Court of Appeal File No.: CA46575
Vancouver Registry

B.C. Supreme Court File No. S1811004
Vancouver Registry

COURT OF APPEAL

BETWEEN:

ADRIAN CROOK

APPELLANT
(Petitioner)

AND:

THE DIRECTOR UNDER THE CHILD, FAMILY AND COMMUNITY SERVICE ACT, AS REPRESENTATIVE OF HER DESIGNATES AND DELEGATES

RESPONDENT
(Respondent)

AND

KIDS FIRST PARENT ASSOCIATION OF CANADA

INTERVENOR

FACTUM OF THE INTERVENER KIDS FIRST PARENT ASSOCIATION OF CANADA

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OPENING STATEMENT

Can a social worker threaten to take a child away unless its parent 'agrees' to the social worker's demands?

The answer – intuitively, constitutionally, and legislatively – is: only in those exceptional cases where the child is in need of protection as defined by statute.

The *Child, Family and Community Service Act* grants the Director, through her social workers, extraordinary powers to profoundly interfere in intimate family relationships, similar in many ways to police powers. The public tolerates this because of the moral imperative to protect children – who are powerless to defend themselves – from abuse, neglect, and other harm. For the Director to utilize these extraordinary powers for less compelling purposes, however, endangers public support for the carefully calibrated statutory scheme. It also risks harming the very children she is mandated to protect.

Section 7 of the *Charter* protects parental liberty to adopt a wide range of child-rearing approaches, and to make a wide range of parenting decisions, free of state interference. The principles of fundamental justice permit the Director to interfere only where the parent renders their child in need of protection. No lesser standard will suffice, even if it is loosely 'safety related'. The *Act* recognizes the fact that interference itself comes at a price which must be heavily justified.

The text of the *Act*, and the Hansard debates, confirm that the statutory intent is for the Director to intervene only where children need protection, not to 'fix' imperfect parenting. Where the children are not in need of protection, the Director has no jurisdiction to impose general safety standards on parents, nor to second-guess particular parental assessments of a child's abilities, maturity, and best interest. The Director is neither the 'Parenting Safety Board' nor the 'Superintendent of Parents.'

This appeal presents an important opportunity for this Court to re-iterate what is, and is not, within the Director's responsibility. Happily, the rights of children to be free of harm, the interest of children in family stability, and the s. 7 liberty rights of parents, can all be simultaneously achieved by a straightforward affirmation of the scheme of the *Act*.

PARTS 1 AND 2 – STATEMENT OF FACTS AND ISSUES ON APPEAL

1. Kids First intervenes to provide submissions on parental liberty under s. 7 of the *Charter*, and the Director's related jurisdictional limits under the *Act*.

PART 3 – ARGUMENT

A. Section 7 of the Charter protects parental liberty in child-rearing

2. This Court recently followed *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, confirming that "the liberty interest of parents protected under s. 7 of the *Charter*" encompasses parental decisions about a child's medical care.[1]

3. The present appeal calls for a determination of which other types of parental decisions receive this same protection. This appeal is unique as the Director has admitted that the appellant's children were not in need of protection. Accordingly, any infringement of the appellant's liberty interest will not be 'saved' by complying with the principles of fundamental justice.[2] Determining the scope of the liberty interest will also resolve any ambiguity in the statutory interpretation of the extent of the Director's powers. Finally, it will colour the severity of any conduct by the Director found to be outside jurisdiction from a 'mere' administrative law defect, to a breach of Constitutional rights.

4. *B(R)* at para. 83 gives "medical care" as but one example of the "fundamental matters" falling within the scope of parental liberty. The same paragraph states that parental liberty "include[es] medical care and moral upbringing," indicating that the categories are not closed. Although state intervention was justified for the "medical treatment" at issue in that case, La Forest J. at para. 71 defined the parental s. 7 liberty interest for the purpose of "child protection as a whole" to address the "more general question of the right of parents to rear their children without undue interference by the state."

5. Parental liberty benefits children, because "parents are more likely [than the state] to appreciate the best interests of their children", and parents "have a deep personal interest" in their children's well-being: *B(R)* at para. 85. "[T]he right of parents to care for their children and make decisions for their well-being … is primary, and the state's authority

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[1] *A.B. v. C.D.*, 2020 BCCA 11 at para. 208.

[2] *New Brunswick (Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at para. 70 ("*G(J)*")

is secondary to that parental right."[3] The presumption in s. 2(b) of the *Act* that children's best interest lies with their parents reflects both pre- and post-*Charter* jurisprudence.[4]

6. Parental liberty serves the parent-child *relationship*, in the same way as the doctrine of solicitor-client privilege, and the *Charter* freedoms of religion and association, protect and nurture other relationships viewed as valuable by our society and by the law.[5] To narrow any of these legal protections would harm the underlying relationships.

7. The parent-child relationship is "fundamentally [and] inherently personal", and the way a parent raises their children "implicate[s] basic choices going to the core of what it means to enjoy individual dignity and independence", placing it squarely within the purposes of s. 7.[6] Parental liberty protects against state interference in the ability of the parent to raise their child in accordance with the parent's understanding of what is true and valuable; to provide a moral upbringing which reflects the parent's values. It does violence to parental liberty and integrity to be ordered to parent by someone else's values. For the state to overrule these good faith and inherently personal basic choices is "not simply rejecting the individual [parent]'s views and values, it is denying her or his equal worth."[7]

8. Parents "must enjoy correlative rights" to their parental responsibilities which "translates into a protected sphere of parental decision-making": *B(R)* at para. 85. No parent can be effective without authority. The Supreme Court of Canada recognizes parents' "relatively large measure of freedom from state interference to raise their children as they see fit"; "carv[ing] out a sphere" of independent parental authority "protects both children

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[3] *E.T. v Hamilton-Wentworth District School Board*, 2017 ONCA 893, at para 65.

[4] Even if the parents are impoverished: *Martin v. Duffel*, [1950] S.C.R. 737 at 746; *Hepton v. Maat*, [1957] S.C.R. 606, approved in *G(J)* at para. 69. *G(J)* at para. 73, 76.

[5] *Alberta (Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 26; *Loyola High School v. Quebec*, 2015 SCC 12 at paras. 59, 93; *Mounted Police Association v. Canada*, 2015 SCC 1 at paras. 35, 56, 57, 62, 64.

[6] *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para. 66 (La Forest J.), approved in *R. v. Malmo-Levine; R. v. Caine*, 2003 SCC 74 at para. 85. Examples include marriage, having children, child-rearing decisions, and medical decisions: *Halsbury's Laws of Canada - Constitutional Law (Charter of Rights)* Dwight Newman; HCHR-57; §VIII(2)(3)

[7] *Mouvement laïque v. Saguenay*, 2015 SCC 16 at para. 73 (s. 2(a), by analogy).

and parents."[8] The *Family Law Act* codifies a margin of deference for this same reason.[9]

9. *B(R)* was followed in this province in the family law context in *F.(N)*[10]:

> It is not open to a court to substitute its own opinion on matters of morality for that of the custodial parent, always providing that the custodial parent's views on morality are not inconsistent with public policy. … The parent is entitled to bring up his or her child in any religion … or lifestyle that the parent selects…

10. International legal instruments declare the family to be the "fundamental group unit of society"[11] and require states to "respect the responsibilities, rights, and duties of parents … to provide … direction and guidance" to their children.[12] "The *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."[13] Recent scholarship, learning from Canada's historical failings, suggests these and other international instruments establish a right of "family integrity" which sees the family as "fundamentally autonomous from" and "entitled to protection from the state".[14]

11. Respecting parental liberty also supports a diverse society. The family is one of the essential institutions through which culture is transmitted. "Autonomous families not only provide the conditions needed for the physical and emotional development of individual children, but also make possible a religious and cultural diversity that might disappear if the state extensively regulated or controlled child rearing."[15] The legacy of cultural disruption

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[8] *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48 at para. 72 ("K.L.W."); *Canadian Foundation for Children, Youth and Law v. Canada*, 2004 SCC 4 at paras. 1-2.

[9] *Fawcett v. Read*, 2016 BCSC 310 at paras. 25-28.

[10] *F.(N.) v. S.(H.L.)* (1998), 60 B.C.L.R. (3d) 283 (S.C.) paras. 42-43, aff'd 1999 BCCA 398.

[11] *Universal Declaration of Human Rights*, at Art. 16(3). See also *International Covenant on Economic, Social and Cultural Rights* Art 10(1); *International Covenant on Civil and Political Rights* at Art. 23(1).

[12] *Convention on the Rights of the Child* at Art. 5.

[13] *R. v. Hape*, 2007 SCC 26. *Inglis v. British Columbia*, 2013 BCSC 2309.

[14] Amy Anderson, Hon. Dallas Miller, & Dwight Newman, "Canada's Residential Schools and the Right to Family Integrity," 41 Dalhousie L.J. 301 (2018) at pp. 311-320e, 323. *B(R)* itself at para. 72 states that "the integrity of the family unit is itself premised… on that of parental liberty."

[15] Judith Areen, "Intervention between Parent and Child – A Reappraisal of the State's Role in Child Neglect and Abuse Cases" (1975), 63:4 Georgetown L.J. 887 at 893.

from Canada's policies of residential schools and the '60's scoop'[16] demonstrates how numerous separate state interventions simultaneously aggregate into lasting macro harms. Section 27 of the *Charter* requires s. 7 to be interpreted consistently with Canada's multicultural heritage, just as much as the religious and associational rights in s. 2.[17]

12. To receive s. 7 liberty protection under either of *B(R)*'s twin categories should require the parent to establish either that the subject matter is of "fundamental importance" (including decisions protected by sections 2, 7, and 15 of the *Charter*), or that the decision instantiates the parent's values in the context of the child's "moral upbringing". "Moral upbringing" is broader than teaching and includes the practices and choices by which parents seek to give their children a moral upbringing in values such as resilience, perseverance, courage, adaptability, thrift, resourcefulness, responsibility, initiative, skill, empathy, humility, sustainability, and independence. It might include such choices as schooling, extra-curricular activities, diet, fasting, chores, sleep, spiritual practices, being home alone, traveling by car or bus, tattoos, curfews, dress, political engagement (such as voting, petitions, advocacy, and protests), driving, screen time, hygiene, employment, etc. The focus of this branch is on the forming of the child's moral character. The activity itself need not be as "fundamental" as medical care.

B. Parental liberty is engaged by implied threats by the Director's delegates

13. Parental liberty is clearly engaged when the Director obtains a child protection order under the *Act*. Parental liberty is equally engaged where the Director extracts parental compliance by threatening (even impliedly) to seek such an order.

14. It is the director's appointment under the *Act* which gives force to her demands or threats. Without the statute, the threat would carry no weight (or would be illegal). Per para. 65 of the reasons below, the parent submits to the demand only because of the Director's statutory office and enforcement powers. "[T]he statute supplies the needed element of government action" for reviewability under s. 32 of the *Charter*.[18] The demand is reviewable

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[16] *Final Report of the Truth and Reconciliation Commission of Canada*; *"Indigenous Resilience, Connectedness, and Reunification"* ('Grand Chief Ed John report') at pp. 32-35

[17] e.g. freedom of association in s. 2(d) also serves as a bulwark against state power: *Mounted Police* at paras. 35, 56, 57, 62, 64.

[18] Peter Hogg, *Constitutional law of Canada*, 5e (Scarborough: Thomson/Carswell, 2007) (loose-leaf updated 2017, rel. 1) at p. 37–24. *R. v. Conway*, 2010 SCC 22 at paras. 41-44.

under the *Charter* whether or not it is a "decision" for the purposes of the *Judicial Review Procedure Act*. The scope of *Charter* (as opposed to administrative law) review is set out in s. 32 of the *Charter* itself and cannot be narrowed by ordinary legislation. There is no Provincial Court proceeding in which the appellant can assert his *Charter* claim only because the Director proceeded by implied threat rather than by court application. The Director cannot rely on that very choice to avoid judicial review for *Charter* compliance. The court below retains jurisdiction in such situations.[19]

15. Any other result would privilege form over substance and do an end run around a parent's *Charter* rights. The *Charter* would clearly apply in a supervision order application in Provincial Court to compel a change in parental practice. The *Charter* must equally apply if the Director gives the parent an ultimatum to make the same change, failing which the Director will seek a supervision order (i.e. an express threat). The same ought to be true of an implied threat where the Director tells a parent that they must "consent" to parent differently and that the matter is "non-negotiable." In all three cases the Director utilizes her appointment under the *Act* to achieve her objective of coercing a change in the parent's child-rearing approach. Parental liberty is engaged in the same way in each case. *B(R)* itself at para. 79 defines the liberty interest by reference to *Big M. Drug Mart*'s protection against state "coercion or constraint … [including] indirect forms of control." The Director must not be permitted to escape *Charter* review by acting indirectly (i.e. by implied threats) rather than directly (by court application).

16. The justificatory standard required by the principles of fundamental justice should be the same in any of these three equally coercive courses of conduct: the child must be in need of protection within the meaning of the *Act*.[20] If this standard is not met, the Director cannot insist on a 'consensual' Safety Plan or Family Development Response and then claim that there is nothing for a court to review for *Charter* compliance.

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[19] *L.S. v. British Columbia*, 2018 BCSC 255 at paras. 31-33. *K.L.W.* at para. 129.

[20] Continuing Legal Education BC "*Child, Family and Community Services Act Overview"* §III(F)(3) at p. 11.1.5-11.1.6: A supervision order under s. 29.1 is "essentially a court ordered safety plan" and "The Ministry must be able to establish that the child in question is in need of protection. It isn't enough that the social worker would like to be able to monitor the family." [emphasis added] This CLEBC paper was authored by the same Attorney General lawyer, Corinne Feenie, who is identified at para. 24 of the appellant's factum as the author of the legal opinion given in support of the 'age 10 rule'.

C. The Act authorizes only child protection, not parental regulation

17. If "a statutory provision is capable of an interpretation that is constitutional and one that is not, then the courts should choose the construction that conforms with the Charter."[21] Rightly interpreted in light of its text, context, and purpose,[22] and in light of the s. 7 parental liberty interest, the *Act* does not authorize the Director to overrule parenting decisions where children are not in need of protection.

18. Section 2(b) of the *Act* recognizes that "a family is the preferred environment for the care and upbringing of children." The Director's intervention powers apply only when a "child needs protection" within the meaning of s. 13 or when a child is facing "abuse, neglect and harm or threat of harm" within the meaning of s. 2(a)[23]. The Director is required to utilize the "le[ast] disruptive measures"[24] in order to preserve family integrity.

19. The Hansard debates on the *Act* comprise 94 pages[25], much focusing on the inherent tension[26] between the child's entitlement to protection from abuse on one hand, and the family's right to "self-determination" (10 mentions) and the statutory infringements of parents' "civil liberties" and "civil rights" (9 mentions) by state "intrusion" (15 mentions)[27] on the other. The sponsoring minister stated as follows:

> We are committed to taking the least intrusive measures that will be effective to protect the child. … [This bill] is not a guide for parenting. If parenting is working.... This [bill] is not to make judgments on the socioeconomic or cultural abilities of parents to parent. If your child is safe, healthy and secure, then this bill has no application to you. If you are functioning as a family and providing a nurturing environment -- not to make judgment on what or where that environment may be, or on what happens in that environment … [This bill] is to give recognition to the fact that there are different families in society today. There are many more single-parent families, and, yes, there are different ways of

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[21] *R. v. Ruzic*, 2001 SCC 24 at para. 26.

[22] *R. v. Penunsi*, 2019 SCC 39, at para. 36.

[23] *S. (B.) v. British Columbia* (1998), 48 B.C.L.R. (3d) 107 (C.A.) ("*S.(B.)*")

[24] Sections 6(4)(a), 30(1)(b), 33(1)(d), 35(1)(c). This reflects K.L.W. at para. 77.

[25] British Columbia, Legislative Assembly, Official Report of Debates ("Hansard"), 35th Parl., 3rd Sess., Vol. 16: June 7, 1994 [pp. 11529-11533, 11546-11553], June 9 [11697-11708, 11721-11740], June 16 [12017-12029, 12034-12049], June 20 [12097-12111], June 21, 1994. 4th Sess. Vol. 20: June 7, 1995 [p. 15109], June 15 [15581-15586], June 19 [15727-15730], June 20 [15779]. Proclaimed in early 1996.

[26] A tension described by the Supreme Court of Canada at *K.L.W.* at para. 76.

[27] Including the alternative forms of the word: "intrude" and "intrusive"

> parenting depending on what culture you come from. … the intent is not to intrude in the home … This bill is intended to give greater assurances to those who are responsible for protecting children. They now have a clear guide and very specific language. … We will know when a child is in need of protection ….[28]
>
> This legislation is not about parenting; this legislation is not about enforcing the state's view on parenting. [29]

20. The high bar for state intervention in the *Act* reflects the fact that even well intended state interference in families has side effects – a high 'transaction cost'. Per the Supreme Court of Canada in *K.L.W.*: "Unnecessary disruptions of [the parent – child] bond by the state have the potential to cause significant trauma to both the parent and the child."[30] Even 'best case' removals are costly: "removal may be necessary in some cases, [but] it carries significant risks to the child in all cases" (even for short periods) and "removal has a profound effect on the child and family . . . that cannot be undone."[31] Furthermore, despite best intentions, the Director has a statutorily reported track record of numerous tragic failures to protect children in care[32] or out of care and receiving services[33]. Ironically, this track record makes parents more fearful of their children being taken, and thus overly compliant with the Director's demands, even where the parent knows their child is not in need of protection. The targets of the Director's attention are disproportionately poor, single mothers, disabled (particularly with mental health challenges), victims of domestic violence, and indigenous,

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[28] Hansard, 35th Parl., 3rd Sess., Vol. 16; June 7, 1994 [pp. 11530, 11552-11553],

[29] Hansard, 35th Parl., 4th Sess. Vol. 20: June 15, 1995 [p. 15586].

[30] K.L.W. at para. 72; see also para. 124. Interfering with attachment can breach s. 7: *Inglis* at paras. 10, 647.

[31] C. Church, M. Mitchell, V. Sankaran, *Timely Permanency or Unnecessary Removal?* (ABA Center on Children and the Law, 1 May 2017). Sankaran & Church, *Easy Come, Easy Go: The Plight of Children who Spend Less Than Thirty Days in Foster Care*. Univ. Penn. J.L. 19.3 (2016) 207 at 210-213, 215. Council of Europe Parliamentary Assembly Doc. 14568 Committee on Social Affairs, *Striking a balance between the best interest of the child and the need to keep families together* at para. 52 ("Striking a balance")

[32] *Representative for Children and Youth Act* reports: a) *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (Oct. 2016) and the five previous reports listed on page 2. b) *Broken Promises: Alex's Story* (Feb. 2017); c) *Who Protected Him? How B.C.'s Child Welfare System Failed One of Its Most Vulnerable Children* (Feb. 2013)

[33] *Representative for Children and Youth Act* Annual Report 2018/19 (September 2019) Figures 5-11 at pages 29-33 (In-Mandate Critical Injuries and Deaths).

and thus less able to contest a removal.[34] Rules against children being left unsupervised (anywhere, even for short periods), will disproportionately impact these families.

21. To justify intervention, the situation in the family must be worse than the inherent risks of the intervention itself. All parents are flawed. All parents make mistakes. All children face varying degrees of risk inherent in life within their family. But the alternative risk of the state acting as parent is, in the overwhelming majority of cases, worse. The side effects and transaction cost of state intervention can be justified to avoid actual child abuse, neglect, and likely harm, but not to simply impose the Director's opinions or methods to 'correct' imperfect, or even mediocre, child-rearing. The *Act*'s purposes are achieved not by *more* intervention by the Director, but rather intervention *only where children are in need of protection*, which is the condition precedent in sections 28, 29.1, and 30 of the *Act*. Loose "safety concerns" are not enough.

22. The Director sometimes suffers negative publicity (or tort liability) in high-profile 'failure to intervene' cases.[35] This could cause 'institutional drift' where risk aversion causes the Director to 'hedge' or 'insure against' future embarrassment by demanding parenting changes for children not in need of protection. If that should happen, this Court has a role in reiterating the carefully calibrated statutory line. No child protection scheme will prevent all harm, and children's best interest and parental liberty must not be sacrificed on the alter of perfection.[36] Per *K.L.W.*, "Children's interests appear on both sides of this balancing scale."[37] The statutory balance should be respected. Per *B(R)* at para. 86, child protection actions should "arise only in exceptional cases."

D. No residual authority to require parents to minimize risk

23. The Director is commonly referred to as the 'Director of Child Protection' for a

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[34] *K.L.W.* at para. 72. Mosoff, Grant, Boyd, and Lindy: Intersecting Challenges: Mothers and Child Protection Law in BC (2017) 50 UBC L. Rev 435. *Striking a Balance* at para. 42.

[35] A trajectory noted in Europe: *Striking a balance* at para. 42 (third bullet). Unfortunately, headlines are rarely made when the Director apprehends a child who is subsequently found to not have been in need of protection, despite the harm to the child of what is found, in retrospect, to have been a wrongful removal.

[36] This was fatal in *Inglis* at para. 12(b) where the administrative actor had "adopted a standard, a guarantee of safety, that he acknowledged was impossible to meet, one that was inappropriate given the constitutional issues implicated by the decision".

[37] At para. 48. To similar effect see *G(J)* at para. 76.

reason.[38] The *Act*, particularly when interpreted through s. 7, does not grant the Director:

a) A rule-making power such as under the *Workers Compensation Act* to impose 'parenting policies', such as those recommended by the Canada Safety Council[39], even in the name of marginally improving safety; or

b) A supervisory power to second-guess parenting decisions on a "case-by-case" basis where the Director takes a different view of the child's best interest. The director is not a 'Superintendent of Parents.'

24. If the Director could impose, either in general or on a "case-by-case" or "child specific" basis, through implied threats of child protection proceedings eliciting "consent"[40], a *de facto* policy against children under the age of 10 taking public transit and/or being unsupervised anywhere (even for short periods), then she could interfere in nearly any parenting decision. Life is inherently risky, and most activities of value to moral upbringing carry elevated physical and/or emotional risks: ice hockey, rugby, gymnastics, wilderness camping, driving to any of these activities, jumping on a trampoline, piano lessons and exams, fine arts auditions and public performances, being the new kid in school due to a family move, playing in the back yard or running an errand a few blocks away while a parent cooks dinner inside, biking in the cul-de-sac or quiet neighbourhood streets, taking public transit alone, walking to a friend's house, martial arts, and so on. Children often feel a measure of apprehension when facing a new challenge, learning a new skill, shouldering a new responsibility, or starting a new program. This does not mean they are in need of protection. Working through these feelings is often part of the parent's objective in gently pushing the child to their 'growth edge.' Per *B(R)* at para. 86, "we must accept that parents can, at times, make decisions contrary to their children's wishes."

25. The level of risk for all of the examples in the previous paragraph falls well below the 'likely harm' standard in s. 13 of the *Act* – a risk estimated at around 10% by this Court in S.(B) – and well below the likelihood of harm in the example described in the Hansard debate about s. 13 of the *Act* (proof that a parent had abused another sibling)[41]. If the

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[38] E.g. "Child Protection Services in BC" (BC Government website).

[39] A body with no legal authority or statutory mandate.

[40] Identified as a problem in Europe as well: *Striking a Balance* at para. 47.

[41] Hansard, 35th Parl., 3rd Sess., Vol. 16: June 9, 1994 p. 11734: "her sister has [been abused] and that parent remains in the home… it's safe to predict that the other is at risk as well."

Director is given jurisdiction to overrule these decisions, her risk averse mindset may result in a 'race to the [risk] bottom' where children miss valuable opportunities for development and moral formation. It will also make demoralized parents 'walk on eggshells' for fear of a report to the Director, and will lead to the homogenization of families.

26. The child's "entitle[ment] to be protected from abuse, neglect and harm or threat of harm" under s. 2(a) of the *Act* is not an upbringing of minimal possible risk. Much like the criminal law, the *Act* serves as a floor of what society can tolerate – the "socially acceptable threshold": *B(R)* at para. 86. Much of parenting is balancing the costs (time, energy, and financial) and inherent risks of various activities with their long term benefits. Parents must be free to make these assessments and decisions based on their "appreciate[ion of] the best interests of their children" (*B(R)*), and within the realities and constraints of their own family, including the number, ages, and needs of siblings; the number of parents and their capacities and work schedules; and the family's financial means. The *Charter*, common law, and the *Act* assign this responsibility squarely to parents, not to the Director. *Young v. Young* noted in a related context: "A custody award is a matter of whose decisions to prefer, as opposed to which decisions to prefer."[42]

27. The Director has no jurisdiction to use implied threats of child protection actions to coerce a parent on the basis that a different child rearing approach or parenting decision would further reduce an already remote risk. That is neither authorized by the *Act*, nor permitted by s. 7 of the *Charter*.

PART 4 – NATURE OF ORDER SOUGHT

28. These interveners seek to present oral argument at the hearing of the appeal. They do not seek costs and ask that no order as to costs be made against them.

All of which is respectfully submitted at the City of Vancouver, Province of British Columbia, this 4th day of May, 2020.

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Geoffrey Trotter, Counsel for the intervener
Kids First Parent Association of Canada

[42] [1993] 4 S.C.R. 3 (L'Heureux-Dubé J.); followed in *J.B. v. M.R.*, 1995 CanLII 6242 (NB CA) and *Jewish Family and Child Services v. H.R.G.*, 2016 ONCJ 262 at para. 42

LIST OF AUTHORITIES

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APPENDIX: ENACTMENTS

Convention on the Rights of the Child

Preamble

The States Parties to the present Convention, … Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

International Covenant on Civil and Political Rights (ICCPR)

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

International Covenant on Economic, Social and Cultural Rights

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Universal Declaration of Human Rights

Article 16

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.