

TAB 1

1

Starting The Case Off Right: Your First Appearance

**Initiating Child Protection Proceedings from the
Children's Aid Society's Perspective**

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**Best Practices For The Conduct of a Child
Protection File - Part I**
Enhancing Your Effectiveness at the Early Stages of Representation



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BEST PRACTICES FOR THE CONDUCT OF A CHILD PROTECTION FILE

STARTING THE CASE OFF RIGHT: YOUR FIRST APPEARANCE

INITIATING CHILD PROTECTION PROCEEDINGS FROM THE CHILDREN'S AID SOCIETY'S PERSPECTIVE

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PURPOSE

This paper provides a general overview of how child protection agencies in Ontario initiate proceedings under the **Child and Family Services Act (R.S.O. 1990, c. C.11 as am.)** (the "CFSA").

ROLE OF A CHILDREN'S AID SOCIETY

The objectives of the CFSA are set out in section 1. The paramount purpose of the CFSA is to promote the best interests, protection and well-being of children. There are also secondary purposes of the CFSA set out in section 1 which include the support of family integrity and autonomy; pursuit of the least disruptive course of action; respect for children's needs for continuity of care and stable family relationships; respect for physical, mental, cultural and regional differences among children and a special mention of provision of services to Native people in a manner which respects their cultural heritage and traditions.

Section 15 of the CFSA sets out the duties of a Children's Aid Society ("CAS") which include the investigation of allegations or evidence that children may be in need of protection and the duty to take steps to protect these children.

The term “in need of protection” is found in Part III of the CFSA appropriately titled **Child Protection** and refers to specific criteria upon which the Court can make a finding that the child is in fact, in need of protection. It is important to note that Part III deals only with children who are under the age of 16 or who are already subject of a court order under this Part. These definitions are set out in section 37(2) of the CFSA and refer to specific types of harm including among others, physical, sexual and emotional harm and the risk of these types of harm inflicted by the person having charge of the child or caused by or resulting from that person’s failure to adequately care for, provide for, supervise or protect the child; or the above-noted types of harm or risk of harm resulting from that person’s pattern of neglect in caring for, providing for, supervising or protecting the child. There are also provisions relating to abandonment and children over the age of 12 whose parents are unable to care for them and who are brought before the court on consent of both the parents and the child. It is important to note that this is an exhaustive list and if the Society wishes to bring a child before the Court for a finding that he or she is in need of protection, the presenting circumstances must fall into one or more of these categories.

On the occasions where court intervention is required to carry out services to children and their families, the Society presents its case to the Superior Court of Justice of Ontario (Family Branch) or the Ontario Court of Justice (depending upon the location of the CAS) for direction on the particular case plan to be carried out by the Society.

As is the case with any other applicant in family court, the Society is bound by the Ontario Family Law Rules and the practice directions of the Court in the jurisdiction of that CAS. Specifically, Rule 33 of the Family Law Rules applies to child protection proceedings and sets out timelines for the stages of a child protection proceeding.

VOLUNTARY MEASURES

In terms of how a child and family would become involved with a CAS, most of the family files at the CAS are not actually litigated matters. Families become involved as a result of a self-referral

seeking assistance for admitted issues. Other times, a family will come to the attention of the CAS through a community referral prescribed by the duty to report abuse or suspected abuse to the CAS under section 72 of the CFSA. This duty to report obligates individuals who perform professional or official duties with respect to children to report abuse or suspected abuse to the CAS directly and not through a third party. It further imposes an obligation to make subsequent and ongoing reports as necessary in respect of a child. At times the CAS has been challenged about how it can obtain confidential information from involved service providers without releases of information or warrants of information. This is the provision which allows this disclosure. The involved professionals are statute bound to report their concerns in the name of promoting the protection of the child despite the potential damage or effect on the clinical or therapeutic relationship established with their clients.

In these cases of self or community referral, the Society will attempt voluntary services with the family to address the protection concerns including measures such as provision of counselling, guidance, referral to community services or placement of the children with family, community members or in the care of the Society on a voluntary and temporary basis under a temporary care agreement. On some occasions, an involvement with the family may lead to involuntary removal of the child from the care and control of the parent or caregiver. This is known as an “apprehension”. This happens in the most serious cases only - where all other voluntary or less intrusive options have been ineffective or where the presenting situation can not allow for a less intrusive option. Essentially it has to be a situation where the child or children are likely to suffer harm which is more probable than not if they are left in the care of the parent or caregiver.

ROLE OF CAS COUNSEL

As part of providing legal advice to the Society, CAS counsel reviews the legal position to be presented to Court and whether that position can be supported by the evidence of the Society. It is the duty of CAS counsel to advise the Society of the weaknesses and potential challenges to the evidence by both counsel and the Bench. As part of providing a legal opinion on when and how to initiate court proceedings under Part III of the CFSA, it is also incumbent upon CAS counsel to

ensure that the CAS acts in accordance with the principles of the CFSA. These include not only the paramount principle of section 1 but also the secondary principles which mandate support for the autonomy and integrity of the family unit wherever possible on the basis of mutual consent and the employment of the least disruptive course of action that is available and appropriate to help a child.

In short, CAS counsel have an ongoing obligation to ensure that prior to initiating court proceedings, the Society has attempted all less intrusive manners of intervention into the family unit. Of course, there are sometimes situations where there are presenting risk issues of an urgent nature which require an immediate response to prevent harm and where no less disruptive option will suffice. However, generally the cases which require court intervention are the cases that have a history of voluntary worker intervention which simply has been insufficient to address the protection issues raised.

As part of the legislative mandate to use the least disruptive course of action that is available, where possible and in accordance with internal agency policies, the Society should consider the voluntary services provided for by the CFSA as a first alternative to address the situation. These are provided for by the CFSA under Part II - Voluntary Access to Services and include the use of temporary care agreements as alternatives to court proceedings.

In addition, before bringing a child into care, where the time to do so will not place the child at risk of harm, the Society should consider less disruptive options such as non-residential services, placement of the child with a relative, neighbour or other member of the child's community or extended family with that person's consent. Again there are special provisions under section 57 of the CFSA relating to Native children where the Society is required to place with a member of the child's native extended family, community, Band or another Indian or native family unless there is a substantial reason for placing the children elsewhere.

Furthermore, if an apprehension is deemed to be necessary to protect a child from a likely risk of harm, the Society is required by section 40 of the CFSA to obtain a warrant to carry out this very

intrusive process unless there would be a substantial risk to the child's health and safety during the time necessary to obtain warrant. It is the role of CAS counsel to remind the worker to fulfil this statutory obligation prior to effecting an apprehension as a safeguard to ensure that the Society is not acting over-zealously in its intervention.

As is the relationship between any legal counsel and client, CAS counsel will offer consultation services and provide a legal opinion to the Society in respect of the evidence. However, at the end of the day, the client still makes the decision in respect of what course of action to take. Since the client is an institutional client, that decision may be the shared effort of many individuals at various levels of the organization. However, from a practical standpoint, the immediate client is the protection social worker with carriage of the file.

INITIATING COURT PROCEEDINGS

Where all else fails or in the situation of an immediate and likely risk of harm which is more probable than not, the Society will initiate court proceedings. At that point, CAS counsel has already asked all the questions about voluntary services which have been attempted and which have failed. Now the questions to ask are: why is the child in need of protection and what type of relief will address the risk of harm. This will likely result in one of two scenarios - situations of apprehension or situations where the child can stay with the parent or a consenting third party under an order of Society supervision.

The potential court ordered dispositions are found under section 57 of the CFSA and include supervision orders, temporary or society wardship orders, hybrid orders involving wardship followed by supervision or Crown wardship orders which effect permanent removal from the care and control of the parent. Section 58 of the CFSA deals with orders of access which should always be a component of any application where removal of the child is contemplated. It is important to note that all court orders made under Part III of the CFSA are time limited except for Crown wardship orders and there is minimum time period of three months for supervision orders.

CAS counsel should also be mindful of the time limitations of section 70 of the CFSA as there are maximum allowable time periods for children to be in care as temporary wards. These time limits are 12 months for children under 6 and 24 months for children 6 and over. These time limitations may come into play when the Society is deciding on the duration of the order sought. It is also important to note that time spent in care under temporary care agreements is counted in the equation and time periods since April 2000 are counted in a cumulative fashion.

In initiating proceedings under section 40 of the CFSA, the Society seeks two stage relief: first, a finding from the court that the child is in need of protection under one of the criteria of section 37(2); and second, an order which takes into account what is in the best interests of the child following the guidelines of section 37(3).

With the protection application, the Society will file the supporting affidavit evidence of the involved protection workers. The Society will also bring a motion for interim relief pending final disposition of the application. This motion will set out the interim order sought at the first appearance of the application.

By commencing child protection proceedings, the Society activates the timetable for child protection matters prescribed by Family Law Rule 33. This timetable sets out the outside time limits for the various stages of the proceedings to be heard before the Court.

In accordance with the timetable of Rule 33 and section 46 of the CFSA, following a situation of an apprehension, the matter must be presented to court within 5 days. It is at this initial appearance that the first interim order will be made regarding where the child will be placed pending further order of the Court. In the situation where an application is brought under section 40 of the CFSA for an order of supervision or in non-apprehension situations where the Society is asking that a child be ordered into care, the first appearance will be the first available date the court has to offer following the filing of the application taking into account sufficient time for the respondents to be served. It is at this initial appearance that the Society will request the appropriate interim supervision order or interim

care and custody order which will remain in place pending further order of the Court.

PARTIES AND NOTICE

In terms of providing notice of the proceedings to those involved with the child, the CFSA sets out who the parties are to a child protection proceeding and who should be entitled to notice of the application. Section 39 of the CFSA outlines who the parties are, namely the applicant, the Society, the child's parent, and the Native Band. The definition of "parent" is set out in section 37 of the CFSA and always includes the mother but has fixed criteria for who qualifies as the father. There are also limited rights of participation of: a person who has cared for the child continuously during the six months before the hearing including a foster parent; and also for the child, taking into account their age and ability to understand the hearing.

Although there are filing requirements for the application and motion materials, in the case of an apprehension where the matter must be heard within 5 days, the Society will likely not meet its filing requirements for that appearance. In the usual case of a motion for interim relief under Rule 14 of the Family Law Rules, four days notice is required. However, it is often simply not possible in the case of the first appearance following an apprehension. The Society worker should effect service as soon as possible prior to the court date.

EVIDENTIARY ISSUES AT THE FIRST APPEARANCE

CAS counsel review the legal position to be presented to Court and the legal documents which will form part of the evidentiary record of the Society at the first appearance. These will include the Protection Application (Family Law Rules - Form 8B), Notice of Motion (Form 14), supporting affidavits (Form 14A) and plan of care (Form 33B). Where possible, third party evidence is attached in whatever form is available for the first appearance as supporting evidence to the Society worker's affidavit. CAS counsel facilitate timely and thorough preparation of court documents and should offer training for their protection staff in this regard. Attached as **Appendix "A"** is a paper

prepared for protection staff at the Ottawa CAS on “Initiating Court Proceedings - How to Draft Excellent Court Papers” which may be helpful to new workers.

The admission of hearsay evidence is allowable under section 51(7) of the CFSA at the first appearance. Although this admittedly runs contrary to the rules of evidence, this is the “nature of the beast”. Very often, the Society is in receipt of community referrals coming from a variety of sources (both reliable and unreliable), information received as a result of the professional duty to report and also from the parents themselves in the course of the ongoing service relationship between the worker and the family. As part of the duty to report, there is no corresponding obligation to forward any information in writing nor to forward any clinical reports or notes. Without any releases of information to further explore these reports or with insufficient time to obtain a warrant for information under section 74 of the CFSA(which is being used more commonly now and of which parents’ counsel should be aware), the Society is somewhat restricted to what is accessible in the course of its investigation. In terms of joint investigation protocols established with police, the Society may have received some police reports but may not have the consent for their use in the proceedings. Similarly hospitals may disclose the results of substance testing but not the official written report. CAS counsel presents all evidence including third party information to the Court with the knowledge that the determination of whether the information is credible and trustworthy under section 51(7) of the CFSA is left in the capable hands of the presiding Judge. So, although the Society expects the ongoing challenges of parents’ counsel regarding the hearsay contained in these early affidavits, it simply can not and will not be excluded.

The onus of the Society at the first appearance following an apprehension is to lead evidence of a *prima facie* case that the test of section 51(3) of the CFSA would be met on a balance of probabilities. This section states that the court must be satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that, the child can not be protected adequately by an order of supervision to the parent or a third party.

In the case of the first appearance on an application for a supervision order, the Society must again

provide evidence of a *prima facie* case that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm but that the child can be protected adequately by an order of supervision to the parent or third party. In addition, given the fact that the court may order such reasonable terms and conditions relating to the child's supervision as the court considers appropriate, the Society should also lead evidence of why the conditions sought are appropriate including any specified terms or conditions regarding access to third parties. It is important to note that the conditions sought by the Society can apply not only to the person with whom the child is placed or to whom the child is returned but also to the child and any other person who participates in the hearing as provided for under section 57(8) of the CFSA.

Although the reality is that the parent will not be in a position to present affidavit evidence on the first appearance, from the CAS counsel's perspective, this does not mean that the Society should be "off the hook" in leading sufficient evidence to support the relief sought. Rather the Society should put its best foot forward to convince the Court that it is acting in a fair and appropriate manner and that it has fulfilled the requirements of the section 1 and section 57 principles mentioned earlier. Despite the potential lack of evidence by the parents at this hearing, the Court may have its own questions regarding the evidence, namely, whether the Society has truly employed the least disruptive course of action, whether potential and known family plans have been explored and whether warrants have been obtained in accordance with the legislation. Recognizing the imbalance of power at this hearing, the Court will appropriately challenge the Society on its evidence when the stakes are the highest.

In an attempt to negotiate settlement at the early stages of the proceedings, CAS counsel should also ascertain their client's position in a timely fashion on other aspects of the interim relief requested including and especially in situations of apprehension, on the issue of access. Even if a parent will have to accept the fact that their child is not going home with them on the fifth day, they should at least be entitled to know when they can attend their first access visit. It is also at this time that if any potential family plans are presented to the Society, that an undertaking should be given to assess that plan. In the case of a first appearance on an application for supervision, CAS counsel should attempt

to negotiate conditions that may be in place pending further hearing or argument of the matter. In addition, where applicable, the first appearance is the time to request an order appointing child's counsel.

Although court scheduling often does not permit full blown argument of the interim motion at the first appearance, on occasion, parents will instruct counsel or self-represent to argue the interim relief on that date and the court will hear the matter. On these occasions, CAS counsel must take the position that the parent's choice to argue the issue of interim care and custody of the child on that date will preclude them from a further opportunity to argue that issue at a care and custody hearing as provided for by Rule 33 before the 35th day of the timetable.

Finally, in recognition of the myriad of difficulties facing the parents at the first appearance, part of the role of CAS counsel should be to encourage the client to level the playing field as much as possible. Specifically, CAS counsel should effect early service of court documents to parents or counsel where possible. If this is not possible, the client should ensure that the parent knows the court date, time and the Society's plan even if by way of a telephone message. CAS counsel should ensure the attendance of the involved protection worker at the court hearing to answer any questions they may have and to allow the court to pose any questions it may have regarding the Society's application. Counsel or client should also attempt to refer the parent to seek independent legal advice as soon as possible or to seek the assistance of duty counsel on the day of the first appearance where they qualify for that service.

CONCLUSION

It is only with a balanced approach and compassion for the parent facing the loss of care and control of their child that the protection worker will maximize their credibility with the Court at the first appearance. Once the first interim order is made at this stage of the proceedings, the matter will likely move on to the next stage which is the temporary care and custody motion.

Appendix A

Legal Training Tools for Child Protection Workers: Initiating Court Proceedings-How to Draft Excellent Court Papers

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Best Practices For The Conduct of a Child Protection File - Part I **Enhancing Your Effectiveness at the Early Stages of Representation**



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Appendix "A"

LEGAL TRAINING TOOLS FOR CHILD PROTECTION WORKERS

INITIATING COURT PROCEEDINGS- HOW TO DRAFT EXCELLENT COURT PAPERS

INTRODUCTION (a.k.a. Why does Legal Services always hound us for those court documents?)

The only way to achieve your child welfare goals in any court proceeding is by way of an application before the Family Court. Pursuant to the **Child and Family Services Act**, any Children's Aid Society ("Society") wishing to intervene into a family situation by way of apprehension or supervision must bring that matter before the Court and prove its case.

In order for a Judge to make the court order which you, the Society child protection worker, are requesting, the Judge must have reliable, credible and trustworthy evidence before them. The only evidence of the Society at the early stages of the court proceedings is the affidavit materials presented by the involved case workers (intake and/or protection).

Remember, **only sworn documents are considered evidence**. The facts in the protection application are not sworn. They form only a brief statement of facts summarizing the reasons for the Society's involvement.

Therefore, in the case of an apprehension, the key documents for consideration by the Court are the Affidavits documenting the apprehension and supporting facts which are filed in support of both the protection application for wardship and the motion for interim care and custody. In an application for a supervision order, the Court relies on the Affidavit which supports the application and motion for an interim supervision order. These affidavits are sworn by the involved protection workers to outline why the children are in need of protection and why less disruptive courses of action are

unable to address the risk of harm which would likely befall the child(ren) if the Society's relief is not granted.

The affidavits, as presented, are your only link to the Judge and will be used by the Society's lawyer to convince the Court that it should grant the relief you are seeking. The more detail your affidavits provide, the better your case will be. The more persuasive your information, the more likely it will be accepted. The weight of your evidence will certainly be enhanced by corroborating evidence such as medical reports, police reports, school reports, letters from involved community service providers, caregivers, family members, neighbours and/ or supervised access reports, case notes or risk assessment notes. When preparing your documents, the general questions to ask yourself are:

IS THERE ENOUGH INFORMATION HERE TO SATISFY THE COURT THAT THE
SOCIETY HAS DONE ITS JOB TO HELP THE FAMILY BEFORE BRINGING THE
MATTER TO COURT?

IS THE ORDER REQUESTED (RELIEF SOUGHT) BY THE SOCIETY IN THE BEST
INTERESTS OF THE CHILDREN AND IN THE CASE OF APPREHENSION, THE
BEST WAY TO PROTECT THE CHILDREN FROM A LIKELY RISK OF HARM ?

The presentation of your materials is also important. Is it complete? Does it leave many unanswered questions? Is it neat? Is it mistake-free? Your court work is a reflection of your social work. Because the Court sees the Society as having much more power and influence than the parents, the Judge will be putting the Society's case under a microscope to be challenged. And so they should!

The Society lawyer is your advocate and their job is to make you look good. They will highlight the strengths of your court papers and emphasize the excellent social work which has been delivered to the family prior to the need for court intervention. Your lawyer will convince the

Court that any and all appropriate steps were taken prior to the initiation of court proceedings in respect of a supervision or wardship application such as **referral to services, voluntary agreements and in the case of apprehension, exploration of extended family or community plans**, where possible. All you have to provide is the detail of this work and you should tell them anything and everything! Remember, nothing beyond what is argued in your affidavit can be introduced to the Judge so it has to be complete and thorough. Matters discussed with your lawyer which are not in your court papers can not be referred to in the course of the argument. In addition, it is often the case that presentation of the evidence in a balanced way, including both positive and negative information about the parents, heightens the credibility of the writer.

Together, you and your lawyer should place your best case before the Court. It is critical that you are both on the same page and that your lawyer knows exactly where you are coming from in presenting your position on both placement and access. Following reading your court materials, your lawyer should be able to explain exactly why each parent is unable to offer a suitable plan and why supervised or unsupervised access is in the best interests of the children. You, as the involved protection worker should, in turn, be aware of the legal tests that the Society has to meet at your court appearance so that you know how important your evidence will be in meeting the tests and in addressing the various opposing arguments which will be made.

For any hearing where your affidavits will be used, it is beneficial for you to be there to back up the lawyer and to answer any surprises which may come out of the arguments. It is not the intention of legal services to require you to spend endless hours in court, rather it is of great assistance to us for you to be there to support your evidence and help us make your case. How would it look to a Judge if you were not there in person to defend your position? It is similar to when a parent does not show up after an apprehension.

The rules that govern what, when, how and why court papers are to be filed with the Court and served on the parties to the proceedings are the Ontario Family Law Rules. Legal Services does not set the deadlines! Occasionally, the Rules are modified by the local Family Court by way of Practice Directions and once again, we have no final say in these instructions but are required to

follow them. In short, we don't make the rules but we have the responsibility of ensuring that the Society follows them. In the course of doing this, we try to impose reasonable internal deadlines for completion of the required documents so that they can be properly prepared for filing by our support staff, filed on time in the court's Continuing Record and served on the other parties within the time limits enforced by the Court.

Please remember, we are only imposing these deadlines upon you so we can ensure that all the Rules are followed. The repercussions of not following the Rules can be as follows: your court papers may not be reviewed ahead of time and errors may be attributable to you; your court documents may be rejected for filing by Courts Administration and your matter may not be heard (this could result in children being returned home following an apprehension); the Judge may not have had a proper opportunity to read your materials and to know how much work was put into the case; the presentation of your case may be compromised for lack of preparation time; your relief may not be granted if all the required court documents are not properly prepared and before the Court (e.g. if you are missing a Notice of Motion requesting interim relief) or the Judge may be offended by the non-compliance and view the Society's case overall as sloppy.

The answer to your question: Why does Legal Services hound us for those Court documents? is simple. WE WANT YOU TO LOOK GOOD FOR THE COURT. Why would any of us sit back and watch your case be jeopardized by non-compliance with rules when this could be avoided. We have no intention here in Legal to "harass" you for court papers....but the truth is ... we all get extremely nervous when an application doesn't arrive on time and the service requirement or filing deadline may not be met. Since we are all on the same team, at the end of the day, it is the case that suffers and why would any of us want that to happen? The more persistent we are, the better for you in the end!

Hopefully, this will help to clarify why it is so vital for high quality court work to be delivered to the Court in accordance with the Rules.

TIPS FOR EFFECTIVE LEGAL WRITING

Here are some things to consider when you initiate court proceedings and want to prepare excellent court documents:

Know exactly what documents you need and why you need them. Don't be afraid to ask questions!! Knowing the purpose of court papers will help you in preparing them and in knowing how critical they are to your case. For example:

Q: Why do we need a Notice of Motion?

A: The application sets out the relief sought as the end result, namely, a specified period of supervision or wardship. However, until the final disposition of the application, a temporary or "interim" order must be in place. The Notice of Motion sets out what interim relief is sought pending final disposition of the case. Therefore, it is critical to advise the Court what interim order you want at the first appearance of the proceedings especially following an apprehension. If this document is not before the Court, there is potential for NO ORDER to be made at your court appearance.

9. Be clear and concise. Use numbered paragraphs in the body of your application under the facts section as well as in your affidavits in order for the Judge to be able to refer to specific items easily and quickly. Keep the paragraphs short and focused. Two ways of organizing ideas are to 1) put items in chronological order; or 2) arrange items according to specific issues i.e. substance abuse or chronic neglect. Use headings!
10. Set the stage for your relief and do not take things for granted when introducing the matter to the Court. The Judge must know the following: who are you? how have you come to know the information you are providing? what is the Society's application? how long has the Society been involved? In addition, the Judge needs to know the family members and their relationships to the children in question. Don't just assume that the

Judge will review the protection application in detail and will cross-reference the documents. BE SURE THAT EACH DOCUMENT CAN STAND ON ITS OWN IN TERMS OF IDENTIFYING THE PLAYERS (YOU, THE PARENTS, THE CHILDREN ETC) AS WELL AS THE RELIEF YOU ARE SEEKING.

e.g. I am a child protection worker employed by the Children's Aid Society of Ottawa and as such I have knowledge of the following matters. OR

I am a child protection worker employed by the Children's Aid Society of Ottawa and as such, have knowledge of the matter to which I hereinafter depose.

Then.. I have been involved with this family since March 10, 2003 and have reviewed the history of the file prior to my involvement. The Society has been involved with this family on and off since 1996. (Or The Society has had involvement with this family dating back to 1996).

AVOID stating that the Society has been involved with the family "since 1996" unless the involvement has been continuous. It gives the Court the misperception that our involvement has lasted for 7 years rather than the true representation of 4 or 5 openings during that time. AGAIN, BE FACTUAL. IT IS FAR BETTER TO CATCH THESE OVERSIGHTS THEN TO BE CAUGHT IN INACCURACIES.

Then..The family constellation consists of the mother, Jane Doe, the biological father, John Doe, the step-father, Jim Hall and the three children, Sam d.o.b. X-Y-Z, Sandy d.o.b. X-Y-Z and Baby Doe d.o.b. X-Y-Z. There is no Native Band affiliation. The religion of the children is Protestant.

Then..The application before the Court is a protection application seeking an order of six months society wardship. There is also a motion before the Court which seeks an

order of interim care and custody to the Society pending final resolution of the protection application.

The interim and final order of access requested is "access to the parents, Jane Doe, and Jim Hall to be arranged by the Society, supervised as deemed necessary in the best interests of the children and access to the father, Jim Hall, to be supervised and arranged by the Society. There will be regular sibling access as arranged by the Society through the respective foster parents".

11. Be completely FACTUAL. Stay away from giving "opinion" evidence. Rather, give an account of your observations and concerns.

e.g. Rather than saying

"I believed the children to be at risk because the mother was intoxicated and was not able to properly parent her children."

Try.. "On August 27, 2003 I attended the family home at 135 Caldwell in order to conduct an announced home visit. When I arrived, the three year old daughter, Sandy opened the door. There was no adult observed to be supervising the situation. The mother was lying on the couch beside two empty wine bottles and smelled of alcohol. My attempts to awaken the mother were unsuccessful as she presented as extremely lethargic. The 18 month old baby was in his crib crying. When I picked up the baby, his diaper appeared to be extremely full; he smelled strongly of urine and a bottle of spoiled formula was in the crib beside him."

"From these observations and the mother's history of alcohol abuse, treatment and relapse during the Society's last three openings between 1996 and today, I assessed the risk to these young children to be very high. There was no other family or community placement available. The father has been disqualified as a parent in previous court proceedings by order of Justice Michel on May 12, 1999."

12. The issue of hearsay is significant for workers when preparing affidavits because the opposing party or their lawyer has the right to cross-examine you on your affidavit if they so choose. This can be unpleasant for you if you are caught providing second hand information. Plus, once an affidavit is filed, it can not be pulled from the court file for correction. Hearsay is information which is not within your direct knowledge or the result of your own observation. For example, if you observed the parent strike the child, you may state that the parent struck the child. If the access supervisor told you she observed the parent strike the child and you refer to it, it is hearsay. There are certain circumstances where hearsay evidence is permitted i.e. for an interim care and custody hearing. Where evidence has come to you from a third party, be sure to date the information, refer to the name of the referent and their position, and indicate that you believe their information to be true. Also include any reports received from them as exhibits wherever possible to give more weight to the evidence. (Please note that hearsay is strictly prohibited when preparing affidavits for use at trial.)

e.g.

1. On August 29, 2001, I received a telephone call from Susan Smith, registered nurse at the Ottawa Hospital (General Campus). Ms. Smith advised me and I do verily believe that the mother, Jane Doe and her son, Baby Doe tested positive for cocaine at birth.
On that same day, Ms. Smith faxed to my attention, the results of the drug tests which were done on that date which indicate the mother's high levels of cocaine at the time of her delivery. I attach a copy of the drug tests dated August 29, 2001 to this my affidavit as Exhibit "A".

13. Use your SPELL CHECK and please proofread carefully. Also, make sure the document is properly formatted and neat. Check to see if your font is appropriate (at least 12 pitch is requested by some Judges). Is the document easy to read and free of mistakes? Prepare your court work as if it was a paper for a thesis. If the materials present well, the Judge is bound to believe that you are a responsible, diligent and reliable source of information. On the other hand, if the papers are sloppy, a negative inference may be drawn about the trustworthiness of your evidence.
14. Don't double up on work unnecessarily. Check for previous affidavits which detail the history of the matter and refer to them in your affidavit. Use items like social histories, previous case notes, supervised access reports, and/or psychological assessments as tools to deliver background information. Simply refer to them in your own affidavit and adopt the facts as part of your case.

e.g. The details of the Society's involvement from 1996 to 1999 are outlined in the affidavits of previously involved workers, Mary Jones and Tom Daly, found in the continuing record of the child, Sam Smith d.o.b. 01-01-87 at Volume 1, Tabs 1 and 5. These affidavits were sworn on May 10, 1996 and June 30, 1999 respectively. I have reviewed these affidavits as well as the Society records which are referenced for these time periods and do verily believe that the statements contained in them are a true and accurate account of the information contained in the Society's file.

From a review of these affidavits, it is clear that the same issues which were of concern to the Society then continue to exist today and have been observed by

me, namely, substance abuse and chronic neglect. The details of my involvement are as follows: etc.

15. Always try to summarize your concerns in a few neat paragraphs at the end of your affidavit to tie everything together. With the help of your lawyer, refer to the criteria for “need of protection” findings or “best interests” to give more weight to your evidence.

e.g. Given the above-noted concerns relating to the history of substance abuse and chronic neglect as well as the recent report of the mother’s relapse into cocaine use at the time of the birth of Baby Doe, it is my position that the children are at likely risk of physical and emotional harm if returned to the mother’s care at this time which can not be addressed by way of a supervision order to her.

In addition, there are confirmed observations of drug use by the step-father which contribute to the risk in the home and which prevent a plan for the children to be placed in his exclusive care .

The biological father, Jim Hall is also not a placement option as he has not been involved in the parenting of his children in any capacity to date nor has he had any regular access. There are allegations of physical and sexual abuse by Mr. Hall on the mother which are confirmed by the police reports referenced above and attached as Exhibit “B”.

As there are no other family or community placements available, I make this motion for interim care and custody and this application for six months society wardship for all three children with interim and final access as set out in paragraph 2 of the application and for no other or improper purpose.

16. If time permits, always request feedback from legal services in advance of filing your documents. Understandably this is not always the case following an apprehension

however, lawyers should be available on an “on-call basis” during the time that you are drafting. Also, see if you can make direct contact with the lawyer who will be arguing your motion and set aside time to prepare. E-mail is a good way for you to have your documents reviewed and many counsel are moving towards this approach. Check to see what works for both of you!

17. Lastly, keep a file of precedents for yourself. Take into account which of your affidavits were strongest and most effective in the argument of your case and remember why they were so useful. Don’t reinvent the wheel every time you go to court. Use your tools! Also, try to keep organized directories of the legal documents you create in a single case for your amended or status review applications and simply update the affidavits the next time court papers are required. This will save time and energy as you should only need to amend the previously used application to reflect the new relief sought and to add to the existing affidavit to provide the Court with the most recent information.

THE LAST WORD

The child protection lawyer would like you to feel that they are accessible, professional, contributing players on your child welfare team. Think of child welfare as a BIG WIDE WORLD of possibilities. You, as the Society worker, want to achieve a child welfare goal through court proceedings and essentially, to move a matter from Point A to Point B as in a child’s best interests. Court proceedings are the vehicle which you must use to get from Point A to Point B. Your lawyer is the driver who will pilot your vehicle to your destination as long as you, the navigator, provide reasonable directions (i.e. you can’t get to Hawaii by bus) and enough gas (premium quality evidence/court papers). Once we have those two things, we will be equipped to get you where you want to go!