



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

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

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

May 31, 2019

Tamar Witelson, Legal Director, METRAC
Julie Ralhan, Family Lawyer

Funded by:



www.onefamilylaw.ca



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

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://undroitdefamille.ca/>

Presenters

Tamar Witelson

Legal Director, METRAC



Julie Ralhan

Family Lawyer



Topics to be Covered

1. Mandate of the Children's Aid Society
2. When is a child in need of protection?
3. Public Duty to Report
4. First contact with the CAS - The Investigation
5. Next Steps - After the Investigation
6. Voluntary Services
7. Going to Court -The Child Protection Application and the Hearing
8. Status Review vs. Appealing a Court Order
9. Additional Resources

Information is accurate as of May 31, 2019



Mandate of the Children's Aid Society

Mandate of the Children's Aid Society

- Children's Aid Societies are required to promote the best interests and well-being of children in Ontario
- provide child protection services required under the *Child, Youth and Family Services Act, 2017 (CYFSA)*
- 49 CAS's across Ontario*, including:
 - 11 Aboriginal
 - 2 Catholic
 - 1 Jewish
- Government-funded, not-for-profit
- Community-run, by local Board of Directors

**as of 2018*

New Principles in the *CYFSA*

- “children are individuals, with rights to be respected and voices to be heard”
(*CYFSA*, Preamble)
- “child” is defined as “a person younger than 18”
(*CYFSA*, s. 2(1))
- The decision about the best interests of a child must consider factors including:
 - preserving the culture of a First Nation, Inuk or Métis child
 - the race, culture and family language of the child
(*CYFSA*, s. 74(3))

Anti-discrimination

- Historic over-representation of Indigenous and Black families involved in the child protection system
- If a person feels unfairness based on race, culture or other protected personal characteristics:
 - can tell a CAS supervisor
 - ask for service for family and child in culturally competent manner
- Your CAS may have their own internal complaint process

New Principles in the *CYFSA*

- CAS services should:
 - respect diversity and human rights
 - maintain connections to community whenever possible
 - consider child's physical, emotional, spiritual needs
 - consider child's race, family diversity, sexual and gender identity, culture and other personal characteristics
 - allow child, parents, relatives and community involvement when possible

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



When is a child in need of protection?

In Need of Protection

The *CYFSA* sets out situations when a child may be in need of protection because of **abuse** including:

- Exposed to, or at risk of physical abuse
- Exposed to, or at risk of sexual abuse
- Suffers, or at risk of emotional harm – signs include:
 - serious anxiety
 - depression
 - withdrawal
 - self-destructive/aggressive behaviour
 - delayed development

In Need of Protection

The *CYFSA* sets out situations when a child may be in need of protection because of **neglect** including:

- at risk, or harmed by failure to adequately protect, care for and provide for a child
- parent is unable or unwilling to care for a child and has not arranged for adequate care of the child

In Need of Protection

Parents should know:

- They have a responsibility to keep children safe from abuse or neglect
 - caused by their own actions or failure to act
 - caused by others
- They have a responsibility to provide treatment for physical and emotional harm
- Abuse or violence in a child's home is considered abuse of a child
 - abuse or violence does not have to be directed at child

In Need of Protection

Parents should know:

- Discipline of child could be considered child abuse if:
 - hitting or spanking a child under 2 years old
 - teaching or correcting the child is not the purpose
 - done in anger
 - contact causes harm or is very hard
 - an object is used
 - the discipline makes the child feel ashamed
- Teachers, caregivers, CAS workers and foster care providers cannot physically discipline a child
- The law may be changing
 - any physical discipline could become a crime



Public Duty to Report Child Abuse and Neglect

Public Duty to Report

- Every person has a duty to **report directly to a CAS** a reasonable suspicion that a child **is or may be exposed to abuse or neglect**
- Child is or appears to be **under 16 years**
 - voluntary to report if youth is 16 or 17
- The report must provide the information on which the suspicion is based
- The duty to report is ongoing, for **every occurrence** where a reasonable suspicion of abuse or neglect arises

(CYFSA s. 125)

Professional Duty to Report

- Duty to report applies to every person who performs professional or official duties with respect to children
 - includes: health care professionals; educators; childcare workers; social workers, youth counsellors; religious officials
- Failure to report a suspicion of child abuse or neglect when information was obtained in the course of professional/official duties is an offence punishable by fine up to \$5,000
- There may be additional professional penalties

Does My Lawyer Have to Report?

- Information that you tell your lawyer because you are seeking legal help is **private** between you and your lawyer
- The only **exception** is that a lawyer may report if he/she believes there is immediate risk of serious bodily or psychological harm to an identifiable person
 - believed risk of **future harm** to a child will be reported to the CAS
 - knowledge of past events will not likely be reported

What Parents Can Tell Their Lawyer?

- A lawyer is best able to help a parent who tells the full truth to their 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 clients they cannot lie to Court
- A lawyer cannot mislead the Court about their knowledge of child abuse or neglect



First Contact with CAS: The Investigation

First Contact with CAS

The Investigation

- All members of the public have a 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
 - parent has right to ask for interpreter; culture-specific support person for interview
- 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 and neighbours
 - family members/other children in home
 - school staff, daycare, doctors, therapists
- Observe child's home and bedroom

First Contact with CAS

The Investigation

Privacy and Consent

When CAS makes inquiries:

- many professionals are required to keep client/patient information confidential (private)
- confidentiality may be broken if professional has reasonable concerns for safety of a child
- client/patient can give consent for professional to talk to CAS (break confidentiality)
 - if CAS request is reasonable
 - can ask for a copy of notes provided to the CAS

First Contact with CAS

The Investigation

Consent Issues

When CAS makes inquiries:

- CAS workers are also required to keep client information confidential
- client can give consent to CAS to discuss investigation (break confidentiality)
 - if CAS request is reasonable
 - can ask for a copy of notes provided to the CAS

First Contact with CAS

The Investigation

What Parents can do:

- Be positive and cooperate with CAS worker
- Tell the CAS worker if you need an interpreter to help you understand or communicate
 - CAS worker can get an interpreter on the phone
- Ask to have a support person at the interview
 - such as a community service provider, a faith or cultural community member
- 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 if you are getting any supports or services
- Explain any action you have taken to respond to CAS concerns
- Ask for the chance to talk to a lawyer
- Important to talk to a lawyer before signing any documents, such as:
 - consent to talk to school staff
 - consent to talk to family doctor or psychiatrist
 - agree 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 agreeing to follow every CAS request
- Asking to speak with a lawyer first should not be a reason for CAS to take your child from your home
- Getting a lawyer at the initial stages of the investigation gives more time to prepare if the case goes to Court
- If the CAS worker arrives with the police, it is important to say you want to talk to a lawyer **before** you answer any questions

Finding a Lawyer

- **Legal Aid Ontario**

- Free telephone interpretation services for languages other than English and French
- 1-800-668-8258 (no charge); TTY: 1-866-641-8867

- **Legal Aid Ontario - Family Violence Authorization Program**

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics

www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- **Justice Net** www.justicenet.ca/directory/search/

- Reduced fee lawyers for low income people not eligible for Legal Aid

- **Ontario Association of Child Protection Lawyers**

- 519-566-1677

<https://oacpl.org/>



Next Steps: After the Investigation

Next Steps: After the Investigation

After an investigation, the CAS may:

- Close the file (formal letter sent)
- Conclude child safety concerns exist:
 - open file and monitor family situation
 - Consider a voluntary solution to work with your family
 - apply to Court in a Child Protection Application (involuntary)



Voluntary Services

Voluntary Services

When the CAS determines a child is in need of protection, parents may have different **voluntary** options:

- Alternative Dispute Resolution (mediation) between CAS and parent(s)
- Voluntary Services Agreement (contract) with the CAS
- Temporary Care Agreement (contract)
- Customary Care Agreement (contract) (for Indigenous families)

Alternative Dispute Resolution (ADR)

- **CAS must consider ADR**
- If child is First Nations, Inuk, or Metis, the CAS must talk to the community's representative to consider ADR
 - if a resolution is reached, the community's representative must be told
- The Office of the Children's Lawyer may agree to represent the child in ADR
- Important for parent to have a lawyer
 - Legal Aid may be available

Voluntary Service Agreement

When CAS determines a child is in need of protection:

- CAS may suggest developing a Voluntary Service Agreement
- Parents may voluntarily agree to accept services such as:
 - in-home visits
 - parenting course
 - drug therapy or testing
 - counselling or supportive services to parents and child
 - child assessment

Signing a Voluntary Service Agreement

What Parents should know:

- a Voluntary Service Agreement is a contract with the CAS
- make sure you understand and can do what you are agreeing to do
- the CAS will monitor if Agreement is being followed
- the Agreement may add new stress in the family
- CAS involvement with family will continue
- if the agreement breaks down, it can affect:
 - future dealings with CAS
 - a court case and 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 your family situation
- Your lawyer can be the person who talks to the CAS for you

Temporary Care Agreement

- When a person who has custody of a child is temporarily unable to care for the child
- A Temporary Care Agreement allows the CAS to have care and custody of the child for a limited time
- CAS must consider and decide there is no other, less disruptive action
- A child 12 years or older must agree to the Temporary Care Arrangement
 - CAS can take other action to protect a child who does not agree

Temporary Care Agreement

- Must be in writing
- Arrangement cannot be for more than six months, with possible extension:
 - up to 1 year (for child younger than 6 years)
 - up to 2 years (for older children)
- The parent, CAS or child can end the agreement at any time, with notice in writing

Temporary Care Agreement

Important for parent to:

- understand the terms of the agreement
- consider finding a relative or friend to be caregiver in Temporary Care Agreement
- include if and when you will have contact with your child
- talk to a lawyer before signing

Customary Care Agreement

- “customary care” means the care and supervision of a First Nations, Inuk or Métis child according to the custom of the child’s band or First Nations, Inuit or Métis community
- A Customary Care Agreement is for when the person providing customary care for the First Nations, Inuk or Métis child is not the child’s parent

Customary Care Agreement

- When a First Nations, Inuk or Métis child is in need of protection, the CAS must make all reasonable efforts to find and arrange a Customary Care Agreement
- The CAS may give a subsidy to help support a Customary Care Agreement
(CYFSA, s. 71)

Presenters

Tamar Witelson

Legal Director, METRAC



Julie Ralhan

Family Lawyer





Going to Court

Going to Court

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
- Review CAS documents
- Get a lawyer quickly
- Lawyer at Courthouse may be able to help for one day
- Attend at Court with or without a lawyer
- If you cannot afford a lawyer, tell the Court
 - a Legal Aid lawyer may be available
 - the Court has the power and may order that a lawyer helps you

Going to Court

The Child Protection Application

What Parents can do:

- Help get all requested and supporting documents
 - police records
 - mental health records
 - therapy/counseling reports
- Take actions to address CAS concerns
- Lawyer can ask for adjournment (for more time)

Going to Court

The Hearing

The Child Protection Hearing:

- must be held within 120 days after the Child Protection Application, or longer if approved by the Court
 - sometimes more time can help parents, if they are working on making positive changes
- 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)
- Interim Society Care (for a set time)
 - Maximum 12 months for child under 6 years
 - Maximum 24 months for child 6 to 17 years
- Extended Society Care (permanent)
 - Until child turns 18 or marries
- Order granting custody of child



Status Review or 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
 - Interim Society Care
 - 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
 - Extended Society Care
 - Parent may have status review, usually not before 6 months after Order
 - No status review after adoption

Parents may also appeal most temporary or final Court Orders

- an appeal asks the Court to look at whether an Order should be changed because of errors in the decision

Presenters

Tamar Witelson

Legal Director, METRAC



Julie Ralhan

Family Lawyer





Additional Resources

Finding a Lawyer

- **Legal Aid Ontario**

- Free telephone interpretation services for languages other than English and French
- 1-800-668-8258 (no charge); TTY: 1-866-641-8867

- **Legal Aid Ontario - Family Violence Authorization Program**

- Free 2-hour emergency meeting with a lawyer
 - Offered through some shelters and community legal clinics
- www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- **Justice Net** www.justicenet.ca/directory/search/

- Reduced fee lawyers for low income people not eligible for Legal Aid

- **Law Society of Ontario Lawyer Referral Service**

- Toronto: 416-947-3330
 - 1-800-268-8326 (no charge); TTY: 416-644-4886
- www.lsuc.on.ca/with.aspx?id=697

Finding a Lawyer

Ontario Association of Child Protection Lawyers

- lawyers for parents in CAS cases
- 519-566-1677

<https://oacpl.org/>

For cases involving concerns of discrimination:

- **Aboriginal Legal Services (ALS)**
 - 416-408-3967 (Toronto); 1-844-633-2886 (no charge)

www.aboriginallegal.ca

- **Black Legal Action Centre (BLAC)**
 - 416-597-5831 (Toronto); 1-877-736-9406 (no charge)

www.blacklegalactioncentre.ca

- **Human Rights Legal Support Centre (HRLSC)**
 - 416-597-4900 (Toronto); 1-866-625-5179 (no charge)
 - TTY: 416-597-4903; 1-866 612-8627 (no charge)

www.hrlsc.on.ca/en/welcome

Additional Resources

- Ministry of the Attorney General
 - child protection, court process, forms
 - 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/professionals/childwelfare/societies/index.aspx
- Ministry of Children and Youth Services
 - duty to report child abuse/neglect
 - www.children.gov.on.ca/htdocs/English/childrensaid/reportingabuse/abuseandneglect.aspx
 - www.children.gov.on.ca/htdocs/English/childrensaid/reportingabuse/index.aspx

Additional Resources

- Family Law Education for Women (FLEW)
www.onefamilylaw.ca
- Ontario Women's Justice Network (OWJN)
www.owjn.org
- Ministry of Children, Community and Social Services
- Child Protection Standards in Ontario
www.children.gov.on.ca/htdocs/English/professionals/childwelfare/protection-standards/index.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
- 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

Finding a Lawyer

- Legal Aid Ontario

www.legalaid.on.ca/en/getting/type_family.asp

Toronto : 416-979-1446

no charge: 1-800-668-8258

- Justice Net

- Law Society of Ontario – referral service