Registry File Number: [insert]  
Registry Location: [insert]

In the Provincial Court of British Columbia

Under the *Child, Family and Community Service Act*

In the matter of the child(ren):

|  |  |
| --- | --- |
| **Name(s)** | **Date(s) of Birth** |
|  |  |
|  |  |

The parent(s)/guardian(s) of the child(ren) is/are:

|  |
| --- |
| **Name(s)** |
|  |
|  |

**NOTICE OF CHARTER APPLICATION**

Pursuant to s. 8(2) of the *Constitutional Question Act*, RSBC 1996, c 68

**Name of applicant:** [name] (the “applicant”)

**TO:** Ministry of Attorney General

Legal Services Branch

PO Box 9290 STN PROV GOVT

1001 Douglas Street

Victoria, BC V8W 9J7

**AND TO:** Attorney General of Canada

British Columbia Regional Office

Department of Justice Canada

900 - 840 Howe Street

Vancouver, BC V6Z 2S9

**AND TO:** Director of Child, Family and Community Services

[address]

**WHEREAS** the applicant is a party to this proceeding under the *Child, Family and Community Service Act*, RSBC 1996, c 46 (the “*CFCSA*”) and a parent to the child(ren) in the matter.

**TAKE NOTICE** that, pursuant to s. 8(2) of the *Constitutional Question Act*, RSBC, c 68, an application will be made to the presiding judge at the courthouse at [address], in the city of [city], in the Province of British Columbia, on a date to be set, requesting that the court find that the Director of Child, Family and Community Services (“the Director”) violated the applicant’s right to security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“the *Charter*”) by:

1. [Insert impugned conduct], in contravention of an access order made by the Honourable Judge [name] on [date] under s. 55 of the *CFCSA* (“the Access Order”).

**TAKE FURTHER NOTICE** that the applicant seeks an order for costs under s. 24(1) of the *Charter*.

**AND TAKE FURTHER NOTICE** that the particulars of the application are set out in Schedule “A” to this Notice.

Date: *[dd/mmm/yyyy]*

Signature of

[  ]  applicant       [  ]  lawyer for applicant

*[type or print name]*

**Schedule A**

**PARTICULARS**

**FACTUAL BASIS:**

1. [Insert].
2. [Insert].

**LEGAL BASIS:**

1. **The Director’s conduct in the child removal context engages s. 7 of the *Charter***
2. Section 7 provides:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

1. To establish a violation of s. 7, the applicant must prove:
2. The impugned state action interfered with, or deprived the applicant of, their life, liberty or security of the person.
3. The deprivation in question does not accord with the principles of fundamental justice.

*Carter v. Canada (Attorney General),* 2015 SCC 5 at para. 55.

1. It is well established that some forms of state intervention in the parent-child relationship, including the removal of a child from their parent’s custody, amount to a deprivation of the parent’s right to security of the person under s. 7. Any such deprivation must accord with the principles of fundamental justice.

*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48, *B.J.T. v. J.D.*, 2022 SCC 24 (“*B.J.T.*”), *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167.

1. Following the removal of a child, and while the child is in the care of the state, the Director’s conduct in relation to access continues to engage the parent’s right to security of the person. Where the impugned conduct contravenes a court order on access, it does not accord with the principles of fundamental justice for reasons including because it is unfair and an abuse of process.

*British Columbia (Child, Family and Community Service) and L.M.R. and S.F.*, 2021 BCPC 353 (“*L.M.R.*”), at para. 41.

1. **Section 7 gives rise to the Provincial Court’s essential oversight role in child removal proceedings.**
2. The Supreme Court of Canada has recognized that s. 7 gives rise to the Provincial Court’s essential oversight role in child removal proceedings. The court must supervise the Director’s conduct throughout the proceedings to ensure that the Director exercises their powers “only when warranted and with due fairness to children and parents.”

*B.J.T.* at paras. 64-65.

1. When assessing fairness in the child removal context, courts must be mindful of the “reality and material circumstances” of parents, whose experiences often include poverty and other forms of marginalization. This contributes to a “significant imbalance” between parents and the Director, even where a parent is represented by counsel.

*Kawartha-Haliburton Children’s Aid Society v. M.W.*, 2019 ONCA 316, at paras. 68-69.

1. **The Provincial Court has the jurisdiction to award *Charter* costs in relation to the Director’s non-compliance with an access order.**
2. The Provincial Court has the jurisdiction to award *Charter* costs in relation to impugned conduct within an ongoing proceeding under the *CFCSA* that affects the Court’s ability to control its own processes.

*J.R.A. v. B.C. (Attorney General)*, [2020 BCSC 759](https://www.canlii.org/en/bc/bcsc/doc/2020/2020bcsc759/2020bcsc759.html) (“*J.R.A.*”), *L.M.R.*

1. The Provincial Court’s jurisdiction includes the authority to award *Charter* costs in relation to the Director’s non-compliance with an access order granted under the *CFCSA*. Such jurisdiction is an important means of exercising judicial oversight over access orders. Further, it is consistent with the societal interest in protecting parent-child relationships, even while the child is in the care of the state.

*L.M.R.*, at para. 41.

**MATERIAL TO BE RELIED UPON**

1. [Affidavit(s)].
2. The *Charter*, ss. 7 and 24(1).
3. The *CFCSA*, ss. 2, 3, 4, and 55.
4. [If the child is Indigenous] *An Act respecting First Nations, Inuit and Métis children, youth and families*, ss. 8, 9, 10, 11 and 17.
5. The *Provincial Court (Child, Family and Community Service Act) Rules*, Rule 1(2).
6. Other such material as counsel may advise.

Date: *[dd/mmm/yyyy]*

Signature of

[  ]  applicant       [  ]  lawyer for applicant

*[type or print name]*