

British Columbia (Children and Family Development) v S.M.B. and E.M.Q., 2025 BCPC 83.

SUMMARY

Application by B.L. to be added as a party to the file under s. 39(4) of the [Child Family Community Service Act](#) (CFCSA), or to be recognized as a care provider and thus granted party status under s. 13 of [An Act Respecting First Nations, Inuit and Métis children, Youth and Families](#) (Federal Act). The Court determines that B.L. is a caregiver and not a care provider, therefore not applicable for party status under s 13 of the Federal Act. The court exercises its discretion and adds B.L. as a party under s 39(4) of the CFCSA after conducting a best interest of the child analysis.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Thomas J
PARTIES	Applicant 1. Director of Ministry of Children and Family Development [the Director] Respondent(s) 1. S.M.B. Mother 2. E.M.Q. Father, deceased
TREATY TERRITORY	None.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Omitted for publication
APPLICABLE INDIGENOUS LAW	None.
TOPICS	Best Interests Continuing Custody Order Foster Parents Historical Context Considered Parties
LEGISLATION CITED	An Act Respecting First Nation, Inuit and Metis Children, Youth and Families, SC 2019, c 24. (Federal Act) Sections 1; 4; 8; 9; 10; 13 Child, Family and Community Service Act, RSBC 1996, c 46. (CFCSA)

	Sections 1; 39(4); 54.1
CASE LAW CONSIDERED	<u><i>ABM v British Columbia (Director of Child, Family and Community Service)</i>, 2024 BCSC 312.</u> <u><i>BC (Child, Family and Community Service) v SB and DMB</i>, 2022 BCPC 140.</u> <u><i>British Columbia (Child, Family and Community Service) v SH</i>, 2020 BCPC 82.</u> <u><i>JW v British Columbia (Director of Child, Family and Community Service)</i>, 2023 BCSC 512.</u>
CASE HISTORY	None.

CASE BRIEF

DECISION

- B.L. is not entitled to be a party under s.13 of Federal Act.
- The Court will exercise discretion to add B.L. to proceeding as a party under s. 39(4) of the CFCSA.

FACTS

- S.E.Q. and E.L.Q (the children), are born to S.M.B. and E.M.Q.
- E.M.Q. has since passed away.
- The children were placed into care of B.L. and C.L. with consent of the parents.
- B.L. and C.L. split and children remain in primary care of B.L.
- Children have been in B.L.'s care for 6 years.
- Society seeking B.L. to be permanent guardian – B.L. is under contract as foster parent with an Aboriginal Agency.
- S.M.B. files an application to have continuing custody order (CCO) terminated and children returned to her care.
- Director and B.L. are opposed to terminating the CCO.
- S.M.B. is member of different nation than B.L. and children.

ISSUES

1. Is the applicant, B.L. a care provider under s.13 of the Federal Act and by virtue of this legislation entitled to be a party?
2. Should the Court exercise its discretion to grant the Applicant B.L. party status pursuant to s. 39(4) of the CFCSA?

ANALYSIS

Issue 1: Is B.L. entitled to be added as a party under s. 13 Federal Act?

- The CFCSA applies concurrently with the Federal Act, subject to doctrine of paramountcy, if or when the two are in conflict.

- S. 13 Federal Act – the child’s parent and care provider have the right to make representations and to have party status.
- S. 1 Federal Act – Care provider is person who has primary responsibility for providing day-to-day care of Indigenous child.
- The Federal Act requires child protection services to consider the intergenerational impact and cultural connections for the children.
- S. 39 of the CFCSA gives no direction to the consideration of the best interest of the child before adding a party to a proceeding.
- The Federal Act requires the best interests of the child to be the paramount consideration.
- B.L. not entitled to be a party under s. 13 of Federal Act
- Does not meet the definition of care provider because she did not have care of the children prior to Director’s involvement - she became a caregiver to the children because of the Director’s involvement.
- B.L. is a caregiver under s1 of CFCSA, but the Ministry of Children and Family Development Policy 1.1 does not include caregivers in consideration, only care providers.
- The court clarifies that foster parents can become care providers, it is only that the facts of this case do not support such a finding.

Issue 2: Is B.L. entitled to be a party under s. 39(4) of CFCSA?

- The court will exercise its discretion to add B.L. as a party under s. 39(4).
- This is a discretion that should be used sparingly.
- The children’s best interests weigh in favour of adding B.L. as a party to the proceedings.
- Adding B.L. as a party does not delay the case, especially as she, the Director and the First Nation share similar positions.
- Adding B.L. as a party allows her to advance her own case.
- Other factors weighing in favour of party status:
- Has been committed to being permanent guardian for 6 years.
- She is relative of the children, and member of the same Nation as them.
- The Nation supports her being a permanent guardian.
- B.L.’s long-term commitment to children allows her to provide the Court with information about children’s emotional, psychological safety, security and well-being, and connection to culture.

RELEVANT EXCERPTS

[44] 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, the intergenerational impact and 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.

[53] I also note that caregivers are not included as care providers under the Ministry of Children and Family Development Policy 1.1 Working with Indigenous Children, Youth, and Families and Communities under the CFCSA (effective January 1, 2020 and amended in April 18, 2024). This policy directive states that the federally defined "care provider" is to include "a person who cares for a child/youth in an out-of-care living arrangement but does not include caregivers (foster parents)". (Retrieved from the Government of British Columbia website: https://www2.gov.bc.ca/assets/gov/family-and-social-supports/data-monitoring-quality-assurance/reporting-monitoring/policy_1_1v19.pdf)

[55] For these reasons, I find that Ms. L. does not meet the definition of a care provider and is not entitled to party status pursuant to s.13 of the Federal Act. To be clear, in this decision I am not saying that foster parents cannot be care providers; rather, the facts in the case do not support this finding.

LEGISLATION CITED

[An Act Respecting First Nation, Inuit and Metis Children, Youth and Families, SC 2019, c 24.](#)

Section 1 – Definitions

The following definitions apply in this Act.

care provider means a person who has primary responsibility for providing the day-to-day care of an Indigenous child, other than the child's parent, including in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs. (fournisseur de soins)

child and family services means services to support children and families, including prevention services, early intervention services and child protection services. (services à l'enfance et à la famille)

coordination agreement means an agreement referred to in subsection 20(2). (accord de coordination)

family includes a person whom a child considers to be a close relative or whom the Indigenous group, community or people to which the child belongs considers, in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child. (famille)

Indigenous, when used in respect of a person, also describes a First Nations person, an Inuk or a Métis person. (autochtone)

Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the [Constitution Act, 1982](#). (corps dirigeant autochtone)

Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the [Constitution Act, 1982](#). (peuples autochtones)

Minister means the Minister of Indigenous Services. (ministre)

Section 4 – Minimum Standards

For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or is not inconsistent with, the provisions of this Act.

Section 8 – Purpose

The purpose of this Act is to

- (a) affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services;
- (b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and
- (c) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Section 9

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 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 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.

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

Section 1 – Definitions and Interpretation

(1) In this Act:

"caregiver" means a person with whom a child is placed by a director and who, by agreement with the director, is authorized to carry out the rights and responsibilities, under the agreement, of the director

Section 39(4) - Parties to Proceeding

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

Section 54.1 - Permanent transfer to 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.

Policies

[Ministry of Children and Family Development Policy 1.1 Working with Indigenous Children and Youth, and Families and Communities under the CFCSA.](#)