



## Canada Court Watch

(A program of the National Association for Public & Private Accountability)  
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February 27, 2011

Trillium Lakelands District Board of Education  
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Tel: (705) 645-8704  
Email: [catherine.shedden@tldsb.on.ca](mailto:catherine.shedden@tldsb.on.ca)  
Attn: Mr. Larry Hope, Director of Education and the Board of Trustees

Dear Mr. Hope and the Board of Trustees

### **RE: Harm to children since December as a result of unregulated CAS workers coming into Trillium Lakelands District School Board schools**

On December 6, 2010, I wrote to the Board providing information regarding the unlawful practice of social work by CAS workers operating in schools. I attached an earlier version of my research document called, "*The unlawful practice of social work in Ontario by unregulated CAS workers*" which provided more than ample evidence to show that front line CAS workers who have been coming into schools have been violating the law by not being registered with the Ontario College of Social Workers. To date, our letter has not been responded to by the Board.

Subsequent to the previous letter to the board and public meetings and consultations in Huntsville, Newmarket, Lindsay and Peterborough, many families have come forward to speak of abuses of their children by unregistered and unregulated CAS workers who are breaking the law at our schools.

Our organization has obtained more chilling testimony from children in your school district who reported being threatened, intimidated and bullied inside your schools by unregistered CAS workers who came into their school. As recently as this past Friday (Feb 25, 2011), two children disclosed seeing a CAS worker come to their school last week and were so fearful because of how they had been bullied by this CAS worker the past that they ran and hid in the school during their recess and snack break. Children are reporting being anxious to go to school out of fear that the CAS workers may show up to harass and intimidate them at school. We have reports of children in your school board district going home and crying to parents because of CAS workers harassing them in their school.

We cannot divulge the names of the children involved due to requirements under the Child and Family Services Act but you can be assured that we do conduct video interviews with children as part of our investigation process into the abuse of children by child protection workers. We also check the Registry with the Ontario College of Social Workers and Social Service Workers to confirm if CAS workers going into schools are registered members of the College. Our investigation has revealed that unregistered CAS workers are going into your schools and are harassing children against their wishes and without legal informed consent and causing significant emotional harm to the children.

Schools are supposed to be placed where children get an education. Schools are supposed to be a place where children can trust their teachers and school officials. Schools are supposed to be a place where children feel safe and secure. Schools are **NOT** supposed to be a place where unregistered and

unregulated CAS workers can just come in unannounced to inconvenience school staff and to embarrass, intimidate and strike fear into the hearts and souls of young children and make them cry and afraid to go to school.

Members of our organization are deeply concerned to learn that in spite of our previous letter bringing this problem to the attention of your Board in December, that children and parents in the communities your Board serves are still coming forth to reveal more information about unregistered and unregulated CAS workers coming into your schools and unlawfully detaining and interrogating students.

We are deeply concerned at what would appear to be the lack of due diligence by your Board in correcting a very serious problem which is harming children at your schools. All that it would take to correct this problem would be simple memo out to all principals advising them that they are to ask that all CAS workers provide proof of registration with the College and proof of legal informed consent of children or parents before allowing CAS workers into their schools. If a CAS worker cannot provide this information beforehand, then the Principal should deny access to the school until the worker has provided proof of such documentation or has indicated that the worker is conducting a lawful apprehension of a child. It must be remembered that under the law, CAS workers are considered as private citizens and employees of a non-profit corporation and as such have no more legal authority than a regular citizen off the street except in the case of a lawful apprehension.

**Under the Social Work and Social Services Work Act (1998), CAS workers who come into any school as part of an investigation MUST be registered with the College.**

The Board has a fiduciary duty to parents in the community to ensure that schools are safe for children and that only front line CAS workers who are properly regulated and in compliance with the *Social Work and Social Service Work Act (1998)* and have informed consent be allowed to enter schools to speak to children. The document, "*The unlawful detention of children at their schools by school officials*" which is prominent on the Canada Court Watch website provides comprehensive information on this topic for school officials. Your Board can directly help in efforts to make CAS agencies and workers accountable by simply ensuring that CAS workers who have contact with school officials are acting within the law. A recent article published in the Toronto Star which is attached to this letter for your reading, serves as yet another reminder of the need for accountability by CAS agencies.

Again, I remind the Board that our organization would be willing to make a formal 15-20 minute presentation to the Board at its convenience and to answer any questions on the subject of CAS and the schools. I may be reached directly by phone at (905) 829-0407 or through my email at [vernonbeck@canadacourtwatch.com](mailto:vernonbeck@canadacourtwatch.com)

Yours truly



Vernon Beck, Child and Family Justice Advocate

**Attachments:**

- 1) Document – *The unlawful practice of social work in Ontario by unregistered CAS workers providing services to the public under false pretence* (Updated February 24, 2011 - 49 pages)
- 2) Toronto Star – *Powerful child welfare authorities must be called into account* (Feb 22, 2011 - 2 pages)

cc: Ombudsman of Ontario [info@ombudsman.on.ca](mailto:info@ombudsman.on.ca)  
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# DiManno: Powerful child welfare authorities must be called to account

By [Rosie DiManno](#) – Columnist

Toronto Star - Feb 22, 2011

When Elaine Campione was on trial for murdering her two young daughters, the prosecution deliberately declined to call child welfare authorities to the stand.

In a strategic gambit to secure conviction — which did, in fact, result — the Crown attorney avoided diluting the case by spreading the blame to anyone other than the accused.

Yet the defendant's own parents, and her estranged husband, had expressed their urgent concerns about Campione's mental problems to the local Children's Aid Society, long before the woman drowned her children in the bathtub in a horrific act of spousal vengeance. The CAS has never been held to account for its decision to return those kids to their mom following her psychiatric hospitalization.

Child welfare authorities in Ontario have immense powers yet are accountable to no one.

The incidents where a member of the CAS or the Catholic Children's Aid Society or the Jewish Family and Child Service have been charged criminally in cases of youngsters dying or suffering unspeakable abuse while under their supervision can be counted on the fingers of one hand.

The roll call of the dead includes:

- **Jeffrey Baldwin: A toddler who was given to his maternal grandparents in a "family adoption," despite the fact his grandmother had been convicted of second-degree murder in the death of her first daughter many years earlier (two other children had been seized) and his grandfather had been found guilty of assaulting children only six years previously.**
- **The emaciated 5-year-old died from shock and bacterial pneumonia brought on by malnutrition. Court heard he was locked in a room surrounded by his own feces and was made to drink from the toilet. At death, Jeffrey weighed just 21 pounds.**
- **An entry from the boy's case file noted that his grandmother operated as a Society-funded**

daycare provider "and her worker at the time had no concerns regarding this family."

- **Randal Dooley: Beaten to death by his father and stepmother 11 months after arriving in their household, he had 13 broken ribs, a lacerated liver and fractured vertebra, and a tooth in his stomach. When his teacher had earlier brought the child's bruises to the attention of the school principal, that man had called the CAS to report the suspected abuse and was told, as he recounted from the witness stand, that "the CAS was not going to attend."**
- **Two weeks after Randal died, the CAS phoned the principal back and asked, retroactively: "Did you expect us to come?"**
- **Jordan Heikamp: Five weeks old when he died at the native women's shelter in Toronto where his teenage mother had been living. The baby had starved to death because his mom had not breastfed him sufficiently, overly thinned the milk formula Jordan was given and been wildly neglectful of the infant's needs.**

The mother afterwards complained that her social worker had not provided the help she required to take care of the baby.

A coroner's inquest would ultimately rule the death a homicide, though charges against the mother and the social worker were dropped at the preliminary hearing phase. The coroner's jury, among its recommendations, urged that child welfare workers be reminded it's the child who needs protection, not the mother.

An internal email allegedly from an executive of the agency, posted online by a children's advocacy group, describes his initial response to media coverage of Jordan's death: "I could not understand why this case was causing such an uproar against CCAS."

A couple of weeks ago, a Hamilton couple were convicted of abuse and endangerment over two youngsters found living in a locked basement room,

after police responded to a 911 call made by the younger boy, who was all of 2 years old. In that case, the social worker had been in the basement mere hours before police arrived and noticed nothing amiss — not the stench of feces and urine, not the two rats caught in a trap.

At trial, the worker said she'd had a bad head cold that day, so was unable to smell anything.

“Her testimony about the basement was not credible or worthy of belief,” the judge concluded. “I find that it defies logic that she would not have detected some of the squalor.”

Yet the Hamilton Children's Aid Society stands by its employee.

Kids in care, those under agency supervision, are among the most vulnerable human beings in society. And everyone claims their welfare is of paramount importance. In practice, however, there's a turf war over authority and the playing field is tilted heavily toward the impenetrable secrecy of child welfare agencies.

A Children's Aid complaint brochure specifically disallows complaints directed at the CAS or the Ontario Child and Family Services Review Board (CFSRB) in matters “currently before the courts or that the courts have already decided,” and “matters that fall under other decision-making processes under the Child and Family Services Act or the Labour Relations Act.”

The province has a Child Advocate office but that department doesn't possess any investigative powers. It cannot compel cooperation from any agency.

Ontario is the only province that does not grant the provincial ombudsman authority to investigate child welfare agencies such as the CAS, the CCAS or the JFCS. Deaths are investigated by the coroner's office — after the fact, its recommendations non-binding.

There is, essentially, no apparatus for determining whether case workers have been either overzealous or undermotivated in the management of any child's file and precious little parents can do when faced with the monolith of a child welfare agency scooping up their kids.

“In Ontario, the child protection system is exempt from oversight,” says André Marin, the Ontario ombudsman whose annual report this year will again call for changes to the Ombudsman Act, pleading for child welfare agencies to be brought under his office's jurisdiction.

Marin's office received 306 child welfare complaints last year, none of which he has the legislative clout to pursue. Ironically, the ombudsman

can oversee the *policies* of the Ministry of Children and Youth Services but can't investigate how those policies are being applied. “So, we can look into the ministry's glass tower in downtown Toronto but we can't reach out to the community that's being affected.”

The ombudsman's office also oversees the operation of the CFSRB — a quasi-judicial entity that reviews complaints made about a child welfare agency's decisions but doesn't probe the underlying issues.

“They're one per cent of the solution, that's about it,” says Marin. “And we have oversight for them. Whoop-de-doo.”

When a specific case explodes in the public arena — a child's death, especially — there's wide discussion of bringing welfare agencies to account, and then the urgency fades away until next time.

“These are powerful agencies that get \$1.4 billion a year from the government,” says Marin. “They get very defensive, ferociously defensive. And they bring out their well-oiled PR machinery.”

Marin has long been crying out for government to “plug the hole” in the Ombudsman's Act relative to child welfare agencies. “It's a legal anomaly that has existed since the ombudsman's office was conceived in 1975.”

Last November, an NDP private member's bill was introduced, yet again, at Queen's Park to amend the act. “It never goes anywhere,” says Marin. “The government always vetoes it.”

Citizen groups have also been fomenting for legislative changes, holding protests outside some particularly controversial regional CAS offices. “They're usually portrayed as lunatics or a fringe minority,” observes Marin, “but they have legitimate issues.”

Marin maintains he has the staff to do the job if the province would just remove the shackles.

“I can't think of any area more ripe for oversight than child welfare. Children die and no one takes responsibility, no one answers the important questions.

“It's just so sad.”

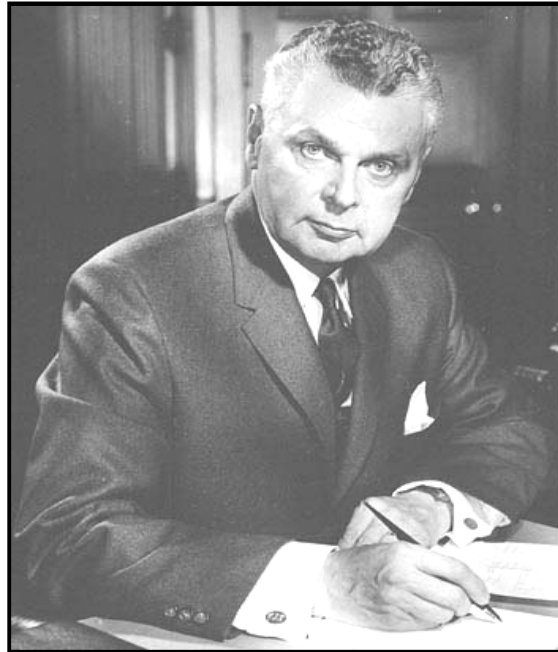
*Rosie DiManno usually appears Monday,  
Wednesday, Friday and Saturday*

# **The unlawful practice of social work in Ontario by unregulated CAS workers who provide services to the public under false pretence**

**A review of legislation applicable to unregistered and unregulated front line workers with the various Children's Aid agencies in Ontario who identify themselves as "child protection workers" or by various titles other than "social workers". This document also includes an overview of the impact that these unregulated workers have had on the protection of vulnerable children, the well being of society and the administration of Justice in Ontario.**

**By Vernon Beck  
Child and Family Justice Advocate  
Working paper – February 24, 2011  
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**Words to inspire Canadians from one of Canada's  
great Prime Ministers**



*“We must vigilantly stand on guard within our own borders for human rights and fundamental freedoms which are our proud heritage.....we cannot take for granted the continuance and maintenance of those rights and freedoms.”*

**- John Diefenbaker 1895-1979 -  
(Canada's 13<sup>th</sup> Prime Minister from 1957 to 1963)**

## Opening message from the author

Since 1995 I have been working in the volunteer sector as a child and family justice advocate helping families who have been adversely affected by the family courts and by child protection services. I have conducted hundreds of interviews of children, families, legal professions and foster parents over the years, many of which are electronically recorded. Over the years I have heard countless stories of family destruction as a result of the actions of Children's Aid Society (CAS) agencies and their workers in Ontario. I have made numerous public presentations and provided testimony in court and before legislative committees over my many years as a justice advocate.

In the many cases I have been involved in regarding CAS agencies in Ontario over the years, one troubling fact which I repeatedly come across in the complaints involving CAS workers was that these workers were not registered with the Ontario College of Social Workers and Social Service Workers (the College) as required under the Social Work and Social Services Work Act (1998). This observation made it clear that there was a direct link between the quality of child protection services by CAS workers and their registration, or lack thereof, with the College.

The College was created by our Legislators with the intent to protect the public's interest relating to the practice of social work in the province of Ontario. It is paramount that all regulatory bodies uphold this most fundamental principle that professional services be regulated. The Legislators laid a sound legal foundation and the College was given the tools and the mandate under law in the year 2000 to fulfill this task, yet to date, the vast majority of front line CAS workers continue to engage in the practice of social work without being registered with the College. This sort of blatant defiance to the Rule of Law in Canada and the principles of fundamental justice by CAS workers in Ontario represents a gross betrayal of all Canadians, not just those in Ontario.

I personally believe that the Province of Ontario needs a child protection system to protect vulnerable children in Ontario. I personally support the need for the CAS and am a voting member of my own local Children's Aid agency. As an advocate for justice I also believe that each and every children's aid agency should be providing the highest quality of services in the most open and transparent manner as possible. Tragically, the current practice of allowing employees of CAS agencies who identify themselves as "child protection workers" to engage in the practice of social and to intrude into the lives of children and families under the force of law, is in many cases resulting in children receiving substandard levels of service and contributing to the abuse of vulnerable children and their families. In addition, I believe that the use of unregulated workers is costing the provincial government hundreds of millions of dollars annually.

I hope that the information I have assembled in this document will encourage debate and serve as a wakeup call to put an end to the practice of allowing front line, taxpayer funded CAS workers in Ontario to unlawfully engage in the practice social work under false pretences using misleading names such as "child protection worker". It is in the best interest of vulnerable children that services being provided to their families be done by only those who are professionally qualified in the practice of social work and that an independent body exists with the power to hold those who practice social work accountable.

Since the first release of this document in October of 2010 this document has undergone regular updates thanks in part to contributions from members of the public and from child protection professionals themselves. I welcome feedback from all readers. Any reader with a comment or criticism about this document may contact me via email at: [vernonbeck1@yahoo.ca](mailto:vernonbeck1@yahoo.ca)



Vernon Beck, Child and Family Justice Advocate



## **Background**

In August of 2000, the Ontario College of Social Workers and Social Service Workers was created when the province of Ontario fully proclaimed the *Social Work and Social Service Work Act (1998)* into law on August 15, 2000. The Act was intended to recognize that social work was a profession which needed to be not only officially recognized in law but regulated by an independent body to protect the public's interest. The significant impact that the practice of social work could have on the well being of society was well recognized by the Legislators at the time.

Some of the comments made by elected officials during debate on the bill in the Ontario Legislature included:

*“Social workers and social service workers play critical roles in the delivery of a wide range of important services in the social, health, educational and correctional services sectors in this province. Thousands of vulnerable adults and children receive services from social workers and social service workers every year in this province. This is important and sensitive work with far-reaching consequences for individuals, for families and for our society.”* Mr. Frank Klees, MPP, riding of York-McKenzie

*“Nobody wants to see an incompetent worker in the system, which is the reason for the bill itself: why we need competent people, why we need qualified people in the province of Ontario.”* Mr. Blain Morin, MPP, riding of Nickel Belt

Legislators forming the Ontario government at the time recognized that there was a serious problem with the delivery of social work services including those services being provided by the province's various children's aid agencies. Legislators understood that a need existed to regulate higher standards of practice in the delivery of social work services in the province. Mr. Blain Morin, MPP for Nickel Belt stated that the reason for the Act was to ensure quality social work services for the people of Ontario.

One of the primary goals of the *Social Work and Social Services Work Act* in Ontario was to protect the public's interest relating to the practice of social work in the province of Ontario. Up until the time of passage of this Act anyone could be employed to engage in the practice of social work and call themselves a social worker. While there were many in the private sector engaged in providing social work services, the province's various children's aid agencies were one of the largest government subsidized which employed workers to engage in the practice of social work.

The intent of the Legislators in Ontario at the time was not without precedent. Significant work on the issue of regulation of the practice of social work had been studied for many years in the United States. Not long prior to Legislation being introduced in Ontario in 1998, the Association of Social Work Boards Model Social Work Practice Act<sup>1</sup> was formally adopted by the AASSWB (now ASWB) Delegate Assembly at its Annual Meeting in the fall of 1997.

### **Section 102. Legislative Declaration.**

The practice of social work in the \_\_\_\_\_ of \_\_\_\_\_ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of social work, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of social work in the \_\_\_\_\_ of \_\_\_\_\_. This Act shall be liberally construed to carry out these objectives and purposes.

<sup>1</sup> Full document available at: [http://www.aswb.org/pdfs/Model\\_law.pdf](http://www.aswb.org/pdfs/Model_law.pdf)



Clearly under Section 102 of their Social Work Practice Act (U.S.A.), it was recognized that those who engaged in the practice of social work needed to be regulated.

During its development, extensive input for the Model Act was solicited from social work regulatory boards, social work professional organizations, credentialing groups, and accrediting bodies from all over the United States. Numerous comments were received and reviewed culminating in this comprehensive model to assist legislatures and boards address issues in social work regulation. Throughout the document, it is clear that “persons” who engage in the “practice of social work” be subject to regulation and control.

## **Other Jurisdictions**

### **Province of Alberta**

On the government Alberta website it also contains a description of what the practice of social work entails. The government website also makes it clear that one must be registered with the College of Social Workers in order to practice social work in the province of Alberta. The following was extracted from the government of Alberta official website.<sup>2</sup>

#### **Description of Occupation**

Social Workers help people, communities and organizations develop the skills they need to improve their social functioning and social environments. They also connect them with available resources needed to do so, through counselling, education, referrals and other means of assistance. Social Workers may work for hospitals, government, schools, community agencies or in private practice. They can provide assessments, counselling, treatment and referral services to clients. They can also be involved in social policy or program research and development.

#### **Registering in Alberta**

In order to practice social work in Alberta, you must register with the Alberta College of Social Workers (ACSW).

### **Province of British Columbia**

Under provincial legislation in British Columbia, the *Social Workers Act[SBC 2008] CHAPTER 31*<sup>3</sup> defines social work and a social worker. The Act states:

**"social work"** means the assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal issues through the use of social work knowledge, skills, interventions and strategies, to assist individuals, couples, families, groups, organizations and communities to achieve optimum psychological and social functioning;

**"social worker"** means a person who practices social work.

### **Province of Saskatchewan**

In May of 2006 the child advocate for the province of Saskatchewan, Mr. Marvin M. Bernstein, published a document called, “The Challenge of Professionalizing Child Protection Workers and retaining the Title of Social Worker.” In his document, he made strong arguments supporting the need to have child protection workers registered and regulated as professionals. In fact, Mr.

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<sup>2</sup> Website: [http://alberta-canada.com/immigration/media/Social\\_Worker\\_Final\\_June\\_2010.pdf](http://alberta-canada.com/immigration/media/Social_Worker_Final_June_2010.pdf)

<sup>3</sup> Website: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_08031\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_08031_01)

Bernstein stated that on page three of his document that it was “imperative” that child protection workers be members of a professional body as part of the strategy of improving the quality of services that child protection workers should be providing. In his document, Mr. Bernstein stated the following:

***“It is imperative that within this climate of potential discouragement and anxiety that child protection workers be supported and empowered in their work. One way of achieving this goal is through professionalizing child protection work and encouraging those child protection workers with social work degrees to take the necessary steps to strengthen their professional identification and to represent themselves as social workers by becoming members of the Saskatchewan Association of Social Workers (SASW)” Marvin Bernstein***



When it comes to knowledge of the laws relating to child protection, Mr. Bernstein has extensive experience as a child protection lawyer, including experience in the province of Ontario. Below is Mr. Bernstein’s bio:

**Marvin M. Bernstein** obtained his B.A. from the University of Toronto in 1969, his LL.B. from the University of Western Ontario in 1975, and his LL.M. in Alternative Dispute Resolution from Osgoode Hall Law School in 1997. He was called to the Bar in 1977, and from 1977 to 1980 was employed as in-house Counsel to the Children's Aid Society of York Region in Newmarket, Ontario. From 1980 to 2000 he served as Chief Counsel to the Catholic Children's Aid Society of Toronto. Mr. Bernstein joined the Ontario Association of Children's Aid Societies (OACAS) in January 2001 and served as Director of Policy Development and Legal Support until 2006. He was appointed Children's Advocate for the Province of Saskatchewan in 2005 in which capacity he currently serves. He is the co-author of Child Protection: Practice and Procedure and Child Protection Law in Canada.

Mr. Bernstein’s report on the subject of regulating social workers and having them hold professional status can be downloaded from the internet at:

[http://www.sasw.ca/releases/Professionalizing\\_Child\\_Protection\\_Article.pdf](http://www.sasw.ca/releases/Professionalizing_Child_Protection_Article.pdf)

### **State of Minnesota (United States)**

As a comparison, below is a copy of legislation related to the practice of social work in that state. It is clear that no person shall engage in the practice of social work unless he/she is licensed by the State.

#### **148D.275 UNAUTHORIZED PRACTICE.**

No individual may:

- (1) engage in the practice of social work without a social work license under sections

148D.055 and 148D.060, except when the individual is exempt from licensure pursuant to section 148D.065;

(2) provide social work services to a client who resides in this state when the individual providing the services is not licensed as a social worker pursuant to sections 148D.055 to 148D.060, except when the individual is exempt from licensure pursuant to section 148D.065.

### **Use of deception by CAS workers in Ontario**

After passage of the Ontario *Social Work and Social Service Work Act (1998)* in August of 2000, workers with the various Children's Aid agencies in Ontario could no longer could technically engage in the practice of social work nor openly identify themselves as social workers. Rather than simply registering with the College and ensuring that their qualifications met professional standards, a large percentage of children's aid society (CAS) workers with the province's various CAS agencies (CAS) switched from the practice of calling themselves "social workers" and began to identify themselves to members of the public using the title of "Child Protection Worker". Some CAS workers opted to use other titles such as intake worker, child worker, family worker, etc. but the underlying intent behind these titles was clearly to skirt legislation intended to provide protection for the public.

While the work that CAS workers performed remained exactly the same, only the title by which they identified themselves by changed. In reality, this sneaky move by CAS workers was nothing more than a calculated effort to avoid compliance with the law. It is widely believed by many that the real reason why the majority of CAS workers did not want to join the College was that many of them were not competent enough or willing to abide by the professional ethical guidelines and standards of practice of the College. Many CAS workers saw the smoke and mirror name change as a simple way to avoid accountability to the College's disciplinary body and as a way to pull the wool over the eyes of the Legislators. From the year 2000 up to the present this deception has gone relatively unnoticed by Legislators who continue to be bombarded by complaints about CAS workers from members of the public.

Unfortunately, since passage of the Act in the year 2000 and the creation of the Ontario College of Social Workers and Social Services Workers nothing has changed when it comes to the protection of the public from those who engage in the practice of social work with the province's children's aid agencies. Many argue today that the public is offered less protection now than back then as many workers actually avoid registration with the College so as to avoid having to abide by the College's professional standards as well as oversight by the College's disciplinary body.

### **How Ontario legislation defines the term, "Child Protection Worker"**

Legislation in Ontario clearly recognizes the position of "Child Protection Worker" as it applies to the protection of children who are at risk of harm. The term "Child Protection Worker" is clearly defined under section 37.1 of Ontario's Child and Family Services Act and is defined in the Act as follows:

**37.(1)** *"child protection worker" means a Director, a local director or a person authorized by a Director or local director for the purposes of section 40 (commencing child protection proceedings); ("préposé à la protection de l'enfance")*

Under section 37.(1) child protection workers get their authority by being authorized by a "Director" or "Local Director" of a Children's Aid Agency. A "Director" (known in the field as a

“Big D” Director) is an appointee of the Minister of Children and Youth Services (MCYS) to exercise particular powers under the Act and is NOT an employee of a CAS (see Section 5 (1)); their key powers are outlined under Section 17(1). This designation is ordinarily given by the Minister to positions such as the Regional Directors (currently nine) of the MCYS, or to Assistant Deputy Ministers (one of the Commissioners recently appointed by the Minister also has the authority as a “Big D” Director).

The “local director” (or “little d”) is the Executive Director or CEO of a Children’s Aid Society as stipulated under Section 16.

By the fact that CAS workers are hired as child protection workers by a local CAS agency they become “authorized” to carry out Section 40 of the Child and Family Services Act. However, it must be noted that the authority of those who call themselves child protection workers is limited to section 40 of the Child and Family Services Act only.

Also under Section 40.(13) of the Child and Family Services Act, a police officer is automatically granted the power and authority of a “Child Protection Worker” without having to be designated as such by a director of a local CAS agency. The act states the following:

**Peace officer has powers of child protection worker**

40.(13) Subsections (2), (6), (7), (10), (11) and (12) apply to a peace officer as if the peace officer were a child protection worker. R.S.O. 1990, c. C.11, s. 40 (13).

A police officer can remove a child from any situation in which the police officer believes that a child is at risk of imminent harm. A police officer can even apprehend a child from the care and control of a foster home or group home should the officer be given information which would allow him/her to believe that a child was at risk of harm in a child care facility, even if the child was placed in that facility by a Child Protection Agency. In fact, a police officer would have an obligation to apprehend a child in such an imminent situation if the child disclosed abuse while being in the care of a children’s aid society and indicated fear of being punishment by those who were in a position of authority over the child.

Just as with any child protection worker with a children’s aid agency, the authority of a police officer under the Child and Family Services Act is limited as well. A police officer who has apprehended a child considered at risk under section 40 of the Act can only deliver a child to a place of safety. Once the child is delivered to a place of safety, the authority of the police officer to protect the child under the Act ends. In most situations, when a police officer apprehends a child who is at risk of harm, the police officer will usually call the children’s aid society and to have the children’s aid society take control of the child and to handle carriage of the file from that point forward. Any further involvement of the police from that point forward will be related to enforcement of other acts such as the Criminal Code.

**The role and authority of a child protection worker**

The role and authority of a “child protection worker” is directly linked by legislation only to what is referred to under 37.(1) of the Act as **“for the “purposes” of Section 40 of the Child and Family Services Act** and for no other purposes. A person who calls themselves a “child protection worker” is therefore limited in the scope of his/her duties as defined under section 40 of the Act.

An in-depth analysis of the clauses contained in Section 40 of the Act clearly shows that the powers of a “child protection worker” granted under this section of the Child and Family Services Act are strictly limited to the purpose of **apprehending the child and the removal of the child to a place**

**of safety**, hence the defined status of a “child protection worker.”

It does make complete logical sense that CAS workers who are not necessarily social workers be given the limited power to apprehend a child as this is often the first stage in any child protection proceeding and is often done on an emergency basis. However, once a child has been taken to a place of safety by the legally authorized “child protection worker,” the authority granted to the “child protection worker” under Section 40 of the Child and Family Services Act ends. The limit to the power and authority of a child protection worker is very clear.

From the time that a child is made “safe” from immediate harm by the “child protection worker,” the Social Work and Social Service Act (1998) takes over which requires that only those CAS workers qualified to engage in the practice social work to provide services which involve investigating and resolving the more complex dynamics of the issues which may be affecting children and their families. This is clearly an area covered by the profession of “social work” and regulated by the Ontario College of Social Workers and Social Service Workers.

The role of a “child protection worker” could be closely compared to that of a police officer, who for example, found a young child who was at risk of some sort of harm. A police officer would have the immediate authority to apprehend and to remove the child from the situation but once the child was brought back to a place of safety such as the police station or child protection agency, the role of the police officer as a “child protection worker” ends and the child must be turned over to appropriately trained persons to deal with the social functioning aspect of the case, such as investigating how the child came to be in that situation and/or to make the recommendations as to what will be done next with the child to keep the child safe in the future.

Interpreting section 37.(1) of the Act in a very broad sense, it would appear that even a non CAS worker could be designated as child protection worker in an emergency situation provided that the person was given this authority by someone classified as a “Director” such as the Director of a local CAS. While such a scenario would likely be extremely rare, technically, a teacher at a school could be given the authority to detain a child or to take a child from the school down to the local children’s aid society office in an emergency situation as part of an apprehension process. In such a situation, the only person who could appoint the teacher as a temporary “child protection worker” would be person considered as a “Director” under the Legislation. A front line CAS worker could not grant this authority to another person to fill the position of a child protection worker on their behalf. This is why front line CAS workers cannot even provide the directions to school officials to detain a child as part of an apprehension of a child. In order to detain a child or to apprehend a child, a CAS “child protection worker” must go to the school in person in order to apprehend any child. School officials cannot be asked to assist in the detention in any way nor should they.

In situations where a child is in immediate risk of harm, a child protection worker can apprehend a child and take a child to a place of safety without a warrant being applied for first. This is outlined under section 40.(7) of the Child and Family Services Act:

**Apprehension without warrant**

(7) A child protection worker who believes on reasonable and probable grounds that,

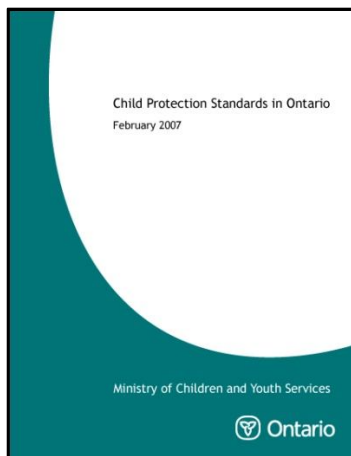
- (a) a child is in need of protection; and
- (b) there would be a substantial risk to the child’s health or safety during the time necessary to bring the matter on for a hearing under subsection 47 (1) or obtain a warrant under subsection (2), may without a warrant bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 40 (7).



It must be noted that where a child has been apprehended without a warrant, the child protection worker must be able to explain to a court within 5 days as to why he/she felt that the child was at such a high risk of harm that immediate removal of the child from the situation was necessary without a court hearing beforehand. To remove a child from a home suddenly without reasonable justification reason could make the child protection worker personally liable for their actions.

The fact that a person who calls themselves a “child protection worker” is limited to the role of apprehending a child is also reaffirmed on page 12 of the “Child Protection Standards in Ontario” published by the Ministry of Children and Youth Services. Under “definitions” in the Standards manual a “Child Protection Worker” is defined as:

Part III of the Child and Family Services Act defined a child protection worker as a person who has been authorized by a Director or local director as a person who may apprehend children. (Page 12 under definitions)



CHILD PROTECTION STANDARDS in ONTARIO	
Standard #1	Receipt of a Report <span style="float: right;">Page 12</span>
Case-Specific Considerations (continued)	<ul style="list-style-type: none"> <li>The facility or institution is considered to be the secondary caregiver.</li> <li>Where there is a family file open, community caregiver files are cross-referenced with the protection files of any child who is an alleged victim, and his or her family of origin.</li> </ul>
References	<p>CFSA, section 15.3(a) (Function of a society to investigate allegations)</p> <p>1. Edleson, Jeffrey L. "Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment under the Law?" In Jaffe, P.G., L.L. Baker, &amp; A. Cunningham (Eds.). <i>Protecting Children from Domestic Violence: Strategies for Community Intervention</i>. New York, NY: Guilford Press, 2004.</p>
Definitions	<p><b>Child Protection Worker</b></p> <p style="background-color: yellow;">Part III of the <i>Child and Family Services Act</i> defines a child protection worker as a person who has been authorized by a Director or local director as a person who may apprehend children.</p> <p><b>Community Caregiver</b></p>

No reference is made in the definitions that a Child Protection Worker can engage in investigations or to assess the risk of harm to any child which is within the jurisdiction of the profession of social work.

### **Limited protection from personal liability granted to those who call themselves “child protection workers”**

Unfortunately, many workers with the various CAS agencies in Ontario who identify themselves as “child protection workers” are under the misguided belief that if they identify themselves as such they are immune to civil or criminal prosecution, even when they extensively involve themselves in the affairs of a child and his/her family. Those who carry out their specified duties under the authority of a “child protection worker” are indeed protected to some extent from personal liability and this is outlined in section 40 of the Child and Family Services Act:

**Protection from personal liability**  
**40.(14)** No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person’s duty under this section or for an alleged neglect or default in the execution in good faith of that duty. R.S.O. 1990, c. C.11, s. 40 (14).

However, the immunity from prosecution granted under 40.(14) to those who call themselves a child protection worker applied only when exercising their authority under section 40. This

immunity ends once the child protection worker has fulfilled his/her duty to bring the child to a place of safety as outlined under the Child and Family Services Act. ***Once a child protection worker engages in activities outside of those listed under section 40 of the Child and Family Services Act, then section 40.(14) which grants them immunity to prosecution no longer applies.***

Workers with one CAS agency, the Durham Children's Aid Society, learned this lesson the hard way. It was reported that in one civil lawsuit case, D.B. v. the Durham Children's Aid Society, the Durham CAS and one of its workers in particular were found guilty in court of malicious prosecution, blackmail, perjury and incompetence. Dorian Baxter, who was a minister at the time and the party in this matter took the Durham CAS to court was awarded damages in excess of \$350,000.



**Dorian Baxter (shown left) won his precedent setting lawsuit against the Durham CAS and its workers. His case was even debated in the Parliament of Canada. Today, Mr. Baxter is an Archbishop with the church and continues to assist others being wrongfully persecuted by children's aid agencies.**

Photo by Canada Court Watch

Regardless of any immunity provision under section 40, no such immunity applies when bad faith can be reasonably shown by a complainant, even during a lawful apprehension.]

### **Crossing over the line of jurisdiction between child protection worker and social worker**

The fact that all of the province's Children's Aid Agencies hire front line workers and give them titles such as "child protection worker" and employ these workers to engage in the practice of social work is very obvious.


Below is a copy of an advertisement put out by the Hamilton Children's Aid Society in which its agency is advertising for a child protection worker. Clearly the job ad openly acknowledges that the child protection workers will be engaging in activities which exceed the legislated authority granted to a "child protection worker" under the Act. Child Protection Workers are not authorized under the Act to engage in the activities which the Hamilton CAS has indicated fall within the scope of a child protection worker.

***Child Protection Workers provide front-line social work services to children and their families by assessing complaints about children alleged to be in need of protection as defined by the Child and Family Services Act, specifically including areas of sexual and physical abuse, neglect and parenting capacity.***

(Source: Hamilton Children's Aid Society)

Below are copies of two ads published by the Family and Children's Services of Niagara in February of 2011 clearly show that the agency openly acknowledges that the child protection workers will be engaging in providing social work services which exceed the legislated authority granted to a "child protection worker" under the Act. In the second ad, the agency states that it uses "professional social workers" to conduct investigations yet many of its workers are conducting investigations who are not registered with the College.





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## JOB POSTINGS

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1 employment opportunity for **Social Workers**


**Child Protection Worker**

01/24/2011

Capable of communicating and building strong relationships, you will provide social work services to families and children in need of protection. The focus is on investigation, assessment of risk, short and long-term treatment, advocacy, and referrals. Your proven assessment, organizational, and teamwork abilities are combined with an MSW or BSW degree and experience working with families in crisis. A valid driver's license and vehicle are required.

[Apply for this position](#)


**This job ad clearly refers to the new child protection worker as providing social work services**



How Can I . . .

- [Become a Foster Parent?](#)
- [Become a Volunteer?](#)
- [Make a Donation?](#)

© 2009 Family and Children Services Niagara      Telephone Toll Free: 1-888-937-7731



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## INVESTIGATION & REPORTING



How Can I . . .

- [Become a Foster Parent?](#)
- [Become a Volunteer?](#)
- [Make a Donation?](#)

We are mandated by the Child and Family Services Act to investigate all reports of the possible abuse or neglect of children or other concerns regarding their care and safety. We receive referrals from many community sources including the schools, police, concerned friends, neighbours or family members.

Professional social workers will conduct a thorough investigation, speaking with all concerned individuals and other community professionals where needed. Their goal is to determine whether or not a child is in need of protection and what action is required to ensure the safety and well being of the children.

Child protection concerns include issues such as physical, emotional or sexual abuse; lack of supervision, inappropriate discipline, neglect or other concerning factors such as family violence, parent or caregivers' mental health; drug, alcohol or other substance abuse problems and environmental factors such as the safety and hygiene of the home.

Intervention might include referrals to other community agencies, ongoing assistance and monitoring by FACS to help make changes that will allow children to remain safely in the home or possibly removing children from the home to foster care or placement with family or friends.

You can report your concerns about the safety of a child 24 hours a day, 7 days a week. Call your local office of Family and Children's Services at (905) 937-7731 or 1-888-937-7731. You can report anonymously or ask to remain confidential.

**Please Note:** Please do NOT attempt to make a report or referral via e mail. Reports should be made by phone or in person.

© 2009 Family and Children Services Niagara      Telephone Toll Free: 1-888-937-7731

Below is another sample job posting on the Services Canada website from the Children's Aid Society of the Districts of Sudbury and Manitoulin showing a typical job posting for a child

protection worker. It should be noted that listed under the category of “Credentials” that none are required. Yet under the category of “Specific skills”, it is clear that the person being hired for the position of child protection worker will be engaged in the practice of social work. In effect, the Children’s Aid Society is hiring persons of unknown qualifications as “Child Protection Workers” to engage in the practice of social work. These unvetted applicants are immune to restrictions and oversight of social workers registered with the College of Social Workers and Social Service Workers. By any reasonable speculation this is a recipe for disaster.

**Job Advertisement**  
[Job Search Safety Advice](#)  
[E-mail this Job](#)  
**Job Number:** 5010932  
**Title:** **Social worker (Bilingual Child Protection Worker) (NOC: 4152)**  
**Terms of Employment:** Temporary, Full Time, Day  
**Salary:** To be negotiated, Other Benefits, As per collective agreement, Medical Benefits  
**Anticipated Start Date:** As soon as possible  
**Location:** Sudbury and Area, Ontario (2 vacancies )  
**Skill Requirements:**  
**Education:** Completion of university  
**Credentials (certificates, licences, memberships, courses, etc.):** Not required  
**Experience:** Experience an asset  
**Languages:** Speak English, Speak French, Read English, Read French, Write English, Write French  
**Work Setting:** Community service organization, Social and family service agency  
**Area of Social Work Specialization:** Child welfare  
**Type of Clients:** Adolescents, Adult, Child  
**Specific Skills:** Interview clients to assess their situation and determine the types of services required and eligibility, Plan programs of assistance for clients, Investigate cases of child abuse or neglect and take authorized protective action when necessary  
**Security and Safety:** Criminal record check, Child welfare check  
**Work Conditions and Physical Capabilities:** Fast-paced environment, Work under pressure, Tight deadlines, Attention to detail, Large workload, Large caseload  
**Transportation/Travel Information:** Valid driver's licence, Own vehicle  
**Work Location Information:** Various locations  
**Essential Skills:** Reading text, Document use, Writing, Oral communication, Working with others, Problem solving, Decision making, Critical thinking, Job task planning and organizing, Computer use, Continuous learning  
**Employer:** The Children's Aid Society of the Districts of Sudbury and Manitoulin

The Ontario Child Protection Tools manual which all front line CAS workers are mandated to follow during the course of involvement with a family is riddled with dozens of examples which make it clear that CAS workers are engaged in the practice of social work. Just one example in the publication where CAS workers are identified as being required to engage in the practice of social work can be found below.

	<p>The safety assessment <i>process</i> is conducted at the point of the first face-to-face contact with the child and family or at any subsequent point in the life of the case when child safety is of concern. Using the safety assessment tool as a guide, the information for each safety threat is collected from the child, caregivers and collaterals using good social work practice and engagement. Each of the safety threats is addressed at some time during the initial contact to ensure that all safety areas are assessed; however, the Ontario Safety Assessment tool is not meant to be used as a questionnaire.</p>	
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The extract from page 5 of the Ontario Safety Assessment instructions (above) provides clear instructions from the Ministry that CAS workers are to use “good social work practice and engagement.”

## **What is social work?**

To better understand the problem associated with CAS workers being engaged in the practice of social work contrary to legislation, it is important for one to have an understanding of what social work is. Social work is a widely accepted and understood public domain, English language term which is not exclusive to any Act or to any professional body, including the College. The term has been described in many textbooks, journals and other publications throughout the world including various encyclopaedias. Most members of the public understand what “social work” is and what it entails in its most general sense and understand that the term “social worker” would refer to a person who provides social work services. The term, “social work” describes a well established discipline dating back to the early 19<sup>th</sup> century which can be defined as follows:

*Social work is a discipline involving the application of [social theory](#) and research methods to study and improve the lives of people, groups, and societies. It incorporates and uses other [social sciences](#) as a means to improve the [human condition](#) and positively change society's response to chronic problems. Social work is a profession committed to the pursuit of [social justice](#), to the enhancement of the [quality of life](#), and to the development of the full potential of each individual, group and community in the society. It seeks to simultaneously address and resolve social issues at every level of society and economic status, but especially among the poor and sick. Social workers are concerned with social problems, their causes, their solutions and their human impacts. They work with [individuals](#), [families](#), [groups](#), [organizations](#) and [communities](#).*

On its website, the International Federation of Social Workers (IFSW) <http://www.ifsw.org/> defines the social work profession as follows:

*The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.*

The Canadian Association of Social Workers <http://www.casw-acts.ca/> describes the practice of social work on page one of its document, “***Social Work Practice in Child Welfare***” as follows:

*“Social workers in child welfare agencies are involved with the planning and delivery of a variety of services for children and families, such as family support, residential care, advocacy, and adoptions and foster care programs, as well as child protection. The social worker’s task is to understand a variety of factors related to the child, the family, and the community and to balance the child’s safety and well-being with the rights and needs of a family that may be in need of help. The professional social work judgment involved in these decisions serves children and families well in the great majority of situations, a fact often lost when a case decision becomes the object of intense public and legal scrutiny. As in other professional work, it is difficult never to make a mistake, and most decisions about complex matters involve risks as well as benefits.”*

While the Ontario Association of Social Workers (OASW) does not publish a specific definition of the term “social work” on its website as do some of the other organizations, they do describe some of the activities that a social worker would engage in. From their website, the OASW states the following:

### **A career that makes a difference**

- *Social work as a career offers many possibilities to people who want to make a difference in the quality of life for individuals and society.*
- *Are you interested in working with abused children or with couples who are having trouble in their relationship?*
- *Would you like to help persons with drug or alcohol problems or in assisting disabled persons to realize their potential?*
- *Social workers are commonly viewed as those who work directly with people who are disadvantaged and troubled.*
- *Perhaps you want to assist people to influence the quality of life of their communities and neighbourhoods. Could you see yourself helping groups organize to get better housing, improved health care or safer neighbourhoods?*
- *Maybe you would like to use your knowledge and skills to help shape better social policies. Or perhaps you have an inquiring mind keen to delve into the causes of specific social ills or to grapple with questions about which social programs really work and why. These are just some of the career possibilities open to you as a social worker.*

### **About Social Workers**

Social workers help people resolve problems that affect their day-to-day lives. People see social workers when they are going through a difficult period in their personal, family and/or work life. Social workers help clients:

- identify and understand the source of stress or difficulty
- develop coping skills and find effective solutions to their problems
- find needed resources
- by providing counselling and psychotherapy.

Social workers deal with all ages, groups, backgrounds and income levels.

**(Source: The Ontario Association of Social Workers website)**

*Social workers are regulated by the Social Work and Social Service Work Act under the Ministry of Community and Social Services. This Act requires that anyone who calls themselves, or holds themselves out to be, a social worker, must belong to the Ontario College of Social Workers and Social Service Workers. The initials RSW (Registered Social Worker) appear after their name.*

**(Source: The Ontario Association of Social Workers website)**

Under provincial legislation in British Columbia, the *Social Workers Act[SBC 2008] CHAPTER 31<sup>4</sup>* defines social work and a social worker below:

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<sup>4</sup> Website: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_08031\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_08031_01)

## **Definitions**

“**social work**” means the assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal issues through the use of social work knowledge, skills, interventions and strategies, to assist individuals, couples, families, groups, organizations and communities to achieve optimum psychological and social functioning;

“**social worker**” means a person who practices social work.

## **Ontario Regulations also reaffirm that those persons who practice social work must be registered with the College**

Ontario regulations related to the *Social Work and Social Services Act 1998* also describes the role of a social worker and social services worker. The Ontario Regulation makes reference to **persons**, not just members of the College. If legislation was intended to apply only to members of the College then the word “members of the College” would have been used instead of the word, “person.” Under section 2 (definitions) of the *Ontario Regulation 383/00* (downloaded from the Ontario Government website on August 13, 2010) it states:

“role of a social service worker” means the role of a person who assesses, treats and evaluates individual, interpersonal and societal problems through the use of social service work knowledge, skills, interventions and strategies, to assist individuals, dyads, families, groups, organizations and communities to achieve optimum social functioning;

“role of a social worker” means the role of a person who assesses, diagnoses, treats and evaluates individual, interpersonal and societal problems through the use of social work knowledge, skills, interventions and strategies, to assist individuals, dyads, families, groups, organizations and communities to achieve optimum psychosocial and social functioning. O. Reg. 383/00, s. 2; O. Reg. 320/10, s. 1.

Under section 6.1.2 of the *Ontario Regulation 383/00* (which is scheduled to be in force on February 13, 2011) further clarification is provided to reinforce the fact that it is the practice of social work in the province of Ontario that is being regulated by the College, not, just the practice of social work by only members of the College. This section of the Regulation is quite clear in that it prevents even a former member of the College from engaging in the practice of social work once the member has ceased their membership with the College. Section 6.1.2. states:

6.1.2. An inactive member shall not engage in the practice of social work in Ontario.

However, verification with the College of the status of former members of the College, does show that some are engaged in the practice of social work with CAS agencies after they have become inactive with the College. It should also be noted that Ontario Regulation 320/10 which was published in the Ontario Gazette on August 28, 2010, and is considered as a revision to Ontario Regulation 383/00 still maintains the same definitions for the “role of a social worker.” (current as of January 4, 2011)

## **What about those who call themselves by other names such as “intake worker, family worker or child worker, etc.**

While the term “child protection worker” has become one of the most broadly used titles used by many front line CAS workers as a way to avoid registration with the College, some workers may try to mask their unlawful practice of social work under other titles such as family worker, child



worker, intake worker, etc.

No matter what title the front line worker uses on his/her business card to identify themselves by, the moment the worker begins to use their social work training to investigate, to gather information by personal observation or to evaluate a problem and to make recommendations, the person is engaging in the practice of social work and therefore must be registered with the College. A CAS worker who may call themselves an intake worker would not be engaged in the practice of social work for example if their job was limited to helping parents fill out standardized forms at a CAS office which would then be reviewed and evaluated by a properly qualified social worker. A CAS intake worker who goes into a home to observe surroundings and to observe interactions between parents would be considered as crossing the line into the area of social work. Regardless of title, registration with the College is a requirement for those CAS workers who engage in the practice of social work.

### **The Fiduciary Duty of the Ontario College of Social Workers and Social Service Workers to regulate the practice of social work**

The duty to protect the public's interest in the practice of social work has been given to the Ontario College of Social Workers (the College) under *Social Work and Social Service Work Act (1998)*. In fact, under the Act, the **PRIMARY** duty of the College is to serve and protect the public interest, even ahead of the interest of its own members. The section of the Act which states that the College must carrying out its objects with the primary purpose of protecting the public's interest is expressed in section 3.(1) of the Act.

The College has an online registration form which members of the public in Ontario can make inquiries as to whether CAS workers in Ontario are registered with the College. The form can be found on the College's website at: <http://www.ocswssw.org/en/registrationform.htm>. The College will only respond by fax or by regular mail to inquiries and usually does so within a few days.

Because protection of the public's interest and regulation of the practice of social work has been given to the Ontario College of Social Workers under an Act, a fiduciary relationship is automatically established between the College and members of the public. The word fiduciary itself comes originally from the *Latin fides*, meaning faith, and *fiducia*, trust. In law, a fiduciary duty is the highest standard of responsibility that a person or entity (referred to as the fiduciary) owes to other person (the principal). A fiduciary (in this case the College) is expected to be extremely loyal to the members of the public to whom the College owes the duty to protect. When acting as a fiduciary, the College must put the interests of the public ahead of its own and must not profit from its position as a fiduciary. From Wikipedia:

In [English common law](#) the fiduciary relation is arguably the most important concept within the portion of the legal system known as [equity](#). In the United Kingdom, the [Judicature Acts](#) merged the [courts of equity](#) (historically based in England's [Court of Chancery](#)) with the courts of common law, and as a result the concept of fiduciary duty also became usable in [common law](#) courts.

When a fiduciary duty exists, equity requires a stricter standard of behaviour than the comparable [tortious duty of care](#) at common law. It is said the fiduciary has a duty not to

be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where his fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from his fiduciary position without express knowledge and consent. A fiduciary cannot have a [conflict of interest](#). It has been said that fiduciaries must conduct themselves "at a level higher than that trodden by the crowd"<sup>[3]</sup> and that "[t]he distinguishing or overriding duty of a fiduciary is the obligation of undivided loyalty."<sup>[4]</sup>

The following sections of the Act are what the College's fiduciary duty to protect the public's interest is based upon:

### **Duty and objects**

#### **Duty to protect public interest**

[3. \(1\)](#) In carrying out its objects, the College's primary duty is to serve and protect the public interest. 1998, c. 31, s. 3 (1).

The section of the Act which states that the College must regulate the practice of social work and social service work is expressed in section 3.(2),1., of the Act.

### **Objects**

[3.\(2\)](#) The College has the following objects:

1. To regulate the practice of social work and the practice of social service work and to govern its members.

Clause 3.(2)1. of the *Social Work and Social Service Work Act (1998)* clearly states that the College must regulate **three** separate and distinct objects. The three distinct objects are;

- 1) to regulated the practice of social work **and**
- 2) to regulate the practice of social service work **and**
- 3) to govern its members

The use of the known English conjunction "and" within the Act clearly indicates that each of these objects is separate and distinct from each other. Nowhere in the Act does it state that the College must regulate the practice of social work amongst **only** its members. If legislators had intended that the practice of social work was to be regulated against only those practitioners who voluntarily chose to be members of the College, then Legislators would have not used the word "and" in the wording of the Act and would have inserted the word "members of the college" in a grammatically correct location in the legislation. The Legislators clearly knew what they were doing at the time when they made "protecting the public's interest" as the "primary" duty of the College.

The importance of grammar in the interpretation of a law was also described by one of Canada's foremost authorities on Statutory interpretation, Elmer Driedger, (1913–1985) who stated, "***the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.***" This principle has been adopted by the Supreme Court of Canada.

Looking at sections 3.(1) and 3.(2) harmoniously is it very clear that the College of Social Workers and Social Service Workers was given the mandate and authority to regulate the practice of social work as part of its duty under 3.(1) of the Act to protect the public's interest. Regulating the practice of social work applies to all persons. The public's interest cannot be protected as intended by the legislators if membership in the College can be avoided by those who practice social work by identifying themselves under some other title such as "child protection worker".



In fact, the Act also states that no person shall represent themselves as a social worker or by implication that he or she is a social worker or registered social worker. Section 46.(2) of the Social Work and Social Service Work Act, 199 S.O. 1998, CHAPTER 31 states:

**46.(2) No person except a registered social worker shall represent or hold out expressly or by implication that he or she is a social worker or a registered social worker. 1998, c. 31, s. 46 (2).**

When a front line CAS worker engages in providing services that fall within the realm of social work this “implies” that the worker is a social worker and will be interpreted by members of the public as such. The wording of the Act also indicates that the term “implication” is used to reference two specific groups of persons – those who imply to be social workers [without being members of the College] and those who imply to social workers as *registered* social worker members of the College. A CAS worker does not have to be a member of the College or even state in words to imply that he/she is a social worker. The term “implied” means to interpret by the actions of that person.

When a CAS worker provides social work services, most members of the public will reasonably assume that the person is a social worker and will trust that due diligence and regulation is in place. It is commonly assumed that those with a degree or certificate in social work who are hired by a Children’s Aid Society and are being paid as a professional to provide social work services to children and families are for all intent and purpose, social workers. (Changing a person’s title on a business card does not change the facts)

***The intent of the Social Services and Social Services Act (1998) was clearly intended to equally benefit all citizens in Ontario and to ensure that those engaged in the practice of social work be properly qualified and regulated. Unfortunately, the Ontario College of Social Workers and Social Service Workers has taken the misguided position to regulate the practice of social work amongst only its members with membership in the College being voluntary. This position of course leaves members of the public vulnerable to anyone who wishes to set up themselves up in business to provide social work services by just calling themselves by a title other than “social work”. If legislators had intended that the regulation of the practice of social work be voluntary, the formation of a College would never have been necessary. The intent of Social Work and Social Service Act was meant to extend equal protection of the law to all children and families in Ontario.***

Many references can be found in case law, including the Supreme Court of Canada, which state that Legislation is to be applied based on its grammatical correctness, its intent and its purpose. More than twenty-five years ago, in the first edition of the Construction of Statutes, Elmer Driedger (1913-1985) described an approach to the interpretation of statutes which he called the modern principle:

***‘Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.’ – Elmer A. Driedger, The Construction of Statutes (Butterworths, 1974), at p. 67.***

As one example of the application of such principle, judges of the Supreme Court of Canada stated the case of Winnipeg Child and Family Services v. K.L.W., [2000] 2 S.C.R. 519:

L'Heureux-Dubé, Gonthier, Major, Bastarache and Binnie JJ.: “.....the underlying philosophy and policy of the legislation must be kept in mind when interpreting it and determining its constitutional validity.”

*By allowing front line CAS workers with the various children's aid societies in Ontario to engage in the practice of social work under the appearance to the public as professionals without enforcing membership, the College is failing in its primary duty to protect the public's interest and failing in one of its most important objectives which is to regulate the practice of social work in the province of Ontario.*

### **Failure of the College to fulfill its fiduciary duty to regulate the practice of social work and to protect the public's interest**

Since the Ontario College of Social Workers and Social Service Workers has come into existence, it has wrongfully taken the position that it only has the authority to regulate those who are registered as members with the College and that those who practice social work as non members are untouchable by the College. As a fiduciary, the College has failed in its duty to protect the public.

In a conversation regarding the intent of the Act and the position of the Ontario College of Social Work and Social Services Work, Marlene Zagdanski, director of complaints and complaints, stated, ***“It [the Act] is a scheme of title protection, this is very clear.”*** Ms. Zagdanski stated that it was the College's official position and understanding of the legislation that the Act was intended for the protection the title of “social worker” and in her own words, “We have authority over members of the College.” Most would disagree with this position for how can the College be expected to fulfill its primary duty to protect the public interest if the College selectively applies its authority only to those who practice social work and choose to become members of the College

In fact, the College wrongfully stated in its own five year review of the Act that it cannot accomplish the key objective of the Act which is to protect the public if those who have the academic qualifications to practice social work continue to provide services to the public which would fall within the practices of the social work profession. In their five year report to the Minister of Community and Social Services the College stated:

***“The College's view is that the Act cannot accomplish the key objective of ensuring public safety and quality services if there are practitioners who have the academic qualifications of a social worker or social service worker and who provide services to members of the public within the scope of practice of the professions but are not regulated by the College.”<sup>5</sup>***

While the College incorrectly stated that it could not protect the public interest, there are clear provisions in the law which do allow the College to enforce the act. The College can take action if it only “appears that a person does not comply with the Act.” Below is the section of the Act which allows the College to intervene on behalf of the public.

#### **Compliance order**

**54.** If it appears to the College that a person does not comply with this Act or the regulations or the by-laws, despite the imposition of a penalty in respect of that non-compliance and in addition to any other rights it may have, the College may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and the judge may make the order or any other order the judge thinks fit. 1998, c. 31, s. 54; 2006, c. 19, Sched. C, s. 1 (1).

<sup>5</sup> Review of the Social Work and Social Services Work Act by the College – November 7, 2005.

If the legislators had intended that the duty and objects of the College were to be applied to only its members, then the legislators would have stated in the Act that the primary duty of the College was to serve and protect the interest of its members. The legislators did not intend for the Act to make the practice of social work in the province of Ontario something that CAS workers can opt into or out of on a voluntary basis.

A number of CAS workers engaged in practice of social work in Ontario have stated that there is no purpose to joining the College as the workers get very little back from the College and that because of this it is not worth the membership fees to join. Forgotten by these short-sighted workers is the fact that the intent of the College was to promote the practice of social work and to make society better through the regulation of the profession. Tragically, too many CAS workers take the selfish position that there must be a direct benefit to themselves if they are to join the College and do not consider what their contribution of becoming a member is doing to support the profession of social work and to benefit society as a whole.

A breach of a fiduciary duty is considered as one of the most serious violations of the law. The College and its Board of Directors have been given the **PRIMARY** duty under legislation to protect the public interest and as such, the Board of Directors of the College owe the public the duty of care to fulfill this obligation. In the view of many the College has failed in its fiduciary duty to protect members of the public and should be held accountable. Damages resulting from the breach of a fiduciary duty such as legal costs, physical or mental suffering or Canadian Charter Rights Violations by CAS workers will generally be compensated for by the courts. In addition, punitive damages are very likely to be awarded against those who violate their fiduciary duties and cause harm to individuals or corporations.

### **Growing public criticism and defiance against unprofessional CAS services and the waste of taxpayer's dollars**

There has been growing public opposition and defiance against children's aid agencies in the province of Ontario over the quality of services being provided by many of the front line CAS workers. Public demonstrations against CAS agencies have been going on for years and are increasing in numbers. During 2010, dozens of community protests by parents against the children's aid society were held in cities and towns all over the province of Ontario. Various parent advocacy groups are already planning their demonstrations and public meetings for the 2011 calendar year.

In addition to the complaints about services by the families affected, those concerned about the abuse of tax resources by CAS agencies are also expressing concern over how CAS agencies are wasting tax dollars. Below is a photo of the CAS offices in Windsor, Ontario which looks more



like a palace than an office building. These expensive buildings must be paid for from government funding from the government, funding which relies on the number of children being provided services.

In addition to the numerous and ongoing public protests by parent groups from across the province of Ontario, social network sites on the child protection system have proliferated on the internet in recent years. There are literally countless Facebook groups and websites springing up regarding the abuse of children and families by child protection agencies. You Tube also has a large number of testimonials about abuse of children and families as a result of child

protection services. A number of groups have organized public meetings to discuss the issue of child protection with all of these events being well attended by people in their local communities.

In Ontario, organizations such as Canada Court Watch ([www.canadacourtwatch.com](http://www.canadacourtwatch.com)), Dufferin Voca ([www.fixcas.com](http://www.fixcas.com)), The Foster Care Counsel of Canada ([www.afterfostercare.ca](http://www.afterfostercare.ca)) and the Bill88 organization ([www.bill88.ca](http://www.bill88.ca)) have websites that have been exposing horror stories about the ongoing failures with the child protection system in Ontario and other parts of Canada for many years. There are literally dozens of facebook groups dealing with the issue of child protection agencies. One Facebook group, “Stop the Children’s Aid Society from taking away children from good parents” has attracted thousands of readers and a devote group of followers. Adults who were formerly in care of CAS agencies in Ontario have formed their own chat groups to exchange stories of their abuse while in the care of CAS agencies.



### Children stand up to protest CAS

The photo to the left shows three children taking to the streets to protest the CAS in their community. Unregulated CAS workers took their friends away into isolation and will not let them see them. In the vast majority of cases, complaints by children and parents against CAS workers involve those workers who call themselves “child protection workers” and who are engaged in the unlawful practice of social work but who are not registered with the Ontario College of Social Workers and Social Service Workers.

Photo: Canada by Court Watch



### Natives take to the streets

The photo to the left shows native protestors marching through downtown Toronto in protest of the Children’s Aid Society during the summer of 2010. Hundreds of protestors at this event closed down the intersection of Yonge St. and Dundas St. which is one of Toronto’s busiest of intersections.

Photo: Canada by Court Watch



### Parents protest CAS

The photo to the left shows a group of parents outside of the front entrance to the Cambridge, Ontario courthouse. Rallies like this have been held in communities all across Ontario with more being scheduled in communities across Ontario.

Photo: Canada by Court Watch





### **Highway blockage in protest of CAS**

Natives on Manitoulin Island, Ontario, block the highway in protest of CAS atrocities against members of their communities. Protests like this are becoming more militant as unregulated CAS workers continue to practice social work unlawfully in violation to the Social Work and Social Services Work Act (1998) and cause havoc to families in many communities.

In some cases, Native communities in Ontario have passed resolutions to ban CAS workers from entering their reserves. Constance Lake First Nation Chief and Council have passed a resolution banning all members of the Ministry of Children and Youth Services from their territory. In July of 2009, Chief Arthur Moore of the Constance Lake First Nation Reserve was quoted in the news media as saying, "If for any reason a representative [Children's Aid Society] enters onto Constance Lake Territory, they will be treated as trespassers, and if any children are removed from the community it will be considered a kidnapping."

Children in care of CAS and formerly in care of CAS are coming forward to tell their chilling stories while they were under the care of CAS agencies in Ontario. In many cases, CAS agencies are spending more tax dollars in an attempt to have some of these sites shut down and to keep the public from finding out. While there are a number of good stories that the public do hear about regarding CAS, there remains little doubt that there are far too many serious issues surrounding the delivery of services by most of the CAS agencies in Ontario and the abuse of tax dollars to cover these mistakes up.

Ontario's Child and Family Services Review Board also has issued orders against CAS agencies and their workers which show that many CAS front line workers are failing to perform their duties in a professional manner consistent with the legislation. Examples of these decisions can be viewed on the Canadian Government legal research website called Canlii at: <http://www.canlii.ca>. Many of the CAS workers who are involved in these complaints to the Review Board are not registered with the Ontario College of Social Workers and Social Service Workers.

The vast majority of children and parents with complaints against the CAS workers in Ontario find that the CAS workers who they feel have done harm to themselves or members of their families are not registered with the Ontario College of Social Workers and Social Service Workers. Based on input from children and parents, there appears to be a direct correlation between workers who are not registered with the College of Social Workers and the frequency and seriousness of complaints by children and parents. *This would reasonably suggest that in general, front line CAS workers who are not registered with the College are not doing as good a job as those front line CAS workers who are registered with the College.*

### **Widespread violations of the rights and freedoms of children and parents as a result of the influence of CAS on other public institutions**

In an effort to spread their power and influence and to give an air of legitimacy to the unlawful practices that many CAS workers engage in, especially to the violations of the rights and freedoms

of children and their parents, CAS agencies actively engaged in a number of campaigns and partnerships to solicit the support and endorsement of the public as well as community based institutions such as schools and hospitals. CAS agencies spend taxpayer money on media campaigns designed specifically to make their operations look as respectable and legitimate as possible.

In some cases, CAS agencies will hold public events to make it appear as if CAS does good for the community where in reality, CAS agencies hide much of the harm they do children and families behind a veil of secrecy and legal barriers.



**Media events such as the one shown to the left are often used by CAS agencies to make themselves look respectable in the community. Yet behind the scenes most of the front line CAS workers providing services to the public are breaking the law and in many cases wasting tax dollars and causing significant harm to children and families as a result of lack of due diligence by front line workers and agency lawyers.**

In other cases, CAS workers will approach public institutions and offer their services as consultants to help these other institutions develop policies relating to child protection. Some senior CAS workers have been known to become board members of other organizations which donate money to the CAS. While such activities may appear honourable on the surface, legitimacy cannot be given to such events when there continue to be widespread abuse of power and authority by those who work for these agencies.

Some of the adverse influences which CAS agencies have on agencies include some of the following:

### **Influence of CAS on teachers and schools**

CAS workers have directly influenced teachers and school officials in a number of ways to spread the power and control of the CAS over the community, some of which include the following:

- a) CAS workers act as “consultants” to school boards to help ensure that school boards develop policies related to child abuse and neglect. Once a part of the policy making process, CAS workers often influence board members into approving policies which support the unlawful activities and the interests of unregistered CAS workers.
- b) Many school boards in Ontario have written policies and procedures relating to child abuse which provide access by CAS workers to children at school but directly violate the rights and freedoms of students and parents under the Canadian Charter of Rights and Freedoms and in some cases, the Criminal Code of Canada.
- c) Many children are unlawfully detained at their schools by CAS workers without the knowledge and informed consent of the parents. In some cases, children are secretly interrogated at their schools by CAS workers who have misled school officials into believing that the interviewing of children at their schools without informed consent is lawful.

There have been reports of chilling confrontations involving children and child protection workers at school involving yelling, screaming and crying out for help. It has been reported in some cases,

that child protection workers have shown up at schools with police to interrogate and bully children. Below are a couple of emails from parents:

*Example 1 - "The CAS came to my daughter's school to apprehend her with police. Even though I understand that they had the right to do so, the workers forced her into a room to question her first. My daughter became upset and started screaming for them to let her go home. I was called by the school and when I arrived at the school I could hear her screaming in the halls. After such an incident, how can my daughter ever expect to trust her teachers or ever want to go back to that school again? My daughter was taken away and placed into foster care in a different district. All of this trauma to my daughter could have been avoided if the apprehension had been done off school property and not involved the school at all. In hindsight, I believe that this was deliberate to make it easier for the CAS to take my child and to relocate her in another district. She has lost contact with all her friends. How is this in the interest of my child."*

*Example 2 - Sharon wrote: "A CAS worker came into the school and simply walked around my son's class observing the students and not speaking to anyone. Her presence made my son so uncomfortable that he asked to be excused to go to the washroom when he really didn't to go. He hid in the washroom for several minutes hoping that when he got back the CAS, "SS" worker would be gone."*

Chilling video testimony of children who were terrified at their school and experienced having had their rights and freedoms violated by the involvement of unregulated CAS workers can be viewed on line at: <http://www.vimeo.com/5023797>

The most common illegal activity which school officials unknowingly participate in is to allow CAS workers to come into schools and to interview children without the informed consent of the parents for the purpose of investigating a report of child abuse. Unless a child has gone to his/her teacher of his/her own initiative and asked for help, it is unlawful for school officials (persons of authority) to allow CAS workers to interview a child at school without the informed consent of the parents. Under Section 7 and 9 of the Charter of Rights and Freedoms, children cannot be unlawfully detained and questioned by anyone. Most police officers are aware of this which is why police officers will not question children without the presence of a parent. Under the Criminal Code, the detention of students at their school is considered as "unlawful detention."

Some CAS agencies are infiltrating school Boards to such an extent as to be allowed to establish CAS offices inside of schools. Unrestricted access to children in their schools provides CAS agencies to a direct source of new clients.

More on the issue of the unlawful activities of CAS inside schools can be reviewed in the document, "Schools and the CAS, a guide for teachers and school officials" which can be obtained for no charge from Canada Court Watch at [info@canadacourtwatch.com](mailto:info@canadacourtwatch.com)

School officials at all levels must be aware that they also have a fiduciary duty to ensure that they do not allow unregistered and unregulated CAS workers who are not members of the Ontario College of Social Workers and Social Service Workers to have any dealings with students or school officials. Too often, school officials fail to understand their contract obligations under the law as fiduciaries.

### **Influence of CAS on police services**

Unregulated CAS workers have directly influenced police services in a number of negative ways,



some of which include the following:

- a) Police officers are routinely requested to accompany unregistered CAS to the homes of parents to assist the CAS workers to unlawfully detain or to interrogate the parents. Most police officers are aware that police don't have the power to arbitrarily detain citizens, yet will often blindly assist unregistered CAS workers to break the law.
- b) Police are often used by CAS workers as a "show of force" tactic to allow unregistered CAS to unlawfully enter homes without search or apprehension warrants. Police officers are routinely used by unregistered CAS workers to bring sense of legitimacy to the unlawful actions of CAS workers against children and parents.
- c) Police have unlawfully entered homes and broken down doors to apprehend children at the orders of unregistered CAS workers where there is no apprehension order and no apprehension being conducted under the Child and Family Services Act.
- d) Many police officers and supervisory officials are under the misguided impression that they must follow the instructions of CAS workers without question when it comes to the area of child abuse and neglect. Police are not likely to ask the credentials of those CAS workers who call them for assistance and are totally unaware to the fact that CAS workers have no more authority under law to give police instructions than an average person off the street except when an official legal apprehension of a child is being conducted.

Police officers are supposed to be protecting the public from those CAS workers who are breaking the law yet in the vast majority of cases the police end up unknowingly protecting the CAS workers and it is the CAS workers who are the ones breaking the law! The bottom line is that police officers should never be taking instructions or assisting any CAS workers without checking first to ensure that the CAS workers are acting within the law themselves by being registered with the College.

### **Influence of CAS workers on courts and family court judges**

Unregulated CAS workers have misled courts and judges in every part of the province of Ontario. With few exceptions, judges at all levels of courts in Ontario assume that CAS workers are professional social workers and the work they do with families to be considered as reliable and professional. Testimony by way of affidavit evidence from CAS workers is often accepted in court without question. Below is a quote from Madame Justice J. Mackinnon of the Ontario Superior Court of Justice in Ottawa, Ontario which reflects how many judges have taken the position that CAS workers are synonymous with social workers.

*“ It is admitted that upon completion of its investigation the C.A.S. closed its file without taking any action. Again, it is my view that the mother has confused the issue of the merits of the father’s case with that of relevance. It may be that the observations made by the C.A.S. at this time will simply serve to confirm the mother’s view that the child is fine and should remain in her care. If so, the merits of the father’s case would be weakened. But in my view, it can hardly be said that the in-home observations of a trained social worker are not likely to be relevant to the outcome of a custody case. Nor do I agree that any information given by the mother to the C.A.S. in the course of its investigation was done with a legitimate expectation of privacy.” Mackinnon, J.<sup>6</sup>*

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<sup>6</sup> D. v. H, 2007 CanLII 62774 (ON S.C.)

## **Influence of CAS on hospitals and on health care professionals**

Unregulated CAS workers have directly influenced hospital workers and health care professionals in a number of negative ways which violate the rights and freedoms of Canadians, some of which include the following:

- a) Hospital staff will in some cases act as “spies” to report back to CAS workers when a mother has come into the hospital to give birth to a child. Based on just a phone call from the CAS, hospital workers are misled into believing that the mother is a child abuser and by acting as a spy for the CAS, they are doing a good deed by helping to protect a child.
- b) Hospital staff will often abuse their authority and unlawfully detain a mother and her baby at a hospital. In some cases it has been reported that hospital staff will use force to prevent a mother and her child from leaving the hospital based on just a phone call from a CAS worker. Often these detentions are made without any written confirmation by the CAS or indicating the lawful authority by which the hospital staff are under obligation to follow. Most often those from the CAS making the call are unregistered CAS workers who are breaking the law themselves and unlawfully engaged in the practice of social work in Ontario.
- c) Hospital staff will help CAS workers “snatch” a child from the mother by distracting the mother while CAS workers take the child out the back door of the hospital into a waiting CAS vehicle while the mother is distracted.

Chilling testimony of one mother who had her child taken from her at the hospital by CAS workers with the help of police services can be viewed on line at: <http://vimeo.com/8080556>

## **Influence of CAS workers on women’s shelters and shelters for young mothers**

Unregulated CAS workers have directly influenced women’s shelters and shelters for young mothers and in many cases resulted in the rights and freedoms of mothers being violated. Mothers have reported that they have been held inside these facilities against their will under threat that their child will be apprehended by CAS workers if they tried to leave the facility to visit friends or families. Fathers are discriminated against and mothers often encouraged not to have contact with fathers even if the mother and father are on good terms with each other. Staff at these facilities have revealed to mothers that they have been instructed by unregulated CAS workers to keep the mothers from leaving the facility for any reason. Sometimes shelter staff are instructed by CAS workers to restrain mothers while CAS workers come over to apprehend their child. These sorts of actions are criminal under the Criminal Code of Canada.

In Canada, it is a criminal offence to unjustly hold anyone against their will through the use of threats, duress, force or the exhibition of force. This offence is called "forcible confinement" and is formally defined by the *Criminal Code* of Canada as depriving an individual of the liberty to move from one point to another by unlawfully confining, imprisoning or forcibly seizing that person.

## **Unregistered CAS workers violate the principles of Contract Law in Canada**

If a statute requires the licensing or registration of an individual to perform a professional or regulated service and an unlicensed practitioner enters into a contract or understanding, then the contract or understanding would be considered as null and void if any of the protections intended by the Legislation which require licensing or registration are being denied by any of the parties who receive such services. This stems from the modern legal principle of harm stemming from the illegality of Contract. CAS agencies and workers are technically under contract with the Government of Ontario to provide services intended to protect children and to help families.

Indirectly, because the government of Ontario represents the people of Ontario, the CAS workers are under implied contract (or by fiduciary duty) with the citizens of Ontario to provide services in accordance to the protections provided for under legislation.

The intent of the Social Work and Social Services Work Act (1998) was to provide protection to members of the public by ensuring standards of training and in addition, to provide the public the protection of the College's disciplinary body. When CAS workers are not registered with the College members of the public are in fact being denied the protections which the legislation was intended to provide to members of the public. The fact that unregistered CAS workers are working in violation to the Social Work and Social Services Work Act (1998) makes their contract with the Government of Ontario illegitimate as well as the services they provide to the courts, illegitimate.

In reality, most affidavit evidence from CAS workers who have submitted evidence which was submitted in their affidavits while they were engaged in the practice of social work unlawfully is null and void as they and the CAS agencies they are employed by are in violation to the principles of contract law in Canada. All consent agreements or court Orders made as a result of unregistered CAS workers engaged in the practice of social work proving evidence to the court would be considered as null and void as well.

### **Legal Remedies**

Under the Social Worker and Social Services Act, the College has not only the authority but the duty under its objects to take actions against those CAS workers who engage in the practice of social work and their employers who wilfully allow their workers to disobey the law. Ensuring that all CAS workers are regulated, meet the professional standards of the College and are overseen by a disciplinary body with the power to act is the only way in which the public's interest and the protection of children can be better protected than now. Currently, the College is the only independent body outside of the courts which has the ability to effectively protect the public. The ability of the College to take legal action against any CAS worker, even if they are not registered as a member of the College is outlined in Section 54 of the Act which states:

#### **Compliance order**

**54.** If it appears to the College that a person does not comply with this Act or the regulations or the by-laws, despite the imposition of a penalty in respect of that non-compliance and in addition to any other rights it may have, the College may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and the judge may make the order or any other order the judge thinks fit. 1998, c. 31, s. 54; 2006, c. 19, Sched. C, s. 1 (1).

To start resolving the problem of unregistered and unregulated workers providing services for vulnerable children, the College need simply send out a letter to the province's CAS agencies advising them that they must bring the qualifications of all workers in line legislation regarding the practice of social work within a fixed period of time or the College will take corrective actions through the court as provided by Section 54 of the Social Work and Social Services Work Act,

Those CAS workers who meet the academic qualifications of the College should be ordered to immediately register with the College as full members. For those front line CAS workers who may not meet the academic qualifications of the College, then those workers should be required to immediately join up as "probationary" members of the College and given twelve months to complete any additional training that is needed to meet the requirements of the College.

The twelve month probationary period of time will ensure that:

- No CAS workers will be forced out of a job because of registration with the College
- Will allow workers to upgrade their training where necessary
- Give the public protection by having a disciplinary body oversee members of the College

Forcing all CAS workers engaged in the practice of social workers to become members of the College will eliminate many of the problems that have been ongoing for many years with child protection workers working for CAS agencies. Members of the public will have an outside body to complain to where currently there is none. The problem practice of social work in violation to the law can be ended in a relative short time frame if the College is to enforce its legal mandate and CAS agencies were to cooperate in this process.

### **Long term solutions to problems with the child protection profession**

While the issue of child protection workers using various titles to skirt the law in Ontario has been the main focus of this document, many of the problems relating to the manner in which CAS agencies handle child protection cases are not related to training or education of the workers at all. Many of the current problems in the child protection sector stem back to the general lack of transparency and accountability. The one single advantage of forcing child protection workers to be registered with the College is that a disciplinary body to investigate complaints will exist where currently there is no body to oversee workers.

Readers who would like to read more about the many problems facing CAS agencies and some of the solutions that concerned citizens of Ontario have proposed as solutions should view the document, “Promoting accountability, fairness and professionalism within Ontario’s child protection system.” This document may be viewed on the Canada Court Watch website at the link:

[www.canadacourtwatch.com/Studies/PromotingAccountabilityTransparencyAndFairnessWithCAS.pdf](http://www.canadacourtwatch.com/Studies/PromotingAccountabilityTransparencyAndFairnessWithCAS.pdf)

### **Conclusion**

The circumvention of legislation intended to promote accountability and to protect children and families in the province of Ontario by unregulated CAS workers must be stopped immediately. Too many individuals and organizations, including the Ontario College of Social Workers and Social Services Workers have turned a wilful blind eye to this blatant violation of the law. As a result, many children and families in Ontario have suffered and continue to suffer significant harm. Judges, lawyers, teachers, school board officials, law enforcement officials and health care professionals have all been duped into believing that unregulated front line CAS workers maintain professional status and have foolishly accepted the testimony of many unregulated CAS workers at face value in legal proceedings. As the result, the fundamental rights and freedoms of Canadians have been sacrificed in the process

Human rights are inseparable from social work theory, values and ethics, and practice. Rights corresponding to human needs have to be upheld and fostered, and they embody the justification and motivation for social work action. Advocacy of such rights must therefore be an integral part of social work, even if in countries living under authoritarian regimes such advocacy can have serious consequences for social work professionals.<sup>7</sup>

The definition in legislation of the term, “child protection worker,” which many CAS workers

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<sup>7</sup> Human Rights and Social Work published by the United Nations - 1994

identify themselves by, makes it very clear that children's aid society workers who identify themselves using this title to members of the public and who are not registered members with the Ontario College of Social Workers and Social Service Workers have only the authority under the law to lawfully apprehend a child as outlined under Section 40 of the Act and to take that child to a place of safety. There are no provisions in the Child and Family Services Act which gives those who call themselves "child protection workers" the authority to engage in practices that would be considered as being encompassed by the regulated profession of social work.

It has become quite evident to many over recent years that the use of the term, "child protection worker" is being used as a guise by many children's aid society workers to engage in the practice of social work in the province of Ontario with the intent to circumvent the intent of Legislation. Child protection workers engaged in the practice of social work with the various children's aid agencies have caused extensive harm to children and families in Ontario and have avoided oversight by the Ontario College of Social Worker and Social Service Workers which has been given the mandate to protect the public's interest relating to the practice of social work. The actions of many CAS workers who are not registered with the College and therefore not trained to the professional standards of members of the College are bringing disrepute to the profession of social work and causing significant harm to the administration of Justice in Ontario.

The practice of social work in the area of child protection has far-reaching consequences for individuals, for families and for our society. The people of Ontario, not only deserve, but are entitled by the Social Work and Social Services Work Act to the highest quality of services when it comes to child protection. This was the intent of the Act when it was proclaimed into law in 2000. When it comes to protecting the province's most vulnerable children, only those who are properly qualified to the professional standards of the College of Social Workers and Social Service Workers and registered with the College should be used for child protection. The Courts cannot be reasonably assured of protecting a child's best interest in a child protection matter when the qualifications and competence of CAS workers who call themselves "child protection workers" cannot be reasonably assured.

Unfortunately, it has become all too common for CAS agencies to turn a blind eye when their "child protection workers" go beyond the limited powers granted to them under Section 40 of the Child and Family Services Act. CAS agencies are openly allowing their workers to engage in the practice of social work without being registered with the Ontario College of Social Workers and Social Service Workers. This practice is a violation of the intent, spirit and letter of the law as it currently applies to all CAS agencies.

Many citizens would consider the slight-of-hand practice of calling front line workers "child protection workers" a fraud against the people of Ontario. It appears too many that CAS agencies appear to be little more than callous, government non-government funded organizations which are destroying the lives of families, children, and adults for money and political agendas while fraudulently portraying their unaccountable workers as "child protection workers". It is also clear that the College was given the mandate to protect the public's interest by ensuring consistency in quality of services of those who practice social work in the province of Ontario, yet it is failing to live up to its duty to the public.

In these times of growing public criticism against children's aid agencies province-wide, it's time for CAS agencies themselves to take responsibility for their actions in the past and to step up to the plate and to take immediate steps get their workers registered. Should CAS agencies fail to do what is right then the province of Ontario and the Ontario College of Social Workers and Social Service

Workers must act swiftly and decisively on behalf of children and families and to begin to fulfill their mandate of protecting the public's interest in the practice of social work. Properly enforcing the ***Social Work and Social Service Work Act (1998)*** would offer a number of advantages:

- Will reduce the number of complaints from the public to elected members of the Ontario Legislature
- Will not add a burden to the taxpayers as the College is largely self funded.
- Will reduce the number of complaints to the Child and Family Services Review Board.
- Will reduce the number of children being taken into care.
- Will reduce litigation against CAS agencies by children and parents.
- Will lessen the need for provincial Ombudsman oversight involving CAS agencies.
- Will ensure higher quality services for children and families in Ontario.
- Will bolster public respect for the child protection system in Ontario.

The first order of business to be undertaken by the authorities should be to begin enforcing membership in the College for all children's aid society workers who engage in paid work which involves the practice of social work. There is no good reason to justify why front line CAS workers, who are being well paid by tax dollars, are being allowed to avoid registration with the College and thus circumvent the intent of provincial legislation intended to protect the public. Until other more effective steps are implemented, membership in the College will help to reduce problems in the meantime.

The second order of business should be for the government to legislate practices which will promote accountability and transparency within the child protection system. Accountability and transparency within the child protection services sector play even a greater role in protecting children and families than does forcing social work practitioners to become a member of the College.

### **Appendix of supporting documents**

The following documents are referenced in this document and have been attached for convenient reference by readers.

#### **Document #1 (2 pages)**

Section 40 of the Child and Family Services Act (2 pages)

#### **Document #2 (2 pages)**

A copy of a job posting for a child protection worker on the Services Canada website from the Children's Aid Society of the Districts of Sudbury and Manitoulin. It should be noted on the job posting that listed under the category of "Credentials" that "none" are required. Yet under the category of "Specific skills", it is clear that the person hired for this position of child protection worker will be engaging in the practice of social work with the CAS. In effect, the Children's Aid Society is openly hiring persons as "Child Protection Workers" to engage in the practice of social work and accepting persons who are not properly qualified nor registered with the Ontario College of Social Workers and Social Services Workers.

#### **Document #3 (11 pages)**

"The Challenge of Professionalizing Child Protection Workers and retaining the Title of Social Worker" by Marvin Bernstein

This document, written by the child advocate for the Province of Saskatchewan, Mr. Marvin Bernstein, discusses the benefits of having child protection agency workers regulated as a profession so that they can keep their title of social worker. This document may also be downloaded on the following government of Saskatchewan website at:

[http://www.sasw.ca/releases/Professionalizing\\_Child\\_Protection\\_Article.pdf](http://www.sasw.ca/releases/Professionalizing_Child_Protection_Article.pdf)

### **Document #3 (8 pages)**

How to determine if a CAS worker/agent is How to determine when an employee/agent of a child protection agency (CAS) in Ontario would be engaging in the practice of social work as defined under legislation in Ontario

This document, written by the child advocate for the Province of Saskatchewan, Mr. Marvin Bernstein, discusses the benefits of having child protection agency workers regulated as a

### **Other reference information**

The following is a listing of sources of other information which was referenced during the development of this document. Readers may also find the information helpful and/or relevant to their own understanding of issue of the unethical and/or unlawful practices of child protection workers in Ontario. While links to any websites were active at the time of publication of this document, readers may find that some may have changed.

#### **Ontario Regulation 383/00**

This Ontario regulation deals with a number of issues concerning the social work and social services work Act including enforcement measures. This document is available on the Ontario Government website at:

[http://www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_000383\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_000383_e.htm)

#### **Ontario Regulation 320/10 (Approved August 10, 2010)**

This Ontario regulation deals with a number of small revisions to the Ontario Regulation 383/00. This document is available on the Ontario Government website at:

[http://www.e-laws.gov.on.ca/html/source/regis/english/2010/elaws\\_src\\_regs\\_r10320\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regis/english/2010/elaws_src_regs_r10320_e.htm)

#### **Five Year Review of the Social Work and Social Services Act – Nov 7, 2005**

This document published by the Ontario College of Social Workers and Social Service Workers reveals that the College incorrectly claims that it is unable to protect the public unless all persons with academic credentials of social work and who provide services to the public must be made to be registered as professionals. This document is available on the Ontario Government website at:

[http://www.ocswssw.org/docs/swssw\\_review\\_additional\\_submission\\_november\\_2005.pdf](http://www.ocswssw.org/docs/swssw_review_additional_submission_november_2005.pdf)

#### **Association of Social Work Boards model Social Work Practice Act (U.S.A.)<sup>8</sup>**

This document is a model for legislators to use in various jurisdictions. The Association of Social Work Boards Model Social Work Practice Act was formally adopted by the AASSWB (now ASWB) Delegate Assembly at its Annual Meeting in the fall of 1997.

During its development, extensive input for the Model Act was solicited from social work regulatory boards, social work professional organizations, credentialing groups, and accrediting bodies. Numerous comments were received and reviewed culminating in this comprehensive model to assist legislatures and boards address issues in social work regulation.

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<sup>8</sup> Website: <http://www.aswb.org>



[http://www.aswb.org/pdfs/Model\\_law.pdf](http://www.aswb.org/pdfs/Model_law.pdf)

### “Human Rights and Social Work” – United Nations

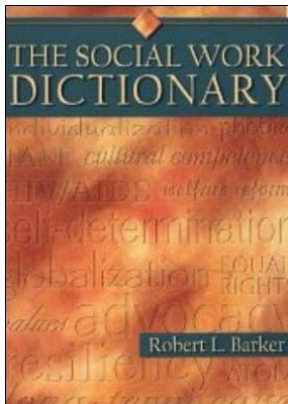
This teaching document intended for schools of Social work and the social work profession is published by the Centre for Human Rights, The United Nations, 1211 Geneva 10, Geneva Switzerland. At the time of publication, this document was downloadable at the following website:

<http://www.ohchr.org/Documents/Publications/training1en.pdf>

### “Understanding Children’s Aid: Meaning and Practice in Ontario’s Children’s Aid Societies 1893-1912”

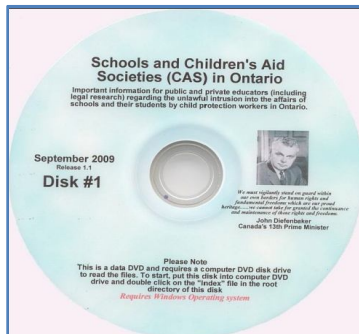
This research document reviews how CAS agencies got started and what motivated the founders. The document also reveals that even in the beginning, politics, money and influence were factors with those who began the child protection industry in Canada.

[http://bruise-hound.angelfire.com/Understanding\\_Children\\_s\\_Aid.pdf](http://bruise-hound.angelfire.com/Understanding_Children_s_Aid.pdf)



### The Social Work Dictionary

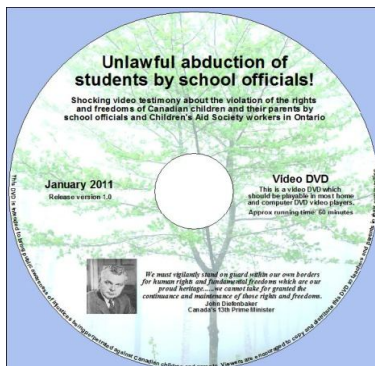
The Social Work Dictionary by Professor Robert L. Barker published by the National Association for Social Workers in Washington, D.C. This book contains a lot of good reference information relating to the practice of social work. This book can be ordered from Amazon.com.



### Schools and the CAS resource data disk

This data DVD contains a collection of valuable information for school officials in regards to the involvement of CAS workers at schools in Ontario. In most cases, CAS workers are entering schools unlawfully and violating the rights and freedoms of students and their parents as guaranteed under the Canadian Charter of Rights and Freedoms. This data disk can be ordered from Canada Court Watch at:

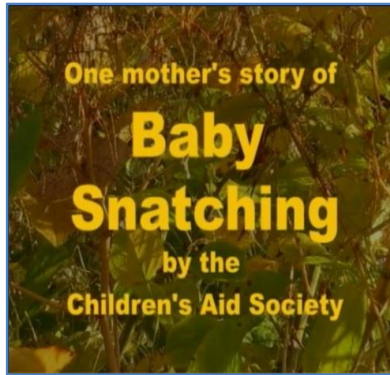
[info@canadacourtwatch.com](mailto:info@canadacourtwatch.com)



### Unlawful Abduction of Children by School Officials

This 60 minute DVD video reveals the tragic and unlawful physical detention of two young children by their principal at an Ontario School. The unlawful detention of the children was done at the instructions of an unregistered CAS worker who gave the principal verbal instructions over the phone to unlawfully detain and to hold the children. This video can be ordered from Canada Court Watch at:

[info@canadacourtwatch.com](mailto:info@canadacourtwatch.com) or downloaded at:  
<http://www.vimeo.com/5023797>



### **DVD Video – One mother's story of baby snatching by the Children's Aid Society**

This 60 minute video reviews the tragic story of one mother from Hamilton, Ontario who had her child snatched from her at the hospital by CAS workers. At one point, the CAS used police as a tool to threaten her and the father of the child at the hospital. It was reported that police physically assaulted the father of the child at the hospital because of over-zealous CAS workers giving unlawful instructions to police. This video can be viewed and downloaded from the internet at:

<http://www.vimeo.com/8080556>

## Child and Family Services Act (Section 40 only)

(Current as of Sept 2010)

### Warrants, orders, apprehension, etc.

#### Application

40.(1) A society may apply to the court to determine whether a child is in need of protection. R.S.O. 1990, c. C.11, s. 40 (1).

#### Warrant to apprehend child

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

(a) the child is in need of protection; and

(b) a less restrictive course of action is not available or will not protect the child adequately. R.S.O. 1990, c. C.11, s. 40 (2).

#### Idem

(3) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (7). R.S.O. 1990, c. C.11, s. 40 (3); 1993, c. 27, Sched.

#### Order to produce or apprehend child

(4) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

(a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or apprehended the child under subsection (7); and

(b) the child cannot be protected adequately otherwise than by being brought before the court, the court may order,

(c) that the person having charge of the child produce him or her before the court at the time and place named in the order for a hearing under subsection 47 (1) to determine whether he or she is in need of protection; or

(d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 40 (4); 1993, c. 27, Sched.

#### Child's name, location not required

(5) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (4), to describe the child by name or to specify the premises where the child is located. R.S.O. 1990, c. C.11, s. 40 (5).

#### Authority to enter, etc.

(6) A child protection worker authorized to bring a child to a place of safety by a warrant issued

under subsection (2) or an order made under clause (4) (d) may at any time enter any premises specified in the warrant or order, by force if necessary, and may search for and remove the child. R.S.O. 1990, c. C.11, s. 40 (6).

### **Apprehension without warrant**

(7) A child protection worker who believes on reasonable and probable grounds that,

(a) a child is in need of protection; and

(b) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 47 (1) or obtain a warrant under subsection (2), may without a warrant bring the child to a place of safety. R.S.O. 1990, c. C.11, s. 40 (7).

### **Police assistance**

(8) A child protection worker acting under this section may call for the assistance of a peace officer. R.S.O. 1990, c. C.11, s. 40 (8).

### **Consent to examine child**

(9) A child protection worker acting under subsection (7) or under a warrant issued under subsection (2) or an order made under clause (4) (d) may authorize the child's medical examination where a parent's consent would otherwise be required. R.S.O. 1990, c. C.11, s. 40 (9).

### **Place of open temporary detention**

(10) Where a child protection worker who brings a child to a place of safety under this section believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Youth Justice). R.S.O. 1990, c. C.11, s. 40 (10); 2006, c. 19, Sched. D, s. 2 (6).

### **Right of entry, etc.**

(11) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (7) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child. R.S.O. 1990, c. C.11, s. 40 (11).

### **Regulations re power of entry**

(12) A child protection worker authorized to enter premises under subsection (6) or (11) shall exercise the power of entry in accordance with the regulations. R.S.O. 1990, c. C.11, s. 40 (12).

### **Peace officer has powers of child protection worker**

(13) Subsections (2), (6), (7), (10), (11) and (12) apply to a peace officer as if the peace officer were a child protection worker. R.S.O. 1990, c. C.11, s. 40 (13).

### **Protection from personal liability**

(14) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty. R.S.O. 1990, c. C.11, s. 40 (14).



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## Job Advertisement

### Job Search Safety Advice

 [E-mail this Job](#)

**Job Number:** 5010932

**Title:** **Social worker (Bilingual Child Protection Worker) (NOC: 4152)**

**Terms of Employment:** Temporary, Full Time, Day

**Salary:** To be negotiated, Other Benefits, As per collective agreement, Medical Benefits

**Anticipated Start Date:** As soon as possible

**Location:** Sudbury and Area, Ontario (2 vacancies )

### Skill Requirements:

**Education:** Completion of university

**Credentials (certificates, licences, memberships, courses, etc.):** Not required

**Experience:** Experience an asset

**Languages:** Speak English, Speak French, Read English, Read French, Write English, Write French

**Work Setting:** Community service organization, Social and family service agency

**Area of Social Work Specialization:** Child welfare

**Type of Clients:** Adolescents, Adult, Child

**Specific Skills:** Interview clients to assess their situation and determine the types of services required and eligibility, Plan programs of assistance for clients, Investigate cases of child abuse or neglect and take authorized protective action when necessary

**Security and Safety:** Criminal record check, Child welfare check

**Work Conditions and Physical Capabilities:** Fast-paced environment, Work under pressure, Tight deadlines, Attention to detail, Large workload, Large caseload

**Transportation/Travel Information:** Valid driver's licence, Own vehicle

**Work Location Information:** Various locations

**Essential Skills:** Reading text, Document use, Writing, Oral communication, Working with others, Problem solving, Decision making, Critical thinking, Job task planning and organizing, Computer use, Continuous learning



**Employer:** The Children's Aid Society of the Districts of Sudbury and Manitoulin

**How to Apply:**

Please apply for this job only in the manner specified by the employer. Failure to do so may result in your application not being properly considered for the position.

**By Mail:**

319 Lasalle Blvd, suite 3  
Sudbury, Ontario  
P3A 1W7

**In Person between 8:30 and 16:30:**

319 Lasalle Blvd, suite 3  
Sudbury, Ontario  
P3A 1W7

**By Fax:** (705) 521-7371

**By E-mail:** hr.recruitment@casdsm.on.ca

**Advertised until:** 2010/05/21

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Fax: (306) 933-8406  
Toll Free: 1-800-322-7221  
Email: childadvocate@saskcao.ca  
www.saskcao.ca



SASKATCHEWAN

## **THE CHALLENGE OF PROFESSIONALIZING CHILD PROTECTION WORK AND RETAINING THE TITLE OF SOCIAL WORKER BY MARVIN M. BERNSTEIN<sup>1</sup>**

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### **INTRODUCTION**

This article has grown out of a presentation I gave to child protection staff of the Department of Community Resources on March 9, 2006 in Regina, Saskatchewan as part of the celebration of Social Work Week. It is also intended to draw upon the 28 years of child welfare experience that I have had in the Province of Ontario as Counsel to the Children's Aid Society of York Region (3 years); Chief Counsel to the Catholic Children's Aid Society of Toronto (20 years); and Director of Policy Development and Legal Support, Ontario Association of Children's Aid Societies (5 years).

During my years of working with Children's Aid Societies, my individual clients were the front-line social workers who were acting as the instructing family service workers. I grew to develop an enormous and unwavering respect for these individuals, who are doing such important work "in the trenches", but are often second-guessed when they make important decisions about the well-being of children for whom they have direct responsibility. Over my career, I have seen a consistent nobility of purpose and a strong commitment to child protection and social justice that has been truly exceptional. I have also been the beneficiary of enduring friendships and collegial relationships with social workers, who are or have been in leadership positions within child welfare, and who have made outstanding contributions to the advancement of child welfare through a variety of academic, research, policy and/or practice pursuits.

During my years of child welfare involvement in the Province of Ontario, I saw the pendulum swing from the promotion of child protection and child safety to the promotion of family empowerment and reunification and then back again. In fact a number of child deaths in Ontario in respect of children receiving child welfare services led to a series of child welfare systemic Inquests and a report of a Panel

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<sup>1</sup> B.A., LL.B., LL.M., Children's Advocate, Province of Saskatchewan, Article prepared in May 2006 for the SASW Newsletter and for other relevant professional Journals.

of Experts chaired by Madam Justice Mary Jane Hatton<sup>2</sup>, recommending that a greater emphasis be placed on the safety of vulnerable children. This, in turn, generated a whole child welfare reform initiative, culminating in the enactment of several amendments to the Ontario *Child and Family Services Act* in March 2000. I also worked at the Catholic Children's Aid Society at a time when a child protection worker was co-charged with criminal negligence causing death, together with the mother of Jordan Heikamp,<sup>3</sup> a five week old infant who starved to death at a Toronto women's shelter where he was residing with his mother, after the approval was provided by the child protection worker. I saw first hand the devastating effects upon a conscientious child protection worker who happened to be in the wrong place at the wrong time. Fortunately, this worker was discharged at the preliminary hearing stage, but she still had to endure the ordeal of a public inquest and much negative media exposure shortly thereafter.

As well, I have refined my thinking about the role of social workers in the child welfare system over the years through my involvement as a sitting member of the Ontario Association of Social Workers (OASW) Image of Social Work Task Force (later changed to the Public Relations Advisory Group) and as a member of both the Sparrow Lake Alliance Steering Committee and the Child in Limbo Task Force of the Alliance.

Now, as Children's Advocate for the Province of Saskatchewan, I have a special interest in contributing to systemic change that will enable child protection workers to perform their duties with optimal effectiveness, so that the children and young persons of this province will have their interests and well-being properly considered and served at all times.

## **THE CONTEXT OF CHILD PROTECTION WORK**

Child protection workers are often the unsung heroes when a child is protected from harm or goes on to enjoy a happy and secure life as a result of judicious worker intervention. Child protection workers are the composite glue that holds the entire child welfare system together. They should be admired for the importance of the work that they do and for the passion and commitment they exhibit on behalf of our most vulnerable citizens. The unfortunate reality, however, is that they are subject to a great deal of stress and are too often unappreciated, if not publicly criticized. As stated by Lord Nicholls of the British House of Lords:

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<sup>2</sup> Hatton, M.J. (Madam Justice) et al., *Report of the Panel of Experts on Child Protection* (Toronto: Ontario Ministry of Community and Social Services), 1998.

<sup>3</sup> For a detailed discussion of this case, see Bernstein, M., Regehr, C. and Kanani, K., *Liability for Child Welfare Workers: Weighing the Risks*, in *Canadian Child Welfare Law: Children, Families and the State* (ed. Bala, N. et al.), Thomson Educational Publishing, Inc.: Toronto), 2004. A shorter version of the article appears in OACAS Journal, April 2002, Vol. 46, No. 1 ([www.oacas.org](http://www.oacas.org)).

*“Cruelty and physical abuse are notoriously difficult to prove. The task of social workers is usually anxious and often thankless. They are criticized for not having taken action in response to warning signs which are obvious enough when seen in the clear light of hindsight. Or they are criticized for making applications based on serious allegations which, in the event, are not established in court. Sometimes, whatever they do, they cannot do right”.<sup>4</sup>*

The stress of child welfare practice has been well documented in the literature and can be attributed to a number of factors<sup>5</sup>:

- Excessive workloads caused by unwieldy caseloads;
- Frequent court appearances;
- Overwhelming paperwork and documentary requirements;
- Poor working conditions;
- Low salary;
- Rapid organizational and supervisory changes;
- Conflicts with supervisory or management staff;
- Changing policies and standards;
- Lack of community resources;
- Conflicts with community stakeholders;
- Mandatory training;
- Frequent travel;
- Working much of the time with involuntary and sometimes hostile clients;
- The enormous responsibility of protecting vulnerable children;
- Threats and risk of personal injury and post-traumatic stress disorder;
- Threats of civil liability or criminal charges;
- Risk of injury or fatality to a child for whom the worker has responsibility; and
- Public or media scrutiny.

In the research conducted by Professor Cheryl Regehr and her colleagues, they found that child protection workers have rates of traumatic stress scores, which are considerably higher than those of workers in the other canvassed emergency service organizations, such as paramedics and firefighters.<sup>6</sup>

## **A WAY FORWARD**

It is imperative that within this climate of potential discouragement and anxiety that child protection workers be supported and empowered in their work. One

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<sup>4</sup> *Re H. (Minors)* (1996), A.C. 563 (H.L.), at p.592.

<sup>5</sup> Regehr, C., Leslie, B., Howe, P. & Chau, S, *Stressors in Child Welfare Practice*, Faculty of Social work, University of Toronto, November 2, 2000.

<sup>6</sup> *Ibid*, at p. 10.

way of achieving this goal is through professionalizing child protection work and encouraging those child protection workers with social work degrees to take the necessary steps to strengthen their professional identification and to represent themselves as social workers by becoming members of the Saskatchewan Association of Social Workers (SASW).

The Saskatchewan Association of Social Workers has much to offer child protection social workers, by virtue of its many and varied statutory purposes<sup>7</sup>:

- To establish, maintain and develop standards of knowledge, skill and competence among its members for the purpose of serving and protecting the public interest;
- To establish, maintain and develop standards of professional conduct among its members;
- To promote, develop and sponsor activities appropriate to the strengthening of and unification of the social work profession;
- To provide a means by which the association through its members may take action on issues of social welfare;
- To edit and publish books, papers and journals and other forms of literature respecting social work in order to disseminate information to members of the association as well as to members of the public at large;
- To encourage specialized studies in social work among its members and to provide assistance and facilities for special studies and research; and
- To carry on any other activities related to the above.

## **BENEFITS OF SOCIAL WORKER PROFESSIONAL IDENTIFICATION FOR CHILD PROTECTION WORKERS**

The benefits of social worker professional identification for child protection workers are as follows:

- It would assist in elevating respect and esteem for child protection work outside the social work profession. In this regard, social work has not always been externally viewed as an accomplished and valued profession. This may, in part, be attributable to the profession's historical origins, which are rooted in charity work, and its focus on assisting, and advocating on behalf of, the most vulnerable and dispossessed groups in society. Public education and communication strategies could be used through the SASW to address these misconceptions.

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<sup>7</sup> *The Social Workers Act*, S.S. 1993, as amended, c.S-52.1, s. 4.



- It would assist in elevating respect and esteem for child protection work within the social work profession itself. Even among other social workers, child protection work is often misunderstood and is sometimes perceived as the least important or prestigious form of social work. This form of “lateral disrespect” towards child protection workers within the social work profession is alarming in its elitism and needs to be addressed. Once again, public education and communication strategies through the SASW could be used to rebut these myths. As well, membership in the SASW, and the attendant networking with fellow social workers, could be used as an opportunity to discuss the nature and importance of child protection work.
  
- It would enable child protection social workers to identify for clients, other professional groups and the public at large that they are “social workers” specializing in child protection work, notwithstanding that the job or position title has been reduced to that of a “child protection worker”. This is important, as no person other than a member of the SASW is permitted to “engage in the practice of social work by using the title ‘social worker’”<sup>8</sup>. This “profession nullification” of child protection work has sometimes occurred for the wrong reasons – such as the unwillingness or resistance of employers to pay the required membership fees. This change of job title - without the accompanying professional identification - strikes at the heart of the credibility of the social work profession, diminishes its status and has the potential to set off inadvertent implications, such as reduced weight being accorded a child protection worker’s “expert” testimony before a court or tribunal. In its submission to the Ontario Provincial Government as part of the 5-year review of that province’s social work legislation, the Ontario Association of Social Workers (OASW) expressed concern regarding the same phenomenon in the following terms:

*“ Additionally, the change in job titles has reduced the credibility of social work testimony within the courts since individuals with academic qualifications in social work, who are not registered ...cannot call themselves social workers or hold themselves out as social workers... the weight of their testimony as an expert witness [being] seriously diminished. Most importantly, social work is the leading discipline for practice and scholarship in the child welfare field, and the scope of practice of social work encompasses the breadth of expertise required to ensure child protection. This includes assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal problems to achieve optimal*

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<sup>8</sup> *The Social Workers Act*, S.S. 1993, as amended, c.S-52.1, s. 24.

*psychosocial and social functioning for the child and his or her family.*

*... Given the vital role that government plays in protecting at-risk children through child welfare ... and the criminal justice system, tolerance of the practice of changing job titles sends a troubling message that the harms from abuse, neglect and family disruption are less significant than harms arising from a health condition or impairment, or that children and families who are disenfranchised do not need the same level of protection afforded other members of the public. It is inconceivable that other regulated professionals such as nurses, doctors, physiotherapists, lawyers or teachers would be permitted to provide services without membership in their professions' regulatory body. Indeed, the Child and Family Services Act exists to codify our responsibility to ensure the well-being of children who are more vulnerable than adult members of society".<sup>9</sup>*

- It would provide some significant protection to child protection social workers against a successful criminal prosecution or a finding of professional negligence (which could have serious reputational implications, even in those circumstances where the "good faith" defence under *The Child and Family Services Act*<sup>10</sup> proves ultimately to protect the Department, agency and/or social worker). This is because child protection social workers, who act according to accepted standards of practice, as endorsed by the Saskatchewan Association of Social Workers, in addition to acting in compliance with legislation, government policy and in good faith at all times, will be better protected against a determination of criminal culpability or civil negligence.<sup>11</sup>
  
- It would enable child protection social workers to stay current with leading developments in their field by attending professional development conferences and seminars and receiving information in SASW Newsletters. They would also benefit from the exchange of ideas and information with social worker colleagues. In addition to obtaining new information directly related to their area of practice, they would learn about other areas of social work practice. These

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<sup>9</sup> Ontario Association of Social Workers (OASW), *Response to Discussion Paper on Review of Social Work and Social Service Work Act*, (March 2005).

<sup>10</sup> *The Child and Family Services Act*, S.S. 1989-90, as amended, c. C-7.2, s. 79.

<sup>11</sup> See Bernstein, M., Regehr, C. and Kanani, K., *Liability for Child Welfare Workers: Weighing the Risks*, in *Canadian Child Welfare Law: Children, Families and the State* (ed. Bala, N. et al.), Thomson Educational Publishing, Inc.: Toronto), 2004. A shorter version of the article appears in *OACAS Journal*, April 2002, Vol. 46, No. 1 ([www.oacas.org](http://www.oacas.org)).

professional development opportunities could also fortify their status as expert witnesses when giving testimony or deposing affidavits.

- It would enable child protection social workers to obtain ethical advice and direction from an Association that promotes all the ethical and professional standards of social work. In particular, there may be occasions where a child protection social worker is questioning an action that he or she is being asked to carry out, having regard to the safety, protection or best interests of an individual child, or it may be that a worker is questioning whether a supervisor is giving excessive weight to the parent's needs and interests over and above the best interests of the individual child. In such circumstances, it is extremely helpful to be able to turn to a regulatory Association for impartial ethical direction. In this regard, the SASW has adopted the 2005 Code of Ethics of the Canadian Association of Social Workers, which provides as follows:

*"...Ethical decision-making in a given situation will involve the informed judgement of the individual social worker. Instances may arise when social workers' ethical obligations conflict with agency policies, or relevant laws or regulations. When such conflicts occur, social workers shall make a responsible effort to resolve the conflicts in a manner that is consistent with the values and principles expressed in this Code of Ethics. If a reasonable resolution of the conflict does not appear possible, social workers shall seek appropriate consultation before making a decision. This may involve consultation with an ethics committee, a regulatory body, a knowledgeable colleague, supervisor or legal counsel."<sup>12</sup>*

- It would enable child protection social workers to obtain the support of the social work profession outside of their work units and to take pride in their social work identity. This could lead to networking activities with social workers who are specializing or generalizing in other areas of social work, so that their peer groups would not be limited to their immediate colleagues within the Department of Community Resources and within the child welfare sector. Over time, it is likely that commonalities of values and practices would be identified and newfound respect for child protection work and diversity of social work practice would be generated.
- It would enable child protection social workers to have a direct voice in shaping future directions for the profession of social work and the activities, continuing educational opportunities and advocacy of the

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<sup>12</sup> Canadian Association of Social Workers (CASW) *Code of Ethics 2005*, at p. 3.

SASW. Members of the SASW can likewise volunteer to serve on different committees and participate at different educational events.

## **OVERCOMING RESISTANCE**

If at least some of these benefits could be derived from maintaining one's social work identification within the field of child protection work, what then what are the barriers to membership and to assuming this sense of professional pride? A non-exhaustive list of barriers would include the following:

- Many child protection workers do not have a clear understanding of the role of the SASW and what it has to offer and thus may be questioning what they would be obtaining for their membership fees. The website of the SASW is full of rich information as to the "value added" by membership and can be found at [www.sasw.ca](http://www.sasw.ca).
- Some child protection workers with social work degrees may be concerned about the cost of membership. While this may have been a real concern historically, most Government Departments, including the Department of Community Resources, are prepared, when requested, to reimburse registering social workers for virtually the full amount of the membership fees.
- Some child protection workers may feel that they are more concerned about individual benefits, rather than any "public interest" considerations. This, however, is short-sighted, as it is important to take a larger view of the serious and legitimate public interest in ensuring that child protection services are delivered by competent and well-trained child protection social workers.
- Some child protection workers with social work degrees may feel that their union is charged with the responsibility of representing their interests and that they do not need to become members of the SASW. In this regard, it is important to delineate between workplace equity issues, on the one hand, and the ethics, standards of practice and quality assurance concerns of the social work profession, on the other.
- Some child protection workers with social work degrees may have issues or concerns with a school of social work and may mistakenly see the SASW as being an extension of, or associated with, their school of social work.
- Some child protection workers may see the SASW as simply a complaints body and do not see why they should pay a fee to register to have complaints brought against them, particularly when complaints may also be made against them to the Department of Community

Resources, thus exposing them to “double jeopardy”. In this regard, good social work practice will generally provide child protection social workers with the best protection against disciplinary sanctions and protocols could be developed between the SASW and the Department of Community Resources to avoid concurrent complaints review procedures. As well, mechanisms can be developed to support the screening out of frivolous, vexatious and bad faith complaints. In a report I authored on behalf of the Ontario Association of Children’s Aid Societies (OACAS) in response to that province’s 5 year review of its social work legislation, we made a number of recommendations in the area of complaints resolution.<sup>13</sup>

- Some child protection workers may feel that there is too much social worker elitism and they do not want to be disparaged by their colleagues, who are engaged in other social work practice areas. However, it is important to remember that misconceptions can be addressed and negative attitudes can be changed through constructive dialogue and direct professional interaction.
- Some child protection workers may feel that the advocacy and/or educational directions do not support their needs. It is axiomatic that we cannot change what we cannot influence and it is only through direct participation in the work of the SASW that child protection learning opportunities and advocacy will take on a stronger presence.

## CONCLUSION

The Preamble to the Canadian Association of Social Workers 2005 Code of Ethics describes the enormous and exciting capacity of social workers to make a positive difference in the lives of their clients and the communities in which they serve:

*“The social work profession is dedicated to the welfare and self-realization of all people; the development of and disciplined use of scientific and professional knowledge; the development of resources and skills to meet individual, group, national and international changing needs and aspirations; and the achievement of social justice for all. The profession has a particular interest in the needs and empowerment of people who are vulnerable, oppressed, and/or living in poverty. Social workers are committed to human rights as enshrined in Canadian law, as well as in*

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<sup>13</sup> Ontario Association of Children’s Aid Societies (OACAS), *Response to Discussion Paper on Review of Social Work and Social Service Work Act*, (March 2005).



*international conventions on human rights created or supported by the United Nations”.*<sup>14</sup>

It is important that child protection social workers develop the capacity to see the “big picture”, and see past the ideological cycles and institutional limitations of child welfare work, while remaining empowered to think independently and creatively and maintaining the fundamental values of the social work profession. Membership in the SASW can go a long way in achieving these goals.

In his recent report on the British Columbia Children and Youth Review, the Honourable Ted Hughes commented on the cycle of ideological shifts in the child welfare system in the following terms:

*“I hope that some of the recommendations in this report can help to achieve a balance so that the pendulum can return to equilibrium... Government has long played a role in protecting children who are at risk for any reason, but has always struggled to find the right balance between respecting families’ autonomy and privacy on the one hand, and intervening to protect vulnerable children on the other.”*<sup>15</sup>

Judy Finlay, the Chief Advocate of the Office of Child and Family Service Advocacy in Ontario, has also provided a caveat concerning the institutional limitations of child welfare work:

*“...In some ways, social workers are at risk of becoming agents of the state in their work in child welfare... It is important to be cognizant of this development, so as not to suppress the profession’s ability to exert influence in a proactive way on behalf of clients and the community-at-large. We should never lose sight of who the client is, as we provide service in the context of large bureaucracies.”*<sup>16</sup>

It is within this larger context of social work and social justice that child protection workers can draw from the strengths of established supervisory and institutional

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<sup>14</sup> Canadian Association of Social Workers (CASW) *Code of Ethics 2005*, at p. 3.

<sup>15</sup> Hughes, Ted (Hon.), *B.C. Children and Youth Review: An Independent Review of B.C.’s Child Protection System*, April 7, 2006, at pages 4,5.

<sup>16</sup> Finlay, Judy, *Profiles of Social Work Leaders* (February 2004), [www.oasw.org](http://www.oasw.org). See also: Bernstein, M., Regehr, C. and Kanani, K., *Liability for Child Welfare Workers: Weighing the Risks*, in *Canadian Child Welfare Law: Children, Families and the State* (ed. Bala, N. et al.), Thomson Educational Publishing, Inc.: Toronto, 2004, where the Coroner’s Jury in the Jordan Heikamp Inquest recommended, among other things, that “It should be made clear to all Child Protection Workers and their Child Protection Supervisors that their client is the child in need of protection, not the parent or the family” and that “All Children’s Aid Societies should adopt a critical role as well as a supportive role for their social workers.” A shorter version of the article appears in *OACAS Journal*, April 2002, Vol. 46, No. 1 ([www.oacas.org](http://www.oacas.org)) and in *Canadian Social Work*, Winter 2001, Volume 3, No. 2.

structures, but yet be empowered, through further consultation, networking and association membership, to challenge constructively those decisions that create ethical dilemmas by leaving vulnerable clients at risk, whether within or outside of government care.<sup>17</sup>

## **ACKNOWLEDGEMENTS**

I would like to express my appreciation to the following persons for their valuable input: Richard Hazel, Executive Director, Saskatchewan Association of Social Workers, Joan Mackenzie-Davies, Executive Director, Ontario Association of Social Workers; Roxane Schury, Advocate, Children's Advocate Office; and Rhonda Johannson, Advocate, Children's Advocate Office.

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<sup>17</sup> The Children's Advocate Office is also available to front-line child protection workers, who may wish to make a referral, so that we can, in appropriate cases, advocate on behalf of those vulnerable children and young persons whose safety and protection ought not to be jeopardized.