

Legal Aspects of the *Children and Family Services Act*

June 18, 2011

James C. Leiper

Senior Solicitor and Team Lead

Outline

- My role
- Areas covered by CFSA
 - Defining roles
 - Functions
 - Voluntary Services
 - Duty to Report
 - *Ex parte* Applications

Outline

- Areas covered by CFSA
 - Secure Care
 - Child Abuse Register
 - Adoption
 - Miscellaneous provisions
 - Proceedings
 - Foster Parents

Paramount Consideration

- s. 2(2)
- “In all proceedings and matters pursuant to this Act, the paramount consideration is the **best interests of the child.**”

Roles

- s. 3 – Definitions
 - 3(1)(n) – “foster parent”
 - 3(1)(r) – “parent or guardian”
 - “but does not include a foster parent”
- s. 8 – Agencies
 - Now primarily the Minister
 - Mi’kmaw Family and Children’s Services

Functions

- s. 9 – Functions of Agency
 - s. 9(g) provide care for children in its care or care and custody pursuant to this Act
- ss.13 & 14 – Services

Voluntary Services

- ss.15 &16 – Facilities
- s. 17 - Temporary Care Agreement
- ss. 18 & 19 – Special Needs Agreement

Duty to Report

- Duty owed by every person in N.S.
- s. 23 – general provision
- s. 24 – Duty of Professionals
- s. 25 – Duty to Report 3rd Party Abuse

Ex Parte Applications

- s. 26(1) – To Produce Documents
- s. 26(2) – To:
 - Enter specific residence
 - Conduct Physical Examination
 - Interview
 - Search and Take Possession
 - Remove & Interview or Medical

Ex Parte Applications

- s. 29 – Locate and Detain
 - By parent
 - By Agency
- s. 30 – Protective Intervention

Secure Care

- ss. 54 -60A
- Allows a child to be detained
- Court review required
- Emotional or behavioural disorder
- Necessary to confine

Child Abuse Register (CAR)

- Register of Names
- Purpose to Protect Children
- Register is Confidential

Child Abuse Register (CAR)

- 3 ways to be entered:
 - During a proceeding
 - physical or sexual abuse
 - Conviction of offence against a child
 - Listed offence
 - By Application
 - physical or sexual abuse or emotional harm

Adoption

- All types of adoption
 - Child in care
 - step-parent
 - Relative
 - Private
- Establishes process and notice requirements

Miscellaneous Provisions

- s. 88 – Advisory Committee
- s. 89 – Order to bring child
- s. 90 – Enforcement
- s. 91 – Assistance of Peace Officers
- s. 92 – Offences
- s. 94 – Prohibition on Publication

Proceedings

- Where child taken into care
- Where child to be supervised
- Commenced by Application
 - Now 2 slightly different processes

Proceedings

- Interim Hearing
 - Must be in Court within 5 days
 - Must be completed within 30 days
- Test
 - Reasonable and probable grounds
 - Substantial risk of harm

Proceedings

- Protection Hearing
 - Must be completed within 90 days
- Test
 - In need of protective services
 - s. 22(2)
 - 14 different grounds

Proceedings

- **Disposition Hearing**
 - Must be completed within 90 days of Protection Hearing
- **Test**
 - In need of protective services
 - Services adequate to protect child
 - Placement with relative, etc.
 - Likelihood of change

Proceedings

- Review Hearings
 - Periodic
 - Depending on:
 - Order; and
 - Age of youngest child
 - Test: Same as Disposition

Proceedings

- Maximum Time Frames
- Supervision
 - 1 year
- Temporary care and custody
 - Under 6 – 12 months
 - Under 12 – 18 months
 - Over 12 – no limit

Foster Parents

- s. 36(4) – Notice to Foster Parent

(4) On a hearing to review a disposition order pursuant to Section 46 or on an application to terminate, or vary access under, an order for permanent care and custody pursuant to Section 48, a foster parent, who has cared for the child continuously during the six months immediately before the hearing or application,

(a) is entitled to the same notice of the proceeding as a party;

(b) may be present at the hearing;

(c) may be represented by counsel; and

(d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

Foster Parents

Children's Aid Society of Shelburne County v. I.C. [2001] N.S.J. No. 260

“There the judge expressed his disapproval at the foster parents having been added as parties to the initial protection application so that they could oppose the agency's plan for placement of the child.” [Para. 28]

Foster Parents

N.S. (M.C.S.) v. L.W. [2006] N.S.J. No. 323

“foster parents may participate at a review hearing to make submissions on any significant issue relating to the child's best interest about which they have personal information. They cannot present a different plan of care, but they can raise issues to assist the Court in determining whether the child's best interest is being met by the various dispositions presented to the court” [Para. 18.]

Foster Parents

Children's Aid Society of Shelburne County v. I.C. [2001] N.S.J. No. 260

“the structure of the CFSA leaves open the possibility of latecomers applying to terminate the permanent care order.” [Para. 45]

The coat of arms of Nova Scotia, which is a shield containing a red rampant lion. The shield is centered on a background of a large, light blue saltire (St. Andrew's cross) on a white field.

Questions