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# Dealing with the Children's Aid Society What Parents Should Know

February 28, 2013

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# METRAC

## METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

<http://undroitdefamille.ca/>

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Seema Jain**

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# Topics to be Covered

1. Mandate of the Children's Aid Society
2. First contact with the CAS - The Investigation
3. Solicitor/Client Privilege – What Parents Can Tell Their Lawyer
4. Next Steps - After the Investigation
5. Signing a Voluntary Services Agreement
6. Going to Court -The Child Protection Application and the Hearing
7. Status Review vs. Appealing a Court Order
8. Additional Resources

*Information is accurate as of February 28, 2013*



# Mandate of the Children's Aid Society

# Mandate of the Children's Aid Society

- Children's Aid Societies provide child protection services required under the *Child and Family Services Act*
- 47 CAS's across Ontario, including:
  - 6 Aboriginal
  - 2 Catholic
  - 1 Jewish
- Webinar: *Understanding the Children's Aid Society – From the Inside*  
<http://yourlegalrights.on.ca/webinar/85974>

# Mandate of the Children's Aid Society

- Investigate allegations of abuse and neglect
- Protect children who are in need of protection
- Provide guidance and counseling to families for the protection of their children
- Care for or supervise the care of children in CAS care
- Establish foster care options
- Place children for adoption



# First Contact with CAS: The Investigation



# First Contact with CAS

## The Investigation

- All members of the public have duty to report suspected child abuse or neglect
- Professionals who work with children are required to report suspected child abuse/neglect
- CAS Child Protection Workers take calls, record details and determine next steps

# First Contact with CAS

## The Investigation

### **The CAS may conclude:**

- Contact with child's family is not necessary
- Family should be referred to a community service agency
- Necessary for Child Protection Worker to meet child and family to assess child's safety, usually within 7 days
- Extremely severe case: child protection worker meets with child and family within 12 hours

# First Contact with CAS

## The Investigation

### **What the CAS may do to investigate:**

- Meet child at school
- Talk to child without parental consent
- Talk to child before talking to parent
- Talk to others:
  - friends/neighbours
  - family members/other children in home
  - contact school, doctors, therapists
- Observe child's home and bedroom

# First Contact with CAS

## The Investigation

### **Consent Issues**

When CAS makes inquiries:

- Many professionals are required to keep client/patient information confidential
- Confidentiality may be waived if professional has reasonable concerns for safety of a child
- Confidentiality may be waived with client/patient's consent

# First Contact with CAS

## The Investigation

### **Consent Issues**

When CAS makes inquiries:

- CAS workers are also required to keep client information confidential
- Confidentiality may be waived with client's consent

# First Contact with CAS

## The Investigation

### **What Parents can do:**

- Be constructive and cooperative with CAS worker
- Listen closely to CAS concerns
- Answer questions about the care of your child
- Consent to CAS interview with child
- Tidy home

# First Contact with CAS

## The Investigation

### What Parents Can Do:

- Explain supports for, or any work done about CAS concerns
- Ask for the opportunity to consult with a lawyer
- Consider talking to a lawyer before signing any documents, such as:
  - Consent to talk to school staff
  - Consent to talk to family doctor or psychiatrist
  - Agreement to a child or family assessment
- Ask for a referral to a lawyer/legal aid

# First Contact with CAS

## The Investigation

### **Parents Should Know:**

- Co-operation does not mean full compliance
- Asking to speak with a lawyer first should not be a reason for CAS to apprehend child
- Getting a lawyer at the initial stages of the investigation gives more time to prepare if case goes to Court





# Solicitor/Client Privilege: What Parents Can Tell their Lawyer

# Solicitor/Client Privilege: What Parents Can Tell Their Lawyer

- Lawyers have a duty to report a suspicion of child abuse or neglect obtained in the course of legal duties
- Exception: No duty to report privileged information between a lawyer and client
- A lawyer may disclose where he/she believes there is imminent risk of serious bodily or psychological harm to an identifiable person
  - Believed risk of future harm to child will be reported to CAS
  - Knowledge of past events will not likely be reported
- Client may consider asking “what if I did this...?”

## Solicitor/Client Privilege: What Parents Can Tell Their Lawyer

- A lawyer is best able to help a parent who tells the full truth to her lawyer
- Telling your lawyer about mistreating a child does not necessarily mean that the CAS will take the child from the home
- Parents who honestly admit mistakes to their lawyer may get referred to support services, which can help their case
- A lawyer will advise client she cannot lie to Court
- A lawyer cannot mislead the Court about his/her knowledge of child abuse or neglect



## Next Steps: After the Investigation

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### **After an investigation, the CAS may:**

- Close the file (formal letter sent)
- Conclude child safety concerns exist:
  - Open file and monitor family situation
  - Enter a Voluntary Service Agreement to work with family
  - Apply to Court in a Child Protection Application (involuntary)



# Signing a Voluntary Services Agreement

# Signing a Voluntary Service Agreement

## **Voluntary Service Agreement may include:**

- In-home visits
- Counseling and supportive services to parents and child, such as:
  - Parenting courses
  - Addiction counseling/drug testing
  - Daycare or child support services
  - Child's educational assessment

# Signing a Voluntary Service Agreement

## **What Parents should know:**

- The agreement will be monitored
- CAS involvement with family will continue
- Agreement may create stress
- If agreement breaks down, consequences are important:
  - For future dealings with CAS
  - May be used as evidence at a Child Protection Hearing



# Signing a Voluntary Service Agreement

## **It is important to talk to a lawyer:**

- before signing a Voluntary Service Agreement
- Terms should be relevant to CAS concerns
- Avoid terms that are too broad or ambiguous
- Agreement should be specific to family situation
- Lawyer can be a buffer between family and CAS

# Signing a Voluntary Service Agreement

## **Temporary Care Agreement:**

- Child goes to temporary alternate care with:
  - Another family member (called Kinship Service)
  - A residential service, such as group or foster home

## **Important:**

- Understand terms of the agreement
- Talk to a lawyer before signing

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# Going to Court

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## The Child Protection Application

### **Involuntary Process**

- If a voluntary agreement is not possible or unsuccessful, CAS will start a Child Protection Application to go to Court
- If CAS considers the child is in imminent risk of harm, child will be taken into care before going to court:
  - With a warrant
  - Without a warrant
  - First hearing must be within 5 days of apprehension

# Going to Court

## The Child Protection Application

### **Court will decide on temporary care and custody of child:**

- Child may stay or return to home
- Child at home may have CAS supervision order
- Child may go to care of another person, under CAS supervision
- Child may go into the temporary care and custody of CAS

# Going to Court

## The Child Protection Application

### **What Parents can do:**

- Take the situation seriously because timelines are short
- Get a lawyer quickly
- Review CAS documents
- Attend at Court with or without lawyer
- Lawyer at Courthouse may be able to help for one day

# Going to Court

## The Child Protection Application

### **What Parents can do:**

- Help get requested and supporting documents
  - police records
  - mental health records
  - therapy/counseling reports
- Take actions to address CAS concerns
- Lawyer can ask for adjournment for up to 30 days



# Going to Court

## The Child Protection Application

### **What Parents can do:**

- Lawyer can ask Court to make Order “without prejudice”
- “without prejudice” means the Order can still be opposed, as if it didn’t happen
- Parents have time to take steps to show improvement
- Cannot wait too long to return to Court to oppose Order

# Going to Court

## The Hearing

### **The Child Protection Hearing:**

- must be held within 90 days after the Child Protection Application hearing
- The Court decides whether the child is in need of protection

# Going to Court

## The Hearing

If the child is in need of protection, the CAS may apply to Court for:

- Supervision Order (child stays at home)
- Society Wardship (temporary)
  - Maximum 12 months for child under 6 years
  - Maximum 24 months for child 6 to 17 years
- Crown Wardship (permanent)
- Order granting custody of child



# Status Review vs. Appealing an Order

# Status Review vs. Appealing an Order

## After a Court Order, circumstances can change:

- Status Review:
  - Supervision Order
    - CAS must have status review before Order ends
    - Parent may have status review, usually not before 6 months after Order
    - Based on best interests of child
  - Society Wardship
    - CAS must have status review before Order ends
    - Parent may have status review, usually not before 6 months after Order
    - Based on best interests of child

# Status Review vs. Appealing an Order

**After a Court Order, circumstances can change:**

- Status Review
  - Crown Wardship
    - Parent may have status review, usually not before 6 months after Order
    - No status review after adoption

**Parents may also appeal any temporary or final Court Order**

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# Additional Resources



# Additional Resources

- Ministry of the Attorney General

- child protection, court process, forms

[www.attorneygeneral.jus.gov.on.ca/english/family/divorce/child\\_protection](http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/child_protection)

- Ministry of Children and Youth Services

- role of Children's Aid Societies

[www.children.gov.on.ca/htdocs/English/topics/childrensaid/childrensaidsocieties/index.aspx](http://www.children.gov.on.ca/htdocs/English/topics/childrensaid/childrensaidsocieties/index.aspx)

- Ministry of Children and Youth Services

- duty to report child abuse/neglect

[www.children.gov.on.ca/htdocs/English/documents/topics/childrensaid/Reportingchildabuseandneglect.pdf](http://www.children.gov.on.ca/htdocs/English/documents/topics/childrensaid/Reportingchildabuseandneglect.pdf)

# Additional Resources

- Family Law Education for Women (FLEW)  
[www.onefamilylaw.ca](http://www.onefamilylaw.ca)
- booklet on Child Protection and Family Law  
[www.onefamilylaw.ca/doc/FLEW\\_legal\\_EN\\_02.pdf](http://www.onefamilylaw.ca/doc/FLEW_legal_EN_02.pdf)
- Ontario Women's Justice Network  
[www.owjn.org](http://www.owjn.org)
- Ministry of Children and Youth Services
- Child Protection Standards in Ontario  
[www.children.gov.on.ca/htdocs/English/topics/childrensaid/childprotectionstandards.aspx](http://www.children.gov.on.ca/htdocs/English/topics/childrensaid/childprotectionstandards.aspx)

# Additional Resources

- Helpful Tips for Lawyers Representing Clients in Proceedings Under the Child and Family Services Act, *Legal Aid Ontario*:  
[http://www.legalaid.on.ca/en/info/downloads/cfsa\\_tips\\_08mar.pdf](http://www.legalaid.on.ca/en/info/downloads/cfsa_tips_08mar.pdf)
- Ontario Association of Children's Aid Societies Website:  
<http://www.oacas.org/childwelfare/index.htm>
- What You Should Know About Child Protection Court Cases, Ministry of the Attorney General Website:  
[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/child\\_protection.asp](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/child_protection.asp)