



Rights in Ontario's Child Welfare System

Navigating the child welfare system in Ontario can be particularly daunting and challenging. CCWS often hears from child welfare survivors, families, and community members that they didn't know they had certain rights when interacting with child welfare.

At CCWS we understand that knowing one's rights doesn't necessarily mean that asserting them leads to better outcomes. In fact, to be Black, Indigenous, and/or racialized while asserting one's rights can lead to more violence at the hands of the state.

We want to do our best to provide legal information that may be of use to you. If you are concerned about asserting your rights, don't hesitate to contact us at CCWS (info@collectiveofcws.ca) to learn more about our individual advocacy program where we can support you in dealing with child welfare in Ontario.

It is your right to have a lawyer, advocate, or trusted family members/friend present in meetings/at any point in an investigation (except when child protection workers interview those involved in an investigation).

A child protection worker is first and always an investigator, looking into your family to determine if reports received are true, whether your children are well cared for, well protected and your choices are not placing them at risk.

If there's anything you **MUST** understand, is that child protection workers are not your friend. It is a natural impulse to want to assure child protection workers that you are a good parent doing the best you can for your family. This natural reflex leads to sharing many details of your life that may have serious consequences for you.

General Information

In Ontario, the *Child, Youth, and Family Services Act, 2017* ("CYFSA") governs child protection in Ontario.

Part 1 of the *Act* states that the primary purpose is to promote the best interest of the child. It's important to notice that the language says "promote" rather than "ensure." This may be the case given the multiple reports that indicate the Ontario government is both failing to promote and ensure the best interest of the child.

It also states in Part 1 that child protection agencies are meant to support the integrity and autonomy of the family, as long as this doesn't contradict the best interest of the child. This includes the requirement that child protection agencies use the least intrusive means possible, for example not taking a child to a place of safety (apprehending) when they could provide in-home support. While it's said that the legislation exists to support and not punish parents, parents still often state that they felt they were unsupported and being punished.

Based on the *Ontario Child Protection Standards*, child protection workers have certain obligations to children, youth, and families which they are meant to fulfill by adhering to your rights.

For example:

- Duty engage in anti-oppressive practice throughout their work;
- Duty to recognize the presence of systemic oppression within child welfare, which impacts individual cases;
- Duty to engage in a form of practice that challenges this systemic oppression, as well as their own participation in oppression;
- Duty to ensure that all reasonable efforts are made to collect information/evidence that is relevant to an investigation, including actively listening and paying attention to any information which may also include information not supporting allegations made against the parent.

Your Rights

This is a general overview of the rights that come from the *CYFSA*. If you want more specific information, please see Part 1 of the *Act*.

- Agencies must value your cultural, religious, and ethnic makeup when providing service to your family;
- Agencies must respect the integrity of the family if it supports the best interest of the child;
- Agencies must respect the need for continuity of care and stable relationship within a family/cultural environment, and support the strengths of the family;

- Agencies must take into account the various needs of a child, in relation to the various identities they hold (ex: race, sexuality, gender identity, location);
- Children, youth, and families have a right to participate where appropriate in any aspect of a child protection investigation/service/ or court proceeding;
- Children, youth, parents (or guardians) have the right to have all information from the CAS whether oral or written in your preferred language;
- Children and youth have the right to know about decisions that impact them, and to express views on any decisions that relate to their treatment, education, training, or work programs. Due weight must be given to the views of children and youth based on the child's age and capacity.

Rights at Every Stage of the Child Protection Process

Certain rights are clarified in the Act based on where you are in a child protection process.

Rights of Children and Youth

Children and youth have particular rights which are meant to promote their best interests. Below are some of those rights. If you have concerns that these rights aren't being followed, seek support from community organizations like CCWS, or engage legal representation. There is the Office of the Children's Lawyer which provides this service for children and youth if a court orders it.

- Upon residential placement admission, children and youth have a right to be informed, in a language suitable to their understanding of:
 - Their rights;
 - Complaint procedures and how their complaints are reviewed;
 - Their responsibilities while in a placement;
 - The rules governing day-to-day operation of residential care, including disciplinary procedures;
 - Placement in or discharge from a residential placement, or transfer to another residential placement.
- Children and youth have a right to a plan of care designed to fit their individual needs. A plan of care refers to a document that outlines the various supports and services that will be provided to children and youth, and also includes information about their residential

placement. This is prepared within 30 days of admission into residential placement, and a right to participate in the development of the plan of care and any changes made to the plan;

- Indigenous children and youth have a right to a representative from their community;
- Children and youth have the right to be free from corporal punishment;
- Children and youth have the right to speak in private with, visit and receive visits from family members or extended family regularly – unless in extended care or in care as a result of a safety concern;
- Without unreasonable delay, children and youth have the right to speak in private with and receive visits from:
 - Their lawyer;
 - Service providers shall not examine or read communications from a lawyer or representative;
 - Another person representing the child or young person;
 - An appointed person from the Office of the Ombudsman;
 - A member of the Legislative Assembly of Ontario or the Parliament of Canada.
- Children and youth have the right to send and receive written communications that are not read, examined, or censored by another person, with some exceptions where the communication can be opened in front of the child/youth if there are safety concerns;
- Children and youth have the right to reasonable privacy, and possession of own personal property;
- Children and youth have the right to receive instruction and participate in activities of their own choice related to identity;
- Children and youth have the right to food that is of good quality and appropriate for the person, and meals that are well balanced;
- Children and youth have the right to clothing that is of good quality and appropriate for age and size, and activities and weather conditions;

- Children and youth have the right medical and dental care at regular intervals and whenever required;
- Children and youth have the right to the receipt of education that corresponds with aptitude and abilities, and in a community setting whenever possible;
- Children and youth have the right to participate in recreational, athletic, and creative activities that are appropriate.

Investigations

At this stage you have the following general rights:

- The right to ask for details of the report and a copy of the report. You will not be given any personal information about the person who made the report;
- The right to ask questions about the content of the report. Some examples:
 - When was the report made?
 - What are the specific allegations?
 - What steps were taken in the screening.
 - Was anyone contacted during the screening process?

It is in your interest to put all your questions in writing, emails, text messages, letters and any written media.

Service Agreements or Court Action

Voluntary Service Agreement

A voluntary service agreement is between you and the Society. This agreement includes conditions which you must follow and can include random home visits, attendance at parenting courses, drug testing or referral to any resource determined necessary. You risk your child being taken into care if you do not follow the conditions.

These conditions should be reasonable and relevant and consistent with the best interest of the children. considers a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression.

You should not sign any agreement without first reviewing with a lawyer, an advocate or someone you believe can help you navigate a meeting with the child protection worker.

At this stage you have the following general rights:

- The right to review the agreement with a lawyer or an advocate;
- The right to ask questions about the reasons for any or all of the conditions;
- The right to ensure that the conditions are relevant to the concerns raised by the society;
- The right to ask for information;
- The right to ensure that the conditions consider your child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression, their cultural and linguistic needs.

Temporary care agreement

A temporary care agreement is created between you and the CAS when the investigation reveals either that;

- (i) your child needs protection and you are at that time unable to care for your child(ren); or
- (ii) you asked the CAS for help because you are unable to care for your children at that time.

This agreement gives the CAS care and custody of your child(ren) for a limited time, not more than, six (6) months, with the possibility for an extension. The legislation has time limits on the length of time children can be in care based on their ages.

The agreement must be in writing and should include clear and specific language regarding visits and contact with your child(ren) The CAS must consider the least disruptive alternative for your child(ren).

At this stage you have the following general rights:

- The right to understand the terms of agreement, review with a lawyer or an advocate;
- The right to end the agreement at any time with notice in writing (both child and parents);
- The CAS must find the least disruptive course of action. Least disruptive means that CAS shouldn't unnecessarily remove the child from the home or refuse to engage in placements with relatives or family friends;

- Unless there are profoundly serious concerns which have been clearly stated to you and which you understand that your presence will place the children at risk or is not in the child(ren)'s best interest, you have the right to have contact or visits with your child(ren).

It is wise and to your benefit to consult a lawyer, advocate, or someone you trust, to review any agreement before you sign. You should not agree to conditions which you know may be difficult to meet; for instance, do not agree to meetings on dates or at times if you know that time-off work may be impossible.

Court Action/Child Protection Application to Court

If the CAS decides that your child cannot be kept safe in your home and is in need of protection, your child(ren) can be removed or apprehended from your home. If you are at this stage do not delay, get legal advice immediately.

The CAS must get to court within five (5) days of removing your child(ren) from your care.

At this stage you have the following general rights:

- To ask to see and get a copy of your personal information in your file.
- To ask for corrections to wrong or missing information in your file.
- To know if your personal information is lost, shared, stolen or viewed when it should not be or by anyone who did not have the authority to review your file.
- To give your consent to the children's aid society for reasonable discussion, consultation with any of your service providers.
- To discuss and get legal advice regarding any conditions, especially if you are asked for a parenting capacity assessment.