

Michif CFS v S.A.S. and J.A.A.M, 2022 MBKB 176.

SUMMARY

The Michif Child and Family Services [“the Agency”] applied to the Court for an order finding the subject child, V.J.A.M-M., remains in need of protection. The Agency seeks a permanent order for the care of the child. The parents contest this request, stating that they can care for, and should care for, the child themselves. The Court proceeds through an analysis (at the request of the Agency), to determine if the order can be made on a ‘summary judgment motion’ (a method of hearing and resolving all or part of a matter without a trial, subject to specific conditions). The Court finds that summary judgment is available for this matter, and makes a permanent order placing the child with their aunt, S.S.

REGION	Manitoba
JURISDICTION	Court of King's Bench of Manitoba
JUDGE	Abel J
PARTIES	Petitioner 1. Michif Child and Family Services [“the Agency”] Respondents 1. S.A.S Mother 2. J.A.A.M. Father
TREATY TERRITORY	While it is unclear exactly which treaty territory this matter takes place in, Michif Child and Family Services serves areas spanning Treaty 1, 2, 3, 4, and 5 territories.
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	The Michif Child and Family Services serves members of the Red River Métis.
APPLICABLE INDIGENOUS LAW	None.
TOPICS	Best Interests Best interests outweighing priority placement Summary Judgement Permanent Order
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24. Sections 9; 10; 16

	<i>The Child and Family Services Act, CCSM c 80.</i> Sections 17(1) & (2); 38(1)(b); 41(1) (Note: Section 41(1) has since been repealed and replaced with section 41). <i>The Court of Queen's Bench Act, CCSM c C280.</i> (Note: The Act has since been replaced with <i>The Court of King's Bench Act</i>. In addition, section 20.07(1) has been repealed, but the link to its amendment can be found here). Sections 20.03(2); 20.07(1)
CASE LAW CONSIDERED	<i>Hryniak v Mauldin, 2014 SCC 7.</i> <i>R v Gladue, 1999 CanLII 679 (SCC).</i> <i>Bibeau et al v Chartier et al, 2022 MBCA 2.</i> <i>Dakota Ojibway Child and Family Services et al v MBH, 2019 MBCA 91.</i> <i>Michif CFS v KLB and AP, 2022 MBQB 144.</i> <i>Sensible Capital Corp v Galton Corporation, 2020 MBQB 159.</i> <i>5976511 Manitoba Ltd et al v Taylor McCaffrey LLP et al, 2020 MBQB 48.</i> <i>Anishinaabe CFS v DA et al, 2017 MBQB 7.</i> <i>Alberta (Child, Youth and Family Enhancement Act, Director) v JSA, 2019 ABPC 32.</i> <i>British Columbia (Child, Family and Community Service) v SH, 2020 BCPC 82.</i> <i>New Brunswick Minister of Social Development v MA and RA, 2014 NBQB 130.</i> (Not available on CanLII). <i>Children's Aid Society of Brant v CG, 2014 ONCJ 197.</i>
CASE HISTORY	None

CASE BRIEF

DECISION

- The Agency's motion for summary judgment is granted.
- There is no genuine issue requiring a trial as to what order is in the best interests of the child (that being the permanent order).
- There will be a permanent order made, placing M.J.A.M-M. with her maternal aunt, S.S.

FACTS

- V.J.A.M-M., the subject child, is the child of S.A.S. [the mother] and J.A.A.M. [the father].
 - As both parents identify as Indigenous, V.J.A.-M-M. is considered Indigenous as well.
 - S.A.S. has three other children, all of whom are under the permanent care of the Agency.
- V.J.A.M-M. has been living with her maternal aunt, S.S., for several years under a temporary care order.
- Some of the protection concerns that led to V.J.A.M-M. being removed include:
 - The mother's mental health and cognitive issues;
 - The mother's inability to regulate her emotions; and
 - The father 'self-medicating' with cannabis.

ISSUES

1. Is summary judgment a fair and just method of adjudication in the circumstances of this case?
 - a. Does summary judgment allow the judge to make the necessary findings of fact;
 - b. Does summary judgment allow the judge to apply the law to the facts; and
 - c. Is summary judgment a proportionate, more expeditious and less expensive means to achieve a just result than going to trial;
2. Is there a genuine issue requiring a trial as to whether the child is in need of protection at the time of this hearing and if so, is there a genuine issue requiring a trial as to what order is in the best interest of the child?
3. If there is a genuine issue requiring a trial, can the trial be avoided by weighing the evidence, evaluating credibility, drawing inferences and/or calling oral evidence?

ANALYSIS

Summary Judgment

- A type of order that resolves a matter without a full trial.
- [*The Court of Queen's Bench Rules, Man Reg 553/88*](#) ["the Rules"] (Since replaced by *The Court of King's Bench Rules*):
 - Rule 20.07(1) – A judge must grant summary judgment if they are satisfied there is no genuine issue requiring a trial, with respect to either a claim or a defence.
 - Rule 20.03(2) – Allows the court to weigh evidence, evaluate credibility and draw reasonable inferences in determining whether there is a genuine issue requiring a trial.
- *Hyrniak v Mauldin*, 2014 SCC 7:
 - The leading Supreme Court of Canada case on summary judgments.
 - There will be no genuine issue requiring a trial when the process:
 - (1) Allows the judge to make the necessary findings of fact;
 - (2) Allows the judge to apply the law to the facts; and
 - (3) Is a proportionate, more expeditious and less expensive means to achieve a just result.
- The findings of *Hyrniak v Mauldin* were confirmed by the Manitoba Court of Appeal in *Bibeau et al v Chartier et al*, 2022 MBCA 2.
- *Dakota Ojibway Child and Family Services et al v MBH*, 2019 MBCA 91:
 - The persuasive legal burden is on the moving party to establish, on a balance of probabilities, that summary judgment should be granted.
- *Sensible Capital Corp v Galton Corporation*, 2020 MBQB 159:
 - Whether there is a genuine issue for trial is a separate and distinct question from whether summary judgment would allow enough process to achieve fair and just adjudication of the issues.

The Federal Act

- [*An act respecting First Nations, Inuit and Métis children, youth and families*](#) ["the Federal Act"].

- The *Federal Act* sets out the national standards for the provision of child and family services to Indigenous children and their families.
 - As both parents are Indigenous, the *Federal Act* applies to this matter.
- Relevant sections of the *Federal Act* for this matter include:
 - Section 9 - Outlines the principles of the act, including the best interests of the child, cultural continuity and substantive equality.
 - Section 10 – Provides for the best interest factors and considerations for an Indigenous child.
 - Section 16 – Directs the prioritization of the placement of an Indigenous child.
 - To the extent that is in the child’s best interests, their placement should be considered as followed:
 - With one of their parents;
 - With another adult member of the child’s family;
 - With an adult who belongs to the same Indigenous group, community, or people as the child;
 - With an adult who belongs to an Indigenous group, community, or people other than the one to which the child belongs; or
 - With any other adult.
- *British Columbia (Child, Family and Community Service) v SH*, 2020 BCPC 82:
 - When determining the best interests of an Indigenous child, primary consideration must be given to the presented in section 10(3).
 - These factors are not mere examples of factors associated with the best interest of an Indigenous child, they are specific categories that must each be addressed.
- Under the *Federal Act*, the best interests of the child must be considered at all stages of the process, or in other words, throughout the entirety of the Agency’s application.
 - This is different from [The Child and Family Services Act](#) [“CFSA”], which only requires the best interests of the child to be considered when a particular section of the act directs the consideration.
 - In the context of a summary judgment, this means that the best interests of V.J.A.M-M (in determining what order is in their best interest) would only be considered *after* determining there is no genuine issue requiring trial as whether the child was and still is in need of protection.

Issue 1: Is summary judgment appropriate?

- The Court is satisfied that summary judgment is a fair and just method of adjudication.
- All affidavits intended to be relied on by the Agency, as well as an affidavit from each parent, were admitted and cross examined by all parties.
- *5976511 Manitoba Ltd et al v Taylor McCaffrey LLP et al*, 2020 MBQB 48:
 - A responding party to a motion for summary judgment ought to put their best foot forward, with respect to their evidence, to establish that there is a genuine issue requiring a trial.
- The question of whether summary judgment permits a fair and just adjudication should not be combined with the question of whether there is a genuine issue requiring a trial.
 - If the available evidence is limited, there is no reason to believe that there would be better evidence available for a trial.
- In this matter, a trial would offer no substantive difference in the evaluation of the evidence than what the court has already been provided.
 - Given the nature of the issues and the nature and strength of the evidence, summary judgment is a proportional procedure in this matter.
 - As the respondents to the summary judgment motion, the parents were required to put their best evidentiary foot forward, and they have.
- The shortened timeline and cheaper cost to a summary judgment motion (in comparison to a full trial) also contributes to it being a fair and just method of adjudication in this matter.

Issue 2: Is there a genuine issue requiring a trial regarding whether the child was in need of protection at the time of the hearing?

- As it has been determined that summary judgment is available for this matter, the Agency now bears the burden of establishing that there is no genuine issue requiring a trial.
- Sections 17(1) and (2) of the CFSA set out what must be considered in determining if a child is in need of protection.
 - S 17(1) – A child is in need of protection where the life, health, or emotional well-being of the child is endangered by the act or omission of a person.
 - S 17(2) – Sets out examples of conduct that illustrates where a child may be in need of protection, such as:
 - The child is without adequate care, supervision or control;

- The child is likely to suffer harm or injury due to the behaviour, condition, domestic environment or associations of a person having care, custody, control, or charge of the child.
- The agency has established a *prima facie* [“on the face”] case that V.J.A.M-M. is in need of protection at the time of this hearing, based on the following:
 - Concerns regarding S.A.S.:
 - S.A.S. has three children, all of whom are in the permanent care of the Agency, due to her mental health concerns and cognitive delays, which impact and interfere with her ability to provide adequate care and supervision to the children;
 - There is a low probability that S.A.S. would be able to provide V.J.A.M-M. with the home environment she needs;
 - S.A.S. has exhibited an inability to care for herself, showing up late to cross-examination and advising the Court she got lost and was “kind of winging it”;
 - S.A.S. admitted in her cross examination that she forgets to take her medications, despite having a care worker who calls and reminds her to do so;
 - The mother’s doctor has reported that S.A.S. becomes dysregulated and lacks emotional and cognitive stability, which could be psychologically harmful to V.J.A.M-M.;
 - S.A.S. has done little to address these ongoing concerns; and
 - The mother believes that her assistance from her care worker and *Turning Leaf* allows her to parent V.J.A.M-M. This belief is not supported by the evidence that has been presented, nor does it create a genuine issue requiring a trial.
 - Given the above, the Court finds that the Agency has met its *prima facie* case that V.J.A.M-M. was in need of protection at the time of the hearing, and S.A.S. has not met her onus to show that there is a genuine issue requiring trial.
 - With respect to whether the child *currently* needs protection, S.A.S. has not met her onus to displace the Agency’s *prima facie* case.

- Concerns regarding J.A.A.M:
 - The father has a long-standing history of cannabis use as a self-medication, which interferes with his ability to function;
 - J.A.A.M. confirmed that he continues to struggle with anxiety;
 - There are no concerns with the fact that the father has anxiety, but rather the way he is choosing to treat it.
 - The father has been advised to seek medical assistance for his anxiety, however has not done so.
 - J.A.A.M. continues to use cannabis daily, including prior to attending visits with V.J.A.M-M.
 - J.A.A.M.'s doctor reports that the father has a low probability of being able to provide a safe, nurturing and structured home environment for V.J.A.M-M. and her developmental needs;
- Given the above, the Court finds that the Agency has met its *prima facie* case that V.J.A.M-M. was in need of protection at the time of the hearing, and J.A.A.M. has not met his onus to show that there is a genuine issue requiring trial.
 - Had J.A.A.M. attended a physician for his anxiety as he was advised to, there would have been evidence to argue that he is on the path to making the necessary changes to parent V.J.A.M-M. effectively, therefore demonstrating a genuine issue requiring a trial.
- J.A.A.M. did present evidence of communication with a counsellor, but this does not demonstrate a genuine issue requiring a trial.
 - The correspondence demonstrates that the parents are attending counselling, however it focuses on the relationship between the father and the mother, rather than J.A.A.M.'s mental health, as was recommended.
 - This correspondence does not demonstrate a genuine issue requiring trial.
- The Court determines that, even if the parents' ability to parent together to overcome deficiencies was considered, this does not create a genuine issue requiring a trial.
 - The mother's mental health concerns are so significant that the Court is not satisfied that J.A.A.M. would be able to make up the deficiency.

- J.A.A.M. argues that the reporting doctor did not consider the intergenerational trauma that the father experienced when writing the report, and therefore, has created a genuine issue requiring a trial.
 - During cross-examination, the doctor states that, while writing his report, the issues relating to J.A.A.M.'s experiences with residential schools and the 60's Scoop were assumed to be in existence and assumed to have played a significant role in J.A.A.M.'s life.
- Apprehending the child was a decision that was made, and therefore, is required to be made with the consideration of the best interest of the Indigenous child section of the *Federal Act* (s 10).
 - Considering section 10, V.J.A.M-M.'s best interests still require the determination that she was in need of protection at the time of the hearing.
- Keeping V.J.A.M-M. in her parents' care would have addressed the cultural and spiritual heritage of the child, her need for bonding with her parents, and would have provided for some stability for V.J.A.M-M.
 - However, the best interest concerns do not outweigh the need for apprehension and/or continue apprehension, given the serious concerns regarding the parents.

Issue 3: Is there a genuine issue requiring a trial as to what order is in the best interests of the child?

- The Agency bears the burden of establishing that there is no genuine issue requiring a trial as it relates to what order is in the best interests of V.J.A.M-M.
- Considering the concerns raised about the parents' ability to adequately care for V.J.A.M-M., the Agency has met its onus to demonstrate that a permanent order is in the best interests of the child.
 - Children need and deserve stability.
 - A temporary order for V.J.A.M-M.'s care was made so that the parents would have an opportunity to address the concerns of the Agency in a meaningful way.
 - Despite almost 18 months passing since the *expiry* of the temporary order (December 2020), the parents remain in the same position.
- The parents have not met their onus to displace the Agency's *prima facie* case that a permanent order is in the best interests of the child.

- It is not enough for the parents to demonstrate that there is an issue.
 - They must demonstrate that there is a *genuine* issue, which requires a trial.
- S.A.S. argues that there are 3 areas that do raise genuine issues requiring a trial.
 - The reporting doctor did not evaluate the resources available to S.A.S.
 - The doctor confirmed in his cross-examination that he considered the resources available to S.A.S.
 - In doing so, he concluded that the mother's mental health and cognitive issues were, even with these supports, too significant.
 - There have been changes in S.A.S. from the date the doctor's report was made to the date of the hearing.
 - No evidence of any significant change in S.A.S. was provided.
 - Given the nature of the concerns regarding S.A.S., there is no realistic timeframe for S.A.S. to demonstrate changes.
 - The Gladue factors were not specifically addressed by the report.
 - In the criminal law context, the Supreme Court of Canada has instructed judges to consider certain factors in the sentencing of Indigenous offenders.
 - These factors are called the "Gladue factors".
 - The existence of the Gladue factors, in themselves, do not create a genuine issue requiring trial. They do require an analysis of how the personal history of S.A.S. impacts her ability to parent V.J.A.M-M.
 - The unique ways that trauma manifests itself, as well as what steps have been taken to address this trauma, must be analyzed to determine if the parent can, over a reasonable time, develop the ability to parent their child(ren).
 - The abuse and trauma suffered by S.A.S. has manifested itself in a way that no amount of support will provide S.A.S. with the ability to parent.
 - The reporting doctor did not specifically refer to the Gladue factors in his report, but states on cross-examination that they were considered by him in arriving at his conclusions.
- A permanent order is an order of last resort.
 - A court should try to plot the path most likely to remedy the inadequacies of the parents to bring about family reunion.

- However, if this Court is to plot this path, then the causes of the inadequacies are irrelevant.
- The impacts of residential schools, poverty, displacements, and substance abuse can all contribute to an individual being before the court.
 - Thoroughly canvassing these factors with parents can help the court understand why a parent is in child protection court.
 - Similar provisions should apply to child protection hearings, with the factors considered in the context of what order would be in the best interest of the child.
- Although the parents did not raise the Gladue considerations in their materials as something that could impact their ability to parent V.J.A.M-M., the Court is prepared to acknowledge and consider that the issues the parents have faced, and continue to face, can be partially attributed to the legacy of colonialism, as detailed by the Supreme Court of Canada in *R v Gladue*.
 - Considering the Gladue factors, the ongoing nature of the parenting concerns, and the parents' lack of effort to addressing these concerns, a permanent order is still in the best interest of V.J.A.M-M.
 - The Court expresses that they are not diminishing the Gladue factors, but that the factors cannot overcome the conclusion that a permanent order is in a child's best interest.
 - Furthermore, there is no more time to make an additional temporary order, pursuant to section 41(1) of the CFSA.
- The parents were given goals such as "establish a relationship with a physician" and "engage in long-term counselling".
 - These are not impossible goals to meet, especially in the parents arguing that they can care for V.J.A.M-M.

Application of the *Federal Act*.

- As making a permanent order is a decision being made, the best interest of the Indigenous child, and its associated factors, are required to be considered pursuant to section 10 of the *Federal Act*.
 - S.S. is the child's aunt and the current licensed kinship placement for the child. She provides V.J.A.M-M. with a stable environment where her needs are met.

- S.S. also cares for V.J.A.M-M.'s older sister, thereby maintaining the sibling relationship.
- Going further, section 16 of the *Federal Act* outlines the order of placement that agencies should follow when placing Indigenous children.
 - The first placement option is with the child's parents (s 16(1)(a)).
 - It has already been established that V.J.A.M-M. is likely to face some form of harm if returned to the care of her parents, therefore, this placement cannot occur.
 - If the child cannot be placed with their parents, the Agency must next look to place the child with an adult member of their family (s 16(1)(b)).
 - S.S. is the child's aunt and therefore, the Agency has fulfilled their placement obligations under the *Federal Act*.
- Pursuant to section 16(3) of the *Federal Act*, the Agency has the obligation to conduct a reassessment as to whether placement with S.S. is appropriate.
 - The *Federal Act* does not preclude a permanent order, but it does require a reassessment, if the child is not placed with a parent.
 - Notably, the *Federal Act* does not speak to any obligation of the Agency to advise a parent of the outcome of their reassessment.
 - However, to address any gap in the legislation that exists regarding providing notice after a reassessment (between the *Federal Act* and the CFSA), there will be a condition placed on the order requiring the Agency to advise the parents of the outcome of their reassessments, so long as they are exercising access with the child at a minimum of once per month.

RELEVANT EXCERPTS

[7] The *Court of Queen's Bench Rules, Man Reg 553/88*, Rule 20.07(1) states that a judge must grant summary judgment if they are satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[22] The *Federal Act* provides an expansive list of factors to be considered when determining the best interests of an Indigenous child. These further factors must be considered. In general, primary consideration must be given to all the factors enumerated in section 10(3) when determining the best interests of an Indigenous child (see *British Columbia (Child, Family and Community Service) v. S.H.*, 2020 BCPC 82 (“S.H.”), at para. 124).

[23] The factors enumerated in section 10(3) are not examples of factors associated with the best interests of an Indigenous child. They are specific categories that must be addressed (S.H. at para. 125).

[24] The most significant difference between *The Child and Family Services Act, CCSM c C80* (the “Act”), and the *Federal Act* in regards to this hearing is the *Federal Act*’s direction that the best interests of the child be considered at all stages of the process, whereas the *Act* only requires the best interests of the child to be considered when a particular section or subsection directs (S.H. at para. 126).

[41] Summary judgment is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial and is therefore a fair and just method of adjudication.

[74] This is not a high bar for the Father to meet. There was no explanation provided by the Father as to why he had not attended to a physician. Had he done so, there would have been evidence to argue that the Father is on the path to making the necessary changes so as parent the child effectively, thereby demonstrating a genuine issue requiring a trial

[85] Father argues that Dr. Enns not considering the intergenerational trauma that the Father suffered in the Report results in a genuine issue requiring a trial.

[86] Dr. Enns, during his cross-examination, confirmed that issues relating to the Father’s experience with residential schools and the 60’s Scoop were assumed to be in existence and played a significant role in the Father’s life.

[87] As an apprehension involves the making of a decision, or the taking of an action, the best interests of the child must be a primary consideration in the making of that decision, or the taking of that action (see s. 10(1) of the Federal Act).

[90] Keeping this child in the care of the parents would have addressed the cultural and spiritual heritage of the child, her need for bonding with the parents, and the stability that would have provided the child.

[91] However, those best interest concerns do not outweigh the need for apprehension, and continued need for apprehension, given the serious concerns regarding the parents, as previously referenced.

[94] The child needs and deserves some stability and finality regarding her future care plans. The Temporary Order was previously pronounced so as to provide the parents with an opportunity to address any parenting concerns in a meaningful way. That has not happened.

[102] With respect to her background and Gladue factors, the existence of those factors in and of themselves do not create a genuine issue requiring a trial.

[106] How the abuse and trauma suffered by a parent manifests itself must be considered by the court in considering whether it is possible for the court to plot a path of reunification.

[111] The effect of residential schools, poverty, displacements, and substance abuse all impact on why a person may be before the court. A thorough canvassing of those factors with a parent would help the court understand why a parent is in child protection court (see C.G.).

[114] For the purpose of this hearing and decision, I am prepared to acknowledge and consider that the issues the parents face can be partially attributed to the legacy of colonialism as detailed by the Supreme Court of Canada in Gladue.

[116] However, in this case, given those Gladue factors, the ongoing nature of the parenting concerns, and the fact that the parents have not meaningfully addressed those concerns, the conclusion is that a permanent order is in the best interests of the child. I am not diminishing or minimizing those Gladue factors. In this case, however, those factors cannot overcome the conclusion of a permanent order being in the best interests of the child.

[139] There is nothing in either the Act or Federal Act that speaks to any obligation of an Agency to advise a parent of the outcome of such a reassessment. Until the enactment of the Federal Act, there was no requirement under the Act for such a reassessment. The Federal Act does not preclude a permanent order, but requires a reassessment should a child not be placed with a parent.

LEGISLATION CITED

An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.

Section 9

Principle – best interests of child

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

Principle — cultural continuity

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

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

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

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).

[The Child and Family Services Act, CCSM c 80.](#)

Section 17(1)

Child in need of protection

17(1) For purposes of this Act, a child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person.

Section 17(2)

Illustrations of child in need

17(2) Without restricting the generality of subsection (1), a child is in need of protection where the child

(a) is without adequate care, supervision or control;

(b) is in the care, custody, control or charge of a person

(i) who is unable or unwilling to provide adequate care, supervision or control of the child, or

(ii) whose conduct endangers or might endanger the life, health or emotional well-being of the child, or

(iii) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner;

- (c) is abused or is in danger of being abused, including where the child is likely to suffer harm or injury due to child sexual abuse and exploitation material;
- (d) is beyond the control of a person who has the care, custody, control or charge of the child;
- (e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment or associations of the child or of a person having care, custody, control or charge of the child;
- (f) is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child;
- (g) being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child; or
- (h) is the subject, or is about to become the subject, of an unlawful adoption under The Adoption Act or of a sale under section 84.

Section 38(1)(b)

Orders of the judge

38(1) Upon the completion of a hearing under this Part, a judge who finds that a child is in need of protection shall order

- (b) that the child be placed with a person other than an agency that the judge considers best able to care for the child, with or without transfer of guardianship to that person, and subject to the conditions and for any period, including until the child reaches the age of majority, that the judge considers necessary;

Section 41(1)

Maximum period of temporary guardianship

41(1) The total period of temporary guardianship shall not exceed:

- (a) 15 months with respect to a child under 5 years of age; or
- (b) 24 months with respect to a child 5 years of age or older and under 12 years of age.

Note: Section 41(1) has since been replaced with Section 41, which states:

Extension of temporary guardianship

41 A judge or associate judge may extend an order of temporary guardianship for a period not exceeding 24 months. An order of temporary guardianship may be extended one or more times.

[The Court of Queen's Bench Act, CCSM c C280.](#)

Section 20.03(2)

Powers of judge

20.03(2) When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of the following powers in order to determine if there is a genuine issue requiring a trial:

- (a) weighing the evidence;
- (b) evaluating the credibility of a deponent;
- (c) drawing any reasonable inference from the evidence;

unless it is in the interests of justice for these powers to be exercised only at trial.

Section 20.07

Granting summary judgment

20.07(1) The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.