IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Family and Children's Services* v. *Iwaniw,* 2005 YKSC 4

Date: 20050118
Docket No.: S.C. No. 04-AP002
Registry: Whitehorse

Between:

Director of Family and Children's Services

Appellant

And

Elaine Iwaniw

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Zeb Brown	For the Director of Family and Children's Services
David Christie	For the Respondent
Debbie Hoffman	For the Office of the Official Guardian

REASONS FOR JUDGMENT

INTRODUCTION

[1] The Director of Family and Children's Services (the director) applied for a permanent care and custody order of the respondent's child under the *Children's Act*, R.S.Y. 2002, c. 31.

[2] By way of interlocutory application, counsel for the parents applied for an order under s. 176(2) of the *Children's Act* requiring the director to provide copies of all relevant documents.

[3] The trial judge ordered the director to copy and deliver to counsel for the parent and to the child advocate, without cost, all relevant documents in the possession of the director that relate to the parent and the child. The director appealed the decision but complied with the order so that the hearing in this matter would not be delayed.

[4] The appeal is moot but it raises important and significant issues that should be heard. Counsel for the parents and the child advocate also wish the matter to be resolved.

ISSUES

[5] The issues to be determined are as follows:

1. What is the standard of review for the appeal?
2. Did the trial judge have the jurisdiction to order disclosure of the relevant documents?
3. Did the trial judge err in providing a C*harter* remedy without engaging in a C*harter* analysis?
4. Did the trial judge err in rejecting the method of disclosure proposed by the director which involved:
    (a) basic disclosure and copying of all relevant documents that the director will rely upon at the hearing in addition to detailed summaries of the facts in affidavit form; and
    (b) allowing counsel for the parents to review the balance of the file at the director's office with discretion to charge the parent for additional copies that may be requested?

BACKGROUND AND POSITIONS OF COUNSEL

[6] In 1997, the decision of *Re R.I.,* [1997] Y.J. No. 90 (T.C.) determined the disclosure requirements of the director in child protection cases.

[7] In that case, the director agreed to provide full and complete disclosure to the child advocate representing the children's interests. At the same time, the director declined to give full and complete disclosure to the parents on the ground that it would aggravate relations between the parties and the social workers responsible for the protection of the children.

[8] In support of this position, the director contended that the Court did not have jurisdiction to order disclosure or to determine the process of disclosure.

[9] In ordering the director to disclose all relevant information or documents to the parents, the Court decided that:

1. Section 175(2) of the *Children's Act* gave the Court the legislative authority to order disclosure. The Territorial Court, in spite of being a court of inferior jurisdiction, was competent to determine its own process;
2. There was a common law duty of fairness to disclose relevant information or documents;
3. The disclosure of all relevant information and documents to the parents, subject to relevancy and privilege, must be timely upon demand.

[10] The director, in this present appeal, relies upon *Re R.I.* and particularly the statement of the Court at paragraphs 33 and 36. In paragraph 33, the Court ruled that

counsel for the parents would not be entitled to copies of every document. In paragraph 36, with respect to the mechanics of disclosure, the Court stated that the director may comply with disclosure by making the documents available for inspection and review at the office of the director.

[11] The policy of the director, in compliance with *Re R.I.*, has been, until the hearing of this case, the following:

1. The director provides detailed descriptions of the facts alleged by the director by way of affidavit of the social workers involved, assessments and other relevant reports and all documents that the director intends to tender as evidence at trial.
2. The director's complete file is made available for inspection by counsel for the parents and the director agrees to provide copies of any additional document requests, with discretion to charge for such copies.

[12] The parents applied for an order that the director must provide a copy of all relevant information and documents at the director's expense to the parents or counsel for the parents.

[13] The director states that her policy minimizes the circulation of copies of the file and thus protects privacy and confidentiality. In order to protect privileged documents and privacy rights, the director has the complete file or files vetted prior to being made available for review by counsel for the parents.

[14] The director contends that there are two significant benefits to this procedure.

[15] Firstly, the procedure facilitates early disclosure of the director's case to facilitate settlement conferences.

[16] Secondly, it avoids the time and expense of preparing a complete copy of every file which, she alleges, could impact the level of service provided to families.

[17] The director is also flexible as to the hours during which the inspection can take place. The director's office is quite accessible to all counsel and the inspection can take place in private without interruption. This assertion by the director assumes that all counsel reside in Whitehorse. While this is generally the case, I note that two lawyers of the 107 resident lawyers on the roll of the Law Society of Yukon reside outside Whitehorse.

[18] Counsel for the parents and the child advocate (who both take the same position against the director's policy) respond that as a matter of law, the parents are entitled to full and complete disclosure at the cost of the director. Interestingly, in this case, the director provided the child advocate with a full copy of the file at the director's expense.

[19] Counsel for the parents and child advocate also submitted that:

1. Since the director's file must be vetted in any event, it is not a significant additional cost to photocopy the entire file;
2. Counsel are limited in their ability to prepare for a child protection case by having to attend at the director's office during office hours, or by special arrangement, since most of their work is done outside normal office hours;
3. The director's procedure leads to delays as counsel has to review the file and then wait for photocopying;

4. Counsel for the parents submits that there are power imbalances and strained relationships in protection proceedings, making it demeaning to require counsel and the parents to attend at the director's office.
5. Many parents in child protection cases are indigent and a requirement to pay for additional documents is an effective bar to obtaining full disclosure.

THE TERRITORIAL COURT DECISION

[20] Barnett T.C.J. made a very detailed order for the director to make full and complete disclosure for the parents. I attach the wording of that order in its entirety as Schedule A because it covers many other issues that are not in dispute here.

[21] The essence of his decision is that the director shall copy and deliver to counsel for the parents and the child advocate all relevant information and documents without cost. This includes a list of witnesses and a summary of their evidence.

[22] The director has the liberty to apply with respect to any claim for privilege. The parents are obliged to disclose their relevant documents to the director.

[23] There is a further term of the order limiting the use of the director's documents to the proceeding and requiring their return to the director at the conclusion of the proceeding.

[24] The trial judge found that the Territorial Court did not have any rules in place. Pursuant to s. 76(1) of the *Territorial Court Act,* R.S.Y. 2002, c. 217, the rules and procedures in the Supreme Court of the Yukon Territory shall be followed subject to being "modified as suits the case". Barnett T.C.J. found those rules did not "suit the case" for child protection proceedings.

[25] The trial judge found that the Territorial Court had authority to devise rules of procedure in child protection matters.

[26] The trial judge pointed out that the Court in *Re R.I.* was not required to make a ruling on the mechanics of the disclosure. He preferred to follow the decision in *S.D.K*. v. *Alberta (Director of Child Welfare)*, 2002 ABQB 61, in which Bielby J., following *Stinchcombe* and *New Brunswick*, ruled that the relevant documents, having been vetted for privileged material, should be copied for counsel for the parents without charge to the parents.

[27] As in *S.D.K.,* the trial judge relied upon *R.* v. *Stinchcombe*, [1991] 3 S.C.R. 326 and *New Brunswick (Minister of Health and Community Services)* v. *G.(J.)*, [1999] 3 S.C.R. 46 as the seminal cases to be considered.

[28] He was of the view that the *New Brunswick* case “changed everything” as the Supreme Court of Canada rejected the argument that a legal aid budgetary saving was of sufficient importance to deny the parents a fair hearing.

[29] Adopting *S.D.K.*, he found that the law had evolved from the decision in *Re R.I.* in 1997 and favoured full and complete disclosure by the director by photocopying all relevant information and documents and providing it to counsel for the parents and the child advocate without cost.

Issue 1: What is the standard of review for the appeal?

[30] The right of the director or any person aggrieved to appeal to the Supreme Court is found in s. 147 of the *Children’s Act*. The powers of the Supreme Court are set out as follows:

> **147**(5) On hearing an appeal, the Supreme Court may affirm, reverse, or modify the order appealed against, and

> make any other order that seems proper to the Supreme Court.

[31] The Supreme Court of Canada, in *Housen* v. *Nikolaisen*, 2002 SCC 33, has recently reviewed the role of appellate courts and the standard to be applied on appeal from a decision of a trial judge.

[32] The court began with the proposition that a court of appeal should not interfere with a trial judge's reasons unless there is a palpable and overriding error. The majority then considered the application of the standard of review to four questions:

1. questions of law;
2. questions of fact;
3. inferences of fact; and
4. questions of mixed law and fact.

[33] The standards of review can be summarized as follows:

1. On pure questions of law, the standard of review is correctness; the appellate court can replace the opinion of the trial judge with its own (paragraph 8).
2. The standard of review for findings of fact is that they cannot be overturned unless the trial judge made a "palpable and overriding error" (paragraph 10).
3. The standard of review for inferences of fact should not have a lower standard of review than that for findings of fact. Thus, where evidence exists to support the trial judge's inference of fact, it will be a difficult task to find a palpable and overriding error (paragraph 22). The appellate court cannot interfere with a factual conclusion simply

because it disagrees with the weight to be assigned to the facts (paragraph 23).

4. The court distinguished findings of fact and inferences of fact from questions of mixed law and fact. The latter involves applying a legal standard to a set of facts (paragraph 26). Thus, where the trial judge errs in the characterization of the legal standard, a correctness standard of review applies (paragraph 33). “Where the legal principle is not readily extricable”, then the standard of review is the more stringent standard (paragraph 36).

[34] This appeal involves the application of a legal standard to a set of facts. The facts and positions of the parties are found in affidavits so that there was no requirement for a finding of credibility. The appeal really focuses on the disclosure policy of the director, the fairness of that policy and the interpretation of s. 176(2) of the *Children’s Act*.

[35] In my view, the appeal involves a question of mixed law and fact. This requires the application of a legal standard to a set of facts and a correctness standard of review applies. This standard is supported by the broad power given to the judge on appeal in s. 147(5) of the *Children’s Act.*

Issue 2: Did the trial judge have the jurisdiction to order disclosure of the relevant documents?

[36] Part 4 of the *Children’s Act* sets out the statutory regime in child protection matters. Part 5 of the *Children’s Act*, entitled “Procedural and General Matters” contains the following section on the director’s disclosure obligation:

Disclosure of director's records

> **176**(1) Subject to section 99 and any regulation that may be made under this Act, no information or document that is kept by the director of family and children's services and that deals with the personal history of a child or an adult and has come into existence through any proceedings under Part 3 or 4 shall be disclosed to any person other than an agent of or lawyer acting for the director, unless it is disclosed with the consent of the director or pursuant to subsection (2).
> (2) No person shall be compelled to disclose any information or document obtained in the course of the performance of duties under Part 3 or 4 except
>
> (a) in the course of proceedings before the court or a judge under Part 3 or 4; or
>
> (b) in any other case, with the consent of the director or on the order of the court.

[37] Section 99 deals with adoptions and there is no regulation under the *Children's Act* dealing with disclosure of the director's records.

[38] Counsel for the director submitted that a judge of the Territorial Court has no authority to order the disclosure of the director's records. Curiously, counsel did not refer to s. 176 of the *Children's Act* in his submission nor in his filed *factum*. But he may be relying on the statement of Barnett T.C.J. at paragraph 7 of his decision that "the *Children's Act* does not specifically provide for disclosure". Counsel for the director did not appeal the term of the order compelling the parents to disclose all relevant documents in their possession to the director.

[39] In my view, Barnett T.C.J. implicitly, if not explicitly, relied on s. 176 of the *Children's Act* as authority for making his order, as he relied upon the decision in *Re R.I.* That case explicitly relied upon s. 176 as granting the Territorial Court authority to order disclosure.

[40] Although s. 183 of the *Children's Act* does not vest the inherent jurisdiction of superior courts in the Territorial Court, it is unnecessary to rely on inherent jurisdiction when the prohibition against disclosure in s. 176(1) specifically excludes disclosure in the course of protection proceedings before the court or a judge.

[41] The trial judge may be correct that the *Children's Act* does not specifically provide a positive duty to disclose. I interpret s. 176(2)(a) and (b) as giving the Court the power to order disclosure of information and documents in the course of protection proceedings or in any other case on the order of the Court.

[42] Applying a standard of review of correctness, the trial judge was correct by concluding that a judge of the Territorial Court has the jurisdiction to order the director to disclose relevant documents.

Issue 3: Did the trial judge err in providing a charter remedy without engaging in a charter analysis?

[43] Counsel for the director, in his written *factum*, did not argue that the trial judge granted a *Charter* remedy without engaging in a *Charter* analysis. He did make the argument in his oral submissions at the appeal hearing, catching the respondents by surprise. However, counsel were able to respond and it is an important issue. I assume that no notice was given under the *Constitutional Questions Act*, R.S.Y. 2002, c. 39. As the issue was not addressed in the trial judge's decision, I assume that it has been raised on appeal for the first time.

[44] Counsel for the director submits that as there is no authority for the Territorial Court to order disclosure, it must be addressed as a breach of the parents' rights under s. 7 of the *Charter*. It is submitted that a legal analysis must be made as though the denial of copies of documents to the parents was in breach of their s. 7 *Charter* rights to

security of the person. The trial judge did not do a *Charter* analysis or make a decision under the *Charter*.

[45] In my view, this submission is without merit. The application of the parents is not based upon a *Charter* breach. It is based upon the statutory authority of the trial judge to order disclosure and what form that should take.

[46] In short, it is a question of statutory interpretation.

[47] However, statutory interpretation can and should be done in a manner that is consistent with the fundamental values enshrined in the *Charter*. In *R.W.D.S.U* v. *Dolphin Delivery*, [1986] 2 S.C.R. 573, at paragraph 39, McIntyre J. noted that the question of the application of the *Charter* to private litigation,

> … is a distinct issue from the question whether the judiciary ought to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution. The answer to this question must be in the affirmative. In this sense, then, the Charter is far from irrelevant to private litigants whose disputes fall to be decided at common law.

This passage was cited with approval in *Cloutier* v. *Langlois*, [1990] 1 S.C.R. 158, at page 184 and *R.* v. *Salituro*, [1991] 3 S.C.R. 654 at paragraph 48.

[48] The fact that the issue of disclosure arises in a child protection hearing makes the application of *Charter* values even more appropriate.

[49] If there was no statutory authority, then it could be argued that a *Charter* breach would be required to grant a C*harter* remedy under s. 7. As I read the judgment of Barnett T.C.J., he found the authority to order disclosure based upon s. 176 of the *Children's Act* and the reasoning of Bielby J. in *S.D.K.* The judgment in *S.D.K.* is infused with the decisions of the Supreme Court of Canada in *Stinchcombe* and *New*

Brunswick. That does not mean that a *Charter* analysis is required to order disclosure. However, the *Charter* analysis in *Stinchcombe* and *New Brunswick* does impact the nature of the disclosure that is required.

Issue 4: Did the trial judge err in rejecting the method of disclosure proposed by the director which involved:

1. **basic disclosure and copying of all relevant documents that the director will rely upon at the hearing in addition to detailed summaries of the facts in affidavit form; and**
2. **allowing counsel for the parent to review the balance of the file at the director's office with discretion to charge the parent for additional copies that may be requested?**

[50] This issue boils down to the question of what is fair disclosure by the director in a child protection proceeding. Counsel for the director states that the director does not object to full disclosure as a matter of principle. Rather, it is submitted that the director should have the discretion to control the manner of disclosure in the same manner as the Crown in a criminal case.

[51] Counsel for the director relies upon the *Stinchcombe* case and Sopinka J.'s comment at paragraph 22 that "much leeway must be accorded to the exercise of the discretion of the counsel for the Crown with respect to the manner and timing of the disclosure …".

[52] This quote must be considered in its context. Paragraph 22 and preceding paragraphs are discussing the discretion of Crown counsel to withhold privileged and irrelevant information as opposed to an absolute obligation to disclose.

[53] Sopinka J., at paragraph 10, also stated that full production and discovery of parties and even witnesses have long been recognized in civil proceedings. He stated

that this change was based on the principle that justice was better served by eliminating surprise from the trial process.

[54] At paragraph 19, Sopinka J. stated that it is a correct statement of law that “there is a general duty on the part of the Crown to disclose all material it proposes to use at trial and especially all evidence which may assist the accused even if the Crown does not propose to adduce it”.

[55] At paragraph 20, Sopinka J., discussed the discretion of the Crown for matters of privilege and relevance but all the while erring on the side of inclusion. Delayed disclosure by the Crown would be permissible to avoid impeding an ongoing investigation but those occasions should not be encouraged and are rare.

[56] It is clear that the “much leeway” quote is made in the context of a withholding of documents by the Crown that is being reviewed by the Court. It is not a statement that in substance supports the contention of counsel for the director that there should be a two-tier disclosure consisting of “basic disclosure” and a disclosure of the rest of the information and documents in the possession of the director by making it available for inspection by counsel for the parents with discretion to charge the costs of photocopying.

[57] The best summary of the Supreme Court’s position in *Stinchcombe* is found at paragraph 29, where Sopinka J. stated:

> With respect to what should be disclosed, the general principle to which I have referred is that all relevant information must be disclosed subject to the reviewable discretion of the Crown. The material must include not only that which the Crown intends to introduce into evidence but also what which it does not. No distinction should be made between inculpatory and exculpatory evidence.

[58] Other courts have not interpreted *Stinchcombe* as stating that all relevant materials must be produced in criminal matters. Some cases lend support to the two-tier concept of “basic disclosure” followed by inspection for the remainder.

[59] Criminal law principles are not, however, directly applicable to child protection proceedings. The *New Brunswick* case states that child protection cases are hard to characterize and probably contain elements of criminal, civil, family and administrative procedure (paragraph 78). My view is that they are more akin to civil proceedings as in family law than they are to the criminal context. In civil cases, as stated by Sopinka J., the concept of full disclosure of relevant documents, subject to claims for privilege, is well established. There is much to be said for the concept put forward at paragraph 52 by Biebly J. in *S.D.K.* that full production of relevant documents should be the general principle with the right of the director to apply where disclosure should be withheld or met by inspection.

[60] There is a further reason for applying civil rules of discovery rather than the criminal law context. The Crown in a criminal case is always subject to an order to stay proceedings if full disclosure has not been made. The discipline of a stay of proceedings is not appropriate in child protection proceedings where the best interests of the child must always prevail.

[61] Thus the order made by Barnett T.C.J. is consistent with full and complete discovery, subject to the director’s discretion for claims of privilege and other matters listed in paragraph 2 of the order attached as Schedule A.

[62] Counsel for the director acknowledges that Crown counsel usually provide full disclosure by providing copies of all relevant documents and information. He submits

that child protection cases are different in that there is a duty of care on the director to ensure that there is no accidental or unnecessary release of confidential information. While confidentiality is a serious concern, it is not a reason for denying the parents full disclosure to the files that contain information and allegations about them. I am satisfied that the trial judge has dealt with this issue in making provision for the director vetting the file for privilege claims and third party confidentiality. Indeed, the trial judge has gone much further by putting a term in the order that both counsel and parties are limited to using the disclosure in the child protection proceedings and requiring the return of the disclosure after the conclusion of the litigation.

[63] The director also raises the issue of expense. She states that potentially tens of thousands of pages would be required to be copied every year which “could impact the level of service we provide to families”. I note that no dollar figure was placed on this expense. Nor was there a calculation of the expense associated with the costs of providing a room to inspect documents to provide a comparison. Although there was no evidence on the subject of inspection of files by self-represented litigants, I would expect this to be an ever greater burden on the director who might wish to monitor the inspection of the files.

[64] The trial judge correctly pointed out that the Supreme Court of Canada in *New Brunswick*, at paragraph 100, addressed the expense issue. The Court described the proposed budgetary savings of under $100,000 by not providing legal aid to be “minimal” and not sufficient to deny the parents a fair hearing. This balancing, by way of analogy, is useful to apply to the statutory right of disclosure in the present case.

[65] The *Children's Act* is quite explicit about whose interests are at stake in s. 1:

> **Best interests of child**
>
> **1** This Act shall be construed and applied so that in matters arising under it the interests of the child affected by the proceeding shall be the paramount consideration, and if the rights or wishes of a parent or other person and the child conflict the best interests of the child shall prevail.

[66] The Supreme Court in *New Brunswick* stated that the interests at stake are of the highest order. Not only are parental rights at stake but the best interests of the child in the parent-child relationship are engaged (paragraph 76).

[67] I conclude that the *Children's Act* authorizes disclosure which is in the best interests of the child and the parents. The expense of full and complete disclosure, cannot trump the right of full disclosure to ensure a fair hearing for the parents.

[68] I also agree with Bielby J. in *S.D.K.*, at paragraph 52, that there may be cases where the child's best interests, which are always paramount, require that certain material or information not be disclosed to the parents for safety or other reasons. However, that requires an application, on notice to the parents and the child advocate, for an order permitting the disclosure to be withheld.

[69] As an aside, I have used the terminology of expense deliberately to distinguish it from the word "costs". Costs refers to the tariff items that can be assessed by a Court against one party and payable to another to defray or reduce the legal fees and disbursements of a successful party. The *Children's Act* specifically prohibits orders for costs. I raise this because counsel for the director submitted that the trial judge's ruling was, in effect, a costs order. That submission is not persuasive as orders for costs

involve an assessment of the merits of a particular application or proceedings, which is not what is at issue here.

[70] The director also indicates that every effort would be made to accommodate the inspection request of counsel for the parents by accommodating special time requests and so on. Unfortunately, this does not address the issue of inconvenience in not having all the documents at the office of counsel for the parents. Additionally, protection cases are very time sensitive and there would be delay in obtaining and paying for additional requests for photocopying.

[71] The wish of the director to retain discretion as to who will pay for the additional photocopying could also be an impediment to counsel for the parents or self-represented parents.

[72] The trial judge relied upon the principle articulated in the *New Brunswick* case that fairness of a hearing requires the opportunity to present one's case effectively (paragraph 73). The trial judge added: "But neither can a fair hearing be anticipated if procedural barriers make it unnecessarily difficult for parents' counsel to prepare his or her clients' case effectively" (paragraph 28).

[73] I take issue with Barnett T.C.J. in one respect. At paragraph 16 of his decision, he reviewed the effect of s. 76(1) of the *Territorial Court Act*, which states as follows:

> **Proceedings in territorial court**
> **76**(1) Subject to this Act, the rules of practice and procedure followed in the Supreme Court shall, modified as suits the case, be followed in all actions and proceedings in the court.

[74] He concluded that the civil rules of the Supreme Court of the Yukon Territory do not "suit the case" for matters brought before the Territorial Court of Yukon pursuant to

the *Children's Act.* His rejection of Rule 26 was presumably based upon the requirement of Rule 26(9) which requires the party requesting copies of the documents of the other party to pay the cost of reproduction and delivery in advance.

[75] I do not agree that Rule 26 should be rejected entirely as opposed to modifying the Rule to fit the circumstances of child protection cases. The entire Rule 26 should apply to protection cases "modified as suits the case". I would modify Rule 26 to require the director to pay for the expense of copying and delivering the documents. I make the additional modification that the director is not required to prepare a list of documents except that the director is required to list the claims for privilege. In my view, the parents and the child advocate are entitled to know of the existence of the documents for which privilege is claimed. Having applied Rule 26 to child protection proceedings, counsel are at liberty to request a conference to raise any concerns that need to be addressed. I do not wish to change the terms of the order made by Barnett T.C.J. except to say that Rule 26 applies.

[76] The appeal is dismissed.

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Veale J.

Schedule A

THIS COURT ORDERS THAT:

1. The Director of Family and Children's Services shall copy and deliver to the Applicants and the child advocate, without cost, the following:

    (a) the intended evidence of the Director including a list of witnesses the Director intends to call at the hearing of this matter;

    (b) a summary of the evidence of those witnesses; and

    (c) copies of all relevant documents in the possession of the Director that relate to the Applicant and the children, including:

        (i) all running records or other review recordings,
        (ii) medical notes and reports,
        (iii) correspondence or reports of foster parents and any other caregivers,
        (iv) social workers' notes and/or black book entries,
        (v) printouts of all e-mail communications between Social Workers, Supervisors, and all agents of the Director;
        (vi) any documents received from related bodies, and
        (vii) any and all other information related (sic) the Applicant and the children that is in the Director's possession.

2. The release of such disclosure be subject to the following:

    a) names and informants other than the parties or any information tending to disclose the identity of the informants shall be deleted;

    b) information given to the Director by third parties in confidence on the basis that it would not be disclosed shall not be disclosed;

    c) information with respect to which a claim of privilege is otherwise advanced such as documents prepared in contemplation of litigation or information subject to solicitor client privilege shall not be disclosed;

    d) no information regarding any youth record shall be disclosed unless authorized by a Youth Court Judge;

    e) no information relating to any person or child in care or former child in care not involved in this proceeding shall be disclosed where such disclosure will be unreasonable invasion of the personal privacy;

f) any and all information disclosed by the Director shall be limited to use in these proceedings and its parties and their counsel shall not use the information for purposes outside these proceedings and, on the conclusion of litigation, counsel for the Applicant shall return to counsel for the Director, all copies of the disclosed documents except for documents filed with the Court, or provided to an investigator retained or appointed with the consent of the parties or court order, upon demand by the Director; and

3. The director shall have liberty to re-apply with respect to any issue arising from a claim of privilege.

4. The Applicants shall disclose to the Director of Family and Children's Services all relevant documents in their possession that pertain to a matter in issue in these proceedings.