

# *The Child and Family Services Act*

**s. 3 Purpose:**

“The purpose of this Act is to promote the well-being of children in need of protection by offering, wherever appropriate, services that are designed to maintain, support and preserve the family in the least disruptive manner.”

## Child Welfare Law in Saskatchewan

1. Agreements under the *Child and Family Services Act* (Sheri)
2. What constitutes a “Child in need of Protection”? (Deidre)
3. Possible Orders / Outcomes and their implications (Sheri)
4. The Court Process
  - For MSS (Deidre); and
  - For Parents (Sheri).
5. Q & A

## CFSA Agreements

### **Parental Services Agreement (PSA's) – Parent / MSS:**

- Used by Ministry of Social Services (MSS) when children are on the verge of being apprehended. Typically for 3 months in duration.
- Parents often sign hastily to avoid an apprehension without proper advice or consideration of the conditions. If too onerous, they won't meet the conditions and MSS may use that as a ground to apprehend.

**Section 9 Agreements – Parent / MSS :** A parent who is unable to care for their child may enter into an agreement with MSS for residential services for their child for a term not exceeding one year. May be extended for total time not to exceed 24 months.

- Typically used when parents are willing to acknowledge their children need protection and are trying to cooperate with MSS. Also used when special needs of a child are not manageable for the parent(s).
- s.9 Agreements contain conditions for the parents to abide by. Whether or not they do abide by them can have serious implications down the road.

## CFSA Agreements Continued

**Section 10 – Youth / MSS Agreement:** Applies to a 16 or 17 year old in need of care and supervision when no parent is willing / able to assume the responsibility.

- Typically used with youth in care as they turn 16/17 and do not have a good placement (in group homes or similar).
- The agreement includes provision for residential and / or financial assistance to the youth.
- Cannot exceed one year in length, but may be renewed.

**Section 56 – Young adult / MSS Agreement:** Applies to persons between the ages of 18 and 21 who were in care immediately before turning 18. They may extend the support they receive from MSS until they turn 21 provided they are continuing their education and require assistance.

- Includes applicable residential services: “sheltering, supporting, educating, caring and providing appropriate counselling and rehabilitative services”.
- Examples: youth in care who are not yet done high school, teen moms who need assistance beyond age 18, etc.

## CFSA: A Child in Need of Protection

### Section 11 – A child is in need of protection where:

- (a) As a result of action or omission by the child's parent:
  - (i) The child has suffered or is likely to suffer physical harm;
  - (ii) The child has suffered or is likely to suffer a serious impairment of mental or emotional functioning;
  - (iii) The child has been or is likely to be exposed to harmful interaction for a sexual purpose, including involvement with prostitution...
  - (iv) Medical, surgical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner has not been or is not likely to be provided to the child;
  - (v) The child's development is likely to be seriously impaired by failure to remedy a mental, emotional or developmental condition; or
  - (vi) The child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child.

### Section 17 – Apprehension

17(1) If a child is in need of protection, to provide family services, or where no other arrangements are practicable, apprehend the child.

17(4)(b) **Within 7 days** of apprehension, an application must be made to the court for a protection hearing.

## **Possible Orders CFSA section 37**

If a child is found in need of protection pursuant to section 11, the appropriate Order needs to be made under section 37.

### **Supervision Order**

The child is returned home with the parent(s) subject to various conditions and supervision by MSS for up to 12 months.

- Non-compliance with the conditions often leads to (re)apprehension;
- This is the least intrusive of the options available to the Court once a finding is made that the child is in need of protection.
- Similar in many ways to a Parental Services Agreement, but done by court order rather than with the Agreement of the parties.

## Possible Orders Cont.

### Person of Sufficient Interest (PSI)

- PSI's can be extended family members, long time foster parents, family friends, band members, etc.
- The child is placed "in the **custody** of a person having a sufficient interest" (sec. 37(b)) so they are no longer in the "custody" of the minister.

Note: When discussing "kids in care", most statistics do not consider PSI placements because those kids are not in the care of the Minister

### Temporary Ward

- Not to exceed 6 months (but can be renewed up to a maximum of 24 months)
- The court may attach any conditions it considers appropriate, including access.
- Parents' counsel will often debate the conditions their client is subject to so that they are attainable

## Possible Orders Cont.

### Permanent Ward

- If none of the less invasive Orders are appropriate, the court *shall* make an Order permanently committing the child to the care of the Minister
- No conditions may be attached to a Permanent Order. This means no order for access. In many cases there will be no further contact between the child and the parent after the PW Order issues.
- Once a permanent ward, the child may be placed for adoption. After an adoption order issues, there is no possibility of variation.
- Often, Permanent Ward Orders are the result of years of litigation and a lengthy history of section 9 agreements, apprehensions, Temporary Ward Orders, supervision Orders, etc. etc.

### Long Term Ward

- If “by reason of age or other circumstances it is unlikely that an adoption plan would be made if the child were permanently committed to the minister” the child is made a long term ward (so until their 18<sup>th</sup> birthday).



## Court Process

### Hypothetical File:

Johnny's mom, "Sally" struggles with addictions and high-risk relationships. Her latest relationship ended with a violent attack and the police attended the residence charging her boyfriend with assault.

Mobile Crisis also attended Sally's home the night of the assault and apprehended Johnny (age 5) from her care and placed him in a temporary foster home. Their investigation uncovered that the home was unclean, there was evidence of drug paraphernalia in the living room, Johnny had a mouth full of cavities and appeared unclean and developmentally delayed. Sally's blood is taken at the hospital that night and tests positive for THC / Meth.

MSS decides to bring an application for a 6 month temporary wardship order.

Sally is in the shelter at the YWCA dealing with her addictions, recovering from her injuries, and attempting to regain contact and custody of Johnny.

# MSS v. Sally

**1<sup>st</sup> Appearance**

**Subsequent Appearances**

**Pre-Trial Conference**

**Trial**

**ADR**