

First Nation A v AB, 2020 BCPC 279.

SUMMARY

This case involves First Nation A's application to include its cultural plan in a s. 41(1)(d) order (continuing custody order) ["CCO"] of the [Child, Family and Community Services Act](#) ["CFCSA"]. The CCO of Baby A has already been granted, entering of the order is pending this matter. The Director opposes any inclusion of the Cultural Plan. A.B. and S.B. support First Nation A's position that the [An Act respecting First Nations, Inuit and Métis children, youth and families](#) ["Federal Act"] requires the Cultural Plan to be included. The Court determines that the plain reading of provincial legislation precludes the addition of terms and conditions not recommended by the Director, but the Federal Act takes paramountcy and requires such considerations as a Cultural Plan. First Nation A's application is allowed in part, as some conditions of their plan are not included in the s 41 CFCSA order.

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Smith J
PARTIES	Applicant(s) 1. First Nation A Respondent(s) 1. A.B. Father 2. S.B. Mother ["S.W."]
TREATY TERRITORY	Unknown
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Omitted for publication, only referred to as "First Nation A"
APPLICABLE INDIGENOUS LAW	None
TOPICS	Best Interests Cultural Continuity Cultural Plan Historical Context Considered

	National Standards
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24. Preamble; Sections 4; 8; 9; 10; 15; 16 <i>Child, Family and Community Service Act</i>, RSBC 1996, c 46. Sections 1 (“court”, “guardianship”); 40(3); 41; 50(1)(a); 50.01; 54.01; 55(6); 70(1.1); 71(3) <i>Provincial Court (Child, Family and Community Service Act) Rules</i>, BC Reg 533/95. Rules 1(2); (3); (4); 7(1); 7(5) <i>Constitution Act, 1867</i> (UK), 30 & 31 Vict, c 3. Section 91(24)
CASE LAW CONSIDERED	<i>R v Ipeelee</i>, 2012 SCC 13. <i>R v Garcha</i>, 2000 BCCA 550. <i>British Columbia (Child, Family and Community Service) v SH</i>, 2020 BCPC 82. <i>M (RA)</i>, [1998] BCJ No. 2208, 1998 CarswellBC 2660. <i>S v S</i>, 2004 BCPC 354. <i>Michif CFS v CLH and WJB</i>, 2020 MBQB 99. <i>Brown v Canada (Attorney General)</i>, 2017 ONSC 251.
CASE HISTORY	<i>British Columbia (Children and Family) v AB</i>, 2020 BCPC 278. <i>First Nation A v AB</i>, 2020 BCPC 279.

CASE BRIEF

DECISION

- The judge is not functus.
- S 41(3) of the *CFCSA* does prevent any terms and conditions the Director has not recommended from being attached to a s 41 order.
 - Despite this, the *Federal Act* allows the Cultural Plan proposed by the First Nation A to be attached to the CCO, with restrictions on some provisions.
- First Nation A's application is granted in part, several portions of the Cultural Plan should not be included.
- Minimum yearly visits to First Nation A and First Nation B.
- The Director has expressed the intention to ensure that this occurs, and to fund such visits. But under the *Federal Act* and the *CFCSA*, neither really give this court the authority to make such an order.
- Baby A to have ongoing connection with biological parents.
- Baby A's parents harmed her gravely, it is up to her guardian (the Director) to assess whether such contact is appropriate now or in the future, in the Court's view it would not be in the child's best interests to incorporate such a requirement into the section 41(1)(d) *CFCSA* order.
- Child's Placement
 - No term or condition will be included that would restrict Baby A's guardian, with regard to her placement.
- Child's School
 - The Court has not included the proposed requirement that Baby A's caregiver enrol her in a public school when she is school Age; this is recommended in the Cultural Plan. Baby A's needs at the time of her attending school cannot be predicted and that choice is in the clear purview of the guardian.

FACTS

- A.B. and S.B. are both Indigenous and live on First Nation A.
- The subject child, Baby A, was removed at 3 months old.

- Since removal, she has lived an hour away from First Nation A, in a non-Indigenous foster home.
- Both A.B. and S.B. were in foster care as children and both experienced a disconnection from their community.
- First Nation A is seeking to have their drafted Cultural Plan attached to any section 41 order.
 - The Director opposes the inclusion of the order. All other parties support its inclusion.
- The Cultural Plan places Baby A with her paternal grandmother.
 - It also provides for ongoing connection to First Nation A and First Nation B, as well as on going visits with her biological parents.

ISSUES

1. Whether a Provincial Court judge can order that the views and preferences of an Indigenous group be included in an order made under s. 41(1)(d) of the CFCSA, when it is not recommended by the Director.
2. If yes, is it in Baby A's best interests to include the Cultural Plan, or some part of it, in the section 41 CFCSA order, and which parts.

Sub-issues

1. Am I (the justice) functus?
2. Does s. 41(3) of the CFCSA preclude such a step?
3. Does the new *Federal Act* impact a Provincial Court judge's jurisdiction?

ANALYSIS

Issue 1: Am I functus?

- Functus – a judge no longer having authority to rule on a matter they previously dealt with because their duties are determined to be 'fully accomplished'.
- First Nation A's application remains outstanding until this decision; this leads to the view that judge is not functus.
- In the reasons for the CCO, the judge established that there would be a delay in the order's implementation to permit First Nation A's application to be heard.

- This application could only be heard after the Director's 41(1)(d) *CFCSA* application was dealt with, and the type of order to be made was known.
- *R v Garcha*, 2000 BCCA 550 – functus occurs once a decision has been made AND the resulting order entered.
- The resulting 41(1)(d) order has not yet been entered.
 - Even if there is no jurisdiction to hear this matter under the *CFCSA*, there is under the *Federal Act*.

Issue 1a: Can the Cultural Plan be included in the terms of the order if it is not recommended by the Director?

- S 41(3) *CFCSA* – the court can only attach terms and conditions recommended by the Director to a s 41(1)(d) order, in its plain reading. Director therefore argues that the Cultural Plan cannot be attached to the COO without the Director's recommendation and in this case the Director does not recommend inclusion, therefore no order can be made to include the Cultural Plan.
- First Nation A argues that applying the Director's proposed approach would have the practical effect of placing supremacy of the *CFCSA* over the *Federal Act* which would be incorrect.
 - A.B. argues that the court has jurisdiction to attach the plan to the section 41 order.
- The Cultural Plan speaks to Baby A's connection to First Nation A and B, including a connection independent of her relationship with her parents – these are fairly described as terms and conditions of implementing the Plan of Care.
- Under s 41(3) of the *CFCSA*, First Nation A's Cultural Plan can only be included in the s 41 *CFCSA* order if the Director recommends it.
 - Given the Director does not recommend it, there is no authority to grant First Nation A's application under the provincial legislation (*CFCSA*).

Issue 1b: What is the effect of the *Federal Act*, if any, regarding this court's jurisdiction in relation to this application?

- S 9 *Federal Act* – requires the Act be interpreted and administered with the principles of the best interest of the child, cultural continuity and substantive equality.
- It is in Baby A's best interest (s 10(3) *Federal Act*), as well as in alignment with s 9(1) and (3) that First Nation A's views and preferences be considered and attached to the s 41 *CFCSA* order.

- In fact, these sections require a consideration of the Cultural Plan.
 - This determination is not supported by the *CFCSA*, but in cases of conflict or inconsistency, the Federal Act takes paramountcy.
- To allow the Director to have the only voice to recommend terms and conditions for a Plan of Care for an Indigenous Child violates the purpose of the *Federal Act* and is a continuation of colonial practices.
 - The reality given the large number of Indigenous children in care is that they might be placed with non-Indigenous care givers.
 - This makes Plans of Care like the one being proposed by First Nation A even more important.
- Unlike a Superior Court this court does not have inherent jurisdiction, nor does it have parens patriae jurisdiction (*S v S 2004 BCPC 354*). If a provincial court judge finds that in interpreting and administering the Federal Act an order should be made in relation to an Indigenous child, if that order is not authorized by the *CFCSA* or Rules, the jurisdiction to make the order must come from the Federal Act.
- *S 10 Federal Act* – requires best interest of the child factors to be a consideration at all stages of a proceeding in child protection cases.
- The Federal Act confers jurisdiction for this court to order the inclusion of the terms and conditions requested by First Nation A, in administering the *Federal Act* in accordance with s.9 principles.
 - Therefore, Baby A's best interest as it relates to the appropriate terms and conditions of the s 41 *CFCSA* order, must be examined.
- The Cultural Plan provides practical means to ensure Baby A's cultural continuity, which is essential to her well-being.
- Considering and attaching the Cultural Plan to the s 41 *CFCSA* order is relevant to the *Federal Act*, specifically ss 9 and 10.

Issue 2: Is it in Baby A's best interests to include the Cultural Plan, or some part of it, in the s 41 order?

- The Director is the guardian of Baby A, and therefore has the rights, duties and responsibilities of a parent.
- To include the Cultural Plan in consideration of Baby A's Plan of Care does not restrain the guardianship roles of the Director.

- Inclusions of some parts of the Cultural Plan in the s 41 *CFCSA* order is in Baby A's best interest.
- No term or condition can be included that restricts Baby A's guardian (the Director) regarding her placement – but, placement needs to be guided by s 16 of the *Federal Act*.
 - Also, cannot include terms related to school placement, ongoing connection with biological parents, and minimum yearly visits to First Nations A and B.

RELEVANT EXCERPTS

[54] Finally, as discussed below in relation to the impact of the Federal Act on the current application, I have concluded that the Federal Act provides this court with jurisdiction additional to that of the CFCSA; consequently, if I am wrong and have no remaining jurisdiction under the CFCSA, I am satisfied that I have jurisdiction to consider the Nation's application under the Federal Act, and to make the order sought, if appropriate under that legislation.

[80] If, in interpreting and administering the Federal Act, a Provincial Court judge concluded that an Indigenous child's best interests under section 10 of the Federal Act required that a step be taken – which step was not authorized by the CFCSA or Rules – the court's ability to administer the Federal Act in accordance with section 9 would be stymied, absent jurisdiction conferred by the Federal Act upon the inferior court to order the requisite step. A Provincial Court judge's having no jurisdiction to make orders necessary to administer the Federal Act as prescribed could not have been intended and supports the conclusion that the Federal Act confers jurisdiction to this court in certain circumstances in relation to Indigenous children.

[82] While this result is not provided for in the provincial legislation, the Federal Act is paramount in cases of conflict or inconsistency. (See: section 4 of the Federal Act, discussed below).

[83] I am fortified in my conclusion that the Federal Act confers jurisdiction for this court to order the inclusion of the terms and conditions requested by the First Nation A, in administering the Federal Act in accordance with the section 9 principles, when I consider the alternate result: the provincial Director would have the only voice in relation to recommended terms and conditions for the implementation of a Plan of Care for an Indigenous child; her Indigenous Nation would have none.

[84] In my respectful view, that outcome would be incongruent with the Federal Act's preamble, which includes:

LEGISLATION CITED (Aptos; 18; Bold; CAPS)

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;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows

Section 4

Minimum Standards

4 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

8 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

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

10 (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 15

Socio-economic Conditions

15 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

16 (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).

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

Section 1

Definitions and Interpretation

(1) In this Act:

"court" means the Provincial Court except where this Act provides otherwise

"guardianship" includes all the rights, duties and responsibilities of a parent

Section 40(3)

Protection Hearing

(3) If the court finds that the child needs protection, it

(a) must consider the plan of care presented by the director, and

(b) may hear any more evidence the court considers necessary to help it determine which order should be made under section 41.

Section 41

Orders Made at Protection Hearing

(1) Subject to subsection (2.1), if the court finds that the child needs protection, it must make one of the following orders in the child's best interests:

(a) that the child be returned to or remain in the custody of the parent apparently entitled to custody and be under the director's supervision for a specified period of up to 6 months;

(b) 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, for a specified period in accordance with section 43;

(c) that the child remain or be placed in the custody of the director for a specified period in accordance with section 43;

(d) that the child be placed in the continuing custody of the director.

(1.1) When an order is made under subsection (1) (b) or (c), the court may order that on the expiry of the order under subsection (1) (b) or (c) the child

(a) be returned to the parent, and

(b) be under the director's supervision for a specified period of up to 6 months.

(2) The court must not order under subsection (1) (d) that the child be placed in the continuing custody of the director unless

(a) the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found,

(b) a parent is unable or unwilling to resume custody of the child, or

(c) the nature and extent of the harm the child has suffered or the likelihood that the child will suffer harm is such that there is little prospect it would be in the child's best interests to be returned to the parent.

(2.1) If an order was made under section 33.2 (2), the child has not been removed since that order was made and the court finds that the child needs protection, the court must order that the director supervise the child's care for a specified period of up to 6 months.

(3) The court may attach to an order under this section any terms or conditions recommended by the director to implement a plan of care.

Section 50(1)(a)

Effect of Continuing Custody Order

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

the director becomes the sole personal guardian of the child and may consent to the child's adoption

Section 50.01

Planning for Indigenous Child after Continuing Custody Order

A director, in respect of planning for the needs of an Indigenous child in the continuing custody of the director, must,

(a) if the director makes an agreement under section 92.1 (2) (a) (v), conduct the planning in accordance with the agreement, or

(b) if there is no agreement as referred to in paragraph (a), consult and cooperate, at least on an annual basis, with the following:

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

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

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

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

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

(B) the parent, if the child is under 12 years of age.

Section 54.01

Permanent Transfer of Custody Before Continuing Custody Order

54.01 (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 55(6)

Access to Child in Interim or Temporary Custody of Director or Other Person

55(6) The court may attach to an access order under this section or section 56 any reasonable terms or conditions.

Section 70(1.1)

Rights of Children in Care

70 (1.1) In addition to the rights set out in subsection (1), Indigenous children have the right to

(a) receive guidance, encouragement and support to learn about and practise their Indigenous traditions, customs and languages, and

(b) belong to their Indigenous communities.

Section 71(3)

Out-of-home Living Arrangements

71 (3) If the child is an Indigenous child, the director must give priority to placing the child as follows:

(a) with the child's extended family or within the child's Indigenous community;

(b) with another Indigenous family, if the child cannot be safely placed under paragraph (a);

(c) in accordance with subsection (2), if the child cannot be safely placed under paragraph (a) or (b) of this subsection.

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

Rule 1

Making Applications Other Than Applications Under Rule 1.1

Applications for Other Orders

(2) To apply for an order, other than an order made at a presentation hearing, a person must complete and file with the court an Application for an Order (Form 2) or an Application to Change Method of Attendance (Form 10.5), as applicable, unless a judge permits otherwise.

Applications to Change or Cancel an Order

(3) To apply for an order changing or cancelling another order, a person must complete and file with the court an Application to Change or Cancel an Order (Form 3), unless a judge permits otherwise.

Application may be made Orally

(4) At a hearing or a case conference, a judge may permit an application to be made orally in court, without the filing of a form.

Rule 7

Orders

Effective Date of Order

(1) An order takes effect on the day it was made by a judge unless the judge orders otherwise.

Settling the Order

(5) A party may apply to a judge to settle the terms of an order when there is a dispute about the terms.
(See Rule 1 (2))

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3.

Section 91(24)

Legislative Authority of Parliament of Canada

91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

24. Indians, and Lands reserved for the Indians.