

BC (Child, Family and Community Service) v SB and DMB,
2022 BCPC 140.

SUMMARY

The Director seeks an order pursuant to s. 35(2)(a) of the [Child, Family and Community Service Act](#) [“CFCSA”] that K.B., M.B. and B.B. [collectively, “the Children”] remain in the interim custody of the Director pending a protection hearing. S.B. seeks an order returning the Children to her care, with or without supervision. The Court determines there was reasonable grounds for removal, but places Children back with S.B. after conducting an analysis of best interest of the Children according to the [An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 46](#) [“Federal Act”].

JURISDICTION	British Columbia
COURT	Provincial Court of British Columbia
JUDGE	Doulis J
PARTIES	Applicant(s) 1. Director of Ministry of Children and Families [the “Director”] Respondent(s) 1. S.B. Mother 2. D.M.B. Father to B.B.
TREATY TERRITORY	Unknown
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Omitted from publication.
APPLICABLE INDIGENOUS LAW	None
TOPICS	Best Interests Cannot Apply the Act to non-Indigenous child Historical Context Considered Interim Orders

	National Standards
LEGISLATION CITED	<u><i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24.</u> Preamble; Sections 4; 8; 9; 10; 16; 17 <u><i>Child, Family and Community Service Act</i>, RSBC 1996, c 46.</u> Sections 1(“Remove”); 2; 3; 4; 13; 30(1); 33.3; 35(2); 55; 66; 68(2)(a)
CASE LAW CONSIDERED	<u><i>AM v British Columbia (Director of Child, Family & Community Service)</i>, 2008 BCCA 178.</u> <i>British Columbia (Child, Family and Community Service) v AR, KG and TJ</i>, (Duncan Registry File 12360) (Unreported Decision). <u><i>British Columbia (Child, Family and Community Service) v HDC</i>, 2020 BCPC 214.</u> <u><i>British Columbia (Child, Family and Community Service) v SH</i>, 2020 BCPC 82.</u> <u><i>British Columbia (Child, Family and Community Service) v SS</i>, 2020 BCPC 233.</u> <u><i>British Columbia (Director of Child, Family and Community Services) v AB</i>, 2019 BCPC 35.</u> <u><i>British Columbia (Director of Child, Family and Community Services) v AS</i>, 1998 CanLII 1071 (BCSC).</u> <u><i>British Columbia (Director of Child, Family and Community Service) v SG</i>, 2019 BCPC 258.</u> <u><i>Brown v Canada (Attorney General)</i>, 2013 ONSC 5637.</u> <u><i>Director v KS</i>, 2020 BCPC 97.</u> <u><i>J(L) v British Columbia (Director of Child, Family and Community Services)</i>, 2000 BCCA 446.</u> <u><i>JMS v British Columbia (Director of Child, Family and Community Services)</i>, 2021 BCSC 2104.</u> <u><i>MB v MLK and TDR</i>, 2022 MBQB 106.</u> <u><i>Michif Child and Family Services v CLH</i>, 2020 MBQB 99.</u> <u><i>ML v BT</i>, 2021 ONCA 683.</u>

	<u><i>Mugesera v Canada (Minister of Citizenship and Immigration)</i>, 2005 SCC 40.</u> <u><i>Native Child and Family Services of Toronto v AB</i>, 2022 ONCJ 75.</u> <u><i>Stadelmann v Dmytruk</i>, 2010 BCSC 1615.</u> <u><i>S(B) v British Columbia (Director of Child, Family and Community Service)</i>, 1998 CanLII 5958 (BCCA).</u> <u><i>Richardson v Richardson</i>, 1987 CanLII 58 (SCC).</u> <u><i>R(B) v K(K)</i>, 2015 BCSC 1658.</u> <u><i>TL v British Columbia (Attorney General)</i>, 2021 BCSC 2203.</u>
CASE HISTORY	None

CASE BRIEF

DECISION

- There were reasonable grounds to justify removal.
- The Children will be returned to S.B.'s care pending the protection hearing, under Director supervision.
- Supervision terms include Children's school attendance, regular medical and dental checkups, maintenance of the residence, preventing anyone under the influence of alcohol or drugs from being around the Children, etc.

FACTS

- S.B. is mother to 4 children: N.B., K.B., M.B. and B.B.
 - N.B. was apprehended at 4 months old after society determined she was abandoned. She is in the continuing care of the Director and is not one of the subject children in this matter.
- K.B., M.B. and B.B. have been removed from S.B.'s care multiple times – they are the subject children in this proceeding.
 - Initially removals were for S.B. not protecting children against G.M.
 - Removals continued for neglect and for the children found walking highways alone.
- B.B. is born and K.B. and M.B. are removed because S.B. did not have care plan for them, due to giving birth 4-6 weeks early. B.B. is subsequently removed due to risk of Sudden Infant Death Syndrome ["SIDS"].
 - The foster parents of N.B are T.N and L.C.
 - The Children have been placed with T.N. and L.C. each time they have been removed.
- G.M. is father of N.B., K.B. and M.B.
 - G.M. is registered member of Cree Nation, as are his children.
 - G.M. has criminal record for violent and sexual offences, has court order prohibiting any contact with child under 18.
- D.M.B. is father of B.B.
 - D.M.B. is not Indigenous and neither is B.B.

- D.M.B. has traumatic brain injury and struggles with alcohol and drug misuse.
- Neither father attends hearing.
- S.B. self-identifies as Indigenous, as her mother (since passed) was member of Little Red River Band in Saskatchewan
 - The Band does not recognize S.B. as a member, so S.B. does not have First Nation's status.
- February 2022 removal – Children are found with chronic head lice and M.B.'s head had infected wounds. The Children disclose that, at this time, they are not attending school
 - M.B. examined and found to have signs of neglect including dental decay, skin lesions and delayed speech.
- S.B. agrees to have Director clean her laundry and sanitize furniture to combat lice infestation – S.B. does not follow through on these agreements.

ISSUES

1. Was the Director justified in removing the Children from S.B.'s care in February 2022?

Specifically, at the time the Children were removed:

2. Did the Director have reasonable grounds to believe the Children needed protection?
3. Was there an immediate danger to the Children's health or safety?
4. Were there less disruptive measures available?
5. If the court concludes the removal was justified, what is the best way to care for the children pending the conclusion of the protection hearing?

ANALYSIS

- S.2 *CFCSA* - Safety and wellbeing of the children must be paramount.
- The *Federal Act* – Establishes national minimum standards and takes paramountcy over *CFCSA*.
- S.9 – key principles of the act are best interests of the child, cultural continuity and substantive equality.
- S. 10(3) – list of best interest factors. Factors must be considered at all stages of a proceeding and prioritize the child's connections to their culture.

- S. 16(1) – If Indigenous child cannot be placed with parent or kin, must look at adults belonging to the same Indigenous group for placement before any other adult.

Issue 1: Did the Director have reasonable grounds for removal?

- Removal of a child triggers a two-step proceeding, a presentation hearing and a protection hearing.
- A presentation hearing is a screening process. This is where the court is now.
 - The Court's job at a presentation hearing is to determine if Director should retain custody of the child until the protection hearing, not to make a determination of need of protection.
- S. 30(1) *CFCSA* – A child may be removed if the Director has reasonable grounds believe that child needs protection. Specifically:
 - The child's health or safety is in immediate danger; or
 - No other less disruptive measure is available that can protect the child.
- *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40.:
 - Reasonable grounds to believe is a higher standard than reasonable suspicion.
 - Reasonable grounds will exist if there is an objective basis for the belief that is based on compelling and credible information.
- S. 68(2)(a) *CFCSA* – permits the court to admit hearsay evidence they find reliable.
 - Director relies on hearsay evidence (Children's physician and school principal) but it is reliable and therefore admitted as evidence.
- *British Columbia (Child, Family and Community Service) v A.R., K.G. and T.J.*:
 - In a presentation hearing, a judge must consider the context of the history of the Director's involvement with the family.
- In the totality of the circumstances, the Director had reasonable grounds to believe that the Children had been, or were likely to be, harmed because of the neglect of their primary parent.

Issue 2: What is the best way to care for the Children pending the protection hearing?

- S. 35(2) *CFCSA* – after protection hearing, 1 of 4 orders can be made:
 - (a) Interim order of child in Director's custody:

- (b) Interim order child remains with parent entitled to custody, with supervision;
 - (c) Order child be returned to parent entitled custody; or
 - (d) Interim order child is placed with adult other than a parent, with supervision.
- As the Director was found to have reasonable grounds the children were in need of protection at time of removal, court must make an order under (a), (b) or (d).
 - (d) is not an option as the Director has not identified any acceptable kin.
- The *CFCSA* does not require the best interest to be considered at this stage.
 - The *Federal Act* does require best interest to be considered.
- Best interest considerations include:
 - K.B. and M.B. do not appear to have connection to their Nation.
 - Their father is prohibited by court order from having contact and neither the band nor extended paternal family has taken an active role in the children's lives.
 - No dispute the Children's physical needs are met in the foster home, but there is no evidence as to how they are faring emotionally or psychologically.
 - There is no evidence, since 2018, that S.B. has not been protective of the Children as it involves G.M.
 - The photo of a few beer cans taken on day of removal does not indicate S.B. or her guests were consuming an alarming amount of alcohol in children's presence.
 - S.B. was truthful in saying she took M.B. to the clinic for her head lice.
 - S.B. has strong, supportive ties in the community.
 - The Director's past actions have ensured the Children's safety, but simultaneously isolated S.B. from friends and family for support.
 - The strong bond of Children and S.B. is significant consideration.
- One of the key principles of the *Federal Act* is reuniting Indigenous children with their family and community.
 - The paramountcy of the *Federal Act* and children's Indigeneity leans toward returning to S.B.'s care.
- S.B. is all the children have.
- S.B. will need social service agencies support, which should not be provided with unnecessary intrusiveness.

RELEVANT EXCERPTS

[126] It appears that the most significant difference between the [CFCSA] and the Federal Act as regards to the instant application is the latter's direction that the best interests of the child be considered at all stages of the process, where as the former only requires the best interests of the child to be considered when a particular section or subsection directs.

[174] In determining the Children's placement pending the completion of the protection hearing, the CFCSA does not require the court to undertake a "best interest analysis." However, ss. 9(1) and 10(1) of the Federal Act does if the child is Indigenous: *British Columbia (Child, Family and Community Service) v. H.D.C.*, 2020 BCPC 214 (CanLII), paras. 113-115.

[184] Given the paramountcy of the Federal Act, the Children's Indigeneity militates toward returning them to their mother's care under the Director's supervision. I realize this means S.B. will continue to depend on social services agencies to fulfil her parental responsibilities. I would hope these support services could be made available to S.B. in a reasonably dignified manner and not predicated on over-surveillance or unnecessary intrusiveness. The evidence before the court, which is scant, does not persuade me that shoring up S.B.'s ability to parent her children to a standard of "good enough" is less desirable than the Director's only alternative, which is to place them with a "ministry resource." Hence, I am ordering K.B., M.B., and B.B. be returned to S.B.'s care under the supervision of the Director.

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 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 an 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

17 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.

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

Section 1

Definitions and Interpretation – “Remove”

1(1) In this Act:

"remove" means to take a child into the care of a director under section 30, 36 or 42;

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:

- (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

3 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 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 13

When Protection is Needed

13 (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(1)

Removal of Child

30 (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.

Section 33.3

Nature of Presentation Hearing

A presentation hearing is a summary hearing and must be concluded as soon as possible.

Section 35(2)

Presentation Hearing and Orders

(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 55

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

(1) At the time 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, the parent who had custody when the child was removed may apply to the court for access to the child.

(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.

(3) At least 10 days before the date set for hearing an application under subsection (2), notice of the hearing must be served on

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

(b) the director, and

(c) in addition

(i) if the application is made before the protection hearing, the persons mentioned in section 34 (3) (b), (d), (e) and (f), and

(ii) if the application is made after the protection hearing, the persons who under section 39 are entitled to notice.

(3.1) If a person referred to in subsection (3) (b) and (c) (i) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(4) If the parent who had custody when the child was removed applies under subsection (1) or (2), the court must order that the parent be given access to the child unless the court is satisfied access is not in the child's best interests.

(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.

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

Section 66

Hearings Civil in Nature and May be Informal

66 (1) A hearing under this Act

(a) is civil in nature,

(b) may be as informal as a judge may allow, and

(c) must be held at a different time or at a different place from the usual time or place for sittings of the court relating to criminal matters.

(2) No order under this Act may be set aside because of any informality at the hearing or for any other technical reason not affecting the merits of the case.

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