



## Inglis v. British Columbia (Minister of Public Safety)

2013 BCSC 2309

**Country:** Canada

**Region:** Americas

**Year:** 2013

**Court:** British Columbia Supreme Court

**Health Topics:** Child and adolescent health, Poverty, Prisons, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to family life, Right to liberty and security of person

### Facts

The plaintiffs brought a case before the British Columbia Supreme Court following the 2006-2007 decision by the Ministry of Public Safety to cancel the Mother Baby Program at the Alouette Correctional Centre for Women, a women's prison. This program had allowed incarcerated mothers and their babies to live at the institution together, subject to the Ministry of Children and Family Development's (MCFD) approval that this would be in the best interests of the child. Evidence presented at trial suggested that both mothers and infants derived significant benefits from rooming together, breastfeeding, and developing attachments.

The program had operated successfully since its inception in 1973, with positive outcomes for both mother and child but was cancelled without official evaluation of the program's risks or benefits on the basis that infants were not within the mandate of the British Columbia Corrections Branch and did not need to be accommodated. As a result, the babies who would have stayed with their mothers in prison were placed in foster care.

### Decision and Reasoning

The Court held that the decision to disallow the Mother Baby Program violated section 7 of the Canadian Charter of Rights and Freedoms, which guarantees the right to life, liberty, and the security of the person.

The Court found that separating incarcerated mothers from their babies created significant stigma and psychological distress among the mothers and affected the physical and psychological well-being of the infants. The program's cancellation therefore constituted state action that deprived both mothers and infants of their security of the person. The Court rejected the Ministry's contention that its decision was based on a reasonable apprehension of harm based on the ministry's impossible standard of a guarantee of safety. A blanket prohibition on infants remaining with their mothers did not accord with the principles of fundamental justice because it was arbitrary, overbroad, and resulted in a grossly disproportionate infringement on the security of mother and child.

Although the plaintiffs did not meet the standard for a claim of cruel and unusual punishment under section 12, the Court found a violation of section 15, equality rights, on the basis that the cancellation resulted in differential treatment amounting to discrimination. The Court reasoned that the decision deprived mothers and infants of the benefit of the Child Family and Community Service (CFCS) Act, which mandated making decisions about infants on a case-by-case basis according to the best interests of the child. This exacerbated intersecting disadvantages faced by incarcerated women who are disproportionately aboriginal and have histories of addiction, abuse, mental health issues, poverty, and involvement with child welfare systems. The Court thus found there to be discrimination against mothers on the enumerated grounds of race, ethnicity, disability and sex, and against infants on the analogous grounds of family status.

As a remedy, the Court reversed the decision of the Ministry to cancel the Mother Baby Program.

### Decision Excerpts

"The interests of mothers and infants to remain together has been recognized and protected by the courts as an aspect of the security of the person in the context of s. 7. In J.G....Chief Justice Lamer, writing for the majority, concluded that the right to security of the person is engaged in child protection proceedings, stating at para. 61:

I have little doubt that state removal of a child from parental custody pursuant to the state's *parens patriae* jurisdiction constitutes a serious interference with the psychological integrity of the parent. The parental interest in raising and caring for a child is, as *La Forest J. held in B. (R.)*, supra, at para. 83, "an individual interest of fundamental importance in our society". Besides the obvious distress arising from the loss of companionship of the child, direct state interference with the parent-child relationship, through a procedure in which the relationship is subject to state inspection and review, is a gross intrusion into a private and intimate sphere. Further, the parent is often stigmatized as "unfit" when relieved of custody. As an individual's status as a parent is often fundamental to personal identity, the stigma and distress resulting from a loss of parental status is a particularly serious consequence of the state's conduct." Paras. 381-382.

"The infants who are separated from their mothers because of the decision to cancel the Mother Baby Program are deprived of the ability to breastfeed regularly and are placed at an enhanced risk of not being fed breast milk. They are also deprived of secure, uninterrupted bonding with their mothers and are placed at an enhanced risk for insufficient attachment and the problems associated with that condition. In my view these deprivations amount to a serious interference with their physical and psychological integrity." Para. 404.

"I agree that the state has a legitimate interest in protecting the safety of infants. The Mother Baby Program with its case-by-case decision-making based upon the best interests of the individual children permitted the state to protect the safety of the infants of provincially incarcerated mothers while at the same time preserving the parent-child bond and the integrity of the family unit where possible. The decision to cancel the Program removed that option." Para 492.

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