

Welter v Kequahtoway, 2023 SKKB 33.

SUMMARY

This action is originally brought to the Court by the paternal aunt of the subject child Hiba. The paternal aunt is seeking sole decision-making capabilities and primary care regarding the child. Hiba was placed with her aunt in a private placement agreement between her mother and her aunt.

Although Hiba’s mother, Quanita, brings her own application to have sole decision making and primary care regarding Hiba, the Court does not determine Hiba’s care arrangements in this hearing. Instead, the two counter-petitions filed by the mother are ruled upon. The first petition sought to have the First Nation, Zagime Anishinabek, be added as a party to the proceeding, due to Hiba’s membership with the Nation and the mother’s current residence on the Nation. The second petition sought to have the matter moved from the Judicial Centre of Battleford to the Judicial Centre of Regina.

The Court determines that the Nation is not entitled to party status in the proceeding because the mother is capable of bringing any evidence about the child’s culture (as it relates to her best interest), before the court. The matter is moved to the Judicial Centre of Saskatoon, as this is a compromise between the parties’ priorities. Lastly, interim care arrangements for Hiba are made in which she resides with her aunt and exercises access with her parents on alternating weekends.

JURISDICTION	Saskatchewan
COURT	Court of King’s Bench for Saskatchewan
JUDGE	Goebel J
PARTIES	Applicant(s) 1. Amanda Dawn Welter Paternal Aunt Respondent(s) 1. Quanita Kequahtoway Mother 2. Yasser Khamis Fdl El Mulla Father
TREATY TERRITORY	Treaty 4
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Zagime Anishinabek First Nations

APPLICABLE INDIGENOUS LAW	None
TOPICS	Access Application of Act Best Interests Care Provider Decision Making Interim Orders Jurisdiction Off-Reserve Parties Party Status
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.</i> Sections 13(b); 33 <i>The Child and Family Services Act, SS 1989-90, c C-7.2.</i> Sections 23(1)(b); 39(1) <i>The Children's Law Act, 2020, SS 2020, c 2.</i> Section 8(1) <i>The King's Bench Rules, Sask Gaz December 27, 2013, 2684.</i> Rules 3-84; 15-5; 15-6; 15-10(5); 15-11 <i>The Queen's Bench Act, 1998, SS 1998, c Q-1.01.</i> Section 22(7)

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CASE LAW CONSIDERED	<i>Bear v Muskoday Convenience Store</i>, 2013 SKQB 279. <i>DB (Re)</i>, 2021 ABPC 140. <i>Dirk v Dirk</i>, 2002 SKQB 292. <i>DLC v GES</i>, 2006 SKCA 79. <i>Hauser v Hauser</i>, 2008 SKQB 51. <i>JC (Re)</i>, 2022 ABPC 212. <i>Klapak v Minty</i>, 2015 SKQB 230. <i>L (MSD) (Re)</i>, 2008 SKCA 48. <i>McDonald v Hawley</i>, 2021 ABPC 98. <i>Métis Child, Family and Community Services v CPR</i>, 2022 MBCA 40. <i>MM v Alberta (Child, Youth and Family Enhancement Act, Director)</i>, 2021 ABPC 317. <i>MSD v AC</i>, 2021 NBQB 14. <i>NP v LDS Adoption Services</i>, 2006 ABQB 78. <i>NQ (Re)</i>, 2003 YKTC 35. <i>Potzus v Potzus</i>, 2017 SKQB 105. <i>RAB (Re)</i>, 2019 ABPC 178. <i>SM v Alberta (Child, Youth and Family Enhancement Act)</i>, 2019 ABQB 972. <i>Superior Construction Solutions Inc. v Hamilton Construction Corp.</i>, 2016 SKCA 130. <i>Toronto-Dominion Bank v Janzen</i>, 2021 SKQB 38. <i>URM (Re)</i>, 2018 ABPC 96. <i>Veenstra v McCabe</i>, 2014 ONSC 6844. <i>Wiebe v Intact Insurance Company</i>, 2017 SKQB 368.
CASE HISTORY	None

CASE BRIEF

DECISION

- The application to add Zagime Anishinabek as a party to this proceeding is dismissed.
- The proceeding is transferred from the Judicial Centre of Battleford to the Judicial Centre of Saskatoon.
 - Any party may reapply for a further transfer.
- The interim care order is amended so that:
 - the father shall have parenting time on alternating weekends that coincide with his days off from work commencing on Friday, January 20, 2023;
 - the mother shall have parenting time on alternating weekends commencing on Friday, January 27, 2023;
 - at all other times the child, Hiba, shall remain in the care of the aunt;
 - the aunt shall share Hiba's school calendar with each of the parents, and the parties will endeavour to increase each parent's weekend parenting time to incorporate statutory holidays and non-school days where possible; and
 - the aunt will facilitate video and/or telephone communications with the parents upon request
 - the parties shall exchange care of the child at a mutually agreed upon location in Davidson, Saskatchewan, unless alternate arrangements are made in advance; and
 - that said, it is expected that weekend parenting time will take place in Kindersley, Saskatchewan, or Saskatoon, Saskatchewan, on a regular basis in which event the exchange arrangement will be modified.

FACTS

- The subject child to the proceedings is Hiba, a 6-year-old girl.
- Hiba has mixed ancestry:
 - Her mother, Quanita Kequahtoway ["Quanita"], is a member of the Zagime Anishinabek First Nations ["Zagime Anishinabek"].
 - Her father, Yasser Fdl El Mulla ["Yasser"], immigrated from Sudan to Canada.

- Quanita has 3 older children from a previous relationship.
- Quanita and Yasser ended their relationship when Hiba was only a few months old.
- In Spring 2018, due to personal circumstances, Hiba’s mother made the difficult decision to place her children with extended family members.
 - Hiba’s 3 older half-siblings were placed with their maternal grandparents on Zagime Anishinabek.
 - Hiba was placed with a paternal aunt and uncle, as Hiba was just over a year old, and this placement was closer to Quanita.
- A written agreement was signed by the mother and caregivers in September 2018 and April 2019. These were difficult but voluntary decisions made by the mother. Child protection services were not provided at that time.
- April 2019 – April 2021
 - Quanita maintained regular access with Hiba, including taking her to Zagime Anishinabek.
 - In April 2021, the paternal aunt and uncle caring for Hiba ended their relationship.
 - Amanda Welter [“Amanda”], the paternal aunt, moved with Hiba to Kerrobert Saskatchewan to live with extended family.
 - Note that, to this point, Yasser claims he tried to maintain contact with Hiba after his separation from her mother. However, was not aware of the private placement arrangements that were made between Amanda and Quanita.
 - After he became aware, Yasser and Amanda worked cooperatively to facilitate access with him and Hiba. He has also supported Amanda with the financial requirements of Hiba’s care.
- June 2022
 - Quanita moved back to Zagime Anishinabek to live with her parents and her 3 oldest children.
 - At this time, Quanita informed Amanda that she wants Hiba to move to Zagime Anishinabek as well.
- Amanda opposed the move and initiated this proceeding under the [Children’s Law Act](#) [“CLA”].

- Through this claim, Amanda seeks an order from the Court designating her as a Person of Sufficient Interest [“PSI”], in addition to an order providing her with the sole guardianship and decision-making authority for Hiba.
- Quanita responds to this application by filing an Answer and Counterpetition, seeking the primary care of Hiba.
 - Quanita also files an application to have Yasser and Zagime Anishinabek added as parties to the proceedings, and to change the location of the proceedings to the Judicial Centre of Regina (from the Judicial Centre of Battleford).
- Yasser files his own Answer and Counterpetition, seeking the primary care of Hiba to be granted to him.
- A second application is filed by Quanita under [An Act Respecting First Nations, Inuit and Métis Children, Youth and Families](#) [“the *Federal Act*”].
 - This application seeks a ruling that the determination of Hiba’s best interests and care arrangements is governed by the *Federal Act*, due to her membership with Zagime Anishinabek First Nations.

ISSUES

1. Should Zagime Anishinabek be added as a party to this proceeding?
2. Should the proceeding be transferred to another judicial centre?
3. What, if any, changes should be made to the interim care arrangement to ensure that Hiba’s best interests are being met pending further agreement of the parties or court order?

ANALYSIS

1. Should Zagime Anishinabek be added as a party to this proceeding?

The Positions of the Parties

- The mother:
 - Quanita seeks to have Zagime Anishinabek added as a party.
 - The mother’s counsel, who also appeared as an agent for the Nation on the date of the hearing, confirmed that Zagime Anishinabek consents to being added.

- Counsel argues that case law, the *CLA*, the intent of the *Federal Act*, and the increased recognition of the inherent rights of Indigenous people to self-government support Zagime Anishinabek being added as a party.
- It is not disputed that Quanita and Hiba are members of Zagime Anishinabek.
 - Hiba's maternal grandmother is also an elected member of Zagime Anishinabek's council.
- The mother argues that the unique facts of this, including the financial and cultural support that Zagime Anishinabek provides to the family, alongside the grandmother's involvement in the Nation's governance support Zagime Anishinabek's party status.
- The aunt:
 - Amanda opposes having Zagime Anishinabek added as a party to the proceedings.
 - She claims there is no legal basis to have the Nation added, and doing so will only complicate the proceedings.
 - Amanda expresses concern that it will be harder to resolve the application if the Nation is "allowed to advance its own distinct agenda".
- The father:
 - Yasser also opposes the Nation being added as a party.
 - He claims that adding the party is an attempt by the maternal grandparents to control the proceeding, due to their connections to Zagime Anishinabek's council.
 - Yasser states that the maternal grandparents have not taken an interest in the care of Hiba while she was being cared for by her aunt, so they should not be allowed to have a say in Hiba's care now, through the Nation.

The Rules and Legislation

- The Court has, generally, large powers to add parties to proceedings.
 - This power must be used carefully, as being named as a party to a proceeding comes with entitlements and rights that can impact the party being added and those already involved.
 - This power is generally outlined in *The Queen's Bench Rules* [now known as [*The King's Bench Rules*](#)], rules 3-84 and 15-10(5).

The Legislation Governing this Proceeding

- *CLA* section 9(2) – an application for parenting must be directed on “any person who has, in the court’s opinion, a sufficient interest in the child, and that person may be heard at the hearing of the application.”
 - The Court finds that this subsection does not speak to party status, but rather the right to notice of an application and to make representations.
- Nowhere in the *CLA* is the right of a First Nation to participate in a proceeding involving an Indigenous child mentioned.
 - However, the *Child and Family Services Act* [“*CFSA*”] allows for a court to designate a chief of a band or the chief’s designate as a PSI, giving the chief or their designate full participatory rights, where the child is a member.
 - *L (MSD) (Re), 2008 SKCA 48*: Adding a chief or their designate as a PSI assists the Court in making a more informed and sensitive decision.
 - This case also stands for providing chiefs with participatory rights pursuant to section 23(1)(c) of the *CFSA*, when the evidence supports a clear connection between the First Nation and the child.
- Notably, the *CFSA* is not available to the Court in this instance. No claim relating to Hiba has been made pursuant to the *CFSA*, nor is there any child protection involvement (recall that Hiba was placed with her paternal aunt through a private agreement not involving the Ministry).
- An application related to the *Federal Act* is made in relation to Hiba.
 - Section 13(b) of the *Federal Act* “grants the right to make representations to an Indigenous governing body [“IGB”] acting on behalf of the Indigenous group, community or people to which a child belongs within the context of a child and family services proceeding.”
 - Quanita’s counsel admits that this section does not directly provide the Nation with party standing, however, she argues that the purpose and intent of the *Federal Act*, along with the increasing recognition of Indigenous peoples’ right to self-government supports adding the Nation as a party.
- The Court states that there is little debate that the law is evolving to recognize participation of First Nations and the right to govern in child protection matters involving Indigenous children.

- A number of cases outside of Saskatchewan (for example, New Brunswick and Alberta), have seen courts rule that the legislated right of an IGB to make representations in child and family services matters not only exists, but must be meaningful and substantive.
 - An example of the right being “meaningful and substantive” is allowing IGB’s the right to call witnesses and cross-examine the witnesses of other parties.
- A notable decision on the topic of First Nations and party status is [*SM v Alberta \(Child, Youth and Family Enhancement Act\)*, 2019 ABQB 972](#).
 - Here, the Alberta Court of Queen’s Bench (as it then was), confirms that neither the provincial child protection provisions, nor the *Federal Act*, grant party status to a First Nation.
 - Instead, the legislation provides the right to make representations “if its exercise is consistent with the best interests of the child and is appropriate in the circumstances”.
 - However, the Court was “influenced” by the changing laws and the benefits of Indigenous perspectives. Ultimately, the Court finds that the Nation failed to meet the common-law test for intervenor status but grants limited scope intervenor status to the Nation.
- Additionally, [*Métis Child, Family and Community Services v CPR*, 2022 MBCA 40](#) speaks to the intervenor status of First Nations.
 - The Court in this case ruled that the First Nation held the unique perspective of the application of the *Federal Act* to private guardianship. The Nation also had a direct interest in the outcome of the appeal.
 - The Nation’s application for leave to intervene is granted by the court.
- However, the above cases, and others mentioned by the Court, only speak to granting intervenor status. They *do not* speak to granting a First Nation *party* status.
 - Even when a First Nation has been granted intervenor status, there are still limits imposed on participation, such as the right to receive disclosure: *JC (Re)*, 2022 ABPC 212.
 - In *MSD v AC*, 2021 NBQB 14, the Court accepts the *Federal Act* applies to the matter before it, however, rejects that the application of the *Federal Act* provides First Nations with party status.

- Furthermore, all of the above cases contemplate a First Nation's party status in the context of child protection matters, not private parenting disputes.
- The Court notes that there have been very few cases in which the involvement of an Indigenous governing body has been considered in private parenting disputes.
 - One private case based out of Ontario, *Veenstra v McCabe*, 2014 ONSC 6844, rejected the First Nation's application for party status, finding that the Nation's participation was "neither necessary nor required" to make a determination of the children's best interests.

Application of the Law to Evidence

- Each case turns on its own facts, circumstances and evidence.
- When considering the legislation and previous cases from various courts, in the context of the case at hand, the Court *is not* satisfied that it is "appropriate or necessary" to add the Nation as a party to the proceeding, for a number of reasons.
 - This matter is purely private family law between the parents and the PSI.
 - This makes this case inherently different from those involving the state.
 - There is not currently, nor has there ever been, a child protection controversy involving Hiba.
 - There is a distinction between a necessary witness and a necessary party.
 - When determining care arrangements for any child, the standard will always be the child's best interests.
 - There is no dispute that Hiba's Indigenous upbringing and heritage inform her best interests, just as there is no question that Hiba's Sudanese upbringing and heritage informs the determination, under section 10(3)(f) of the *CLA*.
 - Quanita's application regarding the applicability of the *Federal Act* remains undecided.
 - It is reasonable the Quanita would present evidence regarding Hiba's cultural connection and, therefore, her connection to the Nation.
 - However, having information that is important to a proceeding does not require that Zagime Anishinabek be given party status: [*Bear v Muskoday Convenience Store*, 2013 SKQB 279.](#)

- The fact that an individual has relevant information to a proceeding *and* seeks to be added as a party to the proceeding does not automatically elevate them from being more than a potential witness: *Veenstra v McCabe*, 2014 ONSC 6844.
- Quanita is free to call witnesses and lead evidence that she believes is relevant to the cultural factors in the determination of Hiba's best interests.
 - Based on this, Zagime Anishinabek does not need to be a party in the proceeding to ensure that the information on how Hiba would be raised as a member of the community is brought before the Court.
- Quanita is asking for Zagime Anishinabek to be added as a party, with full participation rights, as opposed to asking the Court to give the Nation the right to make representations, or to grant intervenor status.
 - The distinction between this is significant. Among other things, being a party would mean that Zagime Anishinabek's consent would be required before any agreement or consent could be reached.
 - Family law matters (as opposed to child protection matters) contain private and sensitive information regarding the parents and children involved, due to the extensive disclosure requirements.
 - The Court is concerned that adding the Nation as a party to the proceedings raises "legitimate" concerns that the matter will become more complicated, and/or a resolution "derailed" by issues not relating to Hiba's best interests.
 - It is unreasonable to expect the other parties to pay for more complicated litigation, both in time and money. That could result from having the Nation added as a party, even if the mother is prepared to pay these costs.
- Lastly, the Court is not persuaded by the argument that the matter is so unique that it requires the Nation's participation to avoid conflict within the community.
 - The Court understands that this concern is raised based on the maternal grandmother's elected membership of Zagime Anishinabek Chief and Council, and the mother's reliance on the Nation financially, culturally and emotionally. In other words, the Court interprets this as the ongoing support

from the Nation to Hiba, and her family might be jeopardized if the Nation is not given a say in the proceedings.

- It is not uncommon for parents in private parenting disputes to rely on friends, family, and cultural communities to provide various types of support.
 - Being relied on for support does not mean these individuals and organizations are elevated to party status.
- There is no order under the *CLA* requiring the Nation to do, or not to do, something in relation to Hiba.
 - It is up to Zagime Anishinabek to *choose* to provide support; choosing to do so does not provide them with legal standing in this matter.
- The mother has failed to satisfy the Court that granting party status to Zagime Anishinabek is necessary, appropriate, or in the best interests of Hiba.
 - The application related to this is dismissed.

2. Should the Proceeding be Transferred to another Judicial Centre?

The Positions being Advanced by the Parties

- Quanita is making the application to have the matter transferred from the Judicial Centre of Battleford to the Judicial Centre of Regina.
 - This request is primarily based on the significant distance between Battleford and Zagime Anishinabek, where the mother has lived since mid 2022.
 - In the alternative, Quanita requests that the proceedings be moved to the Judicial Centre of Saskatoon, where she used to reside, as this is a more convenient and less costly location for her participation.
- Amanda opposes any transfer of the proceeding.
 - Transferring the matter to Regina would require her to travel to the area the night before, forcing her to incur costs of overnight accommodations, as well as alternate care arrangements for Hiba.
- Yasser currently lives in Regina but does not take a strong position on the matter.
 - He proposes that transferring the matter to Saskatoon would be more convenient for him and Quanita, without destabilizing Hiba's care or routine.

The Legal Framework

- Rule 15-11, *King's Bench Rules* – A family law proceeding may be commenced at any judicial centre in the province.
- Section 22(7) *Queen's Bench Act* – Once commenced, a proceeding cannot be transferred without the consent of the parties or an order of the Court.
- Rule 15-11(3)(b) *King's Bench Rules* – If consent cannot be reached, a court will only make an order moving the proceeding if the “balance of convenience” favours proceeding in a different judicial centre.
- *Superior Construction Solutions Inc. v Hamilton Construction Corp*, 2016 SKCA 130:
 - The Court has broad discretion to move an action from one judicial centre to another, regardless of the action being commenced in the wrong centre.
- [*Hauser v Hauser*, 2008 SKQB 51](#):
 - A number of factors will inform the court's discretion to move proceedings. These include (but are not limited to):
 - Where the cause of action arose;
 - The residences of the parties;
 - The location where the parties carry business or are employed; and
 - The location of key evidence relevant to the issues before the court, particularly the location of key witnesses and experts.
 - Convenience to legal counsel is *not* a persuasive factor in the determination of whether to move a matter.
- [*Toronto-Dominion Bank v Janzen*, 2021 SKQB 38](#):
 - Additional factors informing a court's decision to move a proceeding include:
 - Economic cost of litigation; and
 - Access to justice and fairness to the defendant.
- When parenting relief is the primary issue in a proceeding, the best interests of the child(ren) will always be the focal point of any determination.

Application of the Law to the Evidence

- There is no one location that is clearly more appropriate or convenient in this instance.
 - However, there is almost no connection between the parties or the child to Battleford.

- Amanda as the petitioner who commenced the action, expresses that Battleford was chosen because it was closer to her residence in Saskatoon, not because she wanted to deliberately inconvenience the mother.
- Currently, Hiba's residence, school and dance lessons are in Kerrobert, Saskatchewan.
 - Her counselling sessions take place in Kindersley, Saskatchewan.
- The mother has lived in Zagime Anishinabek since 2022.
 - The maternal grandparents, who have primary care of Hiba's three older half siblings, have lived on Zagime Anishinabek for over 10 years.
 - Quanita currently resides with her parents but is on a waitlist for independent housing.
 - The mother works nearby as a school receptionist and is currently working with a social worker to address her mental health and substance use.
 - The mother has friends she can stay with if the matter is transferred to Saskatoon.
- The father has lived and worked in Regina for the last 8 years.
- No party appears to have significant financial resources.
 - Both Amanda and Yasser represent themselves.
 - Quanita has out-of-province counsel who has appeared both in person and over the phone. Quanita personally attends the hearings.
- The distances from the parties' residences to each judicial centre is as follows:
 - Kerrobert (Amanda and Hiba's residence):
 - 190km from Saskatoon;
 - 140km from Battleford; and
 - 425km from Regina.
 - Zagime Anishinabek (Quanita's residence):
 - 150km from Regina;
 - 400km from Saskatoon; and
 - 540km from Battleford.
- Without further clarification on whether this matter will proceed to trial and who the necessary witnesses may be if this occurs, the balance of convenience favors moving the proceeding to Saskatoon.
 - This decreases the travel time and expenses for the parents with only a nominal increase in travel time and expenses for the aunt.

- Furthermore, Amanda will not be required to arrange overnight care for Hiba if the matter is transferred to Saskatoon.

3. What, if any, Changes should be made to the Interim Care Arrangement to Ensure that Hiba's Best Interests are being met Pending Further Agreement of the Parties or Court Order?

- During an adjournment of this hearing, the parties discussed interim care arrangements for Hiba.
 - The distance between the parties' homes, the confusion a varied schedule can have on a child and the need for stability for a child was considered, in addition to the importance of Hiba spending time with each of her parents.
 - It was agreed that some visits between Hiba and the parents would take place in Hiba's hometown, and some take place in Saskatoon, in order to limit the amount of travelling that Hiba would have to do.
- The parties have agreed to try an every weekend parenting schedule pending further agreement in mediation or a court order.
 - The parties, however, could not agree on who would take on the burden of travel and/or expenses for this care arrangement.
 - Quanita does not have a car and would have to borrow a car and pay for the price of fuel.
 - The aunt has an old, large car that uses significant amounts of gas.
- The Court orders the parties to share the responsibility for travel required for exchange weekends.

RELEVANT EXCERPTS

[17] Counsel concedes that there is no specific legislative provision that entitles Zagime Anishinabek to party status in this otherwise private dispute but argues that the case law, the *CLA* and the purpose and intent of the *Federal legislation*, along with increasing recognition of the inherent rights of Indigenous people to self-government in Canadian law, support Zagime Anishinabek's participatory rights in this matter.

[28] Nowhere in the *Act* does it speak directly to the right of a First Nation to participate in a proceeding involving an Indigenous child. In contrast, *The Child and Family Services Act*, SS 1989-90, c C-7.2 [CFSA], provides the court with discretion to designate the chief of a band or the chief's designate as a "person of sufficient interest", with full participatory rights, where the child is a member: *CFSA*, s 23(1)(b). This section has been held to enable the court, "when faced with the task of having to decide what is in the best interests of a First Nation's child in need of protection, to add the chief of the First Nation, or the chief's designate, as a party to the proceedings to the end of assisting the court in making a more informed and sensitive decision": *L.(M.S.D.) (Re)*, 2008 SKCA 48 at para 27, [2008] 8 WWR 280. In that case, the Court of Appeal further speculated that it might also be argued that participatory status could be afforded to a chief pursuant to s. 23(1)(c) of the *CFSA*, if the evidence supported a clear connection between the First Nation and the child. In that regard the court held:

[29] Here, for example, had the child been resident with her maternal grandmother on the Ochapowace First Nation Reserve, and been generally regarded as a member of the First Nation, participating in its events, attending its school, and so on, the Court might have assumed that Chief George had the requisite connection with the child, given the relationship between subsections 23(1)(b) and 23(1)(c), coupled with the customary indicia pointing to the requisite connection, as in *D.L.C. v. G.E.S.*, 2006 SKCA 79, 270 D.L.R. (4th) 597; [2006] 11 W.W.R. 101. But that was not the case. The child resided elsewhere with others, and had done so for virtually the whole of her young life, a fact that was capable of undermining what might otherwise have been assumed to be a close connection between Chief George and the child.

[30] Counsel for the mother also refers to the *Federal legislation* (*An Act Respecting First Nations, Inuit and Metis Children, Youth and Families*), in support of her application. Section 13(b) of the *Federal legislation* grants the right to make representations to an Indigenous governing body [IGB] acting on behalf of the Indigenous group, community or people to which a child belongs within the context of a child and family services proceeding.

[32] There is little debate that the law is evolving to recognize First Nation participation and right to governance in child protection matters involving Indigenous children. There have been a number of recent cases outside of Saskatchewan that have considered the scope of representative status that is available to First Nations in child protection matters involving Indigenous children.

[33] For instance, there are a number of cases where the court has held that the legislated right of an IGB to make representations in child and family services matters involving Indigenous children must be meaningful and substantive (*i.e.*, including the right to call and cross-examine a fixed number of witnesses): *MSD v A.C.*, 2021 NBQB 14 [A.C.]; *M.M. v Alberta (Child, Youth and Family Enhancement Act, Director)*, 2021 ABPC 317 [M.M.]; *D.B. (Re)*, 2021 ABPC 140; and *R.A.B. (Re)*, 2019 ABPC 178.

[43] It is also notable that in the above cases, the application was grounded on child protection legislation and/or the child was a ward of the child welfare system pursuant to a previous court order. There appear to be very few cases where the court has considered the involvement of an Indigenous governing body in a purely private parenting dispute – where the child is not in protective care and there are no protective care orders either in place or being pursued.

[46] At the end of the day, each case must turn on its own facts, circumstances and evidence. Here, having considered the cases and statutes referred to the court by the mother, as well as the additional cases cited herein, and the evidence filed, I am not satisfied that it is appropriate or necessary to add Zagime Anishinabek as a party to this proceeding for a number of reasons.

[51] Such was the finding of the Court of Appeal in *L.(M.S.D.) (Re)*. In that case, the chief of the First Nation, where an Indigenous child's mother, grandmother and sibling were registered members, applied to be added as a party to an application to vary a child protection order involving the child. The Court of Appeal recognized that First Nations are "unique communities with a deep seated collective ethic that extends to the children of the community and their well being" (*L.(M.S.D.) (Re)*,

at para 26), but held that party status was not required for relevant information and evidence to be available to the trier of fact. It held:

[49] In closing, we note that such of the child's connection with the Ochapowace First Nation as continues to exist, exists primarily through her maternal grandmother, who, of course, has been added as a party to the proceedings. The grandmother is thus able to address the best interests of the child, including the child's cultural and psychological needs seen from the perspective of her aboriginal ancestry. Presumably, the grandmother could call Chief George as a witness to testify to the child's cultural needs, let us say, and thus provide the court with his insights about where the best interests of the child lie. The point, albeit a pragmatic one, is that Ms [C.M.P.], with the prospective assistance of Chief George, is in a position to assist the court in arriving at an informed and sensitive decision regarding the best interests of the child. In other words the purpose of subsection 23(1) has been met. ...

[57] There are also legitimate concerns that if Zagime Anishinabek is granted party status, the proceeding will become more complicated or a resolution derailed by issues that may go beyond Hiba's best interests. In *McDonald*, the court was alive to corollary issues raised by the evidence and arguments that had the potential to transform the best interests proceeding into a "complicated and unnecessary battle"[...]

[58] As previously indicated, party status would entitle Zagime Anishinabek with the right to participate in settlement discussions and, if they cannot agree, to force a matter to trial. In that regard, counsel for the mother conceded that it is possible that Zagime Anishinabek could advance a position that is inconsistent with the mother's position, potentially forcing the matter to trial even where the remaining parties have reached a consensus. She says her client is prepared to accept that risk. However, the other parties are not. It is not unreasonable to expect that the proceeding will become more complicated and prolonged if Zagime Anishinabek is added as a party, thereby increasing the cost of litigation to the other parties, whose resources are modest.

[62] In conclusion, for all of the reasons provided, the applicant has failed to satisfy me that granting party status to Zagime Anishinabek in this matter is necessary, appropriate or in the best interests of Hiba. Her application in that regard is dismissed.

LEGISLATION CITED

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

Section 13(b)

Representations and party status

13 In the context of a civil proceeding in respect of the provision of child and family services in relation to an Indigenous child,

(b) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which the child belongs has the right to make representations.

Section 33

Transitional Provisions - Representations and party status

33 In the context of a proceeding referred to in [section 13](#) that is pending on the day on which that section comes into force, the right referred to in that section may be exercised only if its exercise is consistent with the best interests of the child and is appropriate in the circumstances.

[*The Child and Family Services Act, SS 1989-90, c C-7.2.*](#)

Section 23(1)(b)

Persons having sufficient interest

23(1) Subject to subsection (2), where an application for a protection hearing has been made, the court may, on an oral or written request, by order designate as a person having a sufficient interest in a child:

(b) where the child is a status Indian:

(i) whose name is included in a Band List; or

(ii) who is entitled to have his or her name included in a Band List;

the chief of the band in question or the chief's designate;

Section 39(1)

Variation

39(1) Subject to subsection (2), the court may, on the application of any party to the original protection hearing, vary or terminate an order made pursuant to section 37 if:

- (a) there has been a change in circumstances; and
- (b) it is in the best interests of the child to vary or terminate the order.

[*The Children's Law Act, 2020, SS 2020, c 2.*](#)

Section 8(1)

Parenting Order

8(1) Notwithstanding sections 3 to 5, on the application of a parent or other person having, in the court's opinion, a sufficient interest, the court may, by order:

- (a) appoint one or more persons as a child's legal decision-maker, and, if applicable, determine the sharing and division of decision-making responsibility;
- (b) grant parenting time with respect to a child to one or more persons;
- (c) determine any aspect that is incidental to exercising decision-making responsibility or parenting time;
- (d) authorize or prohibit the relocation of a child in accordance with sections 13 to 17; and
- (e) make any additional order that the court considers necessary and proper in the circumstances.

[*The King's Bench Rules*](#)

Rule 3-84

Court may add necessary parties

3-84(1) At any stage of the action, the Court may order that any person be added as a party if:

- (a) that person ought to have been joined as a party; or

(b) the person's presence as a party is necessary to enable the Court to adjudicate effectively and completely on the issues in the action.

(2) At any stage of the action, the Court may grant leave to add, delete or substitute a party, or to correct the name of a party, and that leave shall be given, on any terms that the Court considers just, unless prejudice will result that cannot be compensated for by costs or an adjournment.

(3) A person must not be added as a plaintiff, petitioner or originating applicant without the person's consent in writing being filed.

(4) If a person ought to be joined as a plaintiff, petitioner or originating applicant but does not consent to be joined, the person may be added as a defendant or respondent.

Rule 15-5

Access to Court Records

15-5(1) Subject to subrule (3), no person other than a party, a party's lawyer or a person authorized by a party or by a party's lawyer may have access to:

(a) the Court record, including documents, exhibits and transcripts, respecting a family law proceeding; or

(b) a support or separation agreement filed in the Court.

(2) Before granting a person authorized by a party or by a party's lawyer access to the Court record or to an agreement filed in the Court, the local registrar may require that person to sign an undertaking to keep the information obtained from the Court record or the agreement in confidence.

(3) Any other person seeking access to the Court record or to an agreement filed in the Court shall without notice make an application to the Court, and the Court may:

(a) grant or refuse access to the Court record or agreement, subject to any enactment allowing or restricting access; or

(b) require that:

(i) the parties to the family law proceeding be given notice of the application; and

(ii) a hearing be held to determine whether access to the Court record or agreement shall be granted or refused.

(4) Any person seeking a copy of the recording of a family law proceeding must follow the procedures set out in rule 9-34.

Rule 15-6

Confidentiality

15-6(1) Any person who has access to documents, evidence or information obtained pursuant to the financial disclosure provisions of this Part or obtained pursuant to discovery or from the Court record:

(a) must keep the documents and evidence, and any information obtained from them or from the Court record, in confidence; and

(b) may only use the documents, evidence and information for the purposes of the family law proceeding in which the document, evidence or information was obtained or to which the Court record relates.

(2) Subrule (1) does not apply if:

(a) the person who disclosed the document or gave the evidence consents;

(b) the document or evidence is used to impeach the testimony of a witness in another proceeding; or

(c) the document or evidence is used in a later proceeding between the same parties or their successors, if the proceeding in which the document or evidence was obtained was withdrawn or dismissed.

(3) Notwithstanding subrule (1), the Court may, on application, give a person permission to disclose or use documents or evidence, or information obtained from them or from the Court record, if the interests of justice outweigh any harm that would result:

(a) to the person who provided the documents or evidence; or

(b) to the parties to the family law proceeding.

(4) Use of documents or evidence, or of information obtained from them or from the Court record, in a manner contrary to this rule is contempt of Court, unless an order has been obtained pursuant to subrule (3).

Rule 15-10(5)

Parties

15-10 (5) The Court at any time may:

- (a) order that a person who may have an interest in the matters in issue be served with notice of the family law proceeding with or without adding that person as a party;
- (b) give directions respecting the manner of service on that person and the conduct of the family law proceeding; and
- (c) add a party on application in accordance with these rules or in accordance with any enactment.

Rule 15-11

Venue, transfer of family law proceedings

15-11(1) A party may commence a family law proceeding at any judicial centre.

(2) Notwithstanding subrule (1), a party shall commence a corollary relief proceeding or a variation proceeding:

- (a) at the judicial centre where the divorce or the order sought to be varied was granted; or
- (b) at any judicial centre:
 - (i) with leave of the Court; or
 - (ii) if the divorce or the order sought to be varied was not granted in Saskatchewan.

(3) The Court may direct that a family law proceeding be transferred to any other judicial centre:

- (a) with the consent of the parties;
- (b) by reason of the balance of convenience, including the convenience of witnesses; or
- (c) for the purpose of being heard with another proceeding before the Court.

(4) Except by consent of the parties or leave of the Court, an application to transfer a family law proceeding must not be brought before the pleadings are considered to be closed in accordance with rule 15-13.

(5) If an order directing the transfer of a family law proceeding is consented to by the parties, the local registrar may:

- (a) issue the order without referring it to a judge; or
- (b) refer the order to a judge.

[The Queen's Bench Act, 1998, SS 1998, c Q-1.01.](#)

Section 22(7)

Venue of actions

22 (7) Notwithstanding subsections (3) to (6), no family law proceeding shall be transferred from the judicial centre at which the action was commenced without the consent of the parties or an order of a judge