

British Columbia (Children and Family Development) v W.D.,
2025 BCPC 142.

SUMMARY

This case is about a six-year-old Indigenous child, J.D., who was removed from her parents' care and placed in the temporary care of the Director because of serious child protection concerns including sexual abuse and exploitation at the hands of her parents. J.D. is Indigenous on her mother's side from Gwa'sala-'Nakwaxda'zw Nations. The Director applied for continuing custody of J.D. The child's maternal grandmother, L.F., asked the Court to add her as a party to the child protection case. She also asked for unsupervised weekend visits with J.D. L.F. said she had a close relationship with J.D. before the removal and that she could help maintain J.D.'s connection to Indigenous culture. The Director opposed both requests, and the Court decided that L.F. should not be added as a party because it would make the child protection case more complicated and could delay the case. However, the Court agreed that L.F. should still have contact with J.D. The Court ordered that L.F. should have reasonable visits with J.D, but that the visits must be supervised at the Director's discretion.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Brown J
PARTIES	Applicant 1. Director of Child, Family and Community Service [the Director] Respondents 1. W.D. Father 2. A.H. Mother
TREATY TERRITORY	None.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Gwa'sala-'Nakwaxda'xw Nations
APPLICABLE INDIGENOUS LAW	Gwa'sala-'Nakwaxda'xw Nations

TOPICS	Access Cultural continuity Party status
LEGISLATION CITED	<i>An Act Respecting First Nations, Inuit and Métis children, Youth and Families</i>, SC 2019, c 24. (Federal Act) Sections 9(1); 9(2); 10(3); 13 <i>Child, Family and Community Service Act</i>, RSBC 1996, c 46. (CFCSA) Sections 2(g); 4; 4.1; 4.2; 4.3; 4.4; 4.5; 39(4); 55(2); 55(5); 56(1); 68(2)
CASE LAW CONSIDERED	<i>J.W. v British Columbia (Director of Child, Family and Community Service)</i>, 2023 BCSC 512. <i>British Columbia (Director, Ministry of Children and Families) v S.L.J.</i>, 2024 BCPC 260. <i>J.L. v British Columbia (Director of Child, Family & Community Services Act)</i>, 2001 BCSC 1604.
CASE HISTORY	None.

CASE BRIEF

DECISION

- L.F.'s application to be added as a party is dismissed.
- L.F. will have reasonable access to J.D., supervised at the discretion of the Director.

FACTS

- J.D. is a six-year-old Indigenous child, she was removed from her parents on July 19, 2024, after serious child protection concerns were raised.
 - The concerns involved allegations of sexual abuse and exploitation by her parents
 - The father was charged with sexual interference and offences related to child pornography.
 - The mother was also charged with sexual interference.
 - The charges had not been proven in court at the time of this decision.
- J.D. is Indigenous through her mother's side, and the Director identified the Gwa'sala-'Nakawaxda'xw Nations as the Indigenous Nation connected to J.D.
 - At the time of the case, J.D. was living with their paternal family while in the Director's temporary care.
 - The Director applied for continuing custody of J.D. on March 20, 2025.
- The application before the Court was brought by J.D.'s grandmother, L.F., who wanted to be added as a party to the child protection proceeding.
 - This would have allowed her to fully participate in the case, receive disclosure, call witnesses, and cross-examine witnesses.
 - She wanted more access to J.D, including unsupervised weekend visits.
 - She said she had a close relationship with J.D. before J.D. was removed and she saw J.D. once or twice a week and that J.D. had spent time at her home.
 - L.F. believed that she could help J.D. stay connected to her Indigenous culture and explained that her culture is connected to food, fishing, hunting, self-sufficiency, and coastal traditions.
- The Director opposed the grandmother being added as a party because adding another party would make the case more complicated and could delay the child protection proceeding.

- The Director said that the grandmother could still be included in J.D.'s cultural plan without being added as a party.
 - The Director opposed unsupervised visits and was concerned that she might allow A.H. to have contact with J.D.
 - This was a concern because A.H. had stayed with L.F. after J.D. was removed.
 - The Director also had concerns about J.D.'s emotional well-being during and after visits.
- Social workers reported that J.D. was doing well in her current placement.
 - They also reported that J.D. had shown some signs of nervousness and discomfort around visits with the grandmother although some visits went well.
 - The grandmother's visits had recently increased to weekly supervised Sunday visits in an apartment setting.
- The Gwa'sala- 'Nakwaxda'xw Nations' position changed during the case.
 - Sara Fulford who represented the Nation for child protection matters eventually supported L.F. being added as a party, having visits with J.D., and being part of J.D.'s cultural plan

ISSUES

1. Should L.F., the maternal grandmother, be added as a party to this *Child, Family and Community Service Act* ("CFCSA") proceeding?
2. Should the grandmother be granted unsupervised visits with J.D. on weekends?

ANALYSIS

Involvement of the Indigenous Nations

- The Court looked at the role of the Gwa'sala- 'Nakwaxda'xw Nations' in the case. The Court wanted the Nation to have notice and an opportunity to be involved because J.D. is an Indigenous child and because the Nation had already been involved in earlier parts of the case.
- The Court accepted that Sara Fulford, through Galgapothla Family Services Society, was the proper representative for the Gwa'sala- 'Nakwaxda'xw Nations in child protection matters.
- The Court also recognized that under the federal Indigenous child welfare act, an Indigenous governing body has the right to make representations in child and family services

proceedings involving an Indigenous child meaning the Nation could give its views to the Court even if the specific question of party status was different.

1. Should L.F., the Maternal Grandmother, be added as a Party to this CFCSA Proceeding?

- L.F. argued that she should be added because she had a close relationship with J.D. before the removal and because she could help maintain J.D.'s Indigenous culture.
- A.H. agreed with the L.F.'s application, the Gwa'sala- 'Nakwaxda'xw Nations also eventually supported L.F. being added as a party.
- The Director opposed the application and argued that adding another party would make the case more complicated and could delay the case. The Director also argued that L.F.'s cultural knowledge and relationship with J.D. could still be considered through J.D.'s plan of care, even if she was not added as a party.
- [An Act Respecting First Nations, Inuit and Metis Children, Youth and Families, SC 2019, c 24.](#)
 - Applies alongside the CFCSA. If the two laws conflict, then the Federal Act takes priority.
 - Cultural continuity is important to the well-being of Indigenous children, families, and communities. Child and family services should not contribute to assimilation or the loss of Indigenous culture.
 - L.F. could help J.D. stay connected to her Indigenous culture because she had a specific cultural background and had helped care for J.D. before the removal.
 - Indigenous culture should not be treated as one general thing. The Director had taken a more general approach to Indigenous culture, L.F.'s culture was more specific to her own upbringing, family history, and coastal traditions.
 - L.F. did not need to be added as a full party in order to help with J.D.'s cultural plan. The ministry could still consult and include her views when planning for J.D.'s cultural identity.
- [Section 39\(4\) of the CFCSA](#)
 - Allows a court to add someone as a party at a hearing. Case law says this power should be used carefully and only when it is necessary to properly resolve the issue in the case.
 - L.F. did not need to be added as a party. Although she had important information about J.D.'s culture and family connections, her involvement could happen in other ways. For example, she could be consulted about J.D.'s cultural plan and could also

continue with her Family Law Act application, which would be heard together with the child protection case, and could also be called as a witness if needed.

- Adding L.F. as a party would prolong and complicate the child protection case. If she became a party, she would have the right to receive a large amount of disclosure, call witnesses, and cross-examine witnesses, which is unnecessary for J.D.'s safety or protection.
- Child protection cases must move forward in a timely way. J.D. had already been removed for about a year, and there were still no trial dates.
- For these reasons, the request for L.F. to be added as a party was dismissed.

2. Should the grandmother be granted unsupervised visits with J. on weekends?

- Under [s.55 of the CFCSA](#), any person can apply for access to a child in care, and the Court can order access unless it is not in the child's best interests.
- J.D.'s relationship with L.F. was important since she saw J.D. regularly before the removal and she could help J.D. maintain family and cultural connections.
- Not prepared to order unsupervised weekend visits because of the concerns regarding J.D.'s emotional well-being. J.D. had experienced trauma and was in play therapy. Social workers had observed that J.D. sometimes seemed nervous during visits and moved quickly from one activity to another, and there were concerns about behaviours after visits.
- J.D.'s busy routine included school, therapy, Girl Guides, gymnastics, martial arts, and time with paternal family members. The Court did not want to interfere too much with J.D.'s routine.
- Visits had already increased to weekly Sunday visits and the Director was open to expanding visits over time if things went well.
- For these reasons, the Court ordered that L.F. shall have reasonable access to J.D., but that the access remain supervised at the discretion of the Director.

RELEVANT EXCERPTS

[73] Section 9(1) of the *Federal Act* sets out that the *Act* is to be interpreted and administered in accordance with the principle of the best interests of the child. Section 9(2) further states that the *Act* is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in such concepts as s. 9(2)(a) “cultural continuity is essential to the well-being of a child, family and an Indigenous group, community or people” and s. 9(2)(b) “the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity.”

[74] Importantly, s. 9(2)(d) of the *Federal Act* requires that: 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.

[77] I fully accept that Ms. F. can contribute to the cultural continuity for J. She has had a unique upbringing on North Vancouver Island which does not even align with the cultural practices of the larger Gwa’sala-’Nakwaxda’wx First Nations. She also regularly cared for J. in the past. She raised her children in a culture of self-sufficiency on the Pacific Coast, fishing and hunting.

[78] So far, the Ministry has taken a more homogenous approach in attempt to preserve J.’s culture, and clearly Indigenous practices in the Fraser Valley are not necessarily reflective of the culture described by the grandmother. J. is being cared for by a non-Indigenous uncle, but small steps continue to be taken to introduce J. to Indigenous culture.

[80] Importantly, there are avenues for Ms. F. to contribute to J.’s Indigenous culture without necessarily becoming a party. The Ministry must and should consult her when developing any cultural plan for the child. Moreover, should this matter proceed to a continuing custody hearing, Ms. F. can conduct her *FLA* proceeding alongside the child protection hearing and present further evidence about her cultural practices and her bond with the child at that time.

[82] In my view, bearing in mind both s. 39(4) of the *CFCSA* and the *Federal Act*, the addition of Ms. F. as a party is not required for the proper resolution of this child protection proceeding involving J. She undoubtedly can nourish J.'s cultural upbringing and she should be consulted in developing J.'s plan of care. More directly, she can bring her *FLA* application alongside the likely continuing custody hearing in this matter.

[83] However, adding Ms. F. as a party would unnecessarily complicate and prolong the child protection proceeding. She would be entitled to voluminous disclosure and to present her own case and cross examine all witnesses in the *CFCSA* case.

[85] It is important to remember that s. 2(g) of the *CFCSA* requires decisions relating to children be made and implemented in a timely manner. J. was removed in July of 2024 and one year has passed, yet we do not even have trial dates.

[88] I also must consider the factors set out in s. 10(3) of the *Federal Act* as outlined above. One emphasis is on preserving the child's cultural identity, and indigeneity should not be homogenized.

[89] In this case, there is a need to preserve family connections, and Ms. F. has a unique culture distinct from Gwa'sala 'Nakwaxda'wx First Nations. She should not be separated from her granddaughter, a girl whom she historically visited on a regular basis.

[90] The Ministry has attempted to establish regular, supervised visits every two weeks. There have been interruptions, and Ms. F. can be abrasive with social workers. Ms. F. also is, to some degree, critical of the uncle's care of J.

[92] As to J.'s emotional well-being, assuming the child protection concerns are true, this child has been exposed to unspeakable abuse. Her play therapy to overcome trauma is vital. While J.'s visits with her grandmother are important, I must exercise caution and ensure my decisions are all child focussed.

LEGISLATION

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

Section 9

Principle — best interests of child

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

Principle — cultural continuity

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

- (a) cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people; (b) the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;
- (c) a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;
- (d) child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and
- (e) the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

Section 10(3)

Factors to be considered

10 (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.

Section 13

Representations and party status

13 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.

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

Section 2 Guiding principles

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

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

Section 4 Best interests of child

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

- (a) the child's safety;
- (b) the child's physical and emotional needs and level of development;
- (c) the importance of continuity in the child's care;
- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) the child's cultural, racial, linguistic and religious heritage;
- (f) the child's views;
- (g) the effect on the child if there is delay in making a decision.

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

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

Section 4.1 Self-government principles

4.1 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 4.2 Indigenous laws prevail in relation to Indigenous child and family services

4.2 Subject to sections 4.3 (4) and 4.4 (1) and (2), if there is a conflict or inconsistency between this Act and an Indigenous law in a circumstance where an Indigenous authority is providing, or intending

to provide, Indigenous child and family services under the Indigenous law, the Indigenous law prevails to the extent of the conflict or inconsistency.

Section 4.3 Duties respecting Indigenous children

4.3 (1) When exercising powers and performing duties under this Act, a director must promptly take all reasonable steps to confirm whether a child is an Indigenous child.

(2) If a child is an Indigenous child, a director must promptly take all reasonable steps to obtain information about and confirm whether there is

(a) an Indigenous authority with jurisdiction for Indigenous child and family services in relation to the child, and

(b) an applicable Indigenous law in relation to the child.

(3) If there is an applicable Indigenous law in relation to an Indigenous child, a director must promptly take steps when an Indigenous authority is to provide Indigenous child and family services in relation to the child, including by

(a) referring a report in accordance with section 16,

(b) withdrawing from a proceeding in accordance with section 33.05, or

(c) proceeding in accordance with sections 50.02 and 50.04.

(4) If a director provides services under this Act in relation to an Indigenous child to whom an Indigenous law applies, the director must provide the services as follows, as applicable:

(a) subject to section 4.4 (2) and (3), in a manner that is consistent with the Indigenous law,

(i) if the Indigenous law is provided in writing to the director, or

(ii) if the Indigenous law is not provided in writing to the director, in accordance with an agreement referred to in paragraph (b) of this subsection;

(b) in accordance with an agreement

(i) entered into under this Act, or

(ii) referred to in Division 1 of Part 7.

Section 4.4 Considerations in relation to duties and the provision of services

4.4 (1) An Indigenous law does not have the effect of imposing specific duties or restrictions on a director, or requiring that specific services be provided or not provided by a director, unless an applicable agreement referred to in section 4.3 (4) (b) has that effect.

(2) When providing services in a manner described in section 4.3 (4) (a), a director remains subject to this Act and must act in accordance with applicable laws, including the federal Act and the [*Canadian Charter of Rights and Freedoms*](#).

(3) If a director considers that it is not possible to act in accordance with applicable laws as described in subsection (2), the director must notify the Indigenous authority and, if requested by the Indigenous authority, provide written reasons to the Indigenous authority.

Section 4.5 Disputes relating to Indigenous laws

4.5 In the event of a dispute under this Act about the application of an Indigenous law or whether a director's provision of service is consistent with an Indigenous law,

(a) a director must ensure that the dispute does not disrupt the provision of services under this Act while the dispute is being resolved, and

(b) the director must consult and cooperate with Indigenous authorities to resolve the dispute in a timely manner and must give due consideration to the Indigenous laws, or the Indigenous customs, practices and traditions, of the Indigenous peoples or communities.

Section 39(4) Parties to proceeding

39 (4) The court may order that a person be a party at any hearing.

Section 55 (2) Access to child in interim or temporary custody of director or other person

55 (2) After an order, other than a continuing custody order or an order made under section 54.01 (5) or 54.1, is made under this Part, any person may apply to the court for access to the child.

(5) If a person, other than the parent who had custody when the child was removed, applies under subsection (2), the court may order that the person be given access to the child unless the court is satisfied access is not in the child's best interests.

Section 56(1) Access to child in continuing custody of director

56 (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.

Section 68(2) Evidence of others

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

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