

Children's Services slammed

Judge raps officials for attempting to evade court order

By Karen Kleiss and Darcy Henton

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A senior Alberta judge has called on the attorney general to investigate the "disturbing" conduct of Children's Services staff in a case that raises troubling questions about how the department operates and who is ultimately responsible for children in care.

In a searing decision released Thursday, Justice Jean Cote of Alberta's Court of Appeal said the organization of the department is "extremely convoluted and puzzling," and the administrative structure creates opportunities for officials to deny responsibility on the basis of being officially uninformed.

In the end, he likens the shuffling of responsibility among workers to "the dried pea under three walnut shells" and suggests similar mistakes in future might cause "those higher up" to be called to account.

Cote made the comments after hearing a case in which Children's Services staff failed to return a boy to his foster mother after being ordered to do so by the province's highest court.

On June 23, Cote convicted director of child services Richard Ouellet of contempt, but Ouellet asked the judge to reopen the case. As director of child, youth and family services, Ouellet argued he was never directly involved with the boy and the court order should have been delivered to those who were.

In a 20-page decision, Cote dismissed the argument, saying the contempt was "lengthy and undisputed," and that "only the name of the exact culprits has been questioned.

"There has been no miscarriage of justice in the conviction for contempt; indeed, the opposite."

The judge said Ouellet did nothing while his staff ignored the court order to return the boy and tried to figure out how they could legally

avoid doing what the court had instructed them to do.

"He did not tell them that they could not wiggle out of obeying the order, nor that wasting time looking for alternatives to obedience was wrong," Cote wrote. "He did not say to return the child."

Ouellet had no reporting procedures in place, set no deadlines, required no feedback and, "worst of all," never read material given to him regarding the case, Cote said.

The foster mother's belief that officials were stalling until the boy could be adopted by another family merits "careful investigation," Cote said, and he invited the attorney general to undertake that investigation.

"Her Majesty's government of Alberta, in my 42 years' experience, has not been in the habit of hiding identities, equivocating, nor evading orders against it," he wrote.

"But the present case raises doubts about whether everyone in the child protection parts of the government now shares those high standards, or even fully understands court orders. The complex administrative structure suggested by the evidence tendered here must exacerbate opacity and the opportunities for deniability."

Cote said that after his judgment Thursday, "ignorance or neglect by such officials will be a smaller excuse for disobeying court orders. ...

"A repetition might lead to litigation over whether those higher up were not immune."

Court records show the boy at the centre of the case was taken in by his foster mother when he was three months old, and she raised him for more than four years.

Physical abuse allegations

In April 2006, another foster child who

was living in the home made allegations about physical abuse, which resulted in an investigation. On Oct. 20, 2006, Children's Services removed all the children--including the boy--from the foster mother's home.

She fought the decision and lost, then appealed to a higher panel, and won. The government in turn won an appeal before the Court of Queen's Bench. The foster mother went to the Court of Appeal and on Jan. 30, 2009, won her case.

Lawyers on all sides were confused about the appeal court ruling, but in his judgment Cote said only the lawyer for the foster mother sought clarification from the court.

On June 4, the court clarified that the boy should be returned to his foster mother, but the boy was not returned until noon on June 22--the day before the contempt hearing.

Cote is expected to sentence Ouellet in the coming months.

Children and Youth Services spokesman Trevor Coulombe said the ministry acted quickly to rectify the situation after the contempt ruling came down and is conducting an internal investigation, along with Alberta Justice, to determine how it happened.

"We need to make sure our policies and practices around court orders are sound," he said.

He said the case was complicated by various rulings overturning previous decisions, but once the court of appeal ruled on the matter, the department should have responded immediately.

Coulombe said there was about a three-week lag that should not have occurred.

"Clearly, the court found that delay was too long and inappropriate and unacceptable and ruled the director was in contempt of court," he said. "It is clear that we need to be more expeditious in complying with court orders, and so that's why we're taking steps to ensure that happens now."

Coulombe said Ouellet has been reassigned to other duties within the ministry since the beginning of the year.

The provincial directory lists him currently as director of program quality and standards in the child intervention section of the

ministry.

Review underway

Alberta Justice spokesman Jay O'Neill said the department is conducting a review of the handling of court orders in the Children and Youth Services ministry, but is not conducting a criminal investigation to determine whether others should be charged with contempt.

"We want to make sure there is a complete understanding of what a court order is, and that if there are gaps or concerns or anything that needs to be fixed, they are fixed," he said.

Opposition critics said it was shocking that a government department ignored a court order.

NDP Leader Brian Mason said it appears the judge is saying what his party has been saying for years: "That this is the most secretive government in Canada and that they are focused on plugging leaks rather than correcting problems."

Liberal deputy leader Laurie Blakeman said she is concerned that children may actually be harmed by the actions of the ministry that is supposed to protect them.

"It looks to me like they are arbitrary, sloppy and unprofessional," she said. "If they feel they are constrained by the system, they have to work with the system. They can't step outside of it and imperil the child."

Blakeman said from the judge's remarks, it doesn't appear to be an isolated incident.

"I am really concerned about the number of cases here of kids who don't come through this system OK, or who have the system not work for them in a way that's pretty dramatic."

She was also dismayed to see Ouellet continuing to work in the system pending the resolution of his charges.

"I want an explanation from the minister why he is still in child intervention," she said. "This doesn't seem like he has been taken off of active duty."

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