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CHILD PROTECTION LAW IN CANADA
2nd EDITION
Kirwin, Stringer
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Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This resource organizes and updates child protection case law and unreported cases for Canadian common law provinces and territories.

This release features updates to Chapters 3 (Commencing the Protection Application), 4 (Motions), 6 (Protection Application — Dispositions), 7 (Variation and Status Review Applications), 8 (Evidence at Trial), 9 (Summary Proceedings and Agreements), and 10 (Access).

Highlights

- **Commencing the Protection Application — New Brunswick — Case Law — Legal Representation —** The Minister removed the child from the father's care in 2020 and obtained a protective care order. The mother was served with the application and successfully brought an application for state-funded counsel. The lower court found that the notion of "custody" had been changed by legislative amendments and that as long as the non-custodial parent played a role in the child's life, that parent is entitled to state-funded counsel. The appeal court noted that there is no free-standing right to state-funded counsel and that s. 7 Charter rights are triggered when the state removes a child from the custody of a parent. In certain cases, where there is clear evidence that a parent had been denied custodial care of the child through no fault of their own, the court may invoke an "exceptional circumstances" exemption, however, that was not the evidence in this case. It is the distress arising from the loss of companionship of the child and the interference with the parent-child relationship which is the interest being protected. Judges were not to conduct a "best interests of the child" analysis when determining an application for state-funded counsel: *Province of New Brunswick, as represented by the Minister of Justice v. J.F.*, 2021 NBCA 61, 2021 CarswellNB 656, 2021 CarswellNB 657 (N.B. C.A.).
- **Motions — Ontario — Case Law — Disclosure obligations —** The Society filed its current Protection Application after the child made statements of a sexual nature involving the father. In support of its motion to suspend the father's parenting time, the Society served a very vague affidavit and took the position that the father should not be provided with any information about the child's disclosure pending completion of the joint investigation. The court found that the Society was not permitted to withhold information in a child protection proceeding on the basis that its disclosure may compromise an investigation by the Crown or police. All relevant evidence must be disclosed to the parents as a matter of fundamental fairness and so the court can make a proper decision. The legislative framework of the CYFSA militates in favour of full and early disclosure to both the parents and the court. A parent cannot be said to have a meaningful opportunity to obtain legal advice if they can't provide counsel with the full reason for the Society's intervention. This was not a case where the police or Crown had attended court and requested that the court vet the file and balance the interests between the opposing parties or delay fulsome disclosure in a case already before the court. A criminal proceeding does not take precedence over a child protection proceeding: *DCAS v. G.S.*, 2022 ONSC 547, 2022 CarswellOnt 818 (Ont. S.C.J.).

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