TAB 8

I Can't Believe it, We are Going to Trial!!!

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Best Practices For The Conduct Of A Child Protection File - Part II

Strategies to Move your Case Forward to Settlement, ADR or Trial

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I CAN'T BELIEVE IT, WE ARE GOING TO TRIAL!!!

The practice of a lawyer who acts on behalf of parents in child protection proceedings rarely includes preparation for trial. This is in part due to the large number of cases that are settled at one of the many conferences held in all child protection proceedings. It is also due in part to the fact that often agreements are reached which allow the parents to have contact with the children while at the same time offering a measure of protection for the children. Sometimes, however, no agreement can be reached and the issues that are unresolved between the children's aid society and the parents must be tried. This is great work for lawyers but requires a tremendous amount of effort and time to be fully prepared for the trial.

In my view this work must have begun well before it is ordered that a matter proceed to trial. The possibility that a case might end up going to trial must have been a thought the lawyer had from the first moment that he or she was retained to act for one of the parents. From the outset, the lawyer needs to determine:

1. What issues are in dispute;
2. What evidence is available to prove the points the children's aid society's case depends upon; and
3. What evidence is available on the parents' side to refute the society's evidence and to establish the positive aspects of the plan being advanced by the parents.

In addition, as the lawyer for one or both of the parents, you must have learned early on whether your client(s) would be denying every allegation made by the children's aid society or would be agreeing with most of them but seeking to overcome whatever problem was identified prior to going to trial. One of Toronto's great parents' lawyers has said that parents fall into one of two groups: either they want to deny every allegation made by a children's aid society or they are agreeable to seeking some form

of rehabilitation. The work you will be required to do will vary greatly depending on which of these groups your client falls into.

In a child protection proceeding the issues that could be in dispute include the following:

1. The finding whether the child is in need of protection;
2. The disposition if the child is found to be in need of protection;
3. Whether society or crown wardship is the right order;
4. Access to the parents if the child is made a ward;
5. The adoptability of the child;
6. Whether the parents should be required to make payments to the society for the care of the child; and
7. Costs.

FINDING

This is the most important issue in any child protection case. This is because, if no finding is made, the court does not have jurisdiction to impose any further order on the parents. A look at section 57 (1) of the *Child and Family Services Act* shows that a pre-condition to any order being made by a court, whether it is a supervision order or crown wardship without access, is the court finding that a child is in need of protection. Thus, a lawyer acting for a parent must first consider whether this issue is one on which there is going to be a contest. In most cases, by the time you are going to trial, there will have been lots of discussion about this issue and by that time it should be clear what evidence the children's aid society is relying upon. However, that is not to say that there will be agreement as to whether a child is in need of protection or not. Thus, the lawyer acting for one or both of the parents must consider the following:

1. The tests as to what makes a child in need of protection.
2. The relevant date for such a finding.
3. Whether a finding under one subsection of section 37 of the *Child and*

Family Services Act might be better for the parents than a finding under a different subsection.

There are many, many cases that have analyzed what evidence is required to have a child found to be in need of protection under the various subsections of section 37 (2) of the *Child and Family Services Act*. It is impossible to provide an exhaustive list of the cases decided under each subsection and some will be of limited use given the fact driven nature of each decision. It is important, however, for the lawyer to review the current case law relating to the specific subsection relied upon in the case at hand in order to determine what test the children's aid society must meet.

For example, if your case deals with a claim by a children's aid society that a child is in need of protection pursuant to section 37 (2) (a) which deals with physical harm, a look at the case of CAS of Niagara Region v. T. P. and R. G. reported at (2003) 35 R. F. L. (5th) 290, is essential.

An interesting discussion point is whether the key date for the determination of whether a child is in need of protection is the date upon which a child is apprehended or the date of the decision or some other date.

Traditionally, the view was that the key date was the date of the apprehension. This is expressed in the case CCAS of Hamilton-Wentworth v. L. (C.), (2002), 117 A.C.W. S. (3d) 926, where the Honourable Justice Steinberg relied upon an earlier decision of the Honourable Justice Wallace, the case of Re S. (B.) , (1996), 67 A. C. W. S. (3d) 945, wherein Justice Wallace states:

> " Despite the statute's use of the present tense, I find that the only reasonable time to consider in determining whether the children are in need of protection is when the protection application is initiated."

However, more recently the Honourable Justice Nelson sitting in the Superior Court of Ontario, Family Court, ruled in the case of CAS of Hamilton v. M. C. and R. H. (2003) 36 R. F. L. (5th) 46, that the focus on the time of apprehension is too restrictive. He stated that the available evidence to determine whether a child is in need of protection includes anything that has happened up until the date the decision is being made. He relied upon an earlier decision of the Honourable Justice Czutrin, CAS of Hamilton-Wentworth v. R. (K.), (2001), 114 A. C. W. S. (3d) 71, in which Justice Czutrin indicated that:

> "Restricting the relevant date for a finding to the start date is an interpretation that conflicts with the other sections of the Act and may be contrary to the best interests of protecting children from harm."

Justice Nelson then took this reasoning and, based upon the paramount purpose of the *Child and Family Services Act* as set out in section 1 (1) being the promotion of the "best interests, protection and well-being of children", found that:

> "There is nothing in this section that restricts the concept of best interests to the disposition stage alone."

Many parents' lawyers seek to have a finding made under section 37 (2) (l) if possible. It seems that the belief is that this is like a "no fault" provision and that it is less of an indictment of the parents. I have some doubt that this is the case, because under this sub-section, the parent is stating that he or she "is unable to care for the child." In my view, this may be a more difficult admission to overcome in any subsequent status review hearing than indicating that you hit your child. A parent will have to be able to call strong evidence as to what changes have occurred since the finding was made to show that the child is no longer at risk. This can be contrasted to the almost standard

parental response to having been found to have hit your child, which is an undertaking not to do it again, to use non-physical methods of discipline, to possibly take a basic parenting course or perhaps an anger management course.

Before leaving the area of the finding of a child being in need of protection, it is important to make certain that as the lawyer for one of the parents that you are aware of the need for the trial to be a "bifurcated hearing." This means that the hearing with respect to the finding must be completed prior to the hearing on disposition being commenced. This is in accordance with section 50 (2) of the *Child and Family Services Act.* As parents' counsel you will want to make certain that evidence that might be persuasive in terms of a best interests test be kept out until the finding has been made.

It is my view that slowly the courts are moving away from a strict division of the two issues, finding and disposition. This has the effect of making the test appear to always be best interests which is clearly contrary to the intention of the *Child and Family Services Act* which sets out that the test at first, at the finding stage, is to be based on whether the child is in need of protection as defined by section 37 (2) of the *Child and Family Services Act* not on best interests.

As an example of the type of evidence that might be introduced at the disposition stage but should not be considered until a finding is made, just think of the common evidence of how attached a child is to his foster parents and how difficult it will be for the child to be removed from their care. Such evidence has no place in a hearing until a finding is made and the court has moved on to a consideration of the appropriate disposition under section 57 (1) of the *Child and Family Services Act.*

DISPOSITION

There are six possible orders that a court may make following a child being found to be in need of protection. These are set out in section 57 of the *Child and Family Services Act* in subsections 1 and 9. These possible orders are:

1. The placement of the child with the person who had charge of the child immediately prior to the commencement of the proceedings under the *Child and Family Services Act,* with no further order.

2. The placement of the child with some person subject to the supervision of a children's aid society for a period of three to twelve months.

3. Society wardship for a period not longer than twelve months.

4. Crown wardship with access to the parent(s).

5. Crown wardship without access.

6. Society wardship for a period of time followed by the placement of the child with a person subject to the supervision of a children's aid society for a total period not exceeding twelve months.

As the lawyer for a parent you must look at the type of order being sought by the children's aid society and understand what order will be required to adequately protect the child. The test as set out in section 57 (1) of the *Child and Family Services Act* requires the court to determine which of these orders will be in the child's best interests. This is defined in section 37 (3) of the *Child and Family Services Act* and must be

considered in the context of the purposes of the *Child and Family Services Act* as set out in section 1. Thus, a determination must be made as to whether a parent's plan will be considered as being in the best interests of the child and one which will adequately protect the child.

This will then require counsel for the parent to determine whether there are steps that must be taken to put the parent into a position to care for the child. For example, perhaps the parent needs to go into alcohol rehabilitation and to establish a period of sobriety in order to be viewed as an appropriate caregiver for the child. This might require a consent to a period of society wardship to enable the parent to take the necessary steps and then a claim for the return of the child. Thus the child protection proceeding might have to be seen as a two step process: first, the initial application followed by the status review application.

As counsel for a parent you must be careful not to set up your client for failure. Try to make sure that if your client is successful at trial that he or she will be able to carry out the plan for the care of the child.

The type of preparation for the proceeding will again be dependent on the type of client you have. Is he or she one who is denying everything the children's aid society is alleging or is she or he one who is prepared to admit mistakes but wishes to take steps to address them? Clearly, your preparation for trial is going to have to be different depending on which group your client falls into.

One cautionary note to counsel for parents is to pay strict attention to the timelines in the *Child and Family Services Act.* In particular section 70 of the *Child and Family Services Act* must be noted in order to understand how much time your client has to take the requisite steps to make the changes necessary to be considered as a caregiver for the child.

Almost all parents that I have ever been involved with want to have their child placed with them even if it is subject to a supervision order. Thus as counsel for one or both of a child's parents, you must understand that this is the ultimate fall back position. Fight as hard as you can to have the court make no order, but if necessary, sell the attractiveness of a supervision order to the trial judge as being all that is required to protect the child.

This raises the importance of making submissions to the trial judge at the end of a trial that has alternatives. Don't put all of your eggs in one basket.

SOCIETY OR CROWN WARDSHIP

How will a court decide which of the possible orders to make? No clear tests are set out in the *Child and Family Services Act.* However, many cases have discussed the various options available to a trial judge. These are valuable to read in order to understand the concerns a judge might have in choosing one plan over another. I suggest the following as good cases to read:

1. L. (R.) v. Children's Aid Society of Metropolitan Toronto, (1995), 21 O. R. (3d) 724 (Ont Gen Div);

2. C. M. v. Catholic Children's Aid Society of MetropolitanToronto, (1994), 2 R. F. L. (4th) 313 (SCC)

One principle that parents' counsel should often keep in mind is that the disposition to be made by the trial judge should be proportional to the child's needs.

ACCESS

Section 58 of the *Child and Family Services Act* provides that a court can make access orders as part of any other order made under Part III. However, section 59 provides a rebuttable presumption against access when an order of crown wardship is made.

As counsel for a parent at trial, you must be able to present evidence to the court of how access to your client will be in the child's best interests and will not put the child at risk. You cannot simply rely upon the ideas that access to a parent will always be ordered and will be viewed by a court as being in a child's best interests. Evidence will be required. Where will you get this evidence?

The parent will always testify that the child enjoys and benefits from the access. This isn't the best evidence. Have there been supervised access sessions where notes have been produced? Have any third parties witnessed the access? Does the school have any notes that suggest that the child is excited about visiting with a parent and comes back to school happy? You will have to make sure that you have evidence or you will run the risk that a no access order will be made or that it the access order that is made will be too limited and regulated to be meaningful.

In crown wardship cases close attention must be paid to section 59 (2). This section creates a very strong presumption against access and much work will be required to rebut the presumption. Her Honour Justice Jones provides a thorough analysis of the factors to be considered in the unreported case of Children's Aid Society of Toronto v. E. L. and E. L., a decision dated August 3, 1999.

I also refer you to the case of Children's Aid Society of the Niagara Region v. D. M. and A. K., an unreported decision of His Honour Justice Quinn dated April 15, 2002 where a review of evidence sufficient to rebut the presumption is made by the judge.

ADOPTABILITY

The cases that lead to trial more than any other are cases in which the children's aid society is seeking crown wardship without access. This type of case has been referred to as a "capital punishment" case. A parent has no reason to consent to such an order, as he or she cannot do worse at trial. Often the issue that is the most contentious is that of whether access will be ordered. This will require a review of the adoptability of the child because section 59 (2) (b) requires a court to look at whether access will "impair a child's future opportunities for a permanent or stable placement." Although such a placement does not have to be in an adoptive home that is usually what is being suggested.

Adoption is spoken about in many cases as being far preferable to long term foster care. There are statistics available through the government that indicate that crown wards are likely to have a number of placements and a number of workers. There are also statistics that show that some, but few, adoptions break down. Consequently, as a lawyer for a parent seeking access, in a situation where a child has been made a crown ward, much work will be necessary to show that the two conditions in section 59 (2) are met.

It is required that the children's aid society call expert evidence if opinion evidence is to be given as to the adoptability of a child. In a recent case, CAS of Niagara Region v. D.M. and A.K., (2002) CarswellOnt 1077, His Honour Justice Quinn did not allow an inexperienced children's aid society worker to give expert evidence on the issue of the adoptability of a child. He stated that:

> "I am not convinced that the admissibility of expert evidence should vary in accordance with the subject matter or importance of the case. I think that a court must always be vigilant when it comes to

admitting opinion evidence and should consistently eschew the what-harm-will-it-do-let-it -in approach. I favour a rigorous screening of the proffered expert in every instance. However, if I am wrong, and the nature of the case does dictate stringency with which the admissibility of expert evidence is viewed, I can think of no case deserving of more careful attention than where Crown wardship and termination of parental and sibling access are the issues."

Thus, in preparation for a trial in which the adoptability of a child is an issue, counsel for a parent will have to be scrupulous in determining whether the children's aid society has expert evidence on the point. Does the proposed expert have the sufficient degree of expertise to be qualified as an expert in order to give opinion evidence? Was the proposed expert provided with all of the necessary facts and contextual information to be able to provide an informed opinion?

PAYMENT ORDERS

Section 60 of the *Child and Family Services Act* provides that a parent might be ordered to pay an amount to a children's aid society toward the cost of caring for a child in the care of a children's aid society or a person other than the parent. It has been my experience that most parents who do not have a child placed with them will not be happy making a payment for the child. Thus, in preparing for trial, if a children's aid society is seeking such a payment, work will have to done to determine your client's liability and the quantum of any such payment. There are very few cases dealing with how a court should determine when a payment order should be made and the quantum of such payments if the order is made. One case dealing with this obligation is Children's Aid Society of Haldimand-Norfolk v. A.(L.M.) (2002) 33 R.F.L. (5th) 54. In this case, Mr. Justice Thibideau of the Ontario Court of Justice ordered the parents to pay

the actual cost of keeping the child in care. Thus, the court looked to the exact amount the Children's Aid Society of Haldimand-Norfolk was paying the foster home and ordered the parents to pay that amount.

It is my view that this approach will produce an order that is far too onerous for most parents. For example, in a situation where a child is in specialized treatment, it seems unlikely that a court would impose that obligation upon a parent since the cost for this specialized treatment would be very high. However, I think the well-prepared trial lawyer for a parent will have available for a trial judge, a financial statement sworn by the client, the applicable amount payable by the client in accordance with the *Child Support Guidelines* and cases dealing with situations where a parent has not been ordered to pay the actual costs of caring for a child.

COSTS

There are not a lot of cases in which a parent has been ordered to pay costs to a children's aid society. The cases where such orders have been made against parents all appear to have as a factor that the parents unnecessarily delayed the process. Such cases are:

1. Kenora-Patricia Child & Family Services v. M. (A.) (2003) CarswellOnt 3804;

2. Children's Aid Society of Ottawa-Carleton v. D. (2001) WL 590873

There might also be situations in which the Office of the Children's Lawyer might be ordered to pay the costs of another party, including a parent. A recent case in which such an order was made is Children's Aid Society of St. Thomas (City) & Elgin (County) v. S. (L.), (2004) CarswellOnt 390.

There are also cases where children's aid societies have been ordered to pay the costs of parents. These orders have all been based upon findings of bad faith on the part of the children's aid society. This stems from the statement in G. (D.) v. Catholic Children's Aid Society of Metropolitan Toronto, (1992), 40 A. C. W. S. (3d) 109, (Ont. Ct. Gen Div), that costs should only be awarded against an agency in exceptional circumstances of improper or overbearing action. Examples of these cases are:

1. Re Brian O and Children's Aid Society of Ottawa-Carleton (1980), 6 A. C. W. S. (2d) 385;

2. Re MW and Catholic Children's Aid Society of Metropolitan Toronto (1986), 37 A. C. W. S. (2d) 209;

3. D. B. v. Children's Aid Society of Durham Region , (1987), 20 C. P. C. (2d) 61;

In the event that you are going to trial it is essential that counsel prepare for an argument on costs one way or the other. Although the presumption in favour of successful parties set out in Rule 24 of the *Family Law Rules* does not apply in child protection cases, costs orders are still available.

EVIDENCE AND WITNESSES

Now you have thought about the issues that might arise in your case. The next step is figuring out how you are going to prove the facts you need to support your position and how you will refute the evidence being called against your client. This involves a detailed analysis of the evidence both for and against your client.

The first step in this analysis is identifying the witnesses that will be called at the trial. Who are they and what are they going to say? You must know this if you are going to trial. If you don't it seems impossible for you to know whether the case should have been resolved or if there is an issue that requires a trial. You should have been to the children's aid society office to review the entire file, both the family file and the children's file, and you should have reviewed the entire file again just prior to the Trial Management Conference and once more just prior to the trial. You don't want new evidence sneaking up on you at trial.

Also you should have been requesting from counsel, a "will say" statement for each witness that will be called at the trial. Remember there is no property in a witness so you can call any of the proposed witnesses. This comes with a large exception in that you can't call a witness directly who is represented by counsel. For example, you should not be calling the children's aid society's workers who will be testifying without first speaking with counsel for the children's aid society and receiving authorization to do so. However, school teachers, doctors, neighbours, employers, relatives and day care workers are all there for you to speak with. You can't try to convince them to lie but you can discuss the evidence they will be giving.

The current trial procedure, at least in Toronto, requires the children's aid society to have its workers give their evidence by affidavit. These affidavits are to be served at least thirty (30) days prior to the trial and must contain only evidence that would have been admissible if given by the witness in court. Thus, all of the rules of evidence apply including the rule against hearsay, which seems to be breached more than any other evidentiary rule.

In my view this practice is a good one. It allows the children's aid society to put in its case in a much quicker and straightforward manner. But that is not the real reason I

think it is a good idea. The real reason is because it allows parents' counsel to prepare an excellent cross-examination of each witness and to understand before the trial begins the case that must be met.

In preparing this excellent cross-examination some thought must be given as to whether a cross-examination of each witness is required and how extensive such cross-examination should be if one is required. Not everything a witness says is relevant to the issues that the trial judge will be ruling on. Don't make a minor fact or an irrelevant comment by a witness be built up in importance by cross-examining on it unnecessarily.

Another of the *Family Law Rules* that is good for parents' counsel is Rule 23 (1) which requires that the Trial Record be served at least 30 days prior to the commencement of the trial and that "any expert report on which the party intends to rely at trial" be included in the Trial Record. Again, this allows you as counsel for one or both of the parents lots of time to get ready to deal with the report. Do you need to have the expert produced for cross-examination? Do you need to retain another expert to refute the evidence to be given? Do you need the expert to follow-up with the child or parents to see if any changes have occurred since the first report was prepared?

Although there are lots of cases that say that judges will not allow experts to make the decision for them, that seems to happen a lot. This is probably not because the judge is allowing the expert to make the decision but rather because the expert is usually right. However, having the report well in advance of the trial should be of great assistance to you as parents' counsel.

There are also the issues related to the receipt and service of notices under the *Evidence Act.* Business records and medical reports are dealt with in the *Evidence Act*. You will have to determine whether the various records referred to in the notice under section 35 of the *Evidence Act* are in fact business records. You will also have to determine whether the reports referred to in the notice under section 52 qualify as medical reports.

In most cases, children's aid societies produce records and reports as proof of their contents. This is in accordance with the rule in Ares v. Venner [1970] S. C. R. 608. Thus, if parents' counsel wishes to challenge the truth of any statement in a record or report, he or she will have to call the maker of the record for cross-examination.

One issue that is now arising on a frequent basis is the admissibility of children's statements. This is both an interesting and tricky area of the law and much work will have to be done by counsel prior to the trial to determine how the wishes, preferences and other statements of the children will become known by the judge. In dealing with this issue it will be necessary for you to understand the requirements as set in R. v. Khan, (1990) 59 C.C.C. (3d) 92 (SCC) for the introduction of children's statements and the procedure that is undertaken in conducting a voir dire to determine admissibility.

MISCELLANEOUS

You should find out who the trial judge is and then find out all you can about how that judge conducts a trial, the evidence he or she likes and dislikes, previous decisions made by the judge on the issues that will be present in your trial, how the judge likes documentary evidence to be introduced and anything else relevant to the trial. Make certain that you have enough copies of documents in order to permit an extra copy to be given to the trial judge, a copy to be given to the court reporter, if necessary, and for the many unthought of reasons that inevitably arise during a trial.

You should also make sure that you prepare your client for the trial. This will require you to discuss with your client the need to be on time, conduct himself or herself properly in court, how to address the judge and actions that are inappropriate.

You should also have made clear to your client what the issues are that the judge will be focussing on. Many parents wish to spend a lot of time criticizing the care their children are receiving in a foster home or group home. It is important that they understand the trial is not to determine whether the foster home is good or not.

Preparing parents to testify at trial can be a tricky proposition. The various problems that you might face could be any of the following:

1. Parents who are far too confident in their abilities as parents and who therefore don't even consider the problems that are being alleged by the children's aid society;

2. Parents who are intimidated by the entire procedure and who will present as timid;

3. Parents who simply wish to fight with the children's aid society and who will therefore be too quick to argue with counsel or the judge;

4. Parents who will try to remember everything you might have said to them during the preparation for trial and who therefore will appear to be coached and insincere; and

5. Parents who view themselves as blameless for any of the problems that their children are facing and blame everyone else, including the children themselves, for these problems.

Prior to trial, you must take your client through a mock examination-in-chief and also, if possible, you should have another lawyer, do a mock cross-examination. If possible, video tape these examinations in order to allow you and your client to review how he or she did and to try to make improvements. By this I don't mean improvements in the evidence but rather the manner in which the evidence is presented.

Counsel for a parent is entitled to make an opening statement in a trial. It is my view that this should be delivered immediately following the opening statement by the lawyer

for the children's aid society. This will allow the trial judge to know the case that the parent will be delivering and to put the evidence of the children's aid society into a context. The evidence can be viewed by the judge somewhat more carefully than if he or she simply has heard from the children's aid society.

You will also have to figure out how you will take notes during the trial and how you are going to summarize the evidence for the judge at the conclusion of the trial. I think it is a good idea to have your submissions put into written form and that this be provided to the other counsel and the judge. The judge will then have this with her or him when she or he is writing her or his decision and it might be of great assistance.

SUMMARY

A good trial lawyer understands the strengths and weaknesses of both his or her own case and that of the other parties. He or she is prepared to focus on the issues and to deal with them bearing in mind the substantive law and the rules of evidence.

It has been said that the lawyer who appears brilliant at trial has simply done a lot of preparation. I have no doubt that this is true.

February 27, 2004 Lorne Glass

Appendix 1

Reference List

1. *Child and Family Services Act*, R.S.O.
2. 37 of the *Child and Family Services Act*
3. 37 (2) of the *Child and Family Services Act*.
4. *CAS of Niagara Region v. T. P. and R. G.* (2003) 35 R. F. L. (5th) 290
5. *CCAS of Hamilton-Wentworth v. L. (C.)* (2002)
6. 117 A.C.W. S. (3d) 926
7. Re S. (B.) , (1996), 67 A. C. W. S. (3d) 945
8. CAS of Hamilton v. M. C. and R. H. (2003) 36 R. F. L. (5th) 46
9. CAS of Hamilton-Wentworth v. R. (K.), (2001), 114 A. C. W. S. (3d) 71
10. *Child and Family Services Act* as set out in section 1 (1)
11. 50 (2) of the *Child and Family Services Act*
12. 57 (1) of the *Child and Family Services Act.*
13. section 57 of the *Child and Family Services Act* in subsections 1 and 9
14. section 70 of the *Child and Family Services Act*
15. L. (R.) v. Children's Aid Society of Metropolitan Toronto, (1995), 21 O. R. (3d) 724 (Ont Gen Div);
16. C. M. v. Catholic Children's Aid Society of MetropolitanToronto, (1994), 2 R. F. L. (4th) 313 (SCC)
17. Section 58 of the *Child and Family Services Act*
18. Children's Aid Society of Toronto v. E. L. and E. L., a decision dated August 3, 1999.

19. Children's Aid Society of the Niagara Region v. D. M. and A. K.

20. CAS of Niagara Region v. D.M. and A.K., (2002) CarswellOnt 1077

21. Section 60 of the *Child and Family Services Act*

22. Children's Aid Society of Haldimand-Norfolk v. A.(L.M.) (2002) 33 R.F.L. (5th) 54.

23. *Child Support Guidelines*

24. Kenora-Patricia Child & Family Services v. M. (A.) (2003) CarswellOnt 3804;

25. Children's Aid Society of Ottawa-Carleton v. D. (2001) WL 590873

26. Children's Aid Society of St. Thomas (City) & Elgin (County) v. S. (L.), (2004) CarswellOnt 390

27. G. (D.) v. Catholic Children's Aid Society of Metropolitan Toronto, (1992), 40 A. C. W. S. (3d) 109, (Ont. Ct. Gen Div)

28. Re Brian O and Children's Aid Society of Ottawa-Carleton (1980), 6 A. C. W. S. (2d) 385;

29. Re MW and Catholic Children's Aid Society of Metropolitan Toronto (1986), 37 A. C. W. S. (2d) 209;

30. D. B. v. Children's Aid Society of Durham Region , (1987), 20 C. P. C. (2d) 61;

31. Rule 24 of the *Family Law Rules*

32. *Canada Evidence Act*, R.S.C. 1985, c. C-5, as amended, ss. 35 and 52

33. Ares v. Venner [1970] S. C. R. 608.

34. R. v. Khan, (1990) 59 C.C.C. (3d) 92 (SCC)