

Dnaagdawenmag Binnoojiiyag Child and Family Services v GK, 2024 ONSC 3018.

SUMMARY

Dnaagdawenmag Binnoojiiyag Child & Family Services [“the Society”] seek multiple orders pursuant to Rule 16 of the [Family Law Rules](#) [“FLR”]. They seek to place the subject children (H.K., Sh.K., R.K. and Sc.K.) in the care of their oldest sibling, Sk.K., subject to 6 months of supervision, in addition to terms related to access between the children and their parents (G.K. and M.S.). As the orders are sought on a Summary Judgement Motion, the Society has the burden of establishing that there is no genuine issue requiring a trial on their proposed placement, or on the need for continued protection of the children. The Court finds that the Society has met this burden, largely because no effort to address the original protection concerns has been made.

JURISDICTION	Ontario
COURT	Ontario Superior Court of Justice
JUDGE	Bruhn J
PARTIES	Applicant 1. Dnaagdawenmag Binnoojiiyag Child & Family Services [“the Society”] Respondents 1. G.K. Father 2. M.S. Mother 3. B First Nation
TREATY TERRITORY	Williams Treaties
INDIGENOUS GROUP, COMMUNITY, OR PEOPLE	Hiawatha First Nation
APPLICABLE INDIGENOUS LAW	None
TOPICS	Access Best Interests

	Parental Placement is not Absolute Statutory Findings Summary Judgment
LEGISLATION CITED	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, SC 2019, c 24. Section 10 <i>Child, Youth and Family Services Act</i>, 2017, SO 2017, c 14, Sched 1. Sections 74(2) & (3); 101(1)(1) & (7); 104; 105 <i>Family Law Rules</i>, O Reg 114/99. Rule 16
CASE LAW CONSIDERED	<i>Children's Aid Society of Toronto v RH</i>, 2000 CanLII 3158 (ONCJ). <i>Hryniak v Mauldin</i>, 2014 SCC 7. <i>Kawartha-Haliburton Children's Aid Society v MW</i>, 2019 ONCA 316. <i>PF v AW</i>, 2016 ONCJ 714.
CASE HISTORY	None

CASE BRIEF

DECISION

- The Society has met its burden of showing, on a balance of probabilities, that there is no genuine issue requiring a trial in relation to whether the children continue to be in need of protection, nor a genuine issue requiring a trial with respect to the dispositions requested by the Society.
- The parents have failed to provide the court with any evidence or sufficient evidence that they have addressed and/or mitigated the child protection concerns.
- The relief sought by the Society is in the children's best interest and grant an order accordingly.
- The children will be placed with their half-sibling Sk.K and his partner K.S., with access to M.S. and G.K.

FACTS

- The subject children are H.K. (15), Sh.K. (13), R.K. (10), Sc.K. (6) (Collectively, 'the children').
 - The children, G.K., and M.S. are all First Nations and members of 'B'.
- Sk.K has the same father, G.K., as the subject children.
 - Sk.K. and her partner, K.S., are also both First Nations.
- The Society seeks a final order placing the children with their older adult half-sibling, Sk.K and K.S.
 - The mother, M.S., opposes the Society order and seeks to have the children's placement maintained or placed in her care.
 - The father, G.K., supports the Society's position.
 - The First Nation, 'B', also supports the Society's position.
- The Society's protection concerns involve:
 - Intimate partner violence ["IPV"].
 - G.K.'s alcohol misuse
 - The mental health of M.S.
- Protection history began in 2020 while the family was living in Alberta.

- An investigation was conducted by the Alberta Ministry of Children's Services for IPV related concerns.
 - The family moved to Ontario where the Society commenced a protection application in July 2020.
 - This application was withdrawn in April 2021 because of the parents' efforts to address the protection concerns and the support 'B' was providing to the family.
- G.K. and M.S. separate in May 2021.
 - Following the separation, M.S. is arrested for IPV related charges against G.K., and a no contact order is put in place.
- M.S.'s mental health begins to deteriorate, and she assaults multiple other community members, sometimes with the use of a weapon.
 - The children express wanting to live with G.K. and begin to deny visits with M.S.
- G.K. obtains temporary custody of the children in September 2021.
- From September 2021 – May 2022, the Society and Anishinabek Police Services receive numerous reports about G.K. regarding drug trafficking, substance use, intimidation with weapons, poor home conditions, and IPV related acts with his new partner in front of the children.
 - No concerns in relation to the above were reported by the children; however, it appears they were coached for their interviews.
- March 2022, both G.K. and M.S. continue to experience numerous difficulties in their lives.
 - M.S.'s therapist expresses that her mental health has regressed to the point of experiencing psychosis. The doctor says this is potentially due to the previous trauma experienced in her relationship with G.K.
 - G.K. is arrested for drug trafficking and firearm offences. When police attended his home, he was observed to be under the influence of illicit substances and there was backed up sewage and drug paraphernalia in the house.
- The children are placed in the temporary care of the Society.
 - 'B' placed trespass notices on both G.K. and M.S. preventing them from entering upon or near the Nation. This was done in an effort to protect the children in their alternative care home on the Nation.
 - The trespass notices remain in effect.

- The children are placed in the care of A.S., their maternal-great grandmother, in July 2023 on a Final Order.
 - A.S. passes away in October 2023.
 - The children briefly reside with extended family on the Nation before returning to the temporary care of the Society.
- The children have been separated, for the first time in their lives, since being returned to the care of the Society. They have been in separate homes for the last 7 months.

ISSUES

1. Has the Society established, on the balance of probabilities, that there is no genuine issue requiring a trial with respect to whether the children continue to be in need of protection?
2. Has the Society established, on the balance of probabilities, that there is no genuine issue requiring a trial with respect to the dispositions requested by the society?

ANALYSIS

The Law

- There was a Final Order dated July 18, 2023. This order was a 6-month supervision order and not a deemed custody order.
 - This means that this hearing is a Status Review Application.
 - Status Review Application = Trying to determine if an existing order should be changed.
 - Therefore, the judge must determine if the children continue to need protection.
- Summary judgement motions are often cheaper and faster ways of providing closure and direction to families in child protection proceedings.
 - Rule 16 FLR – the procedure governing a motion for summary judgment.
 - This method of resolution is favourable in this matter as it is in the best interest of the children to end their exposure to court hearings and motions.
 - The party making the motion shall serve an affidavit or other evidence that sets out specific facts showing there is no genuine issue requiring a trial
 - The responding party may not rest on mere allegations or denials but shall set out in an affidavit or other evidence, specific facts showing there is a genuine issue requiring trial.

- *Hyrniak v Mauldin*, 2014 SCC 7:
 - To succeed on a summary judgement motion, it must be proven that there is no genuine issue for trial.
 - Genuine issue for trial = Means no chance of success and/or plain and obvious that the action cannot succeed.
- [*Kawartha-Haliburton Children's Aid Society v MW*, 2019 ONCA 316](#)
 - There is a longstanding cautious approach to summary judgement in child protection proceedings.
 - The special considerations that apply to Indigenous Children should inform every decision involving an Indigenous Child.
- Two-step summary judgement motion analysis:
 - Determine whether there is a genuine issue requiring trial, without the additional fact-finding powers in FLR 16(6.1).
 - If, after this inquiry, a genuine issue for trial remains, the judge may use the fact-finding powers to determine if a trial is required.
 - 'Fact-finding powers' are discretionary and refers to weighing evidence, drawing inferences, etc.
- The best interests of the child factors (s 74(3) of the [*Child, Youth and Services Act*](#) ["CYFSA"]) will inform all weighing of evidence in child protection matters.
 - [*An Act respecting First Nations, Inuit and Métis children, youth and families*](#) ["the *Federal Act*"] provides the best interest of the Indigenous Child factors at section 10.
- Parents need to put their 'best foot forward' in a summary judgement motion.
 - A parent's case cannot rest on denials or a heartfelt desire to have the child returned to their care.
 - There must be evidence that the parent is facing 'better prospects' than the time of apprehension, as well as new skills as a parent.
- The legal process needs to be mindful of a child's need for permanency – the process is not to be used as a way to 'buy' a parent more time to build their parenting skills.

ISSUE 1: Has the Society established, on the balance of probabilities, that there is no genuine issue requiring a trial with respect to whether the children continue to be in need of protection?

- The evidence 'overwhelmingly' supports a finding that the children continue to be in need of protection such that there is no genuine issue for trial.

- Neither party has presented evidence that the protection concerns that existed at the time the final order was made have been addressed.
 - This is not for the lack of the Society trying – they have made numerous attempts to work with the parents and have encouraged them to participate in these proceedings.
- The evidence submitted by the Society indicates that G.K. has denied ever having a substance abuse problem.
 - He has not provided the court with any test results that indicate he is free from substance use.
- M.S. previously told the Society that she was seeking a treatment centre and was in detox.
 - The mother could not provide any evidence to prove that she actually attended a treatment facility.
- Neither parents' circumstances show any lesser risk to the children than those that existed at the time of the Final Order.
- The Court finds the Society has met its obligation of showing, on a balance of probabilities, that there is no genuine issue requiring a trial with respect to whether the children continue to be in need of protection.

ISSUE 2: Has the Society established, on the balance of probabilities, that there is no genuine issue requiring a trial with respect to the dispositions requested by the society?

- Considering the best interest of the child analyses found in the CYFSA and the Federal Act, the evidence supports the dispositions requested by the Society, so that there is no genuine issue for trial.
- It is in the children's best interests to be placed in the care of Sk.K.
 - Neither parent is in a position to care for the children because of the unaddressed protection concerns.
 - G.K. has not put forward a plan of care.
 - M.S. has put forward a plan of care, but the home assessment indicates that firearms and alcohol are accessible to the children within the home. Additional safety concerns like exposure to secondhand smoke and unfenced pools exist.
 - Furthermore, M.S. lives with the maternal grandmother and maternal aunt, both of whom the children have reported incidents of substance abuse and verbal/emotional abuse against.

- Sk.K lives with his partner K.S. and their 2 daughters in Calgary.
 - Sk.K has expressed a desire to care for the children since 2022, however the children were placed with their maternal grandmother during this time, as she had previous care of the children and the band supported the placement.
 - Sk.K has appropriate housing, a stable income, and recognizes the basic and greater needs of the children, such as enrollment in counselling and recreational activities.
 - Sk.K is a member of First Nation 'B', K.S. is also First Nations
- The Children's Lawyer ["the OCL"] reports that the children have expressed consistent, unanimous desires to live with Sk.K for approximately 2 years.
- Throughout the court proceedings, the children have had each other; they are a source of comfort to each other.
 - It is important that the children are placed together, for the benefit of their mental and emotional health.
- Sk.K and his partner K.S. are open to permanency for the children.
- The children shall have access to their parents, as arranged by the Society.
- A placement with Sk.K will result in a travel barrier for M.S., as she remains living in Ontario.
 - However, the court determines that, even if both M.S. and G.K. were living in Ontario, it would still be in the best interests of the children to be moved to Calgary to be placed with Sk.K.
 - The best interests of the children, and the benefits of the placement with Sk.K outweigh the negative travel impact that might occur.

RELEVANT EXCERPTS

[60] Parents must put their best foot forward on a motion for summary judgment. A parent's case must rest on more than mere denials or a heartfelt desire to resume care of a child. There must be clear evidence that a parent faces better prospects than what existed at the time of apprehension and that the parent has developed some new ability as a parent. A child's need for permanency planning within a timeframe sensitive to that child's needs demands that the legal process not be used as a strategy to "buy" a parent time to develop an ability to parent.[7]

[74](n) According to the OCL, the children have been clear, consistent and unanimous in their wishes to be placed together in one household. The children are exceptionally close. They thrive when they are together, building memories, and supporting one another. I note that through all of the chaos in their lives, the children have always had each other. They are a source of comfort and support to one another, and it is a priority that they be placed together for their mental and emotional health.

[74](u) Whether the children remain in Ontario or are placed in Calgary, Alberta, there will be a travel barrier for one of the parents as the mother is currently in Ontario and the father is currently in Calgary, Alberta. However, there is no available family placement in Ontario, whereas there is a family placement in Calgary, Alberta. Considering the inconsistency in the mother's access since these proceedings commenced, the uncertainty as to whether she will be able to address or mitigate the protection concerns, the fact that she is already residing some distance from the children, and the benefits to the children of the day-to-day security, stability and support available to them from a placement with Sk.K., I find that it is in the children's best interests to pursue the placement. I would add that even if both parents were residing in Ontario, I would find that the benefits to the children of the placement with Sk.K. outweigh the negative impact on the parental access for the same reasons as stated above.

[81] While I appreciate that the parents may view this decision as a defeat or as a criticism of themselves, that is not the intention. I recognize that the issues the parents are struggling with (including substance use, domestic violence and mental health) are long-standing and deep-seated and that they will take a great deal of time and effort to address or mitigate. The parents are strongly

encouraged to renew their efforts to address these issues for the benefit of their children, and for the benefit of themselves.

LEGISLATION CITED (Aptos; 18; Bold; CAPS)

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

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.

[*Child, Youth and Family Services Act, 2017, SO 2017, c 14, Sched 1.*](#)

Section 74(2)

Child in need of protection

(2) A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (c) the child has been sexually abused or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child;
- (d) there is a risk that the child is likely to be sexually abused or sexually exploited as described in clause (c);
 - (d.1) the child has been sexually exploited as a result of being subjected to child sex trafficking;

(d.2) there is a risk that the child is likely to be sexually exploited as a result of being subjected to child sex trafficking;

(e) the child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996* and the parent is a substitute decision-maker for the child, the parent refuses or is unavailable or unable to consent to the treatment on the child's behalf;

(f) the child has suffered emotional harm, demonstrated by serious,

(i) anxiety,

(ii) depression,

(iii) withdrawal,

(iv) self-destructive or aggressive behaviour, or

(v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(g) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the harm;

(h) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(i) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment to prevent the harm;

(j) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide treatment or access to treatment, or where the child is

incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the condition;

(k) the child's parent has died or is unavailable to exercise the rights of custody over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody

(l) the child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment;

(m) the child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately;

(n) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is 12 or older, with the child's consent, for the matter to be dealt with under this Part; or

(o) the child is 16 or 17 and a prescribed circumstance or condition exists. 2017, c. 14, Sched. 1, s. 74 (2); 2020, c. 25, Sched. 1, s. 26 (1); 2021, c. 21, Sched. 3, s. 1 (2).

Section 74(3)

Best interests of child

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

(a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;

(b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and

- (c) consider any other circumstance of the case that the person considers relevant, including,
- (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
 - (ii) the child's physical, mental and emotional level of development,
 - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - (iv) the child's cultural and linguistic heritage,
 - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
 - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
 - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,
 - (viii) the merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
 - (ix) the effects on the child of delay in the disposition of the case,
 - (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
 - (xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

Section 101(1)(1)

Order where child in need of protection

101 (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 102, in the child's best interests:

Supervision order

1. That the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months.

Section 101(7)

Terms and conditions of supervision order

- (7) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,
- (a) reasonable terms and conditions relating to the child's care and supervision;
 - (b) reasonable terms and conditions on,
 - (i) the child's parent,
 - (ii) the person who will have care and custody of the child under the order,
 - (iii) the child, and
 - (iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and
 - (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services.

Section 104

Access order

104 (1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

Who may apply

(2) Where a child is in a society's care and custody or supervision, the following may apply to the court at any time for an order under subsection (1):

1. The child.
2. Any other person, including a sibling of the child and, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
3. The society.

Notice

(3) An applicant referred to in paragraph 2 of subsection (2) shall give notice of the application to the society.

Society to give notice of application

(4) A society making or receiving an application under subsection (2) shall give notice of the application to,

- (a) the child, subject to subsections 79 (4) and (5) (notice to child);
- (b) the child's parent;
- (c) the person caring for the child at the time of the application; and
- (d) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) and (c) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Child older than 16

(5) No order respecting access to a person 16 or older shall be made under subsection (1) without the person's consent.

Six-month period

(6) No application shall be made under subsection (2) by a person other than a society within six months of,

- (a) the making of an order under section 101;
- (b) the disposition of a previous application by the same person under subsection (2);
- (c) the disposition of an application under section 113 or 115; or
- (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

No application where child placed for adoption

(7) No person or society shall make an application under subsection (2) where the child,

- (a) is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c);
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VIII (Adoption and Adoption Licensing); and
- (c) still resides in that person's home.

Section 105

Access: where child removed from person in charge

105 (1) Where an order is made under paragraph 1 or 2 of subsection 101 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with the person would not be in the child's best interests.

Access after custody order under s. 102

(2) If a custody order is made under section 102 removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact will not be in the child's best interests.

Access after supervision order or custody order under s. 116 (1)

(3) If an order is made for supervision under clause 116 (1) (a) or for custody under clause 116 (1) (b), the court shall make an order for access by every person who had access before the application for the order was made under section 115, unless the court is satisfied that continued contact will not be in the child's best interests.

Existing access order terminated if order made for extended society care

(4) Where the court makes an order that a child be in extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), any order for access made under this Part with respect to the child is terminated.

When court may order access to child in extended society care

(5) A court shall not make or vary an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) unless the court is satisfied that the order or variation would be in the child's best interests.

Additional considerations for best interests test

(6) The court shall consider, as part of its determination of whether an order or variation would be in the child's best interests under subsection (5),

- (a) whether the relationship between the person and the child is beneficial and meaningful to the child; and
- (b) if the court considers it relevant, whether the ordered access will impair the child's future opportunities for adoption.

Court to specify access holders and access recipients

(7) Where a court makes or varies an access order under section 104 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c), the court shall specify,

- (a) every person who has been granted a right of access; and
- (b) every person with respect to whom access has been granted.

When court to terminate access to child in extended society care

(8) The court shall terminate an access order with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) if the order is no longer in the best interests of the child as determined under subsection (6).

Society may permit contact or communication

(9) If a society believes that contact or communication between a person and a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is in the best interests of the child and no openness order under Part VIII (Adoption and Adoption Licensing) or access order is in effect with respect to the person and the child, the society may permit contact or communication between the person and the child.

Rule 16 - Summary judgment

When available

16. (1) After the respondent has served an answer or after the time for serving an answer has expired, a party may make a motion for summary judgment for a final order without a trial on all or part of any claim made or any defense presented in the case. O. Reg. 114/99, r. 16 (1).

Available in any case except divorce

(2) A motion for summary judgment under subrule (1) may be made in any case (including a child protection case) that does not include a divorce claim. O. Reg. 114/99, r. 16 (2).

Divorce claim

(3) In a case that includes a divorce claim, the procedure provided in rule 36 (divorce) for an uncontested divorce may be used, or the divorce claim may be split from the rest of the case under subrule 12 (6). O. Reg. 114/99, r. 16 (3).

Evidence required

(4) The party making the motion shall serve an affidavit or other evidence that sets out specific facts showing that there is no genuine issue requiring a trial. O. Reg. 114/99, r. 16 (4).

Evidence of responding party

(4.1) In response to the affidavit or other evidence served by the party making the motion, the party responding to the motion may not rest on mere allegations or denials but shall set out, in an affidavit or other evidence, specific facts showing that there is a genuine issue for trial. O. Reg. 91/03, s. 5.

Evidence not from personal knowledge

(5) If a party's evidence is not from a person who has personal knowledge of the facts in dispute, the court may draw conclusions unfavourable to the party. O. Reg. 114/99, r. 16 (5).

No genuine issue for trial

(6) If there is no genuine issue requiring a trial of a claim or defence, the court shall make a final order accordingly. O. Reg. 114/99, r. 16 (6).

Powers

(6.1) In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties, and the court may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence. O. Reg. 69/15, s. 5 (1).

Oral evidence (mini-trial)

(6.2) The court may, for the purposes of exercising any of the powers set out in subrule (6.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation. O. Reg. 69/15, s. 5 (1).

Only issue amount of entitlement

(7) If the only genuine issue is the amount to which a party is entitled, the court shall order a trial to decide the amount. O. Reg. 114/99, r. 16 (7).

Only issue question of law

(8) If the only genuine issue is a question of law, the court shall decide the issue and make a final order accordingly. O. Reg. 114/99, r. 16 (8).

Order giving directions

(9) If the court does not make a final order, or makes an order for a trial of an issue, the court may, in addition to exercising a power listed in subrule 1 (7.2),

(a) specify what facts are not in dispute, state the issues and give directions about how and when the case will go to trial (in which case the order governs how the trial proceeds, unless the trial judge orders otherwise);

(b) give directions; and

(c) impose conditions (for example, require a party to pay money into court as security, or limit a party's pretrial disclosure). O. Reg. 114/99, r. 16 (9); O. Reg. 69/15, s. 5 (2, 3).

(10), (11) REVOKED: O. Reg. 69/15, s. 5 (4).

Motion for summary decision on legal issue

(12) The court may, on motion,

(a) decide a question of law before trial, if the decision may dispose of all or part of the case, substantially shorten the trial or save substantial costs;

(b) strike out an application, answer or reply because it sets out no reasonable claim or defence in law; or

(c) dismiss or suspend a case because,

(i) the court has no jurisdiction over it,

(ii) a party has no legal capacity to carry on the case,

(iii) there is another case going on between the same parties about the same matter, or

(iv) the case is a waste of time, a nuisance or an abuse of the court process. O.

Reg. 114/99, r. 16 (12).

Evidence on motion for summary decision of legal issue

(13) On a motion under subrule (12), evidence is admissible only if the parties consent or the court gives permission.