

British Columbia (Children and Family Development) v SC,
2024 BCPC 35.

SUMMARY

S.C. seeks to change or cancel a continuing custody order (CCO) that was made in 2004, pursuant to s 54(1) and Rule 8(6) of the [Child, Family and Community Service Act](#) (CFCSA). Prerequisites for s 54(1) hearing are not established, and matter proceeds as Rule 8(6) application. Harris J determines, even in considering a timeline favourable to S.C., the application was not filed within a reasonable time, and it is dismissed.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Harris J
PARTIES	Applicant 1. Director of Child, Family and Community Service [Director] Respondent(s) 1. S.C. Mother
TREATY TERRITORY	None.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	None.
APPLICABLE INDIGENOUS LAW	None.
TOPICS	Continuing Custody Order Historical Context Considered Notice
LEGISLATION CITED	An Act respecting First Nation, Inuit and Métis children, youth and families, SC 2019, c 24. (Federal Act) Section 10 Child, Family and Community Service Act , RSBC 1996, c 46. (CFCSA) Section 45(1.1) & 54(1) Provincial Court (Child, Family and Community Service Act) Rules , BC Reg 533/95. (PCR) Rule 8(6)

	<u>United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14. (FED UNDRIP)</u>
CASE LAW CONSIDERED	<u>Director of Child, Family and Community Services v CR and RD, 2005 BCPC 449.</u> <u>Director of Child, Family and Community Services v TA, 2008 BCPC 57.</u> <u>Director v CR and RD, 2005 BCPC 449.</u> <u>Director v TA, 2008 BCPC 57.</u> <u>W(S) v British Columbia (Director of Family and Child Services), 2001 BCPC 33.</u>
CASE HISTORY	<u>British Columbia (Children and Family Development) v. S.C., 2023 BCPC 60.</u>

CASE BRIEF

DECISION

- Factor 1 of the 8(6) test not met.
- Application is dismissed.

FACTS

- T.T.K.C. is child of S.C. and D.
- T.T.K.C. is removed for concerns regarding S.C. and D being unhoused and using substances.
 - Court recognizes these concerns are consequences of the impacts of colonialism.
- 2004 – CCO places T.T.K.C. with paternal relative, neither S.C. nor D attend the hearing.
 - Both parents were required to attend treatment as condition of CCO – neither did.
- Regular access between S.C. and T.T.K.C. does not occur until 2018.
 - March – April 2019 - T.T.K.C. briefly lives with S.C. He pulls a knife on S.C. and she asks for him to be removed but continues to be involved in his care.
- T.T.K.C. lives with this family member until he is a teenager.
 - After this, T.T.K.C. shifts between placements, before going into a group home.
 - T.T.K.C. goes missing on September 16, 2020.
 - T.T.K.C. passes away on September 18, 2020, while in group home placement.
 - S.C. says she tried to reach out to T.T.K.C.'s social worker before he passed because she was concerned about him – social worker did not answer the calls.
- S.C. says she did not know the CCO was made until several months after T.T.K.C.'s passing.
 - She had previously tried to get information on T.T.K.C.'s legal status, but would not receive any because she was not a guardian.

ISSUES

- Test for an application under a Rule 8(6):
 - Has the application been made within a reasonable time;
 - Did the applicant have a good reason for not attending the hearing where the order was made;
 - Is there a good reason to change or cancel the order; and
 - Would cancelling or changing the order be in the best interests of the child?

ANALYSIS

- *Director v C.R. and R.D.*, 2005 BCPC 449.
 - The applicant bears the onus of establishing, on a balance, that all four criteria have been met.
- S 10 of [*An Act respecting First Nations, Inuit and Métis children, youth and families*](#) (*The Federal Act*) – The best interests of an Indigenous Child (BIOIC) must be the paramount consideration.
 - The *Federal Act* does not cancel out the requirement that all four criteria of Rule 8(6) must be satisfied for a successful application.

Issue 1: Was the Application made in Reasonable Time?

- S.C. bears the burden of satisfying this test.
- What is a reasonable time?
 - *Director of Child, Family and Community Services v CR and RD*, 2005 BCPC 449:
 - A CCO was issued in July 2005 and a Rule 8(6) application made in September 2005 – this application was found to be brought within reasonable time.
 - *Director of Child, Family and Community Services v TA*, 2008 BCPC 57:
 - A Rule 8(6) application was made within 30 days of becoming aware of the CCO – this was found to be within reasonable time.

- W(S) v British Columbia (Director of Family and Child Services), 2001 BCPC 33:
 - CCO was made February 2000, father was incarcerated until November 2000, when Rule 8(6) application was made. Father says he did not have counsel and did not realize what he was agreeing to. Court finds that the father could have contacted the Director from prison. This, combined with the young age of the child, made seven months too long of a delay.
- Based on review of evidence, it is reasonable that S.C. would have become aware of the CCO as early as December 2018.
- S.C. had ample opportunity to inquire about the status of T.T.K.C. before his death.
 - Did not take any steps to do so between 2003 – 2018.
 - S.C. knew the Director was seeking a Temporary Custody Order in February 2003 but still did not attend court.
 - Court recognizes S.C. is Indigenous Woman dealing with a government agency, which can be challenging and may have caused delay in inquiry.
 - However, S.C.'s willingness to engage in text conversation with the social workers regarding T.T.K.C.'s care indicates that this dynamic was not the reason that she did not make any inquiries between 2003-2018.
 - Also indicates S.C knew that the Society had *some* level of guardianship/decision making responsibility for T.T.K.C.
- S.C. had awareness of T.T.K.C.'s legal guardian up to 4 years prior to this application being filed – this is not reasonable time.
- S.C.'s term of "Several Months" in relation to the application is interpreted as more than 2, but less than 12.
 - Therefore, application *might* have been able to be filed around August 2021. It was not filed until August 2022, 2 years after T.T.K.C.'s death and 18 years after CCO was granted.
- Court says that, even on the most favourable timeline and through an Indigenous lens, the application was not made in a reasonable time.

All 4 factors of Rule 8(6) must be satisfied to set aside an order. As factor 1 has not been met, there is no need for analysis of factors 2-4.

RELEVANT EXCERPTS

[8] I am dealing with an Indigenous family. As I go through my analysis I must be mindful of the federal legislation that applies to Indigenous families. I am also mindful that, Ms. C.'s and Mr. D.'s actions and behaviours as set out in the evidence before me may well be related to the impacts of colonialism on Indigenous peoples in Canada.

[42] In my view, Ms. C.'s interactions with Social Worker L.T. are inconsistent with her evidence that she believed she was T.T.K.C.'s guardian. I bear in mind that Ms. C. is an Indigenous woman who was dealing with a government agency at the time and, the experiences of Indigenous people in Canada could cause an Indigenous person to be hesitant to make inquiries or demands of a social worker. But, I do not have that evidence specifically before me. In fact, the text messages between Ms. C. and Social Worker L.T. make it clear that, at least by March 2020, Ms. C. was not afraid to do exactly that.

LEGISLATION CITED

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

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.

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

Section 45(1.1) - Total Period of Temporary Custody

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.

Section 54(1) - Cancellation of Continuing Custody Order

(1) With the permission of the court, a director or a party to a proceeding in which a continuing custody order was made may apply to the court for the cancellation of the order if the circumstances that caused the court to make the order have changed significantly.

Provincial Court (Child, Family and Community Service Act) Rules, BC Reg 533/95.

Rule 8(6) - Changing or Cancelling Orders

(6) A judge may change or cancel an order made in the absence of a party who received notice of a hearing if

- (a) that party applies within a reasonable time,
- (b) the party had a good reason for failing to attend when the order was made,
- (c) there is a good reason for changing or cancelling the order, and
- (d) the change or cancellation would be in the best interests of the child.

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.