

## Chapter 6

*Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbian law, services, and benefits. Consult with a lawyer for advice related to your specific situation. Laws, benefits, policies, and procedures are always changing. Always double-check the information you intend to rely on with the appropriate agency or with your lawyer. Indigenous people's traditions and customary laws are outside the scope of this guide; however, we want to acknowledge those customs and traditions and emphasize that nothing in this guide should be misinterpreted as superseding or taking away from them.*

### Child protection and the court process

If the social worker, during a child protection response, finds that there are concerns over your grandchild's safety or well-being, you can try to make one of the agreements described in the preceding chapters. If you do not find out about the ministry's concerns early enough, or if you do not succeed in getting an agreement with the ministry, the social worker might decide one of two things:

- that your grandchild's care needs to be supervised by the ministry, or
- that your grandchild must be removed from the parental home.

If the social worker decides either of these things, your family will have to go to court. For information about finding a lawyer and other legal advice see *Chapter 8 of this Guide – Getting Legal Help*. Also check out Legal Services Society of BC <http://www.lss.bc.ca/>, or <http://www.clicklaw.bc.ca/>

The court process usually takes place in two stages:

- the presentation hearing and
- the protection hearing.

The law gives clear deadlines for when everything must happen, but in reality there are often delays and extra steps that can draw a case out for much longer. However, keep in mind that you can still try to work things out with the ministry by negotiating an agreement at any point during the court process, perhaps with the help of mediation or a family group conference.

#### Presentation hearing

When the ministry removes children from their homes, a social worker must go to court within seven days to explain why at something called the **presentation hearing**, a court hearing that is usually quite short. The ministry is not required to let grandparents know the date, time, or

place of the hearing and may not be aware of the grandparents’ involvement. The best you can do is try to stay in touch with your grandchild and the parents and to contact the social worker as soon as possible to let them know you want to remain involved with your grandchild . Remind your grandchild to call you, or have an adult call you, if the ministry removes him or her from the parental home.

You can also call the courthouse to find out what day family cases are initially heard, then go to the courthouse and check the schedule (called the **docket**) to see if your grandchild’s case will be heard that day. Go to the presentation hearing if you can, and ask the judge to make you a **party** to the hearing so that you can participate.

At the presentation hearing, the judge can make four possible decisions ([flow chart from Legal Services Society of BC](#))

**Possible orders made at a presentation hearing**

<p><b>Child returned to or remains with the parent entitled to custody</b> (child stays with parent)</p>	<p>It is safe for the child to return to the parent without any supervision by the ministry. The court case ends.</p>
<p><b>Interim supervision</b> (child stays with parent) Section 35(2) (b) of the <a href="#">Child, Family and Community Service Act. (CFCSA)</a></p>	<p>The child can return to the parent, but there are concerns about the child’s safety, so the judge gives the ministry power to supervise the parents using an interim supervision order. The case goes to a protection hearing.</p>
<p><b>Interim Custody of a person other than a parent</b> (child with grandparent) Section 35(2) (d) of the <a href="#">CFCSA</a></p>	<p>The child is placed with someone other than a parent, such as a grandparent, through an Interim Custody Order. This means the grandparent has custody of the child until further notice, and the ministry can supervise the grandparent and child. The case goes to a protection hearing.</p>
<p><b>Interim custody of the director</b> (child in care) Section 35(2) (a) of the <a href="#">CFCSA</a></p>	<p>The child is in the custody of the ministry or delegated Aboriginal Agency (such as in foster care), through an interim custody order. The case goes to a protection hearing.</p>

## Interim Custody of a person other than a parent

**An interim order that the child be placed in the custody of a person other than a parent is also a supervision order** because the order allows a social worker to visit the child to ensure that everything is alright. This type of order, which is made only through an application by a social worker, can be used to supervise the care of children when they are placed in the custody of someone else, such as a grandparent. If the judge places your grandchild in your custody through an interim custody order, you have the following rights and responsibilities (Section 47(2) of Child, Family and Community Service Act [CFCSA](#)):

- to provide day-to-day care for your grandchild
- to make healthcare decisions for your grandchild (sometimes with the consent of the parents)
- to make necessary decisions about your grandchild's education and religious upbringing (sometimes with the consent of the parents)

If the court finds it is in the child's best interests, it may order that the parents keep either or both of the following rights:

- to make joint healthcare decisions for the child
- to make necessary decisions about the child's education and religious

## Interim custody of the Director

The judge could also decide that your grandchild must be placed in the custody of the ministry or delegated Aboriginal Agency until the protection hearing is over, in which case they will issue an order that the child be in the **interim Custody of the director**. That would mean that your grandchild will be placed with a foster family. You can ask your grandchild's social worker about the possibility of becoming a restricted foster parent (see *Chapter 1 – Child Protection and the Ministry*) if you are able to take care of your grandchild for as long as a few months. You can also ask for access (visits with your grandchild) if he or she is placed with another family. (See *Chapter 4 – Access and Safety*)

## Protection hearing

The protection hearing begins within 45 days of the presentation hearing. Sometimes, everyone involved can reach an agreement – the social worker, the parent, the child if he or she is 12 or older, and you. This kind of agreement can be filed with the court and the judge may make a consent order. There will not have to be a protection hearing.

If you cannot agree, the matter must first be heard at a case conference. If no agreement is reached at the case conference, the case will go to a protection hearing.

At the end of the protection hearing, the judge has four choices listed below.

### Possible orders made at a protection hearing

<b>Supervision order</b> (child with parent)	The child can return to the parent, but there are concerns about the child's safety. A supervision order is granted to the ministry of delegated Aboriginal Agency to supervise the parent and child for a certain amount of time.
<b>Temporary custody</b> of a person other than a parent (child with grandparent)	The child is placed with someone other than a parent, like a grandparent, through a temporary custody order. The ministry keeps supervising the grandparent and child. The temporary custody order has time limits.
<b>Temporary custody of the Director</b> (child in care)	The child stays in or is placed in the temporary custody of the ministry or delegated Aboriginal Agency (such as foster care). Temporary custody orders have time limits.
<b>Continuing custody of the Director</b> (child in care)	The child is placed in the custody of the ministry or delegated Aboriginal Agency on a long-term basis. The ministry or delegated Aboriginal Agency can place the child for adoption.

### Temporary custody order

A **temporary custody order** is similar to an interim custody order. Both types of custody come with the same rights and responsibilities. The difference is interim custody is awarded at the end of a presentation hearing. It is meant to give everyone guidelines for the child's care until the protection hearing. A temporary custody order is awarded at the end of the protection hearing and expires on a certain date.

There are time limits to temporary custody that depend on the age of your grandchild. If you are taking care of more than one grandchild, the age of the youngest child is used to decide when the custody order expires. A social worker can ask the court to extend this order, but the total time that a child can be in temporary custody is:

- 12 months, if the child or the youngest child was under 5 years old on the date of the order,
- 18 months, if the child was 5–11 years old on the date of the order, and
- 24 months, if the child was 12 years old or older on the date of the order.

You can ask the court to extend the time limit by a certain amount. You will have to convince the judge that it is in the child's best interests to do so.

### **Continuing custody order**

A **continuing custody order** puts a child in the care of the ministry on a much more long-term basis, sometimes permanently. With a continuing custody order, the ministry becomes the child's sole guardian, the Public Trustee becomes the guardian of anything the child may own or be entitled to receive, and the ministry can place the child for adoption.

This is very different from temporary custody. A continuing custody order is made when a temporary custody order is about to end and the circumstances that led to the removal of the child have not changed. It is rare for a child to return to the parent once a continuing custody order is made. These orders end when:

- the child turns 19
- the child is adopted
- the child marries
- the court cancels or changes the continuing custody order (see below), or
- custody of the child is given to someone other than a parent (under section 54.1 of the [\*Child Family and Community Services Act \(CFCSA\)\*](#)) – this could be the grandparent(s)

If the parents' circumstances change significantly, the people involved in the court proceeding can apply to change or cancel the order. (If you did not take part in the original court case, you cannot make this kind of application.) A judge will consider the facts and decide whether to cancel the order, make a new one, or leave it the way it is. A judge will consider the child's best interests when making this decision.

## Transferring custody from the ministry to a grandparent

If your grandchild is in the continuing custody of the ministry, you may ask the social worker to apply to the court to transfer custody to you permanently (under section 54.1 of the [CFCSA](#)). If the judge decides it is in the best interests of the child, then your grandchild will no longer be in the ministry's care and you will have both custody and guardianship rights.

The purpose of transferring custody and guardianship to grandparents is to give children a sense of having a permanent home when adoption may not be an option. This might be the case when children have an ongoing attachment to their parents and placing the children for adoption would not be in their best interests, or when adoption would go against the children's or guardians' cultural practices. You will need to ask the social worker to make the application to transfer custody.

If it is clear that your grandchild will not return to the parents, you may think about adoption. You can try to adopt before, during, or after a child protection investigation, and it is important to get legal advice before going ahead.

## When the Public Guardian and Trustee becomes involved

The Public Guardian and Trustee (referred to simply as “the public trustee”) of British Columbia is charged with protecting the legal rights and financial interests of children and youth. The available services to fall into the following four areas:

- **Infant settlement reviews**  
When a child is injured by another person's negligence, the public trustee looks at the compensation offered to make sure it is fair for the child.
- **Trust management**  
If a child inherits or earns money and has no other legal guardian, the public trustee can hold that money in a trust until the child is old enough to be in charge of it.
- **Guardian of estate**  
When a child is in the ministry's care and a continuing custody order has been made by the court, the public trustee and the ministry become the child's guardians. That means that they make decisions about what happens to any money the child inherits.
- **Other protective services**  
The public trustee also makes sure the interests of children and youth are protected when it comes to wills, money, contracts, and property sales.

The public trustee becomes involved in the child protection process under certain circumstances:

- If the parent of a child who is removed is under 19 years of age.
- When a child is in the continuing custody of the ministry, the public trustee becomes the guardian of the child’s property – that means managing anything the child might own or be entitled to.
- When a child is in the continuing custody of the ministry, the public trustee is responsible for protecting the child’s legal interests. This includes starting or defending lawsuits on behalf of children in care.

If a child is in the continuing custody of the ministry and that custody is transferred to another person, the public trustee is no longer the guardian of the child’s property. When custody is transferred, the person who has custody takes over financial decision-making for the child.

## **Aboriginal children, inheritance, and band distributions**

If your Aboriginal grandchild is entitled to property or band distributions, it is possible that Aboriginal Affairs and Northern Development Canada (AANDC) could manage the property or money until the child comes of age. They usually become involved when a band asks them to in order to manage a child’s band distributions. Different bands will have different guidelines as to when they ask for their involvement.

*This Legal Guide will be updated regularly. We are counting on readers to alert us to any errors, omissions or unclear content. Please send your feedback to “Communications” via: [office@parentsupportbc.ca](mailto:office@parentsupportbc.ca).*