

# Legal Issues in Child Protection

Amanda J. Rose

Family Lawyer

# Child Protection : The Basics

- **The Ministry for Child and Family Development** (MCFD) is the government branch that investigates child protection reports, and, if needed, can provide supports or intervene.
- Social workers do the investigations, and team leaders authorize more serious action that needs to be taken.
- “The Director” is the legal representative of MCFD, and appears for them in court.

# Child protection Vs. Family law

- Child protection is a branch of family law, but there are two very different areas, governed by different law.
- (1) **Parent Vs. Parent** – when parents are in a dispute over children the law that governs this is the Family Law Act (FLA)
- (2) **Parent Vs. MCFD** – when there is a dispute over children between the parents and government social workers. Governed by Child Family and Community Services Act (CFCSA)

# How do MCFD get involved?

Child Protection Report :  
minor or no basis for  
intervention

- Investigation: outcome: no action needed, file closed
- Investigation: outcome: support needed, supports offered (voluntary).

Child Protection Report –  
report real, requires MCFD  
help

- Investigation: report true/substantiated: supports offered to family, depending on seriousness.
- If Parent works with MCFD to resolve issues : file closed

Child Protection Report -  
Serious and immediate  
MCFD help needed

- Investigation: serious protection concerns found: Parent required to address immediately
- If parent does not address, child may be removed if there is no other way to ensure their safety.

# The Law

- Child Family and Community Services Act (“CFCSA”)  
[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96046\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96046_01)
  - The act that governs all of child protection work
- Relatively short act.
- Sets out timelines – how long a child can be in care
- Sets out principles – what should govern the social workers work.
- Sets out legal framework (steps in a case).

# Steps in Child Protection

- There is a great legal aid resource for parents who have MCFD involvement:
- <http://www.lss.bc.ca/publications/pub.php?pub=77>
- Parents rights, kids rights.
- Set out the law, and resources.

# Principles of the Act

- **Guiding Principles of the Act** – this is important, the Court will assess the social workers actions in light of the guiding principles (if it goes to court).
- S2 of the CFCSA
- **Guiding principles**
- **2** This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:
  - (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;
  - (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
  - (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
  - (d) the child's views should be taken into account when decisions relating to a child are made;
  - (e) kinship ties and a child's attachment to the extended family should be preserved if possible;
  - (f) the cultural identity of aboriginal children should be preserved;
  - (g) decisions relating to children should be made and implemented in a timely manner.

# Service Principles

- **Service delivery principles**
- **3** The following principles apply to the provision of services under this Act:
  - (a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;
  - (b) aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children;
  - (c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;
  - (d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and Community Living British Columbia established under the [Community Living Authority Act](#);
  - (e) the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children.

# Best interests of the Child

- **Best interests of child**
- **4** (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:
  - (a) the child's safety;
  - (b) the child's physical and emotional needs and level of development;
  - (c) the importance of continuity in the child's care;
  - (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
  - (e) the child's cultural, racial, linguistic and religious heritage;
  - (f) the child's views;
  - (g) the effect on the child if there is delay in making a decision.
- (2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.

# What can a social worker do?

- Their powers are pretty broad – they can:
  1. Talk to the school, neighbors
  2. Talk to the child alone
  3. review school reports or hospital reports about your child
  4. come to your home and ask to see the child. If you say NO, they can remove the child.

# On what grounds can they remove a child?

- [Section 13](#) of the CFCSA governs this:
  - - can be a failure to protection from domestic violence
  - Neglect
  - Physical abuse
  - Sexual abuse
  - Psychological harm
  - List is not exhaustive.
  - Failure to provide medical care – blood transfusions etc.

# What to do if your child is removed

- (1) Call Legal Aid – if a parent financially qualifies, they can get a lawyer to represent them.
- (2) Get as much information as possible to advise lawyer.
- (3) Don't fight with the social workers over it (leave that to the lawyer!)
- If possible, have a third party present (advocate, or calm family member) when meeting with a social worker.

# Timelines after a child is removed.

- (1) Within 7 days, the Director must go to court for the “Presentation Stage” – this is where they file a report to the court about the circumstances under which a child is removed.
- (2) If a parent disagrees, they can ask for a Presentation Hearing, in which the Judge can assess if the child was removed with enough grounds. If not, the child has to be returned.

Reality: Presentation Hearings can take up to 6 months to happen due to court schedule. If the parent doesn't seek a hearing, the Director otherwise gets an “interim order” for 45 days.

Presentation Hearings are usually unsuccessful for the parent. If the parents evidence and the social workers evidence is different, the court basically has to accept the social workers evidence.

# Ways to support parents who have children removed

- If they have a lawyer, ask the lawyer (and the parent!) if you can attend the meetings to help the parent understand what is going on, and to help create a plan.
- Lawyers are only a piece of the puzzle to fix it. Advocates/settlement workers, support workers can help the parent just as much by addressing the issues that might have led to a removal.

# Ways Child Protection Disputes can be resolved

- (1) **Mediation** – Where a trained mediator works with the family and the social workers, usually over a full day, to identify the issues and discuss a way to resolve them.

At any stage of the proceedings, parents can request a mediation. If they have a lawyer, then their lawyer requests it and attends.

## The benefits of mediation

- Can improve the relationship between the social worker and the parent
- Can help the parent or the social worker understand a little more about what happened. Often, both sides are in the dark about what has led to the situation.
- Can help create a “Plan” – or a mediated agreement, which is usually very helpful for the parent. The biggest complaint parents usually have in the process is that they are in the dark about what to do, and how long it will take.

# Ways child protection disputes are resolved:

- Court – if the parent disagrees with MCFD about the removal or continued care of their child, they can have a trial on the issue.

## The downsides of this:

- Time consuming – can take many months to get a hearing
- Success rates are usually fairly poor.
- Trial is usually very stressful for parents, and breaks them down even further.

# Complaint's

- Parents do have the right to complain about the social worker. Complaints about MCFD are handled regionally, and internally.
- Complaint process is actually handled fairly well, but can be time consuming.
- Information can be found on MCFD website.

*A parent should talk to their lawyer first before complaining.*

# Resources

- Parents Legal Center – Robson Square courthouse. A lawyer and advocate is there full time to assist in court and with investigations (supporting the parent). New program and run by an experienced child protection lawyer.
- Legal Aid: call the intake center (they also have translators)
- Legal Aid Publications – Child protection book for parents.

<http://www.familylaw.lss.bc.ca/resources/publications/pub.php?pub=77>

# Resources

- Resources to help kids in care
- Representative for Children and Youth
- <https://www.rcybc.ca/>
- Not part of MCFD – they report directly to legislative assembly
- They can advocate and monitor services for youth who are in MCFD care or receiving services from MCFD

