

Child Protection

Case Scenario:

Sue, Rob and their 5 year old daughter, Jade, went into town for a hockey tournament. On Thursday, their last night there, Sue and Rob went out drinking and left Jade with Rob's sister for the night. Sometime in the middle of the night, Jade woke up alone in her hotel room. Ron's sister was nowhere to be found. Afraid, Jade wandered into the hallway looking for her parents. The hotel manager found her and called CAS, who took her into care.

The next evening, Sue and Rob return to their hotel room and find Jade missing. The hotel manager explains what happened and they immediately call CAS to find out where Jade is and how to get her back. By the time they call, it is Friday evening, and the CAS worker has already left for the weekend. Sue had prior experience with CAS about a son from previous marriage but has not had any involvement with them for a few years.

When Sue and Rob finally speak with the CAS worker on Monday morning, she explains that CAS will investigate the family to determine if Jade is in need of protection. She also advises them that because the law requires the CAS to bring a case to court within 5 days of apprehension, their first court appearance is scheduled for the next day.

On Tuesday morning, Sue and Rob meet the CAS worker at court who gives them copies of the legal documents, which set out what kinds of orders the CAS is asking the judge to make. Sue and Rob want support from their band. As she is required, the CAS worker notifies their band of the proceedings. While it is too late for the band to be involved at the first appearance, the band takes an interest in the proceedings and sends a representative to attend the next few court dates. The band representative is aware of a form of alternative dispute resolution ("ADR") that is used in his community and suggests it to Sue, Rob and their CAS worker. They all agree to try to use this process to deal with the CAS's concerns about Jade. Sue, Rob, the CAS worker and the band representative take part in a Circle and an acceptable plan of care is created that has the support of the band and everyone involved.

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This brochure is made possible by Family Law Education for Women (FLEW), a public legal education project funded by the government of Ontario. FLEW's goal is to provide information to women about their family law rights in Ontario. FLEW has also produced materials on the following topics: Family Law Arbitration, Domestic Contracts, and Family Law Issues for Immigrant, Refugee and Non-status Women. For information about materials available in other languages and formats, please see visit www.onefamilylaw.ca and www.undroitdefamille.ca.



Ontario has a law, the *Child and Family Services Act* (CFSA), to protect children from being mistreated. The law defines what is in the best interests of children, and how to protect children and make sure they are well cared for.

The government funds child welfare agencies which are usually called **Children's Aid Societies** (CAS). Their job is to protect children from harm, including neglect. The CAS also places children for adoption, and offers supports to families. Their role 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. After the CAS investigates, if it believes that your child is **in need of protection**, it can remove your child from your home.

What does “in need of protection” mean?

A child can be **in need of protection** if he or she

- is left alone, is uncared for or is neglected
- has been abused or is likely to be abused. Abuse includes physical, sexual and emotional abuse. It does not matter who is abusing the child. The law says you must protect your children. 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.
- sees abuse between adults in the home. 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. They will ask you and your child questions. 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.

How does CAS get involved with families?

Anyone who believes that a child may be in need of protection is supposed to 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.

Your family may also come to the CAS's attention in other ways, for example, if you call CAS for assistance. The police may also call the CAS if they have been to your home because of reports of abuse between you and your partner.

What happens when the CAS first gets involved?

Step 1: Screening

When someone calls the CAS, it will do an **initial screening** to decide if it needs to do anything else. This means that it will take some steps to look into the report to decide whether it 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.

Step 2: Investigation

After the screening step above, the CAS may decide to **investigate**. 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. Take steps that show you are trying to deal with the problems.

At the end of the investigation, the CAS may decide that your

“The death of fear is in doing what you fear to do.”

- Sequiche Coming Deer

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 must take the “least disruptive course of action.” This means that, where possible, it will work with your family to try to deal with the problems, and to leave the child 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 some 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

If you refuse to do what the CAS has asked, or if the CAS decides that your child could be harmed, it may **apprehend**, or remove, your child from the home. Your child may be placed with a family member, in a foster home or in a group home.

Some kinds of abuse are also **crimes**. Many 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.

Apprehension at birth

The CAS has the power to take your child at birth if there are significant concerns for your child's safety, for example, if your previous children have been taken by the CAS, if you have a serious drug and alcohol problem or if you are homeless or living in an unsafe environment. If you are a teen mother, especially if you were ever in the care of the CAS, you are at particular risk of having your baby taken by the CAS at birth.

Going to court on a child protection matter

Child protection proceedings are complicated. They move quickly. If your child is removed, the CAS must bring the case before a judge within five days. **If this has happened to you, get legal advice right away.**

Aboriginal Child and Family Services

Part 10 of the Child and Family Services Act deals with child and family services for Aboriginal communities. It allows the government to enter into agreements with band and native communities to have these services provided by approved Aboriginal organizations.

There are many provisions in the Act, in this section and in others, that recognize the differences in Aboriginal culture and heritage, and in particular, the importance of involving bands and native communities in decisions regarding the Aboriginal children's best interests. For example, “extended family” for Aboriginal children is defined to include the child's band or native community. Planning for children in care must recognize the importance of the child's heritage, traditions and culture. Bands and native communities are entitled to notice of proceedings involving Aboriginal children and are able to participate at key points in the process. Contact between Aboriginal children and members of the child's extended family, including her band, is permitted so that she can understand her culture and preserve her identity.

There have been many historical challenges for Aboriginal families in dealing with child protection agencies. Mainstream agencies were not appropriately designed, or resourced to meet the cultural needs of Aboriginal children.

In 1985, the *Child and Family Services Act* was amended to ensure that: “Indian and Native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.”

(Declaration of Principles, *Child and Family Services Act*).

“We were taught to believe that the Great Spirit sees and hears everything, and that he never forgets; that hereafter he will give every man a spirit-home according to his deserts. . . . This I believe, and all my people believe the same.”

Joseph [Hinmaton Yalakit] (1830-1904)

Nez Perce chief