



CHILD, YOUTH & FAMILY SERVICES ACT

Fresh Legislation for the Next Generation

Thursday, May 3, 2018

5:00 – 7:00 p.m.

Courtroom #LL01 – Waterloo Region Consolidated Courthouse

Accredited for 25 minutes of EDI training by LSO

Featured Speakers:

Madam Justice K. S. Neill, *Local Administrative Justice, Ontario Court of Justice*

Katherine Kavassalis, *Office of the Children's Lawyer*

Colleen Johnson, *Barrister & Solicitor*

Donna Dubie, *Executive Director, Healing of the Seven Generations*

Co-Chairs: Jeff Boich, Family & Children's Services of the Waterloo Region and Jennifer Breithaupt, Breithaupt Law

5:00 – 5:05 p.m. Welcome & Introduction

Jeff Boich, *Family & Children's Services of the Waterloo Region*

5:05 – 5:10 p.m. Opening Prayer

Donna Dubie, *Executive Director, Healing of the Seven Generations*

5:10 – 5:20 p.m. Welcome to the CYFSA

Madam Justice K. S. Neill, *Local Administrative Justice, Ontario Court of Justice*

- Mandatory review leads to significant improvements
- more responsive and accessible child and youth services
- ***RPC 3.1-2 A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.***

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

5:20 – 5:40 p.m. Hearing Children's Voices: The OCL's Increased Role

Katherine Kavassalis, *Office of the Children's Lawyer*

- Declaration of the Rights of Children (s. 3)
- Expanded service – the importance of reaching 16/17 year-olds (human trafficking; unsafe living conditions; empowerment)
- Service & Support Agreements – OCL consultation (s.77(7))
- Is protection in the best interests of the child (s. 90(1))?
Consideration of the child's views now paramount in the analysis (moved from #9/13 to #1/3); Presumption that child's views *will* be ascertained "unless they cannot be" (s. 74(3)(a))

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

(a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;

5:40 – 6:00 p.m. Reconciliation through Recognition and Customary Care

Colleen Johnson, *Barrister & Solicitor*

- Part IV – engaging the First Nations community; nurturing connections for the provision of services; declarations of "customary care"
- Is protection in the best interests of the First Nations child?
What is the impact of s. 74(3)(b) on the analysis?

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

...

(b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c);

- **Self-Identification – when, how, why?**
- **Extended family redefined (s. 2(1))**

“extended family” means persons to whom a child is related, including through a spousal relationship or adoption and, in the case of a First Nations, Inuk or Métis child, includes any member of,

- (a) a band of which the child is a member,
- (b) a band with which the child identifies,
- (c) a First Nations, Inuit or Métis community of which the child is a member, and
- (d) a First Nations, Inuit or Métis community with which the child identifies;

6:00 – 6:15 p.m. The Importance of Words – Panel Discussion

Moderator: Jennifer Breithaupt, *Breithaupt Law*

Panel: Justice K.S. Neill *Local Administrative Justice, Ontario Court of Justice*; Cheryl Buehler, *Family & Children’s Services of the Waterloo Region*; Katharine Kavassalis, *Office of the Children’s Lawyer*; Krutika Patil, *Family & Children’s Services of the Waterloo Region*; Colleen Johnson, *Barrister & Solicitor*

- **Linguistic shift: Why is the term “Indian” discontinued?**
Colleen Johnson, *Barrister & Solicitor*
- **“interim” and “extended” society care**
Madam Justice K. S. Neill, *Local Administrative Justice, Ontario Court of Justice*
- **The 16 & 17-year-old “child” – Waterloo Region’s Plan and policy directive**
- **Option, not “Duty” to Report re: 16 & 17-year-olds**
Cheryl Buehler, *Legal Counsel, Family & Children’s Services of the Waterloo Region*
- **“Custody Order” – 102 is the new 57.1**
Krutika Patil, *Family & Children’s Services of the Waterloo Region*

6:15 – 6:35 p.m.

All About Access

Jeff Boich, *Legal Counsel, Family & Children's Services of the Waterloo Region*

Reduced relevance of impairment of adoption (s. 105(6))

(6) The court shall consider, as part of its determination of whether an order or variation would be in the child's best interests under subsection (5),
(a) whether the relationship between the person and the child is beneficial and meaningful to the child; and
(b) **if the court considers it relevant**, whether the ordered access will impair the child's future opportunities for adoption.

Addressing a gap in the evidence? (multi-sibling; absence of prospective adoptive family with cultural characteristics – can mean no evidence of impairment if no adoption proposal exists to be risked)

Resource allocation – avoids need for Adoption Worker Affidavit on every Summary Judgment Motion for extended Society care

Shifting mindset of prospective adoptive families – greater awareness of clinical trends that placements for children connected in some way to their birth families can be more successful over the long term?

- Court to specify “access holder” & “access recipient” (s. 105(7))
- NEW: Society's positive duty to maintain relationships post-extended care Order but pre-adoption Order: (s. 220)

220 (1) A society shall make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child in the following circumstances:

1. The child was placed for adoption by the society and the society has decided not to finalize the adoption of the child by the person with whom the child was placed.
2. A child returns to the care of a society after an adoption order was made.

6:35 – 6:55 p.m.

Openness 2.0 – Panel Discussion

Moderator: Charu Smith, *Family & Children's Services of the Waterloo Region*

Panel: Justice K.S. Neill, *Local Administrative Justice, Ontario Court of Justice*; Sherry Currie, *Family & Children's Services of the Waterloo Region*; Katharine Kavassalis, *Office of the Children's Lawyer*

- Openness Agreements: interpretation of language shift regarding children's views

Old CFSA s. 153.6(4)

(4) Where the views and wishes of the child can be reasonably ascertained, they shall be considered before an openness agreement is made.

New CYFSA s. 212(4)

(4) Before an openness agreement is made, the child's views and wishes shall be taken into account and given due weight in accordance with the child's age and maturity.

- **Openness Orders: Who can apply now? (s. 197)**

197 (1) This section applies where a society intends to place a First Nations, Inuk or Métis child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption.

(2) In the circumstances described in subsection (1), the society shall give notice to the following persons:

1. A representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
2. The child.

- **Any differences Pre- or Post-Adoption?**

6:55 – 7:00 p.m.

Closing Remarks & Thanks

Jennifer Breithaupt & Jeff Boich