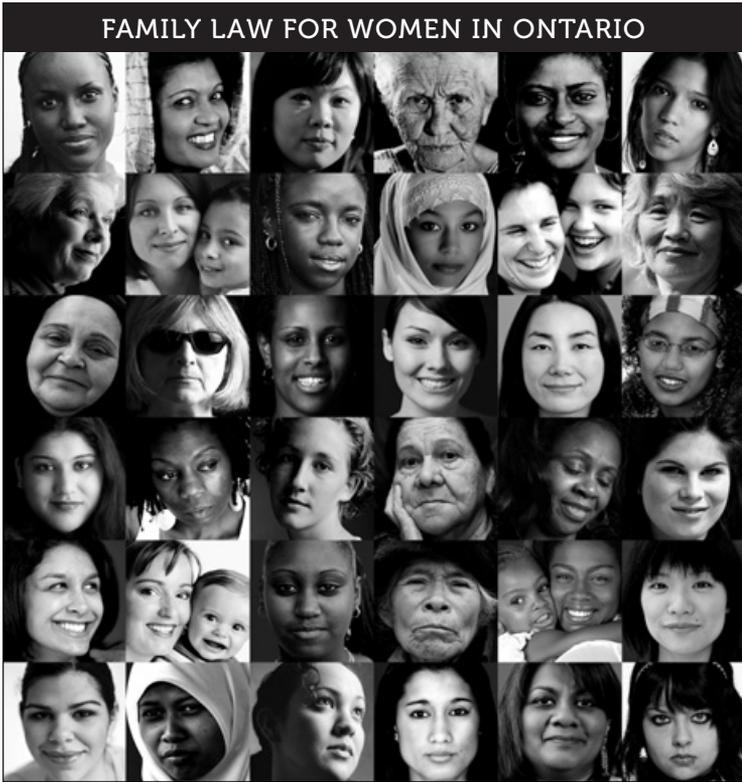


2

Child Protection and Family Law

ENG 002/2010



All Women. One Family Law.
Know your Rights.

flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Child Protection and Family Law

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

Ontario has a law, the *Child and Family Services Act* (CFSA), that promotes the best interests, protection and well being of children.

The government funds child welfare agencies to help children under 16 who need protection. These agencies are usually called **Children's Aid Societies** (CAS). The CAS also provides care for children, places children for adoption, and offers support to families. The role of the CAS is to work to help families stay together and, in extreme cases, remove children from their homes.

As a parent, you must protect your children from harm and provide for their basic needs like food and shelter. If the CAS has a reason to believe that you are not doing this, it can investigate your family. The CAS must follow specific rules and procedures to decide if a child is in need of protection. After the CAS investigates, it will decide what to do. The CAS may decide that they do not need to be involved with your family, or may refer your family to a community agency for support. If the CAS believes your child is **in need of protection**, it can remove your child from your home to a safe place.

What does “in need of protection” mean?

The CFSA describes when a child is in need of protection. This includes if he or she:

- is left alone, is uncared for or is neglected;
- has been abused or is likely to be abused;
- sees abuse between adults in the home.

Abuse includes physical, sexual and emotional abuse.

The law says you must protect your children. Under the CFSA, it does not matter which parent or caregiver is abusing the child. A caregiver includes any adult who is responsible for caring for a child. Even if you are not abusing your child, the CAS can investigate if you knew about the abuse, or should have known about it, and did not try to stop it.

How does CAS get involved with families?

You can call CAS yourself for assistance.

Anyone who believes that a child is in need of protection must tell the CAS. This is called the **duty to report**. Every professional who works with children must call the CAS if they suspect abuse or neglect. This includes teachers, doctors, social workers, religious leaders and day care workers. If they do not report to the CAS, they can be charged with a crime.

The duty to report is ongoing. This means that even when a person has already reported the abuse, they must report any other time they think the child has been abused or neglected.

The police may call the CAS if they have been to your home because of reports of abuse between you and your partner. Sometimes women who are being abused end up being investigated by the CAS. The CAS does this because it is concerned that the adult abuse is affecting the child's safety and well-being.

If you are being abused and the police are called, CAS may come to your house. The worker will ask you and your child questions. The worker may also speak with your abusive partner about the abuse or violence. If the CAS feels that you are not doing what you should to protect your child from harm, they may remove your child even though you are not the abuser.

What happens when the CAS first gets involved?

Step 1: Screening

When someone calls or makes a report to the CAS, a child protection worker will do an **initial screening**. This means that the child protection worker will take some steps to look into the report to decide whether the CAS needs to become involved with your family. Sometimes the CAS will decide that it does not need to take any more action at this point because it is satisfied that your child is well cared for. The child protection worker may also connect your family with services available in the community.

Step 2: Investigation

After the screening step (Step 1), the CAS may decide to do a child protection **investigation**. If this happens,

the CAS will visit your home and talk to you, your partner and your child. The CAS can also interview people outside the home such as other family members, teachers or neighbours.

When the CAS investigates, it is trying to decide if your child is in need of protection. Being investigated by the CAS is very serious. If you do not address their concerns, the CAS may get more involved because they want to make sure your child is safe. Take steps that show you are trying to deal with the problems.

At the end of the investigation, the CAS may decide that your child does not need protection. If this happens, it will take no other steps.

Step 3: Plan of service

If the CAS decides that your child is in need of protection, it will take action to make sure your child is safe. This action includes working with your family to try to deal with the problems so that your child can stay in your home.

In most cases where the CAS is working with families, it will ask you to sign an agreement that says what you will do to make sure your child is safe. This agreement is usually called a **plan of service**. If you have been asked to sign a plan of service, get legal advice. The CAS can remove your child from your home if you refuse to sign the plan of service or if you sign it but do not follow the conditions.

After you sign a plan of service, the CAS will usually stay involved with your family for a period of time to make sure that your child is safe and well cared for and that you are following the plan.

Step 4: Removing the child

The CAS can remove, or **apprehend**, your child from the home if it has decided that your child is in need of protection and

- there is no other way keep your child safe, or
- you refuse to do what the CAS has asked, or
- the CAS decides that your child could be harmed.

If this happens, get legal advice right away.

The CAS must go to court within five days of removing a child from the home. This is called a **child protection hearing**. You will need legal advice and support to help you in court and to make sure that you can tell your side of the story.

If your child must be removed from your home, you can ask for the child to be placed with a family member or friend. If there is no one appropriate for your child to stay with, the CAS will look for a foster or group home.

Some kinds of abuse are also crimes. CAS offices have policies that say they must report to the police any time someone tells them about physical abuse and sexual abuse. The police will investigate the abuse and may lay criminal charges. The criminal case will be in addition to the child protection hearings. Criminal

charges do not make the child protection case go away. If you have been charged with a crime you should get legal advice from a criminal lawyer right away.

Apprehension at birth

The CAS can take your child at birth if there are significant concerns for your child's safety. Just like at any other time, the CAS must have clear concerns to take this action. For example, the CAS will likely be concerned for your child's safety if:

- your previous children have been taken by the CAS;
- you have a serious drug and alcohol problem;
- you are homeless or living in an unsafe environment; or
- you are a teen mom, especially if you were ever in the care of the CAS.

Step 5: Child Protection Hearing

Child protection proceedings or hearings are complicated. They move quickly. If your child is removed, the CAS must bring the case before a judge within five days. The judge will make a decision on care for your child. If your child is removed by CAS, get legal advice right away.

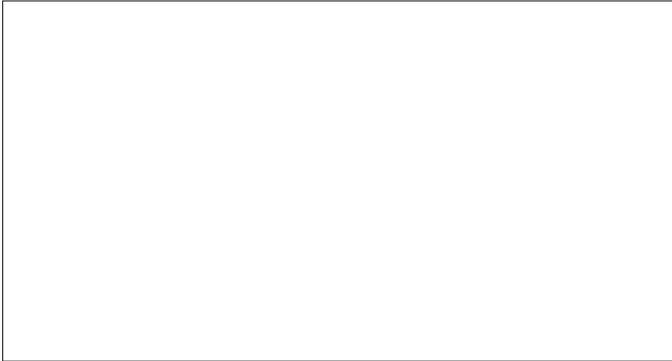
If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
- 2. Child Protection and Family Law (ENG 002)**
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*



flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Funded by / Financé par :
 Ontario

The views expressed in these materials are the views of FLEW
and do not necessarily reflect those of the Province.