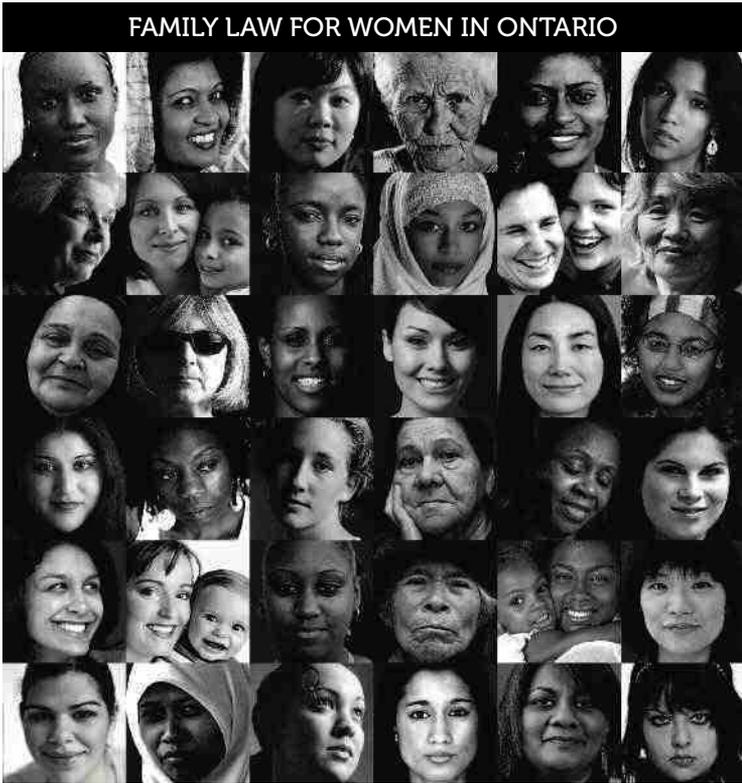


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Child Protection and Family Law



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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.

In Ontario, the *Child, Youth and Family Services Act* ("CYFSA") is the law that promotes the best interests, protection and well-being of children.

The CYFSA recognizes that services to protect children should be child-centered. Services to protect children should think about the least disruptive plan of action and focus on continuing a stable environment for the child.

The CYFSA also recognizes that systemic racism and discrimination must be addressed. All services to children and family must respect diversity and human rights, and must consider a child's race, culture, gender and other personal characteristics.

The government funds child welfare agencies to help children under 18 who need protection. These agencies are often called Children's Aid Societies (CAS) or Child and Family Services. The role of the CAS is to investigate allegations of abuse, to provide guidance, work to help families stay together, and in extreme cases, remove children from their homes. The CAS provides care for children and youth, places them for foster care and adoption, and offers support to families.

As a parent, your legal duty is to protect your child 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 completes an investigation, it will decide what the next steps are. 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, and that the child cannot be protected in the home, it can remove your child from your home and place them with a family, community member, or in foster care.

What does “in need of protection” mean?

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

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

Abuse includes physical, sexual and emotional abuse. Under the *CYFSA*, a caregiver includes any adult who is responsible for caring for a child. It does not matter which parent or caregiver is abusing the 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.

Under the *CYFSA*, a child is defined as a person younger than 18. However, when CAS intervenes for a child who is 16 or 17, the child must agree (consent) to a voluntary agreement. A 16 or 17-year-old cannot be removed from the home without the child's consent.

How does CAS get involved with families?

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 of a child under 16 years old. 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.

If a child is 16 or 17 years old, the professional can decide if they want to report the abuse to CAS. It is not mandatory to report for these ages.

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.

You can also call CAS yourself for assistance.

Domestic Violence and CAS

If you are being abused and the police are called, CAS may also be called to come to your house. 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. The best interests of the child are the focus of the CAS investigations.

If a CAS worker comes to your house, they will ask you and your child questions. The worker may also speak with your partner about the abuse.

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. It is extremely important to talk to a lawyer to figure out what your best options are.

What happens when the CAS 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 1), the CAS may decide to do an 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, doctors or neighbours.

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. It is important to take steps that show that you are cooperating with reasonable requests from CAS and trying to deal with the problems. However, you have a right to speak with a lawyer if you want some legal help.

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: Service Agreements or Court Access

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 outside of court (voluntarily) 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 outside of court, it will ask you to sign a **voluntary service agreement** that includes steps you will take to make sure your child is safe.

A voluntary service agreement can include accepting services like in-home visits, parenting courses, counselling or drug testing.

The CAS could also ask you to sign a **temporary care agreement**. This allows CAS to have care and custody of

the child for up to 6 months. A child older than 12 must agree to the agreement.

If you have been asked to sign a voluntary service agreement or a temporary care agreement, it is extremely important to get legal advice before signing the document. If you cannot get legal advice before signing, you should still get legal advice as soon as possible.

If you need an interpreter when meeting with CAS, you should tell them this right away. If you need any other extra help, like having a support person present in meetings, you should also tell CAS.

The CAS can remove your child from your home if you sign an agreement but do not follow the conditions.

After you sign an agreement, the CAS will usually stay involved with your family to make sure that your child is safe and well cared for and that you are following the agreement.

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 to keep your child safe.

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 the **first appearance** of the **child protection hearing**.

You should seek legal advice and representation immediately after your child is removed. Usually at the first appearance, if the parent does not have a lawyer and evidence, the court may make an initial order based on the evidence of the CAS, and will schedule the case to a later date so the parent can get a lawyer.

You should get a lawyer as soon as possible. They will discuss with you how to schedule the case for a hearing so that you can tell your side of the story.

If an agreement cannot be reached between you and the CAS about where the child should be placed, you are entitled to a hearing (trial). There are five possible outcomes at a child protection trial.

- A **Dismissal** means that the court decides that no child protection order is needed.
- A **Supervision Order** means that a child stays at the home of a parent, family or community member, but the CAS is involved in their supervision. There may be certain terms and conditions the caregiver must follow.
- **Interim Society Care** means that a child is ordered into time-limited custody of CAS (foster parents).
- **Extended Society Care** means that the child is permanently in the custody of the CAS and may be adopted.
- **Custody Order** means that a parent, relative or community member is given custody of the child.

The *CYFSA* emphasizes the importance of keeping children in the extended family if the child cannot be returned to their parent.

If your child must be removed from your home, you can ask for the child to be placed with a family member or friend. The CAS must perform a home assessment of this person to determine if they can care for the child.

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
- other types of instability, including concerns about your emotional and mental health.

Summary

Child protection proceedings or hearings are very complicated. They move quickly. If your child is removed, the CAS must bring the case before a judge within five days.

There are also very strict timelines for how long a child can be in foster care on a temporary basis. For a child under 6 years old, the maximum time is 12 months. For a child who is 6 or older, the maximum time is 24 months. When the time limit is reached, the court must return the child to the parent, community or family member, or make the child an extended society ward (may be adopted).

This is why it is very important that you seek legal advice as early as you can, so that you understand what needs to happen to have your child returned.

If your child is removed by CAS, get legal advice right away. Make sure you find a lawyer who has experience in child protection law. You can start by calling Legal Aid Ontario or Justice Net.



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
- 2. Child Protection and Family Law**
3. Child Support
4. Criminal and Family Law
5. Child Custody and Access
6. Domestic Contracts
7. Family Law Arbitration
8. Family Law Issues for Immigrant, Refugee and Non-status Women
9. Finding Help with your Family Law Problem
10. How Property is Divided in Family Law
11. Marriage and Divorce
12. Spousal Support

** This booklet is available in multiple formats. 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.*

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