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When the Children's Aid Society Gets Involved: What Can a Child/Youth Expect?

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Tamar Witelson, Legal Director, METRAC

Seema Jain, Barrister and Solicitor, Jain Family Law and Mediation

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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

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

www.undroitdefamille.ca

Presenters

Tamar Witelson

Legal Director, METRAC



Seema Jain

Lawyer, Jain Family Law and Mediation



When the Children's Aid Society Gets Involved: What Can a Child/Youth Expect?

Topics to Be Covered

1. Purpose and Mandate of the Children's Aid Society
2. Legal Duties of Service Providers Working with Children
3. Review of the CAS Process
4. The Children's Lawyer
5. Going to Court: What to Expect
6. Possible Outcomes of a Child Protection Hearing
7. Additional Resources

Information is accurate as of September 23, 2013



The Purpose and Mandate of the Children's Aid Society

Purpose and Mandate of the Children's Aid Society

- Children's Aid Societies provide services under the Ontario *Child and Family Services Act (CFSA)*
 - Purposes of the *CFSA*:
 - To promote the best interests, well-being and protection of children
 - Give help to family based on mutual consent, wherever possible
 - Consider least disruptive action
 - include **participation of a child**, parents, relatives, members of the child's extended family and community, where appropriate
 - Recognize that services should respect cultural, religious and regional differences
- (*CFSA*, s. 1)

Purpose and Mandate of the Children's Aid Society

- Children's Aid Societies provide child protection services required under the Ontario *Child and Family Services Act*
 - Investigate, and protect if child is in need of protection
 - Provide guidance and counseling to families for the protection of children
 - Supervise children under CAS supervision, including establishing foster care
 - Care for children in CAS care
 - Place children for adoption

Purpose and Mandate of the Children's Aid Society

- Other FLEW webinars
 - *Understanding the Children's Aid Society – From the Inside*
yourlegalrights.on.ca/webinar/85974
 - *Dealing with the Children's Aid Society – What parents should know*
yourlegalrights.on.ca/webinar/dealing-childrens-aid-society-what-parents-should-know

www.onefamilylaw.ca

Purpose and Mandate of the Children's Aid Society

- Definition of “child” under the *Child and Family Services Act*
 - Under 18 years
- When can CAS intervene?
 - Under 16 years
 - CAS can intervene
 - 16 and 17 years
 - CAS can continue to be involved, only if Court application has already been filed
 - CAS cannot intervene for the first time
 - 18 and over
 - No CAS involvement possible



Legal Duties of Service Providers Working with Children

Legal Duties of Service Providers Working with Children

- **Every person** has a duty to report, directly to a CAS, a reasonable suspicion that a child (who is or appears to be under 16) is or may be exposed to abuse or neglect
- Every person **who performs professional or official duties with respect to children**
 - has same duty to report
 - **and may be fined up to \$1,000** for failure to report a suspicion of child abuse or neglect when information was obtained in the course of professional or official duties

(CFSA, s. 72)

See webinar: *Understanding the Children's Aid Society – From the Inside*

yourlegalrights.on.ca/webinar/85974
www.onefamilylaw.ca

Legal Duties of Service Providers Working with Children

- Professional or official duties with respect to children may include:
 - Service providers who counsel children
 - Service providers who work with families including children
- Duty to report applies if:
 - no CAS intervention
 - After CAS intervention
 - Service is part of a referral by the CAS
- Ongoing duty to report every new concern of abuse/neglect
- Review your agency's policy

Legal Duties of Service Providers Working with Children

- Service providers should consider, if child's age/understanding is appropriate:
 - telling the child about the legal obligation to report a reasonable suspicion of abuse/neglect, or risk of abuse/neglect
 - encouraging the child to ask questions about a service provider's duty to report
 - explaining to the child that a report to CAS was made

Legal Duties of Service Providers Working with Children

- Risk factors that may lead to a report to CAS, if there is concern of harm to a child:
 - Physical or sexual abuse in the home
 - Alcohol or substance abuse by caregiver
 - Criminal record of parents
 - Prior history of CAS involvement

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Review of the CAS Process

Review of the CAS Process

- First contact: the investigation
 - CAS may interview child without parental permission
- Following the investigation
 - possible outcomes:
 - file closed
 - signing a Voluntary Service Agreement
 - Court application and child protection hearing

Review of the CAS Process

- **Voluntary Service Agreement – child under 16**
 - Agreement between parent(s) and CAS
 - Child may participate
 - Child's consent and signing not required
 - Child will be given a voice about wishes
 - Parents have right to make decisions for child, unless harmful
 - Parents should make best efforts to get child to cooperate
- **Voluntary Service Agreement – child 16 or 17**
 - Child must consent to services
- **Voluntary Service Agreement – child counseling**
 - Child 12 to 17 must consent to counseling

Review of the CAS Process

- Temporary Care Agreement
 - Person with custody who is temporarily unable to care for child may make an agreement for CAS care and custody of child under 16 years
 - Child between 12-15 years must agree
- Possible child protection mediation
 - Child may participate
 - Mediator may talk directly to child, if appropriate
 - Child may be represented by a lawyer

Review of the CAS Process

- Children's Rights versus Wishes

- Children under 16 years

- Parents or other persons with custody or Court make decisions in "best interests of the child"
- Child may voice wishes

- Children 16 – 17 years

- If already subject to Court's jurisdiction, Court and CAS may continue to make decisions in "best interests of the child" and child may express wishes

Review of the CAS Process

- Children's Rights versus Wishes

- Until age 16, child protection workers may apprehend a child who they believe is in need of protection
- Until age 16, police have right to physically take a child to the person who has custody of child
- At age 16, child may leave parental custody

- For information, questions, materials:

Justice for Children and Youth, Legal Aid Clinic, Toronto

www.jfcy.org

Example Scenario

Fatima is 15 and living with her parents. Her parents are very strict about the clothing she can wear, and they forbid her from dating or being out of the house after 10 p.m.

Fatima thinks her parents are old-fashioned and unfair, and just don't know how Canadian teenagers really live. When she disobeys her parents' rules they hit her, and lock her in her room. She is worried about what they might do if they find out she has a boyfriend.

Review of the CAS Process

- Court application and child protection hearing
 - Child may have unique interests, different from parents' interests
 - Court may order the Children's Lawyer to represent the child



The Children's Lawyer

The Children's lawyer

Who are Children's Lawyers?

- Office of the Children's Lawyer
 - Government-paid lawyers
 - For children under 18
 - Free of charge to their clients
 - Court may order the Children's Lawyer to represent a child (client)
 - Children's Lawyer can decide whether to represent a child in certain cases
- Children's Lawyer cases:
 - Child protection – must follow Court Order
 - CAS mediation – may accept
 - Custody and access – may accept

The Children's Lawyer

Children's Lawyer in a child protection case

- Voluntary Service Agreements
 - Children's Lawyer will not represent a child
 - Child has right to hire a private lawyer
- Child Protection Mediation
 - CAS may request the Children's Lawyer to represent the child
 - Children's Lawyer may refuse
 - Child has right to hire a private lawyer
- Court Application and Child Protection Hearing
 - Court may order the Children's Lawyer to represent the child
 - Court must believe the child has unique interests in the proceedings or requires a voice
 - Child has right to hire a private lawyer

The Children's Lawyer

Relationship between Children's Lawyer and Parents

- Children's Lawyer only represents the child's situation, views and wishes
- Information between child (client) and Children's Lawyer is protected by solicitor-client privilege
- Children's Lawyer will not tell parents about discussions with child unless child consents
- Children's Lawyer does not represent the parents
- No solicitor-client privilege between parents and Children's Lawyer (no confidentiality)
- Children's Lawyer will not take instructions from parents
- Children's Lawyer can speak to parents in order to obtain more information about the child

The Children's Lawyer

How to contact the Office of the Children's Lawyer

www.attorneygeneral.jus.gov.on.ca/english/family/ocl

Telephone: (416) 314-8000

Fax: (416) 314-8050



Going to Court: What to Expect

Going to Court: What to Expect

- Children age 12 and older:
 - May attend Court, unless it may harm the child
 - May be given Court documents to read, unless it may harm the child
- How to prepare a child for Court
 - Review in advance:
 - Take off coat and hat
 - Don't chew gum
 - Don't take food or drinks into courtroom
 - Stand when the judge enters and leaves Court
 - Stand up when judge asks child to speak
 - Be polite
 - Ask if the child is nervous or scared about Court and discuss

Example Scenario

Sophie is 14 and says her father sexually abused her. Her mother does not believe her. The CAS has apprehended Sophie, concerned that she is in immediate risk of harm. A Court application has been started for a child protection hearing. What are Sophie's rights and to what extent will her wishes be taken into account?

- CAS can request the Children's Lawyer, Court may order
- Sophie can say her wishes, but CAS decides where to place her
- Court can make a Supervision Order including where Sophie lives
- A relative can apply for temporary or permanent custody and Court may approve (Kinship Placement)
- If Court orders Sophie under CAS care, the CAS decides where she will live
- If Sophie wants to see her mother, the Court may agree, may order supervised visits, or may refuse, if contact with her mother may harm her (not in her best interests)



Possible Outcomes of a Child Protection Hearing

Outcomes of a Child Protection Hearing

Possible outcomes when a child is found in need of protection:

1. Supervision Order

- child remains in the home and CAS is involved with the family

2. Society Wardship

- child ordered into the temporary custody of the CAS, cared for by foster parents or members of the child's extended family or a group home

3. Crown Wardship

- child is made a permanent ward of the CAS and may be adopted
- parents may or may not have access to see the child

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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
- Ministry of Children and Youth Services
 - role of Children's Aid Societies
www.children.gov.on.ca/htdocs/English/topics/childrensaid/childrensaisocieties/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

Additional Resources

- Ministry of Children and Youth Services
 - Child Protection Standards in Ontario
www.children.gov.on.ca/htdocs/English/topics/childrensaidthechildprotectionstandards.aspx
- Ontario Association of Children's Aid Societies Website
www.oacas.org/childwelfare/index.htm
- Family Law Education for Women (FLEW)
www.onefamilylaw.ca
- Ontario Women's Justice Network
www.owjn.org

Additional Resources

- Justice for Children and Youth Legal Aid Clinic
www.jfcy.org
- Legal Aid Community Clinics in Ontario
www.legalaid.on.ca/en/contact/contact.asp?type=cl
- Legal Aid Ontario
Toll-free: 1-800-668-8258 TTY: 1-866-641-8867
Toronto: 416-979-1446 (accepts collect calls)
www.legalaid.on.ca/en/getting/default.asp
- Office of the Children's Lawyer
www.attorneygeneral.jus.gov.on.ca/english/family/ocl

Additional Resources

- Law Society of Upper Canada Lawyer Referral Service
Toll-free: 1-800-268-8326
Toronto: 416-947-3330
TTY: 416-644-4886
www.lsuc.on.ca/with.aspx?id=697
- Toolkit for a good Client-Lawyer Relationship
(Barbra Schlifer Commemorative Clinic)
schliferclinic.com/vars/legal/pblo/toolkit.htm
- Helpful Tips for Lawyers Representing Clients in
Proceedings Under the Child and Family Services Act, Legal
Aid Ontario
www.legalaid.on.ca/en/info/downloads/cfsa_tips_08mar.pdf
- What You Should Know About Child Protection Court
(Cases, Ministry of the Attorney General Website)
www.attorneygeneral.jus.gov.on.ca/english/about/pubs/child_protection.asp