according to the interpretive principles set out in Section 9: the best interests of the child (here, Indigenous child), cultural continuity and substantive equality. (see: *J.W. v. British Columbia (Director of Child, Family and Community Service)*, 2023 BCSC 512)

LEGISLATION CITED

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

Section 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

(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 – Provision of Child and Family Services

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 Preventive 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 – Placement of Indigenous Child

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.

Section 2 – Guiding Principles

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

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 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 30 – Removal of Child

(1) A director may, without a court order, remove a child if the director has reasonable grounds to believe that the child needs protection and that

(a) the child's health or safety is in immediate danger, or

(b) no other less disruptive measure that is available is adequate to protect the child.

(2) A director may, without a court order and by force if necessary, enter any premises or vehicle or board any vessel for the purpose of removing a child under subsection (1) if

(a) the director has reasonable grounds to believe that the child is in the premises or vehicle or on the vessel, and

(b) a person denies the director access to the child or no one is available to allow access to the child.

(3) If requested by a director, a police officer must accompany and assist the director in exercising the authority given by this section.

(4) A director's authority or duty under this Act to remove a child applies whether or not

(a) a family conference, mediation or other alternative dispute resolution mechanism is scheduled or in progress,

(b) a date is set for hearing an application under section 29.1, or

(c) any other steps have been taken under this Act with respect to the child.

Section 35 – Presentation Hearing and Orders

(1) At a presentation hearing relating to the removal of a child under section 30, the director must present to the court a written report that includes

- (a)** the circumstances that caused the director to remove the child,
- (b)** an interim plan of care for the child, including, in the case of an Indigenous child, the steps to be taken to support the child to learn about and practise the child's Indigenous traditions, customs and language and to belong to the child's Indigenous community, and
- (c)** information about any less disruptive measures considered by the director before removing the child.

(2) At the conclusion of the hearing, the court must make

- (a)** an interim order that the child be in the custody of the director,
- (b)** an interim order that the child be returned to or remain with the parent apparently entitled to custody, under the supervision of the director,
- (c)** an order that the child be returned to or remain with the parent apparently entitled to custody, or
- (d)** an interim order 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.

Section 37 – Arranging a Subsequent Hearing

(1) At the conclusion of a presentation hearing under section 33.2, 35 or 36 (2), the court must set the earliest possible date for a hearing to determine if the child needs protection, or confirm any date previously set for the protection hearing, unless the court has made

- (a)** no order under section 33.2 (2),
- (b)** an order under section 35 (2) (c), or
- (c)** a consent order under section 60.

(2) The date set under subsection (1) for commencing the hearing must not be more than 45 days after the conclusion of the presentation hearing, and the hearing must be concluded as soon as possible.

Section 68(2)(a) - Evidence of Others

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

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