**Appendix B to Form 2**

**LEGAL BASIS**

1. Section 55(1) of the *CFCSA* permits a court to grant an access order to a “parent apparently entitled to custody” (“custodial parent”) at the same time as or after an interim or a temporary order has been made.
2. Under s. 55(4), a court must grant an access order to a custodial parent unless the court is satisfied that access is not in the child’s best interests. The intent of s. 55(4) is to create a presumption of access for custodial parents.

*A.M. v. British Columbia (Director of Child, Family & Community Service)*, 2008 BCCA 178, at para. 20.

1. Section 55(6) allows the court to attach any reasonable terms and conditions to an access order under ss. 55.

*[If the child is* ***not*** *Indigenous]*

1. When deciding this application, the court must apply the definition of the best interests of a child from s. 4 of the *CFCSA*. The court must also consider the *CFCSA*’s guiding principles set out in s. 2.

*[If the child* ***is*** *Indigenous]*

1. In cases involving Indigenous children, the *CFCSA* applies concurrently with *An Act respecting First Nations, Inuit and Métis children, youth and families* (the “*Federal Act*”).Where there is a conflict or inconsistency, the *Federal Act* is paramount.

*Federal Act*, ss. 4 and 8; *J.W. v. British Columbia (Director of Child, Family and Community Service)*, 2023 BCSC 512 (“*J.W.*”), at para. 48.

1. The *Federal Act*’s jurisdiction over this case means that when deciding whether to grant access under s. 55(4) of the *CFCSA*, the court must consider the best interests of an Indigenous child (“BIOIC”) as defined by s. 10 of the *Federal Act*.
2. Pursuant to 10(1) of the *Federal Act*, the BIOIC must be a “primary consideration” in all aspects of decision-making about access to an Indigenous child. The Court must therefore consider the BIOIC when attaching terms or conditions to an access order under s. 55(6) of the *CFCSA*.

*British Columbia (Child, Family and Community Service) v. S.H.*, 2020 BCPC 82, at paras. 124-125.

1. Further, when making decisions about access, the court must consider the *Federal Act*’s purpose and guiding principles set out in ss. 8 and 9, and its minimum standards set out in ss. 11 to 17. Together, these provisions place an emphasis on the protection of Indigenous children’s cultural and relational continuity.
2. Section 17 of the *Federal Act*, in particular, provides that:

**17**  In the context of providing child and family services in relation to an Indigenous child, if the child is not placed with a member of his or her family in accordance with paragraph 16(1)(a) or (b), to the extent that doing so is consistent with the best interests of the child, the child’s attachment and emotional ties to each such member of his or her family are to be promoted.

1. Finally, the court must consider the historical and social context of ongoing colonialism as outlined in the *Federal Act*’s preamble.

*J.W.* at paras. 62-66.

*[Optional submissions]*

1. The courts have recognized that a critical consideration in the best interests of the child analysis is the ability of an infant to bond with their birth parent and breastfeed.

*L.S. v. British Columbia (Director of Child, Family and Community Services)*, 2018 BCSC 255.

1. The importance of protecting an Indigenous child’s relationships does not diminish with time or age. As observed by Justice Walkem in *J.W.* at para. 85:

The message of the Indigenous survivors of the child and family services system in [the *Brown* class action], and reflected in the [*Federal Act*](https://www.canlii.org/en/ca/laws/stat/sc-2019-c-24/latest/sc-2019-c-24.html), is that Indigenous cultural bonds and connections do not abate in importance over time, but rather are increasingly important as children mature into youth and young adulthood. The *Federal Act*recognizes that protecting the BIOIC requires protecting an Indigenous child’s cultural connections and their attachments and relationships to their extended family, community and territory.

1. Section 55 of the *CFCSA* must be interpreted and applied in ways that are consistent with BC’s *Human Rights Code*. Section 3(b.1) of the *CFCSA* requires that services “be planned and provided in ways that prevent discrimination prohibited by the *Human Rights Code* and that promote substantive equality, respect for rights and culture and, in the case of Indigenous children, cultural continuity.”
2. Section 55 of the *CFCSA* must be interpreted and applied in ways that are consistent with *Charter* values and principles, including those arising from ss. 7 and 15 of the *Charter*.

*British Columbia (Director of Child, Family & Community Service) v. O*, 2009 BCSC 1370, at paras. 41-43; *British Columbia (Director of Child, Family and Community Service) v D.O.S,* 2022 BCSC 168, at para. 84.

1. The Provincial Court has an essential oversight role throughout *CFCSA* proceedings to consider the Director’s conduct and to ensure the *Charter* rights of parents and children.

*B.J.T. v. J.D.*, 2022 SCC 24, at paras. 63-67.

1. Section 55 of the *CFCSA* must be interpreted and applied in ways that are consistent with the values and principles of the *Convention on the Rights of the Child*, including those arising from Articles 5, 8(1), 9(3), 20(1), 20(3) and 30.

*Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), at paras. 69-71.

1. Section 55 of the *CFCSA* must be interpreted and applied in ways that are consistent with the values and principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, including Articles 7-9, 11, and 13.

*K.K.M. V. T.J.S.*, 2021 BCPC 316, at paras. 76-78.