

Going to Court



A guide to child welfare court for young people 12 or older in the care of a Children's Aid Society

Will I have to testify in court?

What does the judge consider before making a decision?

Who are the people in the courtroom?

Do I get a lawyer?

If you have been taken into the care of a children's aid society (CAS), this booklet can help you understand what happens in court and what your rights are. You might find the court process confusing and upsetting. This information will help you make good decisions, understand the process and feel like you can get involved in your case.

Contents:

- ② Coming into care
- ④ What happens at court?
- ⑤ What does my lawyer do?
- ⑥ Is it different if I am Aboriginal?
- ⑦ What happens when we agree or want to agree instead of going to court?
- ⑨ Will I have to testify in court?
- ⑨ What is an assessment?
- ⑩⑩ What can the judge do?
- ⑩② What if I don't want to be in care anymore?
- ⑩② Definitions: Some words you need to know in order to understand this pamphlet. (The words with this mark * are explained in this section.)

Why am I in care?

The children's aid society (CAS) looks into any reports that you are being physically, sexually, or emotionally abused or that you are not being properly cared for (neglected).

If a CAS protection worker believes that you have been harmed or are at risk of harm, he/she must consider your safety. In order to keep you safe, he/she may decide to remove you from your home.

You can be removed from your home without your or your parents' consent. Sometimes the police will help CAS. You may also be placed in care when you cannot live at home or your parents refuse or are unable to have you live with them.

If you are confused or uncertain about why you are in care, you should speak to your CAS worker. You should also speak to your lawyer if one has been appointed for you. It is important that you understand why you are in care.

What will happen next?

You will be taken to a place of safety, which can be a foster home or group home.

If you come into care without the consent of your parents, the CAS must start a court application to have a judge make a decision for your care.

If everyone signed an agreement that you can be in care temporarily, then your case might not go to court at all.

What does the CAS protection worker do?

The role of a CAS protection or social worker is to carry out the following duties:

- ✘ To investigate reports that a child may be in need of protection
- ✘ To start the court process if the worker believes that a court order is necessary to protect a child from being harmed
- ✘ To find a suitable home for a child who has been taken into care
- ✘ To provide guidance, counseling and other services to children and families
- ✘ To work with families for the safe return of their children, if possible

What if I think I need to be in care, but the CAS does not?

If you are under 16, you or another person can bring a court application to ask a judge to make an order that you be taken into care. This is called a third party* application.

*See page 12 for definition.

Why do we go to court?

The CAS may have removed you from the care of your parents or another person without their consent, or may have filed a court application asking to supervise your care in your current home.

If you have been removed without consent, the CAS must bring the case to court within 5 days.

It is important for the court to consider, relatively quickly, whether it was necessary for the CAS to remove you from your family, in order to ensure your safety and to address any risk that you would likely suffer harm while at home.

The judge will decide, based on how you have been looked after, whether you are in need of protection. For example, if you are under 16 and have been abandoned or abused or there is a risk that you will suffer harm, the court may find that you are in need of protection.

Are the court proceedings held in private?

Yes. Court proceedings are held in private in order to protect your identity, as well as the identity of your family members. This is because these are personal matters and only the people directly involved in the proceedings have the right to know what is happening in your family's life.

What do the judges, lawyers and court staff do?

A judge is the person appointed to make the decision about whether the CAS will have legal responsibility for your care or supervision on a temporary or permanent basis.

The lawyers are the people who provide legal representation for all the parties* who have hired them. The judge may order that you have your own lawyer. Your lawyer will find out what your wishes are and tell them to the judge. Anything you say to your lawyer is confidential and you should tell your lawyer what you do not want anyone else to know. (*See page 12 for definition.)

Court clerks and court reporters are also important people. The court clerks organize the scheduling of cases and the court reporters record everything that takes place inside the courtroom.

Who are the people that can be present in the courtroom?

- ✘ The CAS worker
- ✘ The person who brings the application, if different from the CAS
- ✘ Your parents
- ✘ The representative from your band or community, if you are Aboriginal
- ✘ A foster parent or other person who has been providing care for you for at least 6 months
- ✘ If you are 12 or over, you are generally able to participate fully in the same manner as a party*

Each of these people might have a lawyer to represent them. The judge, court clerk and court reporter will also be in the court room.

(*See page 12 for definition)

Do I get a lawyer?

The judge may decide at the first court appearance, or at a later time, to order that you have a lawyer if he or she feels it would be helpful to protect your interests. Once the order is made, you will be assigned a lawyer at no charge through the Office of the Children's Lawyer, which is part of the Ministry of the Attorney General. That lawyer will usually act for you until the court case is finished.

If no lawyer has been appointed for you, but you feel you need one, talk to your CAS worker.

What questions should I ask my lawyer?

You should talk to your lawyer about questions that are important to you regarding your court case and things that you are unclear about.

Some things you may want to ask them about are: When is the court date? What will happen then? Should I go to court on that date? What do the court papers mean? When can I call you?

You have the right to talk to your lawyer in private. Anything you say to your lawyer is confidential and cannot be disclosed to anyone else unless you agree.

If you are in care you have the right to call your lawyer.

What should my lawyer be doing?

Your lawyer will meet with you to get to know you, find out about your situation, explain the court papers to you, and ask what your views are with respect to the court case. He or she will contact other people involved with your case to get more background information.

Your lawyer will let the other parties* know what your views are, and try to work out a solution in accordance with your wishes.

Your lawyer will represent you at each court appearance, including a trial.

Your lawyer will also explain the court process to you so that you understand what is happening in court.

(*See page 12 for definition.)

What if I am Aboriginal?

The law says that if you are an Aboriginal child, your band or native community must be notified about the child protection proceeding. This is the case even if you do not currently live in your native community or have not lived in your native community for some time.

The CAS must also consult with your band or native community to decide whether there is an other way that they use to resolve things without going to court.

If you are Aboriginal and the court is asked to make an order in your best interests, it must also consider the importance of preserving your Aboriginal identity.

If you are made a Crown Ward* the CAS must assist you to develop a positive, secure and enduring relationship within a family through a plan for customary care*.

(*See page 12 for definition.)

What happens in court on the first day?

The first appearance in court is within 5 days of your being removed from your home. Usually, the CAS will have filed papers outlining why they believe you should be in care. Your parents will probably need more time to get a lawyer and file their papers. The judge might also make an order for a lawyer for you at this time.

If your case has to wait until another day, the judge will make an order about your placement until the next court date.

If there is a risk that you may be harmed if you are returned home, you may be placed either with someone other than your parents or you may be ordered to remain in the care of the CAS.

What happens before a trial takes place?

There are 3 types of meetings with a judge that can take place before a trial:

- ✘ **Case Conference** – is an informal meeting of all parties* with the judge early on in the case to decide if there are ways in which the parties can reach an agreement and for the judge to make sure that all important information has been fully shared among the parties.*
- ✘ **Settlement Conference** – is an informal meeting of all the parties* with the judge, where the focus is on coming to an agreement, or if this is not possible, on narrowing the areas of disagreement. The judge who is at the Settlement Conference is not allowed to be the trial judge. This conference must take place no later than 80 days after the start of a child protection court case.
- ✘ **Trial Management Conference** – is a final informal meeting with the judge to decide on how each party* will go about introducing evidence at trial, including the witnesses to be called and the form of the evidence. The parties* will also provide a final estimate of the time needed for the trial.

Some of the conferences or steps in the process may be skipped or combined with the judge's permission. Before the trial takes place, the parties should continue to try to come to an agreement and settle the case.

(*See page 12 for definition.)

Does my case have to go to trial?

Not every family involved with CAS has to have a trial about what should happen. The CAS must consider other ways to resolve things.

Some families and their workers sit down together with the help of a person called a **mediator** to try to come to an agreement about what will happen. This process is called **mediation**.

In a mediation, a mediator speaks with family members, foster parents, the CAS worker, and others who may be important people to hear from, to better understand the best way to care for you, and to try to understand what is important to each of these people.

The mediator then calls everyone to a meeting together to talk about a plan for how you will best be cared for, and how you will keep your relationship with those you don't live with.

Do I have to go to the mediation meeting?

If you are represented by your own lawyer, the mediator will speak to your lawyer to make sure your views are understood by everyone.

Sometimes, if you are older, you can participate in the mediation meetings if you want to do so. But usually someone else, either your lawyer or your CAS worker, will bring your concerns and wishes to the mediation meeting.

It is important that you feel that your concerns have been heard and understood by your lawyer and by your CAS worker. You can call your lawyer or CAS worker or both about your concerns.

What happens if everyone agrees to a plan for me?

If everyone agrees to a particular plan in the mediation, that plan is put before a judge, who will usually approve it. If there is no agreement, then the judge will hear everyone's views in the usual way, often through a trial, and will make a decision about a plan to care for you.

What if everyone agrees and I don't?

You are entitled to put your views forward, and do not have to agree to a certain result, just because everyone else does.

If you have a lawyer, he or she will let you know whether your plan is reasonable and probably won't take your case to a trial if your plan does not have a reasonable chance of success.

For example, if you want to live with someone who does not have room for you, or has abused you in the past, your lawyer will let you know that you will not likely be successful at a trial, and will try to work out another solution for you.

What does the judge consider before making his or her decision?

The judge will consider the information presented by the parties* including the testimony of witnesses, any assessments and the plan of care* presented by the CAS.

Will I have to testify?

You will probably not have to testify. People who give evidence are questioned or cross-examined by all the parties*; so judges usually prefer that children not be witnesses in court.

(*See page 12 for definition.)

What is a plan of care*?

The CAS must file with the court a plan for your care, which describes the services that they will provide to you and your family and the arrangements that are being made for your long-term placement. The judge must consider this before making an order for your care and custody.

What is an assessment?

An assessment is a report that is made by a person or team of people, called an assessor(s), with special skills that allow them to give an opinion about a specific question. For example, assessments can be done by social workers, psychologists, psychiatrists and other professionals.

An assessment question might be “Can this child’s parents learn how to parent her better?” or “How is this child feeling emotionally?” or “What does this child need in order to do well in school?”

A judge can order that an assessment be done to help the court make a decision about you and your family.

What happens in an assessment?

An assessor meets or speaks with all of the people that he or she thinks will have

something important to say about the question that the assessor is trying to answer.

Sometimes these meetings are by telephone, and sometimes they are face to face meetings. They can take place with one person at a time - like a parent - or they can be with several people together - like parents and children on a visit.

Sometimes assessors ask questions or give people small tests to do in order to figure out the best answer to the question they have been asked. There are no good or bad answers to these questions - the answers simply give the assessor the information he or she needs to best do the report.

Do I have to go to an assessment?

If an assessor has been asked to give his or her opinion about you in some way - like how to help you in school, or how you are feeling, or where you should live - he or she will probably want to talk to you.

If the assessor is asked to make suggestions about someone else, you may not be involved in the assessment at all.

What happens after the assessment is done?

Once the assessor has talked to everyone he or she writes a report that talks about what the assessor thinks is the best way to answer the question.

If the assessor asks you questions, the answers to those questions will probably be included in the report.

The assessor should speak to you about who the report might go to or how confidential it is.

The report might make suggestions about how the parents or foster parents could help a child do better in school, or how a parent might learn to become a better parent.

These reports are given to everyone to read, including the judge that hears a case in court.

The assessor can be questioned about the report, so that everyone is satisfied that the suggestions are good ones.

What kind of orders can a judge make if I am in need of protection?

If the judge finds that you are in need of protection, he or she must make one of the following orders for your care that is in your best interests:

Supervision: The court orders that the children's aid society supervises your family or another person who is caring for you, usually by regular visits, to make sure that you are being properly cared for.

Society Ward: You are placed temporarily (up to 12 months maximum if you are under 6 years old, or up to 24 months if you are older) in the care of a CAS. During this time the CAS is your legal parent and is responsible for your care.

Crown Ward: You are placed permanently in the care of a CAS. The state or "crown" becomes your legal parent but the CAS has the responsibility to care for you. If you are a Crown ward you can be adopted by another family if this is in your best interests and there is a family who is willing to adopt you.

Society wardship and supervision: You can be made a society ward* for a period of time and then returned to your parents under supervision for no longer than 12 months total.

Custody: You can be ordered to be in the legal custody of a person rather than in the care of a children's aid society.

Access: The court can order that you have access to a person or that a person has access to you. The court, for example, can order that you have regular visits with your parents or your brothers and sisters. If you are over 16 this order will be made only if you consent.

(*See page 12 for definition.)

Will the judge review my case?

If you are the subject of either a supervision order* or a Society wardship* order, the judge will review your case before the end of the order. At that time, the Society will prepare new court papers, and the judge will determine what further order is in your best interests.

(*See page 12 for definition.)

What if I don't like what the judge ordered?

Parties* to the proceedings can appeal decisions made by the judge. There are complicated rules about when you can appeal or what you can appeal. You will

need to talk to your lawyer about whether this is possible. in your case.

What if I don't want to be in care anymore?

If you are a Crown ward* or a Society ward*, your wardship must be terminated by a court order. You, your parents, the person who has custody of you or the CAS can bring the matter to court to consider a change (called a status review) to have the original order terminated. The judge will decide if this is in your best interests. If so, you might be able to return home or live on your own.

(*See below for definition.)

What if I want to live on my own?

There are two ways in which you can live on your own if you have been a Crown ward.* One way is to have the order terminated. You will need to find a way to support yourself. You should be 16 years old before you consider doing this. The other way is to live independently with the help of CAS, with an independent living allowance. The CAS worker will let you know if she/he thinks this is in your best interests.

(*See below for definition.)

You should speak to a lawyer about your options.

Definitions

Access: Your contact with your parents or other relatives when you are in care. Sometimes the court will make orders that this can only be done if supervised by another person. If there is no access order, then your parent is not permitted to visit you.

Apprehension: When you are taken from your home by a children's aid society without the consent of your parents or the person taking care of you.

Child in Need of Protection: The court will decide, based on how you have been looked after, whether you are in need of protection. If you are under 16 and have been abandoned or abused or there is a risk that you will suffer harm, for example, the court will find that you are in need of protection.

Crown Ward: You are placed permanently in the care of a children's aid society. The state or "Crown" becomes your legal parent but the children's aid society has the responsibility to care for you. If you are a Crown ward you can be adopted by

another family if this is in your best interests and there is a family who is willing to adopt you.

Customary Care: You are placed in the care and supervision of your native band or community according to their custom.

Findings: Findings are decisions made by the judge after hearing the evidence. The judge might make a finding that you are in need of protection. Once this finding is made, the judge can make an order as to who will take care of you.

Party(ies): Person(s) in the court proceeding with the right to be notified of the proceeding, to be represented by a lawyer, to be heard by the judge and to appeal decisions made by the judge that he or she doesn't agree with.

Plan of Care: If you are to be in the care of a children's aid society, they must develop a plan for how you will be looked after in the long-term. After you have been placed in care, the CAS worker will organize plan of care meetings on a regular basis to find out how you are doing and to make decisions about your care that are in your best interests.

Society ward: You are placed temporarily (up to 24 months maximum if you are 6 or older; up to 12 months if you are under 6) in the care of a children's aid society. During this time the children's aid society is your legal parent.

Supervision order: The court orders that the children's aid society supervises your family, usually by regular visits, to ensure that you are being properly cared for.

Useful Contacts

- ✘ Office of the Children's Lawyer - lawyers appointed by the court to represent children - you can find out how to contact the lawyer appointed for you by calling this number
416- 314-8000
- ✘ Justice for Children and Youth
416-920-1633 or 1-866-999-5329 (outside of GTA)
www.jfcy.org
- ✘ Ontario Association of Children's Aid Societies - find out how to contact your local children's aid society
416-987-7725
www.oacas.org

This pamphlet is intended for young people over the age of 12 who have questions about child welfare court. Its purpose is to give general information about the court process. Speak to a lawyer about specific questions. The information was accurate as of April, 2006.

This pamphlet is a collaboration of:



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