



## *Navigating Ontario's Child Protection Investigations/Services*

The purpose of this document is to provide a general overview of navigating the child protection system in Ontario from investigation to CAS service delivery. This document only provides legal information, not advice, and could possibly be out of date should there be changes in the law.

There is a separate document on the CCWS website ([www.collectiveofcws.ca](http://www.collectiveofcws.ca)) which provides information on rights in Ontario's child welfare system. As well, a webinar discussing the content of these two documents and anti-Black racism in child welfare is available on our website under the Resources Tab or at ([https://youtu.be/DA4p\\_slEog](https://youtu.be/DA4p_slEog)).

### **Important Terms:**

- **Best Interest of the Child:** *CYFSA* states its main purpose is to promote the best interest of the child pursued in the least disruptive manner available. This may include offering the appropriate resources and support to a family where there are child protection concerns, temporarily moving a child or children to the home of a relative, community member or foster home, and in the most serious cases, permanently placing the child or children in a different home.
- **Child:** The *CYFSA* defines “child” as anyone younger than 18-years-old.
- **Duty to Report:** In Ontario, there is a legal obligation to report suspicions regarding child abuse or neglect of any child or youth 15-years-old or younger. When an individual calls a child protection agency with a child protection concern, it is called a “referral.”
- **Child in Care:** The *CYFSA* as a child or youth receiving residential care from a service provider.

### **Child Protection Agencies in Ontario:**

There are different kinds of child protection agencies across the province. Child protection agencies can be specific to a location (the Children's Aid Society -Toronto), faith based (the Catholic Children's Aid Society); or they may serve a particular community or demographic, such as the Native Child and Family Services of Toronto.

It is important to note that while community-specific Children's Aid Societies operate for specific populations, they are required to follow the same laws, regulations, policies and

practices as any other child protection agency. Currently, there is no child protection agency in Ontario that serves the Black community, children or youth.

## **When is a child in need of protection?**

The *CYFSA* defines “need of protection” with various different reasons why a child protection agency believes they need to be involved. Again, this document only provides a general overview of what these reasons are, and should you want specific information see section 37(2) of the *CYFSA*.

The main two categories to justify CAS involvement are neglect and abuse. However, the legislation breaks down what falls under these two categories. Physical, emotional, verbal, psychological, and sexual abuse are general reasons for CAS involvement. This includes the possible risk that a child could experience these. Even the child’s behaviour could be justification for CAS intervention. For example, if the child is less than 12 years of age and kills or seriously injures another person.

However, CAS involvement can also occur when they believe a child isn’t being provided certain necessities of life, and that it’s a sustained pattern. This is what they call neglect, and an example of this is the withholding of medical care. Most cases of CAS involvement relate to neglect. Various reports and articles discuss this, pointing out that essentially families are being targeted by CAS for being poor, which has a particular impact on Black, Indigenous, and racialized families, newcomers, women/femme folks, and Disabled folks.

As well, children the age of 16 or 17 can voluntarily engage CAS for supports.

## **About Children’s Aid Societies**

The primary functions of Children’s Aid Societies under section 15(3) of *CYFSA* are to:

- Investigate allegations or evidence that children may be in need of protection;
- Protect where necessary;
- Provide guidance, counselling and other services to families for protection or for the prevention of requiring protection services;
- Provide care for children assigned or committed to care;
- Supervise children assigned for supervision;
- Place children for adoption;
- Perform any other duties given to it by the *CYFSA*.

## Legal Representation

The primary purpose of the child protection regime in Ontario is to promote and protect the best interests of children in our province. Because of this mandate, child protection agencies have the ability to make significant and serious decisions as it relates to the well-being of your familial situation.

However, children, youth, and families have certain rights, and child protection workers and agencies have certain obligations. In order to ensure your rights are preserved and that child protection agencies uphold their obligations, it may be necessary to obtain legal support, advice and representation.

### *Legal Representation for Children and Youth*

A child, youth, or parent/caregiver is permitted to have legal representation at any point during a child protection proceeding/investigation/service provision. If a child does not have legal representation, a court will determine if legal representation is needed to protect the child's interests. Children and youth may be entitled to a lawyer through the [Office of the Children's Lawyer](#) or through [Justice for Children and Youth](#), both who in part, have a mandate to represent children and youth dealing with child protection concerns. A court must give an order for a child to obtain a lawyer from the Office of the Children's Lawyer.

### *Legal Representation for Parents/Caregivers*

Parents and certain caregivers (foster parents, grandparents etc.) who have concerns about their rights and interests in a child protection proceeding and cannot afford a lawyer, may qualify for legal representation through Legal Aid Ontario (LAO). You can apply for a Legal Aid Certificate through LAO. If approved, this certificate acts like a gift card and pays for a lawyer who practices child protection law in your area. If you do not qualify for a LAO certificate, you will want to do your best to exhaust all of your other legal options.

In certain circumstances, a Children's Aid Society may have to pay for a parent's/caregiver's legal representation. This is usually the case if it is in the best interest of the child for the parents/caregivers/family to make submissions to the court, and without legal representation the best interest of the child isn't met in the absence of these submissions from the parents/caregivers/family.

If a parent/caregiver is unable to secure legal representation they may speak with a child protection worker to ask for assistance. If CAS is refusing, it is recommended that you speak to a family lawyer who will give you a free consultation where you discuss this issue.

## Steps of a Child Protection Investigation

There are different types of child protection investigations. **The information contained in this brochure focuses on family-based investigations**, which means that the child protection concern arises in the context of the parent/child relationship. Please see the *Ontario Child Protection Standards* (2016) for further information.

According to the *CYFSA*, the usual steps of a family-based child protection investigation are as follows when a referral to CAS is made:

Step 1: An in-person interview with the child alleged to be in danger using methods consistent with the child's developmental stage and ability to communicate

Step 2: Interviews with other children being cared for in the home, based on developmental level.

Step 3: Interview with the child's caregiver that is not accused of abuse or neglect, if there is one

Step 4: Direct observation of the child's living situation; if the concern is about child's living situation being hazardous and/or suggestive of neglect, the entire home is inspected

Step 4: An interview of alleged perpetrator of abuse and neglect

Step 5: Direct observation of the interactions between child and alleged perpetrator of abuse and neglect, as well as direct observation with between the child and the child's caregiver not accused of abuse or neglect, if there is one

Step 6: Interviews with witnesses in person or by phone;

Step 7: The application of an eligibility spectrum (see below section "Different Tools Used by Child Protection Workers") to see who else may be at risk, for example with siblings;

Step 8: Interviews with all other adults living in the home;

Step 9: The collection of evidence from other professionals involved with the child and/or family;

Step 10: Consideration regarding the need to seek a warrant for access to records.

Child protection workers have significant decision-making freedom with respect to how they conduct investigations. Whether their approach is either flexible/collaborative or rigid/traditional

may be dependent on the seriousness of the allegations. When the allegations are related to criminal assault or involve severe cases of neglect and abuse, the investigation is likely to be more traditional. In certain serious circumstances, the child protection worker may involve the police.

Child protection workers are required to utilize the least intrusive means possible during investigations. This may be influenced by various forms of information provided during the referral, the level of risk of harm to the child or youth, and the needs of the family.

## **The Life of a Child Protection Case**

The usual lifetime of a child protection case includes:

1. **Intake:** the child protection worker either receives the referral and gathers information or the parent voluntarily engages CAS seeking support;
2. **Planning and conducting investigation:** the child protection worker will decide how to go about the investigation (traditional vs. collaborative approach), who to speak to, the information required, and then conduct the investigation;
3. **Safety assessment and safety planning** (explained in Tools section);
4. **Risk assessment** (explained in Tools section);
5. **Ongoing services:** the child protection worker closely monitors the progress of the family for the first month, refers and provides services/support, and re-evaluates safety and risk concerns;
6. **Transfer:** the child protection worker may transfer the file to another worker or a person (parent or child) involved in the case. The child protection worker is meant to ensure that all information is conveyed accurately and relatively seamlessly, and the receiving worker may have to conduct a reassessment for safety and risk;
7. **Closing case:** the child protection worker may decide the case dependent upon the progress of the family and the lack or diminished presence of safety and risk concerns.

## **Other Things to Know During a Child Protection Investigation**

- You do not have to immediately agree to the interview with the child protection worker: While being collaborative with the child protection worker involved with your case is recommended, if you have concerns about your rights and interests, how you are understood, and how to answer certain questions, then you may delay undergoing the interview until you speak to a lawyer;
- Child protection workers can arrive at your house unannounced: Based on the referral, child protection workers may show up at your house unannounced.
- Interviews are usually done separately: the child is usually interviewed separately from the parent
- Child protection workers may also bring police with them: Child protection workers have the decision-making freedom to call police to accompany them depending on the assumed severity of the allegations.
- You are allowed to have an advocate that isn't a lawyer: You can pick someone who may be someone close to you (but is not part of being investigated) and/or someone knowledgeable in child protection who can help advocate for you to ensure your voice is heard and to help you understand the process.

## **Different Tools Used by Child Protection Workers**

The Ontario Association of Children's Aid Societies publishes various regulatory documents meant to ensure that child protection investigations and cases are consistent across the province and amongst different Children's Aid Societies. These documents are available to the public and may be found online, and we recommend seeking out those documents for more detailed information.. The information contained in the documents is valuable because it includes information regarding what child protection workers are meant to be assessing, how they are supposed to conduct themselves, and the possible outcomes of a child protection investigation/case.

- *Ontario Child Protection Standards:* This document details the ways in which child protection workers are meant to conduct themselves during the life of a case. Some examples are:
  - Child protection workers are meant to take into account the various identities of the child, parent(s), and families in order to provide attentive and respectful services
  - Child protection workers are meant to engage in an anti-oppressive manner. This means that they are obligated to recognize how racism, sexism, homo/transphobia, and other forms of oppression are present in the child welfare system, how these factors impact the experiences of families engaged in the system, and how they influence their own behaviours and interactions with and responses to families.

- *Ontario Eligibility Spectrum*: This is a tool designed to assist Children’s Aid Society staff to make consistent decisions about CAS involvement and eligibility for service at the time of referral. The tool includes discussions regarding 12 different reasons for referral, and updated information depending on legislative change and current research.
- *Ontario Child Protection Tools Manual*: This is a package of various tools used to assess a family engaged with child protection services. It includes assessment tools in the following areas:
  - Safety Assessment: determines the level of immediate danger through "yes" or "no" and considers the seriousness of the harm/danger given the current information. This assessment is concerned ONLY with present conditions, for example:
    - The physical living conditions are hazardous and immediately threatening to the health and/or safety of the child (open windows; missing or broken screen)
  - Risk Assessment: concerned with future risk of harm and abuse by assessing the two major areas of abuse and/or neglect mentioned earlier.
    - Example: Primary Parent/Caregiver has a Past or Current Alcohol, Drug or Substance Problem (that interferes with his/her or the family's functioning, evidenced by for example, treatment received currently or in the past)
  - Family and Child Strengths and Needs Assessment: Resource Management/ Basic Needs (Strength: Parent/caregiver provides adequate housing, food and clothing to meet basic needs)
  - Reunification Assessment Tool: where the goal is reunification, CAS will assess/reassess safety/risk in order to reunify family and plan out what that pathway to reunification may be.

## Key Determinations Made During Investigation

There are three key decisions made during a child protection investigation:

1. *Verification*: Decision on whether the referral regarding maltreatment was confirmed
  - Verified; not verified; inconclusive (not enough evidence to say verified or not verified)
2. *Determination if child is in need of protection*:
  - Under one of the grounds named in the CYFSA as moment child or youth may be considered in need of protection.
3. *Investigation disposition*:
  - What kind of services will be provided, if any?

## Possible CAS Decisions After Child Protection Investigation

This is different from the determination made in an investigation. There are many possible courses of action after a child protection investigation. For example, a child protection worker can decide based on the evidence that there are no safety and risk concerns. The child protection worker can even, after receiving a referral and upon discovering information that completely counters the referral, end the investigation.

Some other decision are to implement one or more of the following:

- *Supervision Order*: child protection workers can allow parents/caregivers to keep the child in their care under certain conditions. These conditions can include having to attend certain kinds of counselling, not engaging in certain behaviours/activities, and/or not having contact with certain people.
- *Temporary Care*: temporary out-of-home care means the child is not placed directly in the home of the parent(s)/caregiver. Instead, the child may be placed with family or community members. That or the child may be placed in *interim society care* and be placed in a foster care. For interim society care, it cannot be for a period longer than 12 months.
- *Extended Society Care*: where the child is placed in society care (foster or group home) until the order is terminated.

If the parent/caregiver does not want to agree with the course of actions set by CAS, the agency can go to court to get an order requiring it. However, parents/caregivers can also take CAS to court if they do not agree with the course of action (this is what is known as an appeal). It is highly recommended that you have a lawyer or advocate to help you understand what CAS is trying to have you do before you agree to any kind of service plan/CAS decision.

## Complaints and Reviews about Child Protection Decision

### *Reviews*

A Children's Aid Society can apply at any time for a status review of the child protection case. A status review asks the court to look at what's happened since the last court order and decide what should happen with the child now. If this happens, all relevant parties are meant to get notice about the review. Children and youth 12 years of age and older have a right to notice unless the court deems the notice and review would be emotionally harmful to the child or youth.

Parents may request a review of a decision within the period noted when the decision regarding their case is first given. After that, a parent cannot request a review for the first 6 months. Children at least 12 years of age can also request a review of their case. A review cannot occur if a child or youth is placed in adoption.

There are also internal reviews within Children's Aid Societies where they are meant to review a case every 6 months and/or annually depending on when the case enters the system.

### *Complaints*

Parents, children, youth, and caregivers can also make complaints about the process of an investigation and the conduct of child protection workers. In some circumstances, the person making the complaint must follow the agency's internal complaint procedures before bringing the matter before the Board of the Children's Aid Society.

If you submit a complaint directly to the Internal Complaints Review Panel ("ICRP"), the society will respond within seven days to determine if a review is needed. If it is, a meeting will be scheduled with the society's Internal Complaints Review Panel within 14 days. If your complaint requires a review a notice will be sent to you within 20 days. You should receive a written decision within 14 days of meeting with the ICRP.

CAS is supposed to outline the complaint procedures when they make a decision regarding the case. If this isn't the case, the child protection has an obligation to provide this information upon request.

Upon receiving the complaint, the Society should conduct its own review in a timely and communicative manner. Information on how to lodge a complaint internally should also be posted on the website.

There are some circumstances where the complaint can go directly to the Board, and these are also the only matters that the Board deals with, such as:

- If the society refused to proceed with the complaint
- If the society has failed to respond to the complaint within the timeframe required by regulation
- If the society has failed to comply with complaint review procedure or other procedural requirement related to the review of complaints
- Society has failed to comply with children and parents having a right to an opportunity to be heard and represented when decisions affect their interests are made and to be heard when they have concerns about the services, they receive
- Society has failed to provide reasons for decision on that affects the complainant's interest

- If you were required to attend a Board hearing, you'll receive a decision in writing within 10 days.
- Decisions of the Board cannot be appealed. If you have concerns about the Board you can contact the Ombudsman.

You can also contact or seek support to go before the Child and Family Services Review Board (“CFSRB”). You do not need to have gone through the Children's Aid Society's complaint process before complaining to the CFSRB. You can complain to the CFSRB directly.

But, if you want to complain about inaccuracies in the Children's Aid Society's file or record you must complete the ICRP process before bringing an application to the CFSRB about those inaccuracies. If you don't agree with the ICRP decision, you can apply to the CFSRB.

This is an independent body that can review some complaints or CAS decisions. The board can be reached at 1-888-728-8823 or (416) 327-4673 or through its website: <http://www.cfsrb.ca/>.

You can also make a complaint directly to the Ombudsman of Ontario.