

Indigenous Matters | October 2020

70K Legal Battle Leads to Finding that the MCFD Made Unauthorized Orders on a Parent



When parents become involved with the Ministry of Children and Family Development (“MCFD”) following a child protection report, one of the potential responses is the creation of safety plans between social workers and the family. This less intrusive measure is intended to be conciliatory — it allows families to enter agreements with social workers to

address the concerns out-of-court. However, there is a significant power imbalance in the agreement making process. Terms are often unilaterally imposed on parents through the social worker's subjective lens and parents agree out of fear of more intrusive steps being taken against them. The parent(s) will not have their day in court unless legal proceedings are commenced against them — a step that most want to avoid. So parents, particularly Indigenous parents, frequently sign off on agreements that are overreaching and/or unreasonable. These agreements may have far reaching consequences for the family — with parents having little recourse on any perceived infringement of their right to parent.

However, in a groundbreaking case decided by the BC Court of Appeal on July 6, 2020, the father of five children, Adrian Crook, successfully challenged the MCFD's decision made under s. 16(2)(b.1) of the *Child, Family and Community Service Act* (“*CFCSA*”) requiring that his children under the age of ten be supervised while riding public transit.¹ The chambers judge found that the MCFD made a reviewable decision on the basis that it was made clear and non-negotiable that the children must be supervised by a person 12-years-of-age or older while riding the bus. Further, that the father had little option to ignore the MCFD's directions without significant risks to his position as a parent. The chambers judge nevertheless decided that the supervision requirement on the bus was both reasonable and correct.

The Court of Appeal disagreed and found that the decision of the Director's delegates (MCFD) was unreasonable because it exceeded the Director's authority and jurisdiction to make such an order under s. 16(2)(b.1) of the *CFCSA*. In assessing the statutory scheme, the Court emphasized that s. 2(b) of the *Guiding Principles* states that “... the responsibility for the protection of the children rests primarily with the parents.”² Further, “... the Director is not authorized to order parents how to care for their children in an assessment of a child's safety conducted under s. 16(2)(b.1).”³ The Director is entitled to make recommendations and give advice to a family — but those recommendations are not binding. If a parent does not agree, which the parent is entitled to do, then the Director must decide if it will take further steps, including commencing proceedings under the *CFCSA*.

Mr. Crook went public with his three-year legal dispute that culminated in a significant victory for parents involved with the MCFD. On his blog titled: 5 kids 1 condo, Mr. Crook wrote: “For over 3 years now I've lived with the threat, often literally a written or verbal threat from a social worker or Ministry Director, that the MCFD will take 'more intrusive

action' if I failed to comply with their order.” He further stated that “... in reality parents often have no choice, no advocate, no recourse, no money to fight it, and are cowed into compliance under threat of losing their children.”⁴

Mr. Crook was able to fight the \$70,000 court battle to a large extent through funds generated by a GoFundMe Campaign — Let Responsible Kids Take the Bus! Hopefully, this precedent will bring about systemic change for other families entering out-of-court agreements with the MCFD. Otherwise, Indigenous families, disproportionately impacted by poverty, may not have the funds to challenge the terms of an oppressive and over-reaching agreement imposed on them by the Director.

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1. *Crook v. British Columbia (Director of Child, Family and Community Service)*, 2020 BCCA 192. | ↵
 2. *Ibid*, at para. 59. | ↵
 3. *Ibid*, at para 63. | ↵
 4. bit.ly/bt1020-fr1 | ↵

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