

# A BALANCED APPROACH: EXPLORING A DUTY OF CARE TO PARENTS IN CHILD PROTECTION CASES

## Statutory Framework

Relevant sections of the *Child and Family Services Act (CFS)*:

- **3:** Purpose - Promote the well-being of children in need of protection, while supporting, preserving and strengthening the family unity in the least disruptive way possible.
- **4:** Criteria to determine the best interests of the child.
- **5:** The Ministry *may* provide family services to or for the benefit of a parent or child if essential to the parent to care for the child.
- **14:** If child is in need of protection, the officer shall offer services to the parent.
  - **14(4):** If parent and director cannot come to agreement, officer shall apply to the court for a protection hearing.
- **17:** Immediate nature of apprehension. Notice of Apprehension is served after it has occurred or as it is occurring.
- **70:** Statutory immunity to the Ministry and its agents for actions done in good faith.

## Impact

- Poverty and socio-economic disadvantages increase the likelihood that a family will be involved in the child welfare system
- Parents are often left in the dark regarding the legal process.
- Parents describe feeling powerless, confused, judged, a loss of identity, labelled and stigmatized.

**BEST INTERESTS OF THE  
CHILD**

**PARENTAL RIGHTS AND  
WELLBEING**

*J.B v Ontario (Child and  
Youth Services)*

*B.(D.). v Children's Aid  
Society of Durham Region*

*Fowler v Family and Children's  
Services of the Waterloo Region*

*D.T v Highland Shores Children's Aid  
C.R v Alberta (Director of Child and  
Family Services)*



This poster was created from research done for a major paper  
written in Child Protection Law (Law 322.1)

## The Charter

- *New Brunswick (Minister of Health and Community Services) v G.(J.)*, 1999 CanLII 653 (SCC) held that **section 7 rights can be engaged in child protection proceedings due to the stigmatization, loss of privacy and disruption to the family that occurs during this process**, ultimately restricting the parent's security of the person.
- State apprehensions can be seen as a "**gross intrusion into a private and intimate sphere**."
- **Removing a child from their parents constitutes a serious interference with the psychological integrity of the parent** and deeply impacts the child(ren) as well.
- If section 7 applies, then section 8 - protecting against unreasonable search and seizures - should also apply.

## Cowessess Miyo Pimatisowin Act:

### A Balancing Act

- **Reflects a significant, positive shift in child protection and Indigenous self-governance.**
- Cowessess exercises jurisdiction over their own child and family services, allowing them to preserve cultural connections and promote community well being.
- **Prioritizes the reunification** of the family, while working with both the child and parent(s) without state intervention.
- Emphasis on "Whole Family" and "Circle of Care", along with **healing-based care**.
- Dispute Resolution Mechanism ran by the Eagle Women's Tribunal.
- In 2021, 19 children returned to Cowessess who were in the care of the Ministry; 2 mothers regained custody of their children and were provided addictions and family counselling; 7 short term housing issues were alleviated so that children did not need to go in care.

## Recommendations

- **Statutory reform** and a **complete shift in precedent** is undoubtedly necessary, but this requires years of effort and a change in mindset.
- MUST **strengthen** or **refine** what a "duty of care" to parents would entail in the child protection context.
- **Reviewing** and ultimately **reconsidering** whether conditions imposed on orders are beneficial and productive.
  - MSS is able to recommend the Court to impose conditions on child protection orders. These conditions can include the parent to maintain safe and stable housing, abstain from substances, attend counselling, find employment, limited access to the children, etc.
  - The conditions imposed BY the Government, to seek resources FROM the Government, yet are **NOT EASILY ACCESSIBLE, UNDERFUNDED and LACK CAPACITY**, are completely contradictory and contradict their statutory promise to provide family services to parents involved in child protection proceedings, pursuant to the *CFS*.
- **Promoting a family-centered approach**, rather than only looking to the best interests of the child.

## No Legal Recourse

- There are **numerous ways** in which **parents are wronged by the system and its agents**.
- These include **warrantless apprehensions, unsubstantiated claims of child abuse and neglect, lack of access to services, lack of inclusion in the proceedings, return of their children** etc., Yet, there are hardly any avenues for legal recourse when these things happen.
- The primary option is a legal fight, which is **lengthy, adversarial and expensive** and **sometimes parents are unable to participate in monetarily or emotionally**.



Scan here for references: