

Introduction to Family and Child Protection Law

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*Please note this is legal information only. Please consult with a family law lawyer regarding your specific case.



TABLE OF CONTENTS:

1. Family law claims
2. The Court process
3. CAS Involvement
4. The Office of the Children's Lawyer
5. Schools and Daycares

FAMILY LAW CLAIMS

Some common claims (but not all) that are made in family law proceedings are:

- Major decision-making (custody)
- Parenting time (access)
- Child support
- Spousal support
- Property division
- Restraining Orders

Previously, “major decision-making” was called “custody”. This is often confused with “parenting time”, which was previously called “access”. Major decision-making refers to major decisions regarding a child’s health, education, religion and general well-being. For example, where a child goes to school/ daycare, registering a child in counseling, medical treatment for a child or enrolling a child in extracurricular activities.

There are also claims related to major decision-making that parents often seek to be included in a court order or agreement, such as ability to travel with a child with or without the other party’s consent or the ability to obtain government issued identification (eg. birth certificate, health card, passport, SIN card) with or without the other party’s signature.

Important considerations when deciding whether parties can have joint decision-making responsibility or if one party should have sole decision-making responsibility is how involved a parent is in making those major decisions, whether the parties can effectively communicate to make the decisions together and whether a parent will try to interfere with the other parent’s relationship with the child(ren).

Due to the significant stigma that is associated with sex work, parents who are sex workers may be accused of not being able to make decisions in the best interests of children. A closer analysis of how this work impacts the child(ren) may reveal the parent's actual ability to have decision-making responsibility. For example, some considerations (not a comprehensive list):

- How available is the parent to attend to medical and educational needs of the child(ren)?
- Does the parent expose the child(ren) to inappropriate situations and/or people?
- Is the child(ren)'s stability disrupted, causing developmental, educational and/or mental issues?

These considerations are relevant to parents involved in any type of work or scenario and there is no inherent danger to children just because a parent is involved in sex work.

Parenting time refers to the amount of time each parent spends with the child. There may be a primary parent and a secondary parent or there may be shared parenting time. If a parent sees the child 40% of the time, this may still be considered shared parenting time. This is often determined based on status quo parenting arrangement, the availability of each parent to exercise parenting time, and the distance between the parents for exchanges. There are similar considerations for parenting time as in major decision-making, however parents are typically at liberty to make non-major, day-to-day decisions regarding their child(ren) on their own.

The Child Tax Benefit (CTB) is also determined based on the parties' respective incomes and the parenting time schedule. The Canada Revenue Agency (CRA) determines the amount of CTB and the court does not have the jurisdiction to change this amount or the division of this payment. If a parent is entitled to the CTB but the other party is collecting, the CRA can correct any overpayment or underpayment upon receiving proof of the parenting time schedule (eg. written agreement or court order).

Child support refers to both the monthly amount of support payable for a child based on tables in the Child Support Guidelines of Ontario and Canada, as well as special and extraordinary section 7 expenses ("section 7 expenses"). Table child support is calculated based on the secondary parent's income or by an off-set amount in a shared parenting arrangement based on both parents' incomes. Section 7 expenses are paid separately from table child support for things that are reasonable and necessary, in proportion to each parent's income. Some typical section 7 expenses include tutoring, summer camp, extracurricular activities, healthcare expenses not covered by insurance and post-secondary education.

If a party has a child support obligation, their income is based on their income or imputed income. To determine the appropriate amount a party's income, disclosure may be ordered. Mandatory disclosure includes:

- The last 3 years' Notices of Assessments/ Re-assessments from the CRA

- Income Tax Returns
- Proof of current income.

If you are going to consult with a lawyer, you can best prepare by providing these documents. If you have not filed your taxes recently and either plan to go to court or have been served with court documents, you should file your taxes ASAP, as this may interfere with your ability to make or defend support claims in court.

Imputation of a party's income may take place when there is reason to believe that they are earning more than they report in their income taxes or wilfully underemployed (eg. undeclared cash income). If a party does not or underreports their income to the CRA, their income may be imputed based on their reasonable ability to work or standard of living for the purposes of calculating support. Further disclosure, including bank records, investment statements, medical records or other documents may be ordered in order to establish the appropriate amount at which to impute income.

Spousal support is payable if the recipient can establish that they are entitled to this, which is a legal test. There are compensatory, non-compensatory and contractual bases for spousal support. If the recipient establishes they are entitled to spousal support, the monthly amount (quantum) and length of time that it is payable (duration) is calculated based on the length of the relationship, the ages of the spouses, whether child support is payable and the spouses' respective incomes. In order

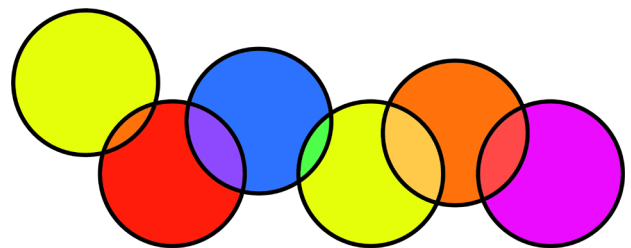
to ensure that support is appropriately calculated each year, both parties must exchange financial disclosure.

Property rights differ between married and unmarried couples in Ontario and can be quite complex. When parties have property to be divided, whether they are married or common law spouses, they need to complete a Financial Statement and provide proper documentation to support the values of the property they seek to be divided or not divided. Parenting rights are typically dealt with separately from property rights.

Restraining Orders can be made through the family law courts (in oppose to criminal courts) when a party is at risk of harm by the other. It is helpful if there is a term in the restraining order that provides an exception pursuant to a family law order, so that if parents want to be able to communicate or be in proximity of each other for parenting time exchanges or regarding major decisions for the child(ren), there is more flexibility.

Further Resources:

[An Introduction to family law in Ontario](#)



THE COURT PROCESS

A domestic court proceeding starts off with one party initiating the court action (the Applicant) by filing a document called an Application where they make their family law claims. The opposing party (the Respondent) will then have to file an Answer within 30 days where they make their own family law claims and defences. The Applicant may then file a Reply in response to the claims in the Answer.

Typically, the first court date is a First Appearance before a court clerk, who will make sure that all party's documents are filed so that they can proceed to the next step. There may be multiple First Appearances, at which time unrepresented parties may speak with Duty Counsel, lawyers available on the day of court.

It is important to always attend every court appearance, otherwise orders can be made in your absence or you may not be able to participate in the court proceeding by making or defending your claims.

Once the parties are ready to proceed to the next step, a Case Conference will be schedule before a judge. This is a settlement-oriented meeting where only orders made on consent or procedural orders can be made.

The judge may give their opinion and make recommendations for settlement, even on a temporary, *without prejudice basis*. *Without prejudice* means that the agreement is for the purpose of settlement only, and the agreement should not be held against the parties in the

future. For example, if a party is seeking parenting time and the agreement is less than the amount that they ultimately want, they might enter into a temporary, *without prejudice* parenting time schedule so that they can build on this parenting time at the next appearance.

There may be multiple Case Conferences, depending on what the judge recommends or thinks is appropriate for the case. In some courts you may have a case management judge or a judge that seizes themselves of the matter, resulting in every conference being in front of that same judge for the purpose of continuity. In other courts, you may have a different judge for each court appearance.

After there has been a Case Conference, the parties can bring a Motion to obtain orders for substantive issues in dispute, like parenting time or decision-making, on a temporary basis. This is not a mandatory step to progress the case. The only circumstance in which a Motion can be brought before a First Appearance and Case Conference is if there is an emergency, such as a restraining order, child abduction or involvement by the police or Children's Aid Society. There is a high threshold for the court to find that Motion is sufficiently urgent to bypass the regular process for a court proceeding. Usually an urgent Motion must be brought without notice to the other party (also called *ex-parte*).

The next step after a Case Conference (regardless of whether there is a Motion) towards finalization of the case (i.e. trial) is a Settlement Conference. At a Settlement

Conference, the parties must prepare an offer to settle. There may be multiple Settlement Conferences or they may be a hybrid with a Case Conference or a Trial Management Conference. A Trial Management Conference focuses on making sure the parties are ready for trial. For example, parties will need to make sure that any necessary disclosure is exchanged, their witness lists are ready and any relevant expert reports have been provided. The final step is Trial.

Further Resources:

[Steps in a family law case](#)

CAS INVOLVEMENT

A child protection agency or Children's Aid Society (CAS or Society) court proceeding is different from a domestic one. You can have CAS involvement even before a CAS court proceeding. The law requires that the Society uses the least intrusive means possible, however this is often not the case. It is very important to have the assistance of a lawyer to advocate for your rights, as this involves state intervention in parent's private lives.

There are different kinds of Societies across the province. Societies can be specific to a location (eg. the Children's Aid Society of Toronto), faith based (the Catholic Children's Aid Society), demographic or community based (Jewish Child and Family Services or Native Child and Family Services of Toronto). Depending on the Society that you are working with, the Society worker you have assigned to your case, and even the case

management judge overlooking your case, you may receive different treatment, support and services.

Before a CAS court proceeding, there may be an Opening or Referral. Every time someone reports to the CAS there's an opening report. This does not automatically trigger a court proceeding but there will always be records of this. There are pros and cons to being involved in the court system. For example, if the CAS is not following the law or being fair, then a judge will have the responsibility of overseeing the proceeding and issues can be brought before the court. On the other hand, there are strict timelines and rules in a court proceeding that can be difficult to navigate.

If the CAS decides to investigate the referral, a caseworker will visit the family and child. The interviews are usually done separately, and the CAS may interview other members of the household. Society workers may also bring police with them, depending on the severity of the allegations.

Often CAS workers say that they are your friend and lead parents to believe that they can be completely honest, but they have directly conflicting roles as a social worker and investigator. They are supposed to support and provide resources but they are also investigating for protection concerns. Opening up to a CAS worker could potentially have negative consequences for your case because what you say to them can be later used against you. It may be helpful to get advice on what things should or should not be disclosed to the CAS.

If the CAS believes there may be a protection concern, they may try to get the parent to enter into a Voluntary Service Agreement outside of court to try to address the concern(s). The Voluntary Service Agreement may place the child with a parent, family member (kin) or a friend/community member (kith) with terms and conditions.

It is important when entering into agreements to know that you are entitled to independent legal advice. CAS workers may pressure parents to enter into an agreement, under the threat of a child being apprehended, and may not advise the parent that they are entitled to independent legal advice.

A Temporary Care Agreement is when the CAS has not started a court proceeding but is asking for a child to be taken into foster care (interim Society care). Temporary Care Agreements often involve a child being placed in foster care, and it is important to scrutinize what benefit there is to the parent to enter into such an agreement outside of court. Within the court system, an independent third party like a judge will be overlooking the case, which may act as a safeguard for the parent. It is extremely important to speak with a lawyer about potential consequences before signing any agreement.

Many parents do not understand the statutory time limits start applying as soon as a child is placed in interim Society care. Under the Child, Youth and Family Services Act (CYFSA), children can only be in foster care on a temporary basis for a certain amount of time

before a trial must take place to determine if they will be permanently placed in foster care and the parent loses custody (extended Society care, previously known as Crown wardship).

If the court finds that a child will not be adequately protected in the care of the parent from whom the child was taken to a place of safety, the parent should explore kin or kith placements. It is always important to try to place a child with kin or kith because the statutory time limits will not apply if the child is placed with kin or kith (not foster care). Kin and kith can be part of an important support system to successfully have the Society ultimately terminate their involvement.

Time limits are an important consideration because there are often waitlists for programming or resources and delays outside of a parent's control. Marginalized parents are often limited by waitlists, such as mental health support, housing or special needs programming, among other resources necessary to address Society concerns.

A Customary Care Agreement can be done with First Nations, Metis or Inuit families. There are more supports available under the CYFSA and opportunities for terms and conditions to be tailored for First Nations, Metis or Inuit families. For example, instead of children going to foster care, the grandparents can become foster caregivers so they can receive funding as foster parents and the children remains with family. It is important to ensure that the child welfare worker offers these supports and opportunities that First Nations, Metis and Inuit families are entitled to.

In a child welfare court proceeding, the first step is the Protection Application. When a child is apprehended or “taken to a place of safety” (language in the CYFSA), the Society must bring the matter to court within 5 days. In a child welfare proceeding, the Society is the Applicant and the parent is the Respondent. It is important that a parent finds a lawyer ASAP to advise them about their rights and to prepare an Answer and Plan of Care. The Society’s disclosure needs to be requested, the Society’s expectations should be clearly outlined in writing, and the Society should be offering or referring the parent with protection concerns to programming to address whatever issue they have.

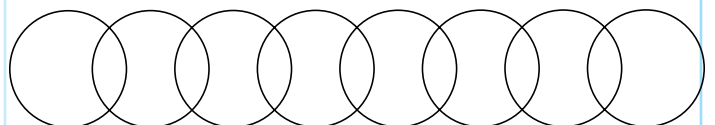
The first court date in a child welfare proceeding is called a First Appearance. Often the Society is the only party with evidence before the court and the parent is only in the initial stages or responding or has not yet retained a lawyer, so a without prejudice order (see above regarding without prejudice orders) is made with a return date once the parent has the opportunity to collect evidence and properly put together a response. It is important to speak with Duty Counsel if you do not have a lawyer.

If a parent wants to contest the orders sought by the Society, they can bring a Temporary Care and Custody Hearing, which is a type of Motion (see above regarding Motions). This is a scheduled date where the parties can present evidence to the court and argue for their claims in dispute. For example, if the Society seeks remove a child from a parent’s

care and place them in interim Society care, the parent can present evidence on why they believe the child should be returned to their care. A lawyer can help ensure that the evidence is presented before the court as best as possible, but the parent should also be actively in contact with their lawyer to put together the best case possible.

The next type of court appearance is a Case Conference or To Be Spoken To, where the court will check in on how the child and parent are doing, as well as ensure that there is progress. As a case progresses towards trial, there may be a Settlement Conference and Trial Management Conference before Trial.

The final order may be a Supervision Order, which means that a final order will be made, often with terms and conditions, but the case will be scheduled to return back to court for a Status Review. The Supervision Order may be as short as 3 months or as long as a year, however an early Status Review may take place upon notice if a party believes that it is necessary for the case to return to the court earlier. The terms and conditions will require the parent to take steps to ensure that steps are taken to ensure the long-term safety of the child. There may be multiple Status Reviews, but the statutory time limits still apply, so it is important to work toward fulfilling the Society’s reasonable expectations.



SOME GENERAL TIPS WHEN INTERACTING WITH THE SOCIETY:

- It is important to be respectful, keep an open mind and be receptive to the Society worker's suggestions. Whether or not you agree, it will impact your case (and therefore the length of the Society's involvement) if you are being cooperative or not. When the Society makes suggestions, you should follow through with suggestions or follow up with any referrals, as the failure to complete them will ultimately fall on your shoulders.
- You are entitled to a Plan of Care in writing. If the Society is involved because of alleged concerns, they should provide you with services and supports to address these concerns. You can hold them accountable by noting whether they have provided this to you and asking for a projected close date for the file. If a Society worker declines or refuses to provide a support, you should note this in writing.
- The Society worker may take notes during meetings, and it is a good idea to take your own notes with specific dates as well. It is an even better idea to take detailed notes afterwards. Every interaction with the Society is made into an internal note in Society records, which is evidence they may use against you. By taking your own notes, you are

building your own evidence. Society workers will often refuse to be recorded and recordings without the other person's consent are often not admissible evidence.

- Based on the referral, Society workers may show up at your house unannounced. They will typically inspect your fridge, smoke detector, carbon monoxide detector and the cleanliness and tidiness of your home. If you are expecting a baby, they will see if you have baby proofed your home or if you have supplies for a new baby. If a term or condition of an agreement or order is that you shall permit the worker to attend at your home for scheduled and unannounced meetings, you must follow this.
- You do not have to immediately agree to the interview with the Society worker. While being collaborative with the Society 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.
- Sometimes the Society's expectations are not reasonable or appropriate to address the concern. For example, if the Society may want you to do certain programming, but you have a rapport with a program

facilitator at a different organization or believe that there is a more underlying issue that would address the concern more effectively. You can approach your worker about the alternative program or different programming to address the underlying issue.

- Find out if you can address Society concerns with a harm reduction approach. For example, if the Society does not want you to do in-calls, perhaps you can take them during times when the child is outside of the home. You should support this approach with evidence, such as an appointment schedule showing clients are not booked when the child(ren) is at school.

- Always attend your visits with the child (if they are outside of your care) and be present for scheduled visits from the Society worker at your home. If you are seeking the return of a child to your care, attending at visits is expected to be your priority over other relationships and obligations.

- Give the Society names of those who can support you in caring for your child or who can take care of your child for a short time. Having a network of support will significantly improve your chances of success in removing the Society from your life permanently. You are allowed to have an advocate that is not a lawyer and is not part of the investigation.



Further Resources:

[What happens if CAS gets a report about my child?](#)

[What happens if CAS decides my child is in need of protection?](#)

[What happens if CAS takes me to court?](#)

[Rights in Ontario Welfare System and Navigating Ontario's Child Protection Investigation/Services](#)

THE OFFICE OF THE CHILDREN'S LAWYER

The Office of the Children's Lawyer (OCL) may provide either a social worker, lawyer or both to represent and advocate for children's views and preferences, in accordance with their views and preferences.

The OCL's involvement may be requested in domestic proceedings and the judge may grant this request. The parents will then fill out intake forms within 14 days of the court granting this order, and the OCL will then determine whether they get involved.

If the OCL gets involved, they can provide the following services:

- Children's Lawyer Reports (with recommendations)
- Voice of the Child reports
- Legal representation
- Legal representation with clinical assistance

Further Resources:

[The Office of the Children's Lawyer in family law](#)

[The Office of the Children's Lawyer \(general\)](#)

SCHOOLS AND DAYCARES

The child(ren)'s school or daycare is often viewed as a neutral setting in both domestic and child welfare proceedings. The OCL or Society workers will often meet with the child(ren) at school or daycare.

In domestic proceedings, a parent's relationship with the child(ren)'s school or daycare is a factor to be considered in major decision-making and parenting time rights. This can be determined by looking at whether a parent does pick-up and/or drop-offs, is an emergency contact for the school, attends parent-teacher interviews, is involved in the child(ren)'s education and understands the child(ren)'s relationships with peers.

A common source of Society referrals is from children's schools and daycares. This is because 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. It is at the discretion of the teacher and school as to whether to make a referral and what steps they choose to take (whether or not the CAS decides to investigate). As indicated above, the Society worker also has discretion over whether they find that there is evidence of a safety and risk concern or whether to end the investigation.

The fact that you are a sex worker does not mean there is an inherent child protection

concern, therefore it would help to find out information about the report. If you would like to obtain more information about the report, you can ask for details of the report and a copy of the report through a request for Society disclosure. You will not be given any personal information about the person who made the report, but you can find out when the report was made, what the specific allegation was, what steps were taken in the screening process, and whether anyone was contacted during the screening process (eg. the other parent). You should put all your questions and requests in writing.

You are also entitled to ask for corrections to wrong or missing information in your file. Your Society file should be confidential and should not be viewed by anyone who does not have your signed written authority to review your file.

Some things that can trigger referrals to the CAS by the school:

- A child missing a significant amount of school;
- A child needing support for special needs not being able to access these resources because their caregiver fails to sign necessary documents;
- A child is frequently attending at school without food and appearing malnourished; or
- A child reports exposure to a high level of conflict at home.

Maggie's Toronto Sex Workers Action Project

WHO WE ARE

We are one of Canada's oldest by and for sex worker justice organizations. Our mission is to advocate and fight for the rights of all sex workers in society, by offering a wide variety of services, educational resources, and creating community so that we may live and work with health, safety, and dignity. We believe in the full decriminalization of sex work and believe it is a crucial step towards sex worker justice.

We offer supportive programming for sex workers including weekly drop-ins, harm reduction services, outreach programs, legal supports and broader advocacy including food security efforts, public health initiatives and educational workshops for sex workers.

Learn more about our work and upcoming projects at maggiesto.org or check us out on instagram @maggiestoronto. You can reach us through email at info@maggiesto.org.

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