

XII. Consent Orders [§12.51]**XIII. Alternative, Collaborative, and Creative Processes [§12.52]****I. INTRODUCTION [§12.1]**

After the Ministry of Children and Family Development (the “Ministry”) has removed a child, there are various pathways to either return the child to their guardian or establish an alternative permanent placement. This chapter covers the various interim processes and orders available under the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 (the “CFCSA” or the “Act”) up until return of the child, withdrawal of the director, or permanent planning for the child. See chapter 13 (Permanent Measures and Outcomes) for permanent measures, such as continuing custody orders, transfers of custody, and adoption.

Always consider whether there are any alternative processes to litigation available. At every stage of CFCSA proceedings (although ideally as early as possible), practitioners are encouraged to seek out creative resolutions via collaboration among the parties and, if applicable, engagement with the Indigenous communities involved. See “Alternative, Collaborative, and Creative Processes” in this chapter.

II. NATURE OF CFCSA PROCEEDINGS [§12.2]

A hearing under the CFCSA is civil in nature and may be as informal as the judge allows (s. 66). No order under the Act may be set aside because of an informality at the hearing or for any other technical reason not affecting the merits of the case (*L. (C.S.) v. British Columbia (Director of Child, Family and Community Service)*, 2007 BCCA 92). Section 66 permits the hearing judge considerable discretion to determine how a hearing may proceed based on the circumstances of the case (*L.J. v. Director of Child, Family and Community Services*, 2000 BCCA 446).

The court proceedings are effectively adversarial in nature (*B. (D.) v. British Columbia (Director of Child, Family and Community Service)*, 2002 BCCA 55, following *New Brunswick (Minister of Health and Community Services) v. J.G.*, 1999 CanLII 653 (SCC)). Notwithstanding this jurisprudence, there has since been a shift towards a more collaborative approach to child and family services law, with a focus on children and families rather than “winning” via the adversarial process. See “Nature of the Practice of Child and Family

Services Law” in chapter 1 and see also “Alternative, Collaborative, and Creative Processes” in this chapter. Many practitioners of child and family services law have made efforts supporting this shift, and the *CFCSA*, the Child, Family and Community Service Regulation, B.C. Reg. 527/95 (the “Regulation”), and the Provincial Court (Child, Family and Community Service Act) Rules, B.C. Reg. 533/95 expressly provide for processes outside of trial, including family case planning conferences, mediation, and other alternative dispute resolution mechanisms.

III. THE PRESENTATION HEARING [§12.3]

Presentation hearings may be initiated under s. 29.1, 30, 36(1), or 42 of the *CFCSA*. The applicable section depends on whether the child has been removed and whether a *CFCSA* supervision order was already in effect at the time of removal.

The director may apply under s. 29.1 for an order to supervise a child’s care if the director has reasonable grounds to believe that the child needs protection and a supervision order would be adequate to protect the child. A presentation hearing is required related to this application. These orders, granted under s. 33.3(2), are often referred to as interim non-removal supervision orders; see “Non-Removal Supervision Orders” in chapter 10.

If a child has been removed from the care of their parent or caregiver, a presentation hearing is required pursuant to:

- s. 30, if no current *CFCSA* supervision order was in place;
- s. 36(1), if an interim supervision order was in place under s. 33.2(2), 35(2)(b) or (d), or 36(3); or
- s. 42, if a temporary supervision order was in effect under s. 41(1)(a) or (b), 41(1.1) or (2.1), 42.2(4)(a) or (c), 46(3), or 49(8).

Where the child has been removed, the *CFCSA* prescribes a two-stage procedure for the presentation hearing. The first stage deals with whether removal was justified under the Act: were there reasonable grounds to believe that the child needed protection, was there immediate danger to the child’s health or safety, and were there less disruptive measures available? If the court concludes that there were no reasonable grounds, then the child must be returned to the parents. If the court concludes that there were reasonable grounds, then the essential issue at the second stage is the best way to care for the child until there can be a full and complete examination at the protection hearing (*B.B. v. British Columbia (Director of Child, Family and*