

Secrecy helps trample parents' rights

By Ray Ferris

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The keystone of child protection should be to ensure that children can be made safe at home, or in care.

Children enter care for many reasons other than neglect or abuse. Some are simply unwanted, delinquent, with special needs or whose parents are temporarily disabled. When young children enter care, early planning is essential so that stable life plans can be ensured.

In contested cases, it is important to have good factual evidence. This means direct eyewitness evidence and not the opinion and hearsay evidence so often presented.

Parents have rights to due process. They have a right to clear statements about what evidence will be offered and a right to competent legal representation.

On the surface, the Child Family and Community Services Act seems to support these principles. Hearings must be within 45 days and temporary orders no more than one year. The child's best interests are paramount and include stability, continuity of care and kinship contact. Timeliness is essential. In practice, the principles are ignored and regularly derailed. The long, complicated act seems designed as a source of revenue for lawyers. When first enacted, it ground the family courts almost to a halt for over a year.

Children's best interests depend on opinion, and ministry bureaucrats think only their opinion counts. Family court becomes as adversarial as criminal court, while child welfare gets lost in legal bickering. Neither the courts, the Ministry of Children and Family Development directors nor defence counsels monitor timelines. Cases get bounced from judge to judge.

Any piece of social legislation can be used as a tool or a weapon. The choice lies with those in authority. Legislators little realized that they offered as many weapons as tools, but the resolutely adversarial Children's Ministry quickly found them.

A recent Times Colonist editorial showed how the ministry behaves as if a child's right to privacy is a paramount right, which can trump all the other rights in the act. They cloak everything in secrecy and withhold information that people have a right to know.

A typical case recently covered by the CBC illustrates these matters. A couple had three children, the younger

ones born 14 weeks and six weeks prematurely. Such children can be very fragile. When the parents took the six-week-old to hospital, a doctor reported that the child's condition was due to abuse. At first, the ministry's director acted reasonably and took charge of the child, who stayed in hospital.

With only inferred evidence on the older children, they took them into care, placing them with relatives.

Then the evidence wilted. Other doctors strongly disagreed with the first diagnosis. Courts had previously declared the type of evidence unreliable. A police investigation found no evidence.

After seven months the parents had spent \$60,000 on lawyers with no progress, and in despair they went to the media. Following Global TV coverage, the director promptly removed the children from relative care with armed police, apparently just to assert his authority.

They have since been moved three times. Last July, the director's lawyer told him the case was weak and he should return the children. In spite of this, the director is pursuing the case aggressively and seeks a continuing care order.

A hearing will not take place until March 2010, and the parents -- already heavily in legal debt -- cannot raise the \$100,000 needed for defence. Blameless or not, they stand no chance of getting back their children.

Obviously the need is for better staff, and not more staff.

Some suggested remedies:

- **The act is too flawed to fix. Scrap it and bring back the old one.**
- **Save a lot of money by providing duty counsel to represent parents as well as the ministry.**
- **Give the child advocate some real power to monitor practice.**
- **Provide mandatory core training on matters like evidence and mediation.**

Ray Ferris was a social worker and supervisor in child protection for more than 30 years. He retired in 1988 but has kept busy with advocacy and writing, including a textbook on child protection.