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**WHEN**

# CHILDREN'S AID comes calling

How CAS works, or doesn't work, and why

by *Stéphane Deschênes*

This article is based on the child protection laws of Ontario, which is where the author lives. While relevant legislation is similar across Canada, each province has its own variation. **GN** welcomes information about the situation in other provinces.

The article does not contain legal advice. For that, readers should consult a qualified lawyer.

Most parents, naturist or not, fear interference by the Children's Aid Society (CAS), because they perceive it as empowered to take their children away. While this is fundamentally true, the reality is that those powers are severely restricted. Just like any other agency with coercive powers, the CAS is bound by checks and balances. The best way to feel secure is to understand how CAS works, and your rights if they choose to intervene.

For this article, I interviewed two people. Most of the information presented comes for them. The first, Will Abbott, from MacDonald & Partners, is a lawyer in family law with much experience dealing with several Ontario Children's Aid Societies. The second, Carol, is a CAS worker who has spent nearly a decade working for it in southern Ontario. She is married with children. All her family members are avid naturists.

Carol is not her real name. She agreed to be interviewed only if she remained anonymous, because she feared repercussions in her employment. That fact in itself should tell you something about the attitude of some people within CAS. The problem, which both Carol and Will identified,

is that CAS workers are individuals who, alone, have to make judgement calls. While those are supposed to be objective, many are influenced by personal biases.

While Carol recognizes the difficulties of her job, she finds it "extremely rewarding." In most cases, she notes that CAS intervention is justified and even welcomed by the parents.

## How it works

In Ontario, child protection is regulated by the Child and Family Services Act. The law defines when children are in need of protection, gives authority to child care workers, and specifies when and how they may intervene.

Ontario has several Children's Aid Societies. Each manages child protection for a region. All are part of the Ontario Association of Children's Aid Societies. While the Act gives CASs their powers, something called the Eligibility Spectrum (see below), created by the Association, is used by Ontario CASs in their daily work to decide when to intervene.

There are two main types of CAS workers: intake workers, who investigate complaints; and ongoing workers, who monitor cases where intervention has been deemed necessary.

When a complaint is lodged about you, CAS must investigate. It will then contact you. Will notes that unless they have an apprehension order (from a court with evidence of immediate risk of harm to a child), CAS workers cannot force their way into

your home or take your children away.

When you meet with CAS workers, they have no power to force you to answer any question or do anything you don't want to do without a court order. You may stop the interview at any time, although some cooperation is expected and forms the best strategy.

## What may happen

Some CAS workers suggest they have the power to coerce you into doing whatever they want. That is a convenient tactic, since their caseload is heavy, and closing files is much simpler if they can get you to provide all kinds of information, believing that more information is better, even if it is not relevant to the complaint.

Unfortunately, such behaviour is extremely intrusive and is an abuse of your rights. Imagine that police pulling you over for speeding could also search your entire house and question your family. Although ridiculous, that is not unlike what some intake workers do.

Occasionally they arrive at your house with a police officer. Officially, the officer is there to protect the worker, but you may erroneously assume that he or she is there to force co-operation.

According to Will, if you do not co-operate, the CAS worker's only option is to go to court to get an order. Again, unless there is evidence of immediate risk of harm, you must be notified of the hearing and have a chance to defend yourself. If you do, it is very impor-

tant to have a lawyer. If you do not have the means to hire one, you may be able to get legal aid, although most Canadians will not qualify for it. The legal aid process may also be slow, and the lawyer you get may not have much experience with CAS cases.

If CAS takes the case to court, you may be given only 72 hours' notice. Often that is not enough time to find a lawyer. Short notice puts you at a disadvantage. Moreover, CAS's lawyers are well versed in the Child and Family Services Act; if you attempt to defend yourself, you will lose. If you cannot appear with a lawyer, ask to speak with the duty council, who will help you get an adjournment so that you have more time to find a lawyer.

A court may grant you 30 days more but will meanwhile rule on an interim supervision order which may keep CAS involved.

### What may rarely happen

In rare cases, CAS workers want to take children away. They do this only if they perceive immediate risk to them. Carol tells me that they often try this without a court order because of the difficulty in getting one. Only in the most extreme circumstances can they legally take a child without a court order, e.g. when a child has been abandoned.

Mostly it is parents who let their children be taken away by CAS. The parents are so upset and unaware of their rights that they don't protest or ask to see a court order. Of course, if CAS tries unsuccessfully to remove children without a court order, you can bet that the case will go to court right away.

It is almost always better to avoid court. You should co-operate, but under your conditions. Co-operation doesn't mean you must comply with all demands. But beware: Will emphasizes that there is no such thing as "off the record" conversations with CAS. Anything you say can be used against you.

### The Eligibility Spectrum

Once the intake worker has investigated, he or she uses the Eligibility Spectrum to determine whether to get involved. If the ranking of your case falls below the "intervention line," they close the file. The lowest rank is labelled *not severe*, which suggests that

CAS believes there is some level of problem to all cases, and has a bias towards assumption of guilt. In fact, the Eligibility Spectrum says, "When in doubt as to severity, err on the side of greater severity."

If the intake worker decides that the case falls above the "intervention line," he or she will try to impose conditions on the family with regard to the child, e.g. demanding that the child get some sort of counselling, and arranging for regular supervisory visits to ensure compliance.

Once again, CAS does not have the power to enforce any of this without a court order; and if you refuse part or all of its demands, its only option is to get a court to issue a supervision order. Again, any hearing would allow you to get an experi-



enced lawyer to defend you.

Will points out that even if a court issues a supervision order, you may disagree with the manner in which the CAS worker implements it. You always have the right to go back to court to seek clarification and/or modifications.

Court supervision orders are always for a specific period of time. Will says that is typically six months. After that, CAS must either seek an extension or close the case.

In most instances, investigations are closed after the intake worker's initial investigation, within 30 days after its beginning. Then, either further involvement will be declared needed, or the case will be closed.

### Naturism & child protection

It is clear from the Ontario Child and Family Services Act that mere naturism does

not qualify for intervention by anybody. However, the Eligibility Spectrum is far broader than the act in its interpretation.

Carol notes that most cases concern physical abuse, neglect, or domestic violence. Very few involve sexual abuse, and even fewer involve risk of it. Of the ten types of reason for involvement, only one could possibly implicate naturism. That is Scale No. 3 of Section No. 1, Abusive Sexual Activity.

Obviously, naturism is not abusive sexual activity. I firmly believe that most Canadians would agree with that. Carol goes further, saying that most CAS workers would also agree. However, there are a few people out there who either hold confused views of nudity or who have personal moral agendas.

For them, the Eligibility Spectrum provides strong reinforcement. In its definitions of Abusive Sexual Activity it includes Sexual Exhibitionism, which it defines as a person who "has exhibited himself or herself in front of the child (e.g. exposure of genitals)." It also refers to Sexual Suggestiveness, which talks about "provocative comments" or showing "pornographic photos." Of course, many people are confused too over what constitutes pornography.

If none of the above is vague enough, the Eligibility Spectrum has an "Other Sexual Abuse" definition. This catch-all category includes undefined concepts like "voyeurism" and the incredibly broad "grooming activities." To further illustrate its bias, the Eligibility Spectrum suggests that involvement may be required in situations where adults are "continuing to bathe with older children" or "continuing to share a bed" with them.

If faced with a CAS worker with the view that naturism is sexual abuse, it is important to remember that the Ontario Child and Family Services Act is not nearly as specific or broad. On the subject of sexual abuse, it says that a child is in need of protection where:

37(2)

(c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person, where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

## ADVICE FOR NATURIST PARENTS



**Be prepared.** Know your rights and understand the system.

**Understand relevant facts about naturism.** There is much false information "out there" that is not based on facts. Child service workers or law enforcement officers may suffer from this misinformation.

**When challenged, respond firmly, confidently, and calmly.** Do not ignore the situation. It won't go away, because CAS workers are legally obligated to investigate all allegations. They will respect you if you are knowledgeable.

**Do not give in to every demand.** Excessive co-operation is sometimes viewed as an admission of guilt. Giving up all your rights will not make CAS go away. In fact, it may stay involved in your life longer.

**CAS can be quite reasonable.** Most situations I've heard about have been quickly dropped after an initial cursory investigation. If you end up dealing with a biased investigator, don't assume that he or she typifies the entire organization.

**When meeting with child service workers, have someone else present.** It is your right, and you will have a witness. This will also change the tone of the meeting.

**Involve a lawyer as soon as you can.** Too often people have had their rights trampled because they tried to defend themselves. CAS workers are professionally trained. You need someone helping who is also professional trained.

**Make sure your lawyer has the right experience.** You need a family law lawyer with CAS experience. This area of law is very specific. Most lawyers lack the relevant expertise. The Law Society can help find a lawyer, but a personal referral is always best.

(d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c).

The act also directs people involved in enforcement to consider relevant circumstances such as:

37(3)

3. The child's cultural background.

4. The religious faith, if any, in which the child is being raised.

Obviously, naturism is not a religion. However, the above shows that the legal definition of sexual abuse is much narrower than the Eligibility Spectrum suggests. Nothing I read in the act even suggests that bathing with older children or sharing a family bed is a reason for CAS involvement.

Therefore, if faced with the accusation that naturism is sexual abuse, calmly explain the facts. Present the worker with the relevant scientific studies as outlined by Mark Storey in *Going Natural* 19:3 (Fall 2004). If after all this, a CAS worker insists on further involvement, get a lawyer and fight—because you are in the right.

### The problems

Both Carol and Will agree that the biggest problems faced by CAS are the high caseloads, phenomenal worker turnover, and poor training. Carol says that the turnover is so high that her nearly ten years' experience is truly unusual. Most CAS workers are new and inexperienced.

The turnover is caused by high stress levels caused by high caseloads, themselves the result of underfunding. In recent years, a number of high-profile cases have led CAS to be afraid of doing too little. However, it is also afraid of doing too much. If it can be proved that it has acted in bad faith, it can be sued.

Changes in the Ontario Child and Family Services Act now force professionals to report all suspected cases of abuse. While the idea behind this is good, it has resulted in a massive increase in the number of cases without a corresponding increase in funding.

All this has led CAS to hire workers without a specific degree. More exactly, a large number of workers in today's CAS are not

certified social workers. Carol points out that social workers are highly trained. They usually have a Master of Social Work degree and belong to the College of Social Work, which binds its members to a code of ethics.

These problems emphasize the point that individual CAS workers may make mistakes or enforce personal morals rather than the law. Even if that is not reflective of the overall CAS system, it is important to know your rights and not necessarily accept one worker's assessment.

### A personal experience

About two years ago, Janet (not her real name) was living with my family because she was in the middle of a messy separation. During a visit with the children, her estranged husband became angry and hit her. The police were called. Because the children witnessed the attack, the police, as required by law, reported the incident to CAS, which was then obliged to investigate.

The two workers who came were nice enough, but Janet was confused as to why she was asked to change her 2-year-old's diaper in their presence and to remove her 4-year-old's clothing also in their presence. She was also questioned about the methods she used to discipline her children. Because she did not know the law or her rights, she agreed to all the demands.

After a great deal of talking, the workers left. Janet was under the impression that things had been resolved to their satisfaction. But we didn't know that Janet's estranged husband decided to use this incident to harass her further. He contacted CAS to complain that the children were living with a nudist who "parades nude in front of them." (That was supposedly me.) Given that CAS must investigate all complaints, this new information was entered into Janet's file.

Two weeks later, a new CAS worker phoned to announce another visit the following day at 11:00. Janet returned the call, leaving CAS a message that she was unavailable at that time. Despite her cancellation of the appointment, CAS arrived at our house the following day. My wife informed the worker that Janet was not home. The worker became angry and accused my wife of helping Janet avoid her. It seems this new

CAS worker had already come to a conclusion without even meeting Janet.

Janet also asked her lawyer to contact the CAS to inform it of her willingness to co-operate with its investigation at a mutually convenient time. Two weeks later, Janet received a letter from the CAS worker about scheduling an appointment with her to “review any child welfare concerns, discuss the safety plan for you and your children, and to provide you any other services you require.” Janet immediately phoned to suggest a meeting two weeks later at the CAS office. The case worker seemed surprised by a request for a meeting there instead of at the house, but agreed.

## Two meetings

Janet went to that meeting by herself, because she didn't feel that the topic of her husband's abusive behaviour was one for discussion in front of her children. Besides, the children had already been seen by the first CAS worker, from the same agency.

As soon as the meeting started, it was clear that the CAS worker was angry at the control that Janet had managed to exert over the situation. The discussion was far more of an interrogation; she accused Janet of hiding the children and questioned her integrity. She referred to my wife and Janet as “hostile” and even expressed doubt about Janet's estranged husband's abusive behaviour. Janet left her office in tears.

At this point, we involved Janet's lawyer and began the complaint process outlined on the CAS website. We presented facts and addressed the law. We made it clear that we knew our rights and we were not going to be intimidated.

Another meeting in the CAS office was arranged. This time I accompanied Janet to the meeting, to support her and to address the allegations about my “nudist activities.”

The meeting was led by a supervisor. The hostile case worker sat quietly in the background. The tone could not have been more different from the previous meetings. The supervisor understood the intrusive nature of the investigation and explained the legal duty to investigate and eventually close the file. She expressed her appreciation for Janet's co-operation and thanked me for attending.

When the subject of my nudity came up, I explained that I preferred the word “naturist,” that our entire family has a policy of casual nudity, and that my extensive involvement in the FCN showed I was not just an ordinary naturist.

The supervisor warned me that such activities could lead to further complaints in the future. I immediately explained that the activity was legal and pointed out several scientific studies that demonstrated the benefits for children. I then asked her to note this in my file. At this latest suggestion, the supervisor became somewhat agitated and defensive. She assured me that there was no file on me, since no complaint had been made about me, only about Janet.

## A conclusion

The meeting ended positively with a very polite request from the supervisor to do a final house visit, at our convenience, so that CAS could officially confirm that adequate shelter existed for the children. Janet agreed. When that day came, the CAS worker with the problematic attitude from before spent less than five minutes looking around the house before leaving and closing the file.

So yes, some CAS workers will use intimidation in order to get their work done faster. However, when you stand up for your rights, CAS eventually backs down. It may realize that it will be able to close a file efficiently only if it earns your co-operation. 🍷

*Sommaire français. La Société d'aide à l'enfance a un important rôle à jouer et doit faire enquête sur un grand nombre de cas. Mais si vous connaissez vos droits, vous obtiendrez de bien meilleurs résultats. Même si les parents craignent la SAE, celle-ci n'a pas le pouvoir de retirer les enfants d'une famille sauf dans des circonstances extrêmes ou si elle détient une ordonnance de la cour.*

*Si la SAE vous amène en cour pour vous forcer à vous soumettre, il est essentiel que vous preniez un avocat apte à défendre ces causes. Vous devez coopérer avec la SAE, sans lui céder vos droits. L'intimidation est chose fréquente, et doit être combattue.*

*Le simple fait d'être nudiste ou naturiste n'est pas un crime. Si un travailleur de la SAE essaie de vous le faire croire, vous devez contester. Cette personne peut ne pas avoir la for-*



## REFERENCES

**Child and Family Services Act**  
[www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c11\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c11_e.htm)

**Ontario Association of Children's Aid Societies**  
[www.oacas.org](http://www.oacas.org)  
 75 Front Street East, 2nd floor  
 Toronto ON M5E 1V9  
 416-366-8115

**Eligibility Spectrum**  
[www.oacas.org/resources/eligibility/index.htm](http://www.oacas.org/resources/eligibility/index.htm)

**Will Abbott, MacDonald & Partners**  
[www.macdonaldpartners.com](http://www.macdonaldpartners.com)  
 90 Adelaide St. West, 3rd floor  
 Toronto ON M5H 3V9  
 416-971-4802

**Law Society of Upper Canada Lawyer Referral Service**  
[www.lsuc.on.ca/public/alfinding/lrs](http://www.lsuc.on.ca/public/alfinding/lrs)  
 900-565-4577 (\$6 cost)

*mation voulue pour saisir la différence entre nudité et agression sexuelle, ou peut se laisser entraîner par ses préjugés.*

*Il y a environ deux ans, quelqu'un que je nommerai Janet a été intimidée par la SAE. Elle s'est alors informée de ses droits et elle a pris les choses en main. Elle a retenu les services d'un avocat, m'a emmené à une rencontre avec la SAE et a déposé une plainte contre la Société.*

*Le naturisme que je pratiquais chez nous, alors que Janette et ses enfants y habitaient temporairement, avait été utilisé contre elle par son mari séparé. Une fois que l'on a su comment composer avec la SAE et collaborer avec elle en faisant valoir nos droits, son dossier a été fermé.*