

Métis Child, Family and Community Services v CPR et al, 2022 MBCA 40.

SUMMARY

This case was about whether Peguis CFS should be allowed to intervene in an appeal about guardianship of A.D.R., a 10-year-old Indigenous child. At the original guardianship hearing, the Court granted guardianship to D.D. instead of A.D.M., the child’s paternal aunt. A.D.M. appealed, arguing that the Court did not properly apply [*An Act respecting First Nations, Inuit and Métis children, youth and families*](#) [“the *Federal Act*”]. Peguis Child and Family Services [“Peguis CFS”] applied to intervene because the child was connected to Peguis First Nation. The Court allowed Peguis CFS to intervene because it had a direct interest and a useful perspective, but the Court also placed limits on its role, so it could not add new facts, new issues, or unfairly delay the appeal.

JURISDICTION	Manitoba
COURT	Manitoba Court of Appeal
JUDGE	Mainella JA
PARTIES	Appellant: 1. A.D.M. Paternal Aunt Respondent(s) 1. Métis Child, Family and Community Services [“MCFCS”] 2. C.P.R. Mother 3. S.J.M. Father (Deceased) 4. D.D. Former Stepmother
TREATY TERRITORY	Treaty 1
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Peguis First Nation
APPLICABLE INDIGENOUS LAW	<i>Honouring Our Children, Families and Nation Act.</i>
TOPICS	Best interests Private guardianship
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Metis children, youth and families</i>, SC 2019, c 24. <i>The Child and Family Services Act</i>, CCSM c C80. Section 75(2)

	<u><i>Court of Appeal Rules</i>, MR 555/88R.</u> Rules 37.1; 46.1 <u><i>Indian Act</i>, RSC 1985, c I-5.</u> <u><i>United Nations Declaration on the Rights of Indigenous Peoples Act</i>, SC 2021, c 14.</u> <u><i>Peguis First Nation Honouring our Children, Families and Nation Act</i>, 2022.</u>
CASE LAW CONSIDERED	<u><i>Interlake Reserves Tribal Council Inc et al, v The Government of Manitoba</i>, 2020 MBCA 126.</u> <u><i>Métis Child, Family and Community Services v CPR</i>, 2021 MBQB 228.</u> <u><i>MSD v. A.C. and K.V. and Eel River Bar First Nation</i>, 2021 NBQB 14.</u> <u><i>SL v Alberta (Child, Youth and Family Enhancement Act, Director)</i>, 2021 ABPC 202.</u>
CASE HISTORY	<u><i>Métis Child, Family and Community Services v CPR et al</i>, 2023 MBCA 82.</u> <u><i>Métis Child, Family and Community Services v CPR et al</i>, 2022 MBCA 40.</u> <u><i>Métis Child, Family and Community Services v CPR</i>, 2021 MBQB 228.</u>

CASE BRIEF

DECISION

- Peguis CFS should be granted leave to intervene as it has both a direct interest in the outcome of the appeal and special expertise or a unique perspective relating to the subject matter of the appeal—the application of the *Federal Act* to matters of private guardianship. Either reason is sufficient basis to grant it leave to intervene.
- The terms and conditions of Peguis CFS’s intervention in the appeal shall be:
 - Peguis CFS may file a factum not exceeding 20 pages;
 - Peguis CFS’s factum is to be filed and served within 14 days of the filing of A.D.M.’s factum;
 - The period for filing and service of D.D.’s factum will not begin to run until the date that Peguis CFS has filed and served its factum;
 - Peguis CFS is bound by the case on appeal and is not to add to the record or the issues; subject to the discretion of the panel, Peguis CFS may make oral submissions at the hearing of the appeal not exceeding 30 minutes; and
 - Subject to the discretion of the panel, no costs shall be awarded in favour of or against Peguis CFS on the appeal.

FACTS

- The case involved A.D.R., a 10-year-old Indigenous child.
- A.D.R.’s father died by suicide in 2019 and her mother abandoned her.
- In fall 2019, MCFCS apprehended the child, and the child was under MCFCS’s legal guardianship through temporary guardianship orders under [*The Child and Family Services Act*](#) [“CFCSA”].
- In Fall 2021, the family court heard two competing private guardianship applications, the two applicants were:
 - A.D.M., the child’s parental aunt.
 - D.D., the former partner of the child’s father.
- The child was eligible to become registered as a member of Peguis First Nation through her father’s side.
- A.D.M. had status under the *Indian Act* and was a member of Peguis First Nation.

- A.D.M. lived in British Columbia and planned to move the child there if she was granted guardianship.
- D.D. identified as Métis but had only recently begun connecting more with her Indigenous ancestry and culture.
- Peguis FN supported the guardianship application of A.D.M. over D.D. Chief and Council of Peguis submitted a letter supporting the guardianship application of A.D.M.
- Ultimately the trial judge awarded guardianship of the child to D.D. He found that the evidence did not establish a “marked superiority” of A.D.M. fostering a better cultural and community connection for the child, particularly given that A.D.M lives in British Columbia and the plan was to relocate the child to British Columbia.
- A.D.M alleges the trial judge erred in law by not applying the Federal Act to the guardianship proceeding and by not giving adequate weight to the foundation, objectives, intent and overarching principles set out in the *Federal Act* which she says favour her guardianship application over that of D.D.

ISSUE(s)

1. Should Peguis CFS be allowed to intervene in the appeal?
2. Does Peguis CFS have a direct interest in the appeal, and would they bring a useful and different perspective?
3. Would Peguis CFS unfairly expand the appeal or add new evidence?
4. Would Peguis CFS’s intervention cause delay or unfairness to the parties?
5. What should the final result of the intervention motion be?

ANALYSIS

Issue 1: Should Peguis CFS be allowed to intervene in the appeal?

- The Court said the main question was whether allowing Peguis CFS to intervene would serve the interests of justice.
- The Court said this case may look like a private guardianship dispute, but it also raises bigger questions about the legal framework for Indigenous children and families in Manitoba.
 - Due to this, the Court said the case had public importance beyond only the two guardianship applicants.

Issue 2: Does Peguis CFS have a direct interest in the appeal, and would they bring a useful and different perspective?

- The Court found that Peguis CPS had a direct interest because the child's ancestry was connected to Peguis First Nation.
 - The child was eligible to become registered as a member of Peguis First Nation, meaning Peguis CFS had an interest in the child's welfare and in the child's connection to her Indigenous community.
- The Court also found that Peguis CFS could bring a perspective that A.D.M. could not fully provide. A.D.M. was focused on her own guardianship appeal, while Peguis CFS had a broader Indigenous community perspective about the *Federal Act* and the overall legal framework for Indigenous children and families.
 - The Court said this perspective would be useful.

Issue 3: Would Peguis CFS unfairly expand the appeal or add new evidence?

- The Court accepted that Peguis would not expand the appeal as the child's ancestry was already part of the record; Peguis CFS did not need to add new facts.
- The Court also made it a condition that Peguis CFS could not add to the record or raise new issues.

Issue 4: Would Peguis CFS's intervention cause delay or unfairness to the parties?

- D.D. was concerned that Peguis CFS's involvement could be unfair or repetitive because Peguis CFS had not participated in the original guardianship trial.
 - The Court understood the concern but decided that conditions could prevent unfairness.
- The Court found that Peguis CFS's intervention would not unfairly delay the appeal and would not prejudice the parties.

Issue 5: What should the final result of the intervention motion be?

- The Court granted the motion and Peguis CFS was allowed to intervene because it had both a direct interest in the outcome and a special Indigenous child and family services perspective.
 - The Court said either reason would have been enough to allow the intervention.

RELEVANT EXCERPTS

[4] For the following reasons, I am persuaded that the interests of justice would best be served by granting Peguis CFS leave to intervene in the appeal upon terms and conditions.

[12] In his reasons, the judge noted that reference to the Act had been made during the course of the guardianship trial. He stated that, in order to decide the competing guardianship applications, he was not required to decide whether the Act applied to a private guardianship application under the CFSA, but he “doubt[ed] the applicability” (at para 26) of the Act save for foundational principles that are common to both the Act and the CFSA, such as the paramount consideration of the best interests of the child, respect for cultural and linguistic heritage, and participation of Indigenous communities in matters relating to their families and children.

[19] Peguis CFS says carving out private guardianships from the applicability of the Act is not only detrimental to individual Indigenous children and families, but also to the jurisdiction of Indigenous governing bodies in relation to child and family services. The position of Peguis CFS is that the Act recognizes its inherent right to be notified of the guardianship applications, the right to make representations at the hearing itself, and the right to the principles and standards set out in the Act being considered by the judge.

[24] There is no dispute as to the relevant principles to consider in the exercise of the discretion under r 46.1 (see *Interlake Reserves Tribal Council Inc et al v The Government of Manitoba*, 2020 MBCA 126 at paras 17-19). An application for intervention must not be looked at narrowly, but more broadly with the overriding concern being whether the interests of justice would best be served by granting leave to intervene.

[25] In terms of the nature of the case and the issues that it raises, while the appeal, at first blush, appears to be a purely private matter, it is not. The governing framework for Indigenous children and families in Manitoba is an important matter of public interest. The law as to the boundaries of federal, provincial and Indigenous jurisdiction and standards is not settled. As Peguis CFS puts it in its memorandum, this area of law is “special, evolving, and expanding.” I am also mindful of the fact that Parliament has now implemented UNDRIP in areas of federal jurisdiction (see *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14). The fact that there is disagreement in other provinces as to whether the Act applies to a private guardianship confirms that this appeal engages important questions not just to the parties, but to the public generally.

[26] In my judgment, Peguis CFS has a direct interest in this case, one that cannot fully be protected by A.D.M. (see Interlake Reserves Tribal Council Inc at para 46). While Peguis CFS and A.D.M. share the same ultimate objective in the private guardianship dispute, Peguis CFS has wider concerns as to “an Indigenous perspective” (at para 58) about the Act and the overall legal framework for Indigenous children and families in Manitoba that A.D.M. could not reasonably speak to at the appeal.

[31] In summary, I am satisfied that Peguis CFS should be granted leave to intervene as it has both a direct interest in the outcome of the appeal and special expertise or a unique perspective relating to the subject matter of the appeal—the application of the Act to matters of private guardianship. Either reason is sufficient basis to grant it leave to intervene.

LEGISLATION CITED

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

[*The Child and Family Services Act, CCSM c C80.*](#)

Section 75(2)

Reporting not to identify persons involved

75(2) No press, radio or television report of a proceeding under Part II or III shall disclose the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person.

[*Court of Appeal Rules, MR 555/88R.*](#)

Rule 37.1

Directions

Where one or more parties to an appeal request or where a judge orders,

(a) the Chief Justice; or

(b) in the absence of, or with the direction of the Chief Justice, a judge;

may convene a meeting of the parties for the purpose of giving such direction for the conduct of the hearing as may be appropriate.

Rule 46.1

Intervention

46.1(1) A person affected by an order made in chambers may appeal to the court, except in those matters where, by statute, authority to make the order is given to a judge in chambers and there is no right of appeal.

46.1(2) A motion for intervention shall be filed and served within 30 days after filing the notice of appeal.

46.1(3) A motion for intervention shall briefly

(a) describe the intervener and the intervener's interest in the appeal;

(b) identify the position to be taken by the intervener on the appeal; and

(c) set out the submissions to be advanced by the intervener, their relevancy to the appeal and the reasons for believing that the submissions will be useful to the court and different from those of the other parties.

46.1(4) If granted leave to intervene, an intervener has the right to file a factum.

46.1(5) Unless otherwise ordered by a judge, an intervener

(a) shall not file a factum that exceeds 20 pages;

(b) shall be bound by the case on appeal and may not add to it; and

(c) shall not present oral argument, without leave of the court.

46.1(6) In the order granting leave to intervene, the judge may specify the filing date for the factum of the intervener but shall, unless there are exceptional circumstances, make provisions as to additional disbursements incurred by the appellant or respondent as a result of the intervention.

46.1(7) Subrules (1) to (3), clauses 5(a) and (c) and subrule (6) do not apply to the Attorney General of Canada and the Attorney General of Manitoba when the appeal is brought pursuant to The Constitutional Questions Act.

[Indian Act, RSC 1985, c I-5.](#)

[Peguis First Nation Honouring our Children, Families and Nation Act, 2022.](#)

[United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.](#)