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INTRODUCTION

Purpose and currency of checklist. This checklist is designed for use with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. It is designed for counsel for the parent(s) involved in child protection proceedings with a director designated under the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 (the "*CFCSA*"). It deals with most aspects of procedure under the *CFCSA*, including presentation, protection, and continuing custody hearings. Also note the Provincial Court (Child, Family and Community Service Act) Rules, B.C. Reg. 533/95 (the "CFCSA Rules"), and the Child, Family and Community Service Regulation, B.C. Reg. 527/95 ("CFCSR Regulation", am. B.C. Reg. 15/2016). This checklist is current to August 31, 2016.

New developments:

- **Law Society Rules.** On July 1, 2015, revised and consolidated Law Society Rules came into effect. See www.lawsociety.bc.ca/page.cfm?cid=4089&t=Law-Society-Rules-2015.
- **Code of Professional Conduct for British Columbia (the "BC Code").** The confidentiality restrictions in Appendix B, paragraph 4(c.1) were amended in April 2015 and allow parenting coordinators some discretion to disclose information. Rule 3.6-3, commentary [1] regarding the duty of candour owed to clients respecting fees and other charges for which a client is billed was amended in June 2015. Effective July 2015, rule 3.7-9 will require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer's withdrawal from a file.
- **Articled students permitted to act as commissioners for taking affidavits.** Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, made pursuant to s. 60(l) of the *Evidence Act*, R.S.B.C. 1996, c. 124). Principals remain responsible for students' actions and will need to ensure that students understand the effect of acting as commissioner.

Of note:

- **Family Law Act.** The *Family Law Act*, S.B.C. 2011, c. 25 (the "*FLA*"), which came into force on March 18, 2013, does not address child protection proceedings directly, but affects child protection practice in relation to such issues as which parent a child can be returned to following a removal. For more detail about current family law practice in British Columbia, see the FAMILY LAW PROCEEDING (D-5) and related checklists.
- **Aboriginal law.** The provincial director of child protection (the "director") has delegated authority to a number of Aboriginal agencies throughout the province to administer all or parts of the *CFCSA*. The degree of responsibility undertaken by each agency is the result of negotiations between the Ministry of Children and Family Development (the "Ministry") and the Aboriginal community served by the agency. As of the date of this checklist, 148 of the approximately 198 First Nation bands in B.C. are represented by agencies that either have, or are planning, delegation agreements to manage their own child and family services. Currently, there are 23 delegated agencies with various levels of delegation: one is in start-up phase; four can provide voluntary services and recruit and approve foster homes; eight have the additional delegation necessary to provide guardianship services for children in continuing care; and ten have the delegation required to provide, in addition, full child protection, including

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the authority to investigate reports and remove children. The Vancouver Aboriginal Child and Family Services Society ("VACFSS"), an Aboriginal nonprofit society, has authority for child protection, family services, and guardianship for all Aboriginal children and families within the municipal boundaries of Vancouver, with the exception of Métis, Musqueam, and Nisga'a children. A listing of the various delegated agencies can be found at: www2.gov.bc.ca/gov/content/family-social-supports/data-monitoring-quality-assurance/reporting-monitoring/accountability/delegated-aboriginal-agencies. The provincial government's authority to enter into agreements with an Indian band or other legal entity representing an Aboriginal community arises under *CFCSA*, Part 7. Other special considerations may apply to children who have ties to an Aboriginal community. For example, notice of various hearings may be required to be sent to an Indian band (e.g., *FLA*, ss. 208 and 209 address standing and notice in hearings for guardianship of Nisga'a children and treaty first nations children, respectively). Note that a child's culture is one of the factors to be considered with all others in determining a child's best interests (see *H. (D.) v. M. (H.)*, [1999] 1 S.C.R. 761, and *CFCSA*, s. 4(2)). One of the guiding principles of the *CFCSA* states that the cultural identity of Aboriginal children should be preserved. For further information, see the articles published in the "Aboriginal Law" page in the Practice Points section of the Continuing Legal Education Society of British Columbia website at www.cle.bc.ca. • **Alternative dispute resolution.** The Attorney General and the Ministry have funded initiatives to divert child welfare matters away from court and into alternative dispute resolution venues. These alternatives to litigation involve early efforts to identify families for participation in the family conference process (*CFCSA*, s. 20), in mediation (*CFCSA*, s. 22), and in informal collaborative meetings. These resolution processes are used for cases already before the courts and to prevent cases from coming before the courts. There is generally a high rate of resolution early in the process as a result of improved relations between the parties. Some areas of B.C. have developed the alternative dispute resolution process to a greater degree than others. In most areas, a request by a parent or parent's counsel for a family conference, mediation, or collaborative meeting will be received favourably by the local Ministry office. Social workers and director's counsel will also often suggest mediation over litigation when an application is contested. The Legal Services Society, as part of the child protection legal aid tariff, funds counsel to participate in mediation between a parent or guardian and the director. Also see *BC Code*, s. 5.7 and Appendix B. • **Additional resources.** For more detailed information about child protection matters, see the *British Columbia Family Practice Manual*, 4th ed., looseleaf and online (CLEBC, 2006); annual editions of *Annotated Family Practice* (CLEBC); and *Family Law Sourcebook for British Columbia*, 3rd ed., looseleaf and online (CLEBC, 2002).					

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CONTENTS

CHECKLIST

1. INITIAL INTERVIEW

1.1 Confirm compliance with Law Society of British Columbia Rules on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.

1.2 Before removal:

.1 Consider if the prospective client is a person involved in a previous matter. Determine whether there may be a conflict. Consider *BC Code*, s. 3.4.

.2 Review the circumstances with the client.

.3 Inform the client of the director's legal obligations under the *CFCSA* regarding s. 13 protection concerns, duty to report, and time requirements.

.4 Refer to the Legal Services Society, if legal aid is required.

.5 Discuss with the client the possibility of an agreement with the director to provide services or support to assist the client to care for the child (*CFCSA*, s. 5). Discuss alternative caregivers, including the other parent, extended family, or friends and neighbours who might assume care of the child on a private basis to avoid forced intervention by social workers who are delegates of the director, employed by the Ministry. The director relies on the "child's kin" section (*CFCSA*, s. 8) to avoid taking children into foster care if the parent can identify an alternative caregiver.

.6 If the client is temporarily unable to look after the child in the home, discuss the possibility of a voluntary care agreement with the director (*CFCSA*, s. 6).

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.7 Discuss mediation or other alternative dispute resolution processes to resolve an issue relating to the child (*CFCSA*, s. 22), aside from whether the child is in need of protection. Advise your client that information exchanged in a mediation or other alternative dispute resolution process is confidential and cannot be used against them except in strictly delineated circumstances (*CFCSA*, s. 24).					
.8 If the director has applied for a protective intervention order (*CFCSA*, s. 28):					
(a) Prepare a retainer agreement or letter for the client, including an explanation of fees, other charges, disbursements and taxes, and, if acting under a "limited scope retainer" (a defined term in the *BC Code*), advise the client of the nature, extent, and scope of the services that will be provided. Ensure the client understands the limited scope of the retainer and the limits and risks associated with the scope of services provided, and confirm the understanding, where reasonably possible, in writing. See *BC Code*, s. 3.6 for the rules regarding reasonable fees and disbursements and a lawyer's duty of candour.					
(b) Obtain the retainer from the client.					
(c) Obtain client history (see item 1.3.14 for suggested particulars).					
(d) Telephone director's counsel to ascertain the social worker's concerns and the circumstances.					
(e) Check compliance with the notice requirements of the *CFCSA* (notice of hearing to be served on the person against whom order sought, the child (if age 12 or over), and the child's caregiver at least two days before the application hearing (s. 28(2))). Note that, pursuant to s. 69(2), the court can make a s. 28 order without a party or the person against whom an order is being made having been served with the application.					
(f) Request that the director provide disclosure of the Ministry file relating to the case, particulars of the order the director plans to request, reasons for requesting those orders, and the director's intended evidence (*CFCSA*, s. 64).					
(g) Discuss the client's position about the order sought by the director.					
(h) Prepare for and attend the hearing.					
(i) Advise the client of the effect of the order made at the hearing.					
(j) Consider whether there are grounds for appeal and, if there are, consult with the client.					
.9 If the director has applied for a supervision order without removal (*CFCSA*, s. 29.1):					
(a) Follow (a) to (d) and (f) to (j) under item 1.2.8 above.					
(b) Ascertain from director's counsel whether an adjournment of the director's application for a supervision order without removal will trigger a removal.					

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(i) Because the test for such an order is that the child would be in need of protection without the order, an adjournment will postpone the granting of an order and may therefore be deemed by the director to leave the child in need of protection, thus creating the need for removal. Generally, director's counsel will advise you that adjournment will trigger a removal unless a plan can be put in place for the period of a brief adjournment that satisfies the protection concerns of the director. Such a plan might include alternative care options or a family member or other person moving into the home to provide additional supervision. You can also ask director's counsel if it will suffice for the client to follow the proposed terms and conditions until the matter returns to court while you attempt to gather the facts that lead to the director's application, and to obtain instructions from your client.					
(c) Check compliance with notice requirements of the *CFCSA* (notice of hearing to be served on the child (if age 12 or over) and on the child's caregiver at least seven days before the presentation hearing (s. 33.1)). The director may seek to proceed on short notice despite the required notice period, since children in need of protection might otherwise require removal.					
.10 If the director has applied for medical intervention under *CFCSA*, s. 29:					
(a) Follow (a) to (j) under item 1.2.8 above.					
(b) Prior to the hearing, demand medical expert evidence from the director and, if needed, retain a medical expert for the parent; ensure that notice is provided to the child as well as the parent if the child is capable of consenting to health care (see *Infants Act*, R.S.B.C. 1996, c. 223, s. 17). The director may seek to proceed on short notice if the child is faced with a medical crisis and there is a dispute between the parents and medical professionals about how to meet that crisis.					
1.3 After removal under *CFCSA*, s. 30:					
.1 Consider if the prospective client is a person involved in a previous matter. Determine whether there may be a conflict, as in item 1.2.1.					
.2 Obtain a brief outline of the circumstances from the client and/or director's counsel.					
.3 Determine whether a court appearance has been scheduled (the case must be in court within seven days of removal (*CFCSA*, s. 34).					
.4 Refer to the Legal Services Society, if legal aid is required.					
.5 Prepare a retainer agreement or letter for the client. If you will be providing a limited scope of legal services, ensure that the client understands the limited scope of the retainer and the limits and risks associated with the scope of services provided, and confirm the understanding, where reasonably possible, in writing.					
.6 Obtain the retainer from the client.					

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.7 Arrange an appointment with the client immediately or as soon as possible. If a parent/client is incarcerated, consider a "spring order" application in due course. (In most registries, the Attorney General now provides for minor appearances of incarcerated parties by video. Except for actual hearings, this may be more convenient for the client. Check with the registry administrator in your location.)					
.8 Have the client prepare a written statement of the circumstances of removal.					
.9 If available, review the client's copies of the presentation form (CFCSA Rules, Form 1) and the report to the court (CFCSR Regulation, Form A), for notice of the date and time of the first court appearance and the circumstances of the removal as alleged by the director.					
.10 If the client does not have copies of the presentation form and the Form A report to the court, telephone the Provincial Court registry or director's counsel to establish when the next *CFSCA* list will occur. Request copies of the presentation form and the Form A report to the court from director's counsel.					
.11 Note time frames under *CFCSA*, s. 34: presentation hearing to take place no later than seven days after child is removed.					
.12 Telephone director's counsel to find out particulars of the social worker's concerns and details regarding the director's interim plan of care.					
(a) Ask director's counsel whether the director will consider alternatives to foster care: e.g., placement with another parent, relatives, friends, or neighbours (first determine if such an alternative exists, and if the parent is prepared to accept that arrangement) (see *CFCSA*, s. 8, referred to in item 1.2.5). If a satisfactory safety plan or alternative placement can be arranged, discuss with director's counsel the director's willingness to withdraw from further proceedings pursuant to *CFCSA,* s. 33.					
(b) Explore also whether the director will consider a return with supervision or a protective intervention order against an abuser pursuant to *CFCSA,* s. 28 and offer informed reasons why those solutions might be more appropriate in addressing the protection concerns.					
.13 Determine whether the removal is on fresh grounds, or is an alleged breach of a supervision order. (Although the proceedings are only slightly different, the considerations are quite different.)					
.14 Obtain client history, including:					
(a) Complete chronological outline.					
(b) Marital and parenting history. As a result of provisions in the new *FLA*, Part 4, Division 2, it is important to determine who the guardians of the child are and if they have parenting time, for the purposes of determining potential options for your client and for the director.					
(c) Previous spouse/relationship.					
(d) Residences.					
(e) Citizenship.					
(f) If Aboriginal, band or First Nation particulars.					

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(g) Education.					
(h) Employment/occupation.					
(i) Financial.					
(j) Medical (obtain consent to release of medical information).					
(k) Previous Ministry involvement, in B.C. or any other province.					
(l) Previous removals, court orders, agreements, child-care agreements, etc., in B.C. or any other province.					
(m) Previous social service or court involvement relating to any other children in relation to whom client stood as a "parent."					
(n) Names of extended family and neighbours, especially those able to provide alternative placement for the child (see item 1.3.12(a)).					
(o) Previous legal involvement (family law, criminal law).					
(p) Use of community resources; especially treatment or counseling relevant to grounds of intervention.					
.15 For each child, get particulars, including:					
(a) Full name, birth date, place of birth.					
(b) Schools, teachers, counsellors.					
(c) Medical and psychological history and any identified special needs of the child.					
(d) Recent child/family activity photograph.					
(e) What problems, if any, parents have been having with the child.					
(f) Babysitters.					
(g) Activities: clubs, groups, sports.					
(h) Child and family relationships.					
(i) Previous Ministry involvement.					
(j) Whether child is a young offender.					
(k) If the child has ties to an Aboriginal community, details to determine which Aboriginal entities must be given notice of proceedings (e.g., *CFCSA*, s. 38(c) to (d), and *FLA*, ss. 208 and 209); the director must take steps to preserve a child's Aboriginal identity (*CFCSA*, s. 4(2)).					
.16 Discuss circumstances of the removal with the client. Canvass with the client factors that could reduce short-term protection concerns (e.g., evidence that an event was isolated and unlikely to recur).					
.17 Discuss with the client any less disruptive measures considered by the director before removing the child and the interim plan of care included in the Form A report to the court. Find out whether the client agrees with the removal and the interim plan of care (the client and the social worker may be working together on the proposed plan).					
.18 Discuss what resources could be suggested or used to satisfy short-term protection concerns and allow the child to reside at home (e.g., having extended family live in the home).					

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.19 Discuss what resources could be suggested or used if the child needs to reside outside the home. The director frequently uses *CFCSA*, s. 35(2)(d) orders to give interim custody to others under the director's supervision. Such orders take the child out of or prevent the child from being placed in foster care. Discuss whether your client is willing to have another person or another parent provide care for the child as an alternative to foster care. If the other parent is a guardian of the child under the provisions of the *FLA*, and that parent has parenting time with the child, the director may consider placing the child with the other parent.					
.20 If possible or of assistance, request letters of reference from the family doctor or any therapists or counsellors involved with the client.					
.21 Discuss with the client and director's counsel or social worker what access, if any, the client has had since the removal of the child(ren), and what access the client could expect to have going forward (e.g., supervised, unsupervised, and frequency of such access) should the child(ren) remain in the care of the director. An access order should be granted unless the court is satisfied that the access is not in the child's best interest. Note though that access orders cannot be granted by the court until an interim order is made.					
.22 Consider requesting mediation or a collaborative meeting to resolve issues of placement, access, or remedial services.					
.23 If the client is not in agreement with the removal and order sought by the director, determine if there is anyone who could be a credible witness at the presentation hearing as to custody, care, and control of the child.					
2. PREPARATION FOR PRESENTATION HEARING					
2.1 The first appearance for a presentation hearing is almost always adjourned if counsel wishes time to consult with the client. The only regular exception is when the director is seeking a non-removal supervision order pursuant to *CFCSA*, s. 29.1, because the director may deem the child to be in need of protection without such order, and remove the child if an adjournment is granted. A contested hearing on the day of the first appearance on a presentation hearing is very rare. More commonly, a presentation hearing is adjourned to the judicial case manager to set a half-day to a day-long hearing. It is not unusual for a presentation hearing to be scheduled several weeks after the first appearance, so it is important to discuss this possibility with your client in advance, as it may have an impact on the decision to proceed by way of a contested presentation hearing.					
3. PRESENTATION HEARING					
3.1 If retained, appear in court with the client and with a copy of the presentation form and Form A report to the court.					
3.2 Either:					
.1 Request an adjournment (if necessary) in order to gather information, to obtain instructions, to consider alternative placements for the child, or to consider or schedule alternative dispute resolution processes; or					

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.2 Stand the matter down to the end of the court list in order to try and discuss the matter further with director's counsel, the social worker, or both. Matters to be canvassed include return under supervision, prospect of returning the child to the other parent or extended family member or friend, what the parent needs to do to address the protection concerns, and access to the child.					
3.3 Canvass with the client whether any other family or friends are prepared to formally assume custody of the child under *CFCSA*, s. 35(2)(d). Propose these caregivers to director's counsel early in the proceedings, as the director will require time to complete a background study of the proposed caregivers. If the director is not amenable to the proposed caregiver, but on the evidence available the caregiver might be acceptable to the court, discuss with the client focusing the hearing on the alternative caregiver rather than on immediate recovery of custody by the client. Note that if the nominee under *CFCSA*, s. 35(2)(d) cannot continue to care for the child, the director must effect another, separate removal under the *CFCSA*, and commence a parallel proceeding. The parallel proceeding can become very confusing for family, counsel, and the courts, and anyone nominated to receive custody under s. 35(2)(d) should be thoroughly informed about the likelihood that the custody arrangement might continue for many months. Note also that if a parent is nominating a person, or agreeing to a person nominated by the director to have custody under s. 35(2)(d) or, later, s. 41(1)(b), parent's counsel should insist that the director include terms of supervision that require the nominee to provide access as directed by the director or ordered by the court, and to cooperate with any service plan designed to assist a parent to eventually recover custody of his or her children. If a caregiver cannot continue to care for the child under a *CFCSA*, s. 41(1)(b) order, and the director is not prepared to return the child to the parent, the director may apply to vary the order to place the child in the custody of the director (i.e., s. 41(1)(c) or (d)). However, if the matter is urgent and the director wants or needs to move the child immediately, then the director will be forced to effect a removal and commence a parallel proceeding, as described above.					
3.4 Determine whether the client is prepared to agree to the child being cared for by another parent. Although practice may vary for some time under the new *FLA*, it may be open to the director to place the child with another guardian of the child who has been having parenting time. Under the *CFCSA*, the director can only return a child to the "parent apparently entitled to custody". Before the *FLA* came into force, the director generally interpreted that phrase to mean the parent the child had been removed from, or the parent entitled to custody under a court order made pursuant to the *FRA* or the *Divorce Act*; under the *FLA*, the phrase may be viewed more broadly by the director and the court. If the other parent attempts to bring an application under the *FLA* to vary guardianship or parenting time as a result of the removal and your client is not in agreement with that application, ensure that director's counsel is aware of and will be arguing existing case law that states that such applications should not be heard at the interim hearing (see *Re G. (A.N.)*, 1996 BCPC 1 and *Re T.(E.)* (7 June 1996), Vancouver 968434 (B.C. Prov. Ct.)).					

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3.5 At the interim stage, where the parent clearly lacks evidence to support a return of the child(ren) to his or her custody, counsel should consider the benefit to the client of proposing to director's counsel a consent interim order granting custody to the director, with an immediate commencement date for the protection hearing. If this is done, the parent can immediately also consent to a temporary custody order, or set a Rule 2 case conference (pursuant to the CFCSA Rules). The statutory scheme of stages is "collapsed" in this process, and the systemic delays in the statute and in the courts are avoided or reduced by at least six weeks. In order to do this, all persons entitled to notice of the protection hearing must consent to this process.					
3.6 If the client is not in agreement with the interim order sought by the director, consider mediation or other alternative dispute resolution processes to resolve the case (*CFCSA*, s. 22). The Ministry and the Attorney General pursue various alternative dispute resolution initiatives to resolve child welfare issues. These processes often result in earlier resolution of the case, improve relations between the director and the client, and greatly empower the client in dealing with the director. The Legal Services Society supports mediation by funding attendance by parents' counsel at mediation. In some communities, the director also provides mediation coordinators to expedite the process, and to establish a roster of child welfare mediation experts.					
3.7 If the client is not in agreement with the order sought by the director, and mediation or other alternative dispute resolution processes are not acceptable or available options, schedule a date for a contested interim hearing. Note that mediations are still often set in contested matters because valuable information can be exchanged in advance of the hearing in alternative dispute resolution processes, which may result in the resolution of the outstanding interim application. Advise the client that at an interim hearing, the director is not required to prove that a child is in need of protection, but only that there is admissible evidence that, if accepted, could lead to a finding that the child is in need of protection (see *British Columbia (Director CFCS) v. C. (J.)*, 2014 BCSC 496, at para. 21). Also advise the client that at the interim hearing stage, where there is a dispute about the facts, the dispute is resolved in favour of the director (*B. (B.) v. British Columbia (Director CFCS)*, 2005 BCCA 46, at para. 14).					
3.8 At a contested interim hearing, the social worker will give evidence as to the circumstances that caused the director to remove the child and also the proposed interim plan of care. If the director has a history of involvement with the parent, the social worker will also give summary evidence of that involvement, if that history was a factor in the decision to remove or fail to return the child. The parent will then give evidence that supports his or her position that the child can be safe at home or in a proposed alternate home until a full protection hearing can be held. Present evidence of circumstances and resources that reduce short-term protection concerns. Be sure to address the issue of access if an interim custody order is granted (under *CFCSA*, s. 55, access can be granted after an interim order is made).					

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3.9 Advise the client of the effect of any order made at the hearing. If the court makes an interim order returning the child to the client under the supervision of the director (under *CFCSA*, s. 35(2)(b)), the court may include terms in the supervision order that are recommended by the director (s. 41.1). Advise the client that non-compliance with a supervision order can lead to removal of the child. The director must remove the child if there is reason to believe that an interim order "no longer protects the child". The director must also remove the child if the parent has failed to comply with a term of an interim order where the express consequence of non-compliance is removal (s. 36). The director must present a written report to the court on the circumstances of such a removal within seven days, and the process outlined in item 1.3 above should be followed.					
3.10 Diarize the commencement date for the protection hearing, which must be within 45 days of the date of the interim order (*CFCSA*, s. 42.17). Normally, the commencement date will be approximately six weeks (42 days) from the date of the interim order, so that the date coincides with the *CFCSA* list day and time. You can request an earlier commencement date to expedite the process, but generally director's counsel must agree to an expedited date.					
4. AFTER PRESENTATION HEARING					
4.1 Do an interim account.					
4.2 Decide whether to continue as legal counsel or refer the client elsewhere.					
4.3 Consider ordering a transcript of the *CFCSA*, s. 35 proceedings (if on legal aid, get prior authorization).					
4.4 Check s. 35 order upon receipt from director's counsel and sign, or advise director's counsel if there are any errors in the draft order. Once the entered order is received from the registry, which can take weeks or months depending on the courthouse, send a copy to the client. If you require an entered copy urgently for some purpose, you can try to coordinate with director's counsel to have it entered sooner.					
4.5 Notice of the application for an order at the commencement of the protection hearing must be served on the parents, an Aboriginal agency, and children 12 years of age and over, at least 10 days before the hearing date.					
.1 The fact that counsel appeared at the presentation hearing and is "counsel of record" does not excuse the director from the obligation to serve parents and children personally. Unlike proceedings under other statutes and rules, there is no provision or expectation that counsel will also be served with the notice for the protection hearing, as his or her client will have been personally served at the protection hearing stage. If counsel wants notice of the protection hearing delivered to him or her before the protection hearing, arrangements must be made with director's counsel on a case-by-case basis.					
5. PREPARATION FOR PROTECTION HEARING					
5.1 Check the notices of hearing for time and accuracy and determine whether all required notices were served.					

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5.2 Canvass with the client whether any other family or friends are prepared to formally assume custody of the children for a short time under *CFCSA*, s. 41(1)(b). Propose these caregivers to director's counsel early in the proceedings, as the director will usually require several weeks to complete a background study of the proposed caregivers. If the director is not amenable to the proposed caregiver, but, on the evidence available, the caregiver might be acceptable to the court, discuss with the client focusing the hearing on the alternative caregiver rather than seeking an immediate recovery of custody by the client.					
5.3 Determine whether the client is prepared to agree to the child being cared for by another parent. Although practice may vary for some time under the new *FLA*, it may be open to the director to place the child with another guardian of the child who has been having parenting time. See further item 3.4.					
5.4 Attend the first appearance for the protection hearing. If the client is not consenting, consider mediation or other alternative dispute resolution processes to resolve the case, and request an adjournment for such a process or set a case conference under Rule 2 of the CFCSA Rules (see item 6).					
5.5 The commencement date will usually be nominal, because the court must direct that a case conference be scheduled if the application at the protection hearing is contested (pursuant to Rule 2 of the CFCSA Rules). In many cases, however, consent orders are entered into at the commencement stage, either on the first appearance or after a short adjournment; counsel should take instructions wherever possible in anticipation of this possibility. Consider proposing to director's counsel that the order be made by filing s. 60 written consents to the order, as this generally alleviates the need for the director to call evidence on the application and for the court to make a protection finding under *CFCSA*, s. 40.					
5.6 Diarize the date of the Rule 2 conference. In many registries, you may wait several weeks or even months for a Rule 2 case conference date. You should prepare your client for that delay. Only after a Rule 2 case conference has been held, are contested hearing dates set.					
5.7 Request that the director provide disclosure of the director's file on your client; particulars of the order he or she intends to request; the reasons for requesting those orders; and the director's intended evidence at hearing (*CFCSA*, s. 64) in advance of the scheduled case conference.					
5.8 Consider whether other proceedings should be heard at the same time as the *CFCSA* hearing (i.e., *FLA* applications).					
6. PROVINCIAL COURT (CFCSA) RULE 2 CONFERENCE OR MEDIATION					
6.1 Having requested disclosure (*CFCSA*, s. 64) from director's counsel at item 5.7, review the Ministry documents thoroughly when received, and discuss the material with the client before the Rule 2 conference or mediation. If disclosure has not been received by the week prior to the case conference or mediation, contact director's counsel to find out when it will be provided.					
6.2 Meet with the client, determine the evidence, and discuss any settlement possibilities.					

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6.3 Prepare the client for participation in the Rule 2 conference or mediation. Advise your client that pursuant to Rule 2(8), only the parties and their lawyers may attend a case conference; other persons may attend if the judge allows. If your client wants a support person to attend, notify director's counsel, and any other counsel who will be attending (so you can get their agreement in advance). Generally, if any of the parties or their counsel object to a third party being in attendance, the judge will not allow that person to remain in the conference room.					
6.4 Discuss with the client any documentary evidence the client may have in his or her possession, or that may easily become available. Explain that the obligation to make timely disclosure of this evidence rests on all parties, not just on the director (*CFCSA*, s. 64). Note the *BC Code* rule 7.2-10 obligations concerning inadvertent possession of the other party's documents or communications.					
6.5 Attend the Rule 2 conference with your client. Upon request, provide a summary of your client's circumstances, what he or she is doing to address the director's protection concerns, and what his or her plans are for the future. Raise any concerns your client may have about access, disclosure, support services, or planning for the child. At a Rule 2 conference, the judge will attempt to determine if a resolution can be facilitated resulting in a consent order being made. If your client is willing to consent to an order as a result, use written consents pursuant to s. 60, if possible, to ensure that a protection finding against your client is not made. The court can dispense with the written consent of parties who have not appeared to contest the director's application pursuant to s. 60(3) to allow s. 60 to be used, despite written consents not being available from all parties. If the judge isn't able to facilitate a resolution to the substantive application, the judge will attempt to mediate any issues in dispute. The judge can also review the adequacy of disclosure by the parties, give directions about evidentiary issues, make directions about the length and timing of the trial, or direct that a further case conference be held. If your client fails to attend the Rule 2 conference, the judge may make the order sought by the director in your client's absence.					
6.6 If a consent order is not made at the Rule 2 conference, set hearing dates on the contested application, taking into account your client's instructions in that regard and how much time will likely be needed to address any outstanding protection concerns of the director.					
7. PREPARATION FOR CONTESTED PROTECTION HEARING					
7.1 Schedule witness interviews.					
7.2 Request information from teachers, counsellors, and others. Note that the effect of a *CFCSA*, s. 35 order giving the director interim custody is that the director gains some rights of guardianship under *CFCSA*, s. 47. Therefore, written consents from the Ministry social worker may be required before information will be released from most agencies and institutions. Generally, if counsel requests consents from director's counsel or the social worker, they will be provided.					
7.3 If medical or psychological experts are required, determine what they are needed for and who is going to pay for that consultation, expert letter, ongoing counselling, or other service. Address the need for expert reports early in the process, to avoid delays.					

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7.4 If outside resources are being used (e.g., social service workers, parenting skills programs, church), consider what progress is being made and whether reports or witnesses will be required.					
7.5 Consider what, if any, expert evidence will be required. Arrange an interview with the expert witness(es).					
7.6 If calling experts, comply with notice requirements in Rule 4(4) of the CFCSA Rules. See Rule 4(5), which requires service of written statement of the expert's opinion on all parties of record at least 30 days before trial. Note that the court can grant permission for late notice (see Rule 4(4) and (5)).					
7.7 Determine what witnesses will have to be subpoenaed. Prepare and issue subpoenas.					
7.8 Determine whether medical records, x-rays, etc., must be obtained by subpoena. Hospital record departments will not release records to non-guardians unless a subpoena is issued. Once served, they are usually cooperative and will provide copies for court purposes, unless these are the client's records (in which case a release must be obtained). There is no provision under the *CFCSA* for a party other than a director to obtain a court order for production of records and documents. *FLA*, s. 212 provides for production of records by third parties, and this can be used if *FLA* proceedings are running concurrently with *CFCSA* proceedings involving custody of the same child. Ask director's counsel if the Ministry has already obtained particular records, or if there are plans to obtain those records (which will then be produced to parent's counsel under *CFCSA*, s. 64), before going to the trouble and expense of seeking production separately from the same source.					
7.9 Obtain up-to-date school report cards, etc. (see item 7.2 above).					
7.10 Consider the wishes of the child, if any. Consider whether the child ought to give evidence, particularly if the child is 12 or older (see *CFCSA*, s. 67). In *CFCSA* proceedings, the courts generally frown upon calling children to testify at a hearing, except in unusual circumstances. Canvass this issue with director's counsel; if there is disagreement, it ought to be dealt with at the Rule 2 case conference. Consider whether a child ought to be joined as a party pursuant to *CFCSA*, s. 39, and have separate counsel appointed. The Attorney General will appoint counsel for children who are made parties to a proceeding. The criteria the Attorney General normally requires to consent to an order that a child be made a party are that the child's views cannot be adequately represented by counsel for the parent(s) or counsel for the director, and that the child wishes to be made a party to the proceeding. Counsel should discuss making an application to have a child made a party with director's counsel before the application is made, but the application can be made over the objection of the director. The Attorney General will sometimes deny counsel for children when the child is consenting to the order sought by the director.					
7.11 If director's counsel seeks consent to file documents, examine the documents thoroughly prior to giving consent. Provide copies of documents you wish to file in advance, so the director can review them. Pursuant to *CFCSA*, s. 64(3), evidence may be excluded from a hearing if no reasonable effort was made to disclose the evidence in advance.					

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7.12 Confirm that the director has disclosed the director's intended evidence (*CFCSA*, s. 64(1)). If not, consider applying to exclude evidence at the hearing where there was no reasonable effort to disclose (s. 64(3)). Some judges have granted orders to compel the director to disclose particular records or to make further disclosure under CFCSA Rule 8(8) and (16).					
7.13 Ensure compliance by the client with any request by director's counsel for disclosure on the part of the client under *CFCSA*, s. 64.					
7.14 Do all necessary legal research and prepare legal argument.					
7.15 Prepare your client to give evidence, and prepare them for the broad scope of cross-examination in these proceedings. Prepare all other witnesses.					
7.16 Determine whether the director is ready to proceed and whether all necessary documents have been filed and served and accepted by the court.					
7.17 In a case where the child has been placed outside the home and a delay in the hearing is requested, consider the appropriateness of an argument that delay will deny full benefit and protection of the law. The test is that a delay application must not compromise or prejudice the best interests of the child.					
7.18 Once you have familiarized yourself with your case and the evidence the director will lead, again consider and discuss with your client whether there might be reason to request a mediation before the scheduled hearing date.					
8. CONTESTED PROTECTION HEARING					
8.1 Protection hearings are civil hearings and are often less formal in terms of process and the application of evidentiary rules than other civil hearings (*CFCSA,* s. 66). In a protection hearing, the court may admit into evidence any hearsay evidence that the court considers reliable (*CFCSA,* s. 68(2)). Director's counsel will often file historical Ministry records, hospital records, police records, and other similar records as business records.					
8.2 Before making the final argument, re-read the *CFCSA* and make sure the court has considered all the issues. Consider whether there was evidence to provide a basis for expert opinions.					
8.3 The deliberation of the trial judge is in two stages, and counsel needs to prepare for each. Two issues are considered at these respective stages:					
.1 Whether the director has established that the child was or is in need of protection (this must be concluded first); if so,					
.2 Whether all the circumstances of the case at the date of hearing require the court to grant the order sought by the director to ensure the safety and well-being of the child.					
8.4 Advise the client of the effect of the order made at the hearing.					
9. AFTER PROTECTION HEARING					
9.1 Outline the director's issues for the client, and review the evidence led at trial that identified remedial measures the client needs to address to avoid a subsequent application for a further temporary custody order or continuing custody order. If appropriate, outline with the client a plan of action to address issues during the term of a temporary order.					

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9.2 Consider ordering a transcript of the protection hearing (if this is a legal aid matter, get authorization).					
9.3 Consider whether there are grounds for appeal, and consult with the client to obtain instructions on pursuing an appeal.					
9.4 Prepare an interim (or final) account.					
9.5 Check the order made at the protection hearing, upon receipt from director's counsel, and send a copy to the client.					
9.6 Get a retainer if proceeding to a further contested hearing if you have closed your file.					
10. SUBSEQUENT APPLICATIONS					
10.1 Prior to the expiry of a temporary custody order or a supervision order, the director may apply to extend those orders under *CFCSA*, s. 44, if the circumstances that caused the child to need protection have not been sufficiently resolved but are likely to be resolved within a reasonable time period. Also, prior to the expiry of a temporary custody order, the director may apply for an order that the director supervise the child after the child is returned to the custody of the parent.					
10.2 Check the notices of hearing for time and accuracy, and determine whether all required notices were served. See item 5 above; most of the same planning considerations apply.					
10.3 Canvass with director's counsel what protection concerns continue unaddressed or require a further custody or supervision order. Discuss these with your client and consider mediation or other alternative dispute resolution processes if your client is not in agreement with the director's application.					
10.4 If the matter cannot be resolved through mediation or other alternative dispute resolution processes, set the matter down for a case conference and/or contested hearing. Although case conferences are not mandatory under the *CFCSA* after the protection hearing stage, in practice, most courts require case conferences for all contested applications. Note that judges can order further case conferences if they determine it would be beneficial to the court process.					
10.5 Review the time restrictions under *CFCSA,* s. 45 to ensure that the total period of temporary custody specified therein has not been exceeded. Director's counsel can apply under s. 45(1.1) for a court order extending the total period if it is in the child's best interests to do so and case law indicates that such an order can be made even after the time limit has expired (see *Re JM, CM, AM and BM* (29 July 1997), Port Alberni 19970729 (B.C.S.C.)). Section 44(3.1) stipulates that children cannot be under the supervision of the director for more than 12 consecutive months, including the period of an interim supervision order.					

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11. PREPARATION FOR CONTINUING CUSTODY HEARING					
11.1 Canvass with the client the availability of alternate caregivers so as to avoid a continuing custody order. See item 5 above; most of the same planning considerations apply. If a child is in the temporary custody of a third party under the director's supervision, the director can apply pursuant to *CFCSA*, s. 54.01 to permanently transfer custody of the child to that person. The child must have resided with that person for at least six months before the application is made, although the court can shorten or waive the residency period if it is in the child's best interests to do so. Discuss with the client whether that plan is acceptable to the client. If an order is made under s. 54.01, that person becomes the child's guardian, and the order can only be varied or cancelled thereafter under the *FLA* and not the *CFCSA*. A person who receives custody under s. 54.01 is eligible to receive financial support from the director.					
11.2 Be prepared to address all relevant issues under *CFCSA*, s. 49.					
11.3 Consider access provisions under *CFCSA*, s. 56. Counsel should file and deliver an application under s. 56 at least 10 days before the date set for hearing the custody application, so the court may consider both applications at the same time. The application may be brought at any time after a continuing custody order is made, unless the application was considered and dismissed at the continuing custody hearing.					
11.4 Advise the client that a court can only make a s. 56 access order if access is in the best interest of the child and consistent with the plan of care for the child. If adoption is the plan and an access order would jeopardize that plan, a court will not make a s. 56 access order (see *M. (A.) v. British Columbia (Director CFCS)*, 2008 BCCA 178).					
12. AFTER CONTINUING CUSTODY ORDER					
12.1 Advise the client of the effect of the order made at the hearing. Make sure the client understands all of the ramifications of a continuing custody order. See *CFCSA*, ss. 50 and 53.					
12.2 Consider whether there are grounds for appeal.					
12.3 Advise the client on provisions of *CFCSA*, s. 54, and CFSCA Rule 8(6) to change or set aside a continuing custody order. Advise the client that, under s. 54, a client who was a party to a proceeding in which a continuing custody order was made may apply to the court for permission to apply to cancel the order if there has been a significant change in the circumstances that caused the court to make the continuing custody order.					
.1 Explain that such an application involves a two-stage application process: the applicant at the first stage must prove on a summary basis that there has been a significant change in the circumstances. If the applicant is successful at the first stage, he or she must then convince the court at the second stage not only that has there been a significant change in the circumstances but also that cancelling the continuing custody order is in the child's best interest. The first stage, if contested by the director, typically proceeds on the basis of affidavit material, while the second stage, if contested by the director, typically proceeds on the basis of *viva voce* evidence.					

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12.4 Note that *CFCSA*, s. 54 and CFSCA Rule 8(6) are different. Rule 8(6) applies only where the client was served but did not appear when the order was made. This Rule is not available where the client appeared or where the client did not attend court, but counsel remained on the record. For the Rule to apply, counsel must have withdrawn before the court deliberated on the continuing custody order application in the absence of a parent. Counsel should consider this in every case where the client fails to attend the hearing and counsel does not have instructions to appear in the absence of the client.					
12.5 A director may apply to the court to permanently transfer custody of a child under a continuing custody order to a person other than the parents of a child (*CFCSA*, s. 54.1). The parent does not receive notice of the application unless that parent has an access order. If the order is granted, the third party becomes the guardian of the child and the order can only be varied or cancelled under the *FLA*, not the *CFCSA* (s. 54.2(1)). The intention of this section is to transfer responsibility for children to permanent caregivers and away from the province, but in a manner less radical than by adoption. Parents should be counselled following a continuing custody order that *CFCSA*, s. 54.1 is an opportunity for other family members or close family friends to assume custodial care of their children. A person who receives custody under s. 54.1 is eligible to receive financial support from the director.					
12.6 Note that *CFCSA*, s. 102, creates an offence if confidential Ministry documents are disclosed, except according to *CFCSA*, ss. 75, 76, and 79. If appropriate, consult with director's counsel on what should be done with documents after a proceeding is concluded and the client file is to be closed. Many parent's counsel feel it is best practice not to make copies or give Ministry documents to clients, instead preferring that their clients review disclosure documents in their office or in their presence.					
13. CLOSING THE FILE					
13.1 Send a letter to the client enclosing your final account, outlining the manner in which you arrived at the amount, and confirming that your engagement is complete.					
13.2 Once the account is paid, close the file. For guidance, see *Closed Files–Retention and Disposition*, July 2015, Appendix B: suggested minimum retention and disposition schedule for specific documents and files (e.g., six years after final judgment or settlement, except when a minor or pension is involved).					