

CAS LAWSUIT PRIMER 101

- A LAYMAN'S GUIDE *

Pg 1 / 12

You hear all the time in the news how a person launches a lawsuit 'just like that' when something goes wrong and they're injured in some way. Sounds easy, but is it? What really happens? What does it take? Is there a downside? What are the pitfalls? Why do we seldom hear about the lawsuit's end results?

It turns out a lawsuit is not a 'sure thing', any mistakes by you can be used against you and you'll lose have to pay the other side's (CAS) legal costs even after they hurt you! The idea is that all parties in a case are compelled to be careful how they frame and conduct their case to avoid having to pay legal costs. Losers always pay the legal costs of the winners! But lawyers, the courts and the government don't want to give any plaintiff a 'heads-up' on how the system really works! So victims are victimized again!

Today we'll talk about CAS lawsuits and what you need to know before you start. Better to learn now than be told by a court and have costs ordered against you for tens of thousands in CAS legal fees! Innocent parents have been victimized all over again when they try to sue and lose – don't find out the hard way. This Guide references Ontario legislation, basic principles apply across Canada.

This paper discusses the most common misconceptions in lawsuits but can't cover every possible situation. Always obtain independent legal advice when planning a CAS lawsuit as soon as possible. This publication discusses CAS lawsuits under the following headings:

WHAT ARE 'TORT' LAWSUITS? see 1) - 5)

LAWSUITS ARE HIGH RISK see 6) - 10)

LIMITATIONS ACT see 11) - 14)

CASE LAW see 15) - 20)

RULES THAT APPLY see 21) - 23)

CHILDREN AS PLAINTIFFS see 24) - 26)

OVER DOING IT see 27) - 30)

STATEMENT OF CLAIM see 31) - 34)

10 COMMON PITFALLS see 35) - 36)

EVIDENCE see 37) - 41)

DAMAGES see 42) - 47)

'DIVIDED SUCCESS' – A KILLER see 48) - 51)

OFFERS TO SETTLE see 52) - 57)

CONFIDENTIALITY see 58) - 64)

ABANDONING / WITHDRAWING see 65) - 69)

IF YOU LOSE – WHAT HAPPENS see 70) - 73)

CONCLUSIONS see 74) - 80)

WHAT ARE 'TORT' LAWSUITS?

1) The public perception of lawsuits makes it look like a slam dunk! Gotta problem? Sue! But it's not that easy. You can be victimized twice!

2) Lawsuits are under "Tort Law", derived from the French word "tort" meaning "wrong"⁽¹⁾ for a civil wrongdoing which is distinct from a criminal offence. However, a criminal act can also lead to a Tort offence that can be actioned depending on the evidence and other factors.

3) Lawsuits are decided on the evidence of both parties and weighed on the 'balance of probabilities' while criminal acts are to a higher threshold of "without reasonable doubt".

* See Page 12 for Terms. () See Page 12 for footnotes Download Case Law & Guides at www.Canadacourtwatch.ORG

4) In Lawsuits the sentence is expressed in the financial compensation while criminal sentences incarcerate the offender for days, months or years.

5) Injured parties (“plaintiffs”) in a case and CASs (“defendants”) are seldom allowed to use a Charter of Rights claim, there are better ways to go. Charter Rights kick in when a person is likely to lose personal liberty when they are charged under the *criminal code*.

LAWSUITS ARE HIGH RISK:

6) In CAS child protection cases in Family Court, when a parent loses a case, they are not ordered to pay legal costs to a CAS, except in the extremely rare cases where combative parents without knowing the law insist on vexatious litigation, meritless Motions and lose *those* Motions. They can be ordered to pay for *those* court appearances or that particular ‘step’ in the case but not the entire case, as some dishonest CAS lawyers claim.

7) In lawsuits all losers in a case must pay all or most of the winner’s legal costs. No matter what. This means losing a case and claiming ‘public interest’ does not shield a loser from legal costs. Courts have ruled being ‘penniless’ is no excuse either. A costs order will follow a person the rest of their lives.

8) The ‘idea’ is to promote careful conduct of a case. The problem is, governments and lawyers don’t want plaintiffs to know the rules soon enough to make a difference.

9) Lawyers wanting to be hired by a client and get a nice fat retainer of \$5,000 to \$10,000 are seldom honest about the downside of losing a lawsuit or moving ahead with a case that is thin on evidence. They know they can walk away if a client runs out of money or after a loss. The client is left holding the bag with a \$10,000 to \$300,000 costs order against them – sometimes even more! ⁽²⁾

10) Being mad about a CAS’ dishonest conduct is not a licence to crank out a defective lawsuit, you’ll be even more devastated when you lose! More than 98% of CAS lawsuits by DIY plaintiffs fail due to their mistakes. It takes real skill and tons of work like a good lawyer would do to win a case – it’s not a slam dunk!

LIMITATIONS ACT:

11) Every province and territory in Canada has legislation relating to the time allowed for all kinds of legal actions in that jurisdiction. In Ontario, the *Limitations Act* used to allow 6 years to launch a claim, but it was shortened to just 2 years.

12) The 2 year time frame can be modified by various factors, it provides that you may start an action within 2 years of *realizing* there was a cause for action, that is, more than the 2 calendar years from the events or CAS case. However, you’d have to prove how and why it took you more than 2 years to *realize* there was a cause for an action.

13) For Crown Ward survivors with disabilities and traumatized in the CAS foster system, they can file a case more than 2 years after “aging out of care” provided they obtain medical evidence related to the disability or trauma and cognitive issues causing a delay to launch a case. Unfortunately, that does not mean launching a case 5 to 20 years after CAS abuse in their “care” / custody.

14) For a late case launch, the risk is that the court will dismiss your lawsuit if your explanation is weak or contrived and does not satisfy the court. You would be ordered to pay CAS legal costs accrued up to that point.

CASE LAW:

15) “Case Law” are previous court decisions that address circumstances and *points of law* that can be used for or against you, this includes lawsuit decisions that aren't related to CAS. Case Law is posted free on CanLii.org. Click on your province to start searching cases and other provinces as needed. It's always helpful to use as many cases in same provincial jurisdiction as your case.

16) A natural temptation is to either ignore Case Law or only use favorable case law that would apply to your case. It's *critical* that you also heed cases where CAS get parent's cases dismissed, learn from these so that you don't make the same mistakes that are already known to the CAS and courts.

17) If you're new to searching and properly reading case law, expect to spend *several months* reading decisions. When you find what you need, download as a PDF and save on your PC, etc. Look for decisions to support various aspects of your case.

18) **TIP:** When you download and save a decision, add a short/useful comment about the decision to the end of the CanLii file name and “save as” to your laptop or PC so you'll remember why you saved it without having to reread it until you plan to use it!

19) Search decisions on CanLii.org and use search words like “CAS lawsuit” or “CAS tort”, etc. As you progress you can more specific search terms.

20) **TIP:** Also click on and read decision links *within* decisions you're reading on CanLii. Decisions cited within a case are often significant and well known to the courts, be sure you know these cases too. Download and save them with the tip in para 18).

RULES THAT APPLY:

21) Rules that apply in Ontario Lawsuits *starts* with the *Rules of Civil Procedure* which is over 250 pages long! You can get a current copy via Ontario e-Laws.

22) Since you'll be suing an Ontario CAS, also show how the CAS violated the CFSA and applicable CAS Case Law. Often, the big issue is how a CAS avoided or failed to perform their “Statutory Duty to investigate” and avoided evidence with affidavits “sworn with no honest belief”.

23) OK, so the “tort of fraud or negligence” doesn't sound as dramatic as “Perjury” or “kidnapping” but tort offences carry significant weight in a lawsuit. Never claim an offence that belongs in a criminal court – the CAS will ask the court to dismiss and the court will have no choice but to dismiss.

CHILDREN AS PLAINTIFFS:

24) Underage children can be plaintiffs in a CAS lawsuit. Parents usually can't be a child's *litigation guardian*. First, the courts almost always consider parents to have an adverse interest in a case, second, parents without legal training can easily botch a child's interests and blow the case.

25) This means a child must have their own lawyer to handle their claim in a CAS lawsuit.

26) Some parents charge ahead and attempt to be their child's litigation guardian only to have the case dismissed for violating the rules. The court or the CAS may raise this issue, on dismissal, the CAS will ask the court for a costs order against you.

OVER DOING IT:

27) Many folks believe "more is better", but this is not true. Piling on claims that may include CAS acts that are not tort offences will result in dismissal. This is often called "over reaching".

28) CASs are often impolite, hostile, inconsiderate, downright rude, late, etc, and arrange visitation in a way that makes life difficult for parents in order to break the child's bond to the parents. Many of these acts fall under '*bad faith conduct*' in the CAS case where you should have made a claim for a bad faith finding.

29) However, when a CAS arranges a case that violates 'procedural fairness' or causes a delay in the release or documents that prejudices the case against a parent among other acts is more significant.

30) It's important for a parent to 'parse' all the issues or claims in the case to find the key acts that are tort offences that are also provable with evidence from the original case. Try this: List the acts in a left hand column, then list the rules or case law violated in the center and the evidence you have to support your claim on the right. If you can do that, you are on your way to a better case.

STATEMENT OF CLAIM:

31) The Statement of Claim is the key legal document for your lawsuit. It has to be framed in a legal manner that follows the rules and applicable Case Law.

32) Some parents make the mistake of turning the Statement of Claim into a long story / narrative that can stretch 50 - 60 pages! The Statement of Claim must be a description of the events related to specific tort offences and your damage claim.

33) Failing to specify the correct tort offences or the wrong tort will allow a CAS to ask for your case to be dismissed for "no cause of action".

34) Read the *Rules of Civil Procedure* and research information before writing a Statement of Claim. Once written, served and filed with the court, the courts seldom allow you to change it later.

10 COMMON PITFALLS:

35) If you read enough court decisions you'll see a trend on the most common problems with self-drafted and conducted lawsuit claims. We'll cover the "Top Ten" here:

- [1] Claims of Defamation / Libel:

Whenever a CAS lawyer mentions a false claim in court over and over, it sure feels awful, insulting just like defamation, slander or libel.

CAS LAWSUIT PRIMER 101

- A LAYMAN'S GUIDE

Pg 5 / 12

The problem is, unless the CAS makes these claims in public on TV, in a public gathering or in a newspaper, defamation, slander and libel don't apply. CASs make their money by lying in court away from the media. All parties in any court case, the CAS and you have "qualified privilege" in court to make statements that may be "correct", "less correct compared to other evidence" or "mistaken".

If you can prove the CAS avoided or suppressed evidence that disproved their claims, what you have is "bad faith conduct" that could have been addressed in family court if only you knew enough to get a bad faith finding when it occurred.

Once a CAS case ends and you decide to sue for the CAS lying in court and in affidavits, then you usually sue for the tort of negligence or fraud, etc. Don't claim defamation, slander or libel, your claims will be dismissed outright – at your expense!

- [2] Naming the wrong parties:

It's true, you can blow your case by naming the wrong parties in your case! First be sure to identify the CAS by their actual incorporated legal name! "CAS " on it's own is not enough.

Name the workers who acted directly in your case that committed a Tort offence for which you have evidence. Often parents name the CAS management, directors, board members who had no direct involvement in your case. When this occurs, the court will dismiss them as parties. These dismissals hurt your case. Name only who have to be named. A CAS corporation is 'vicariously liable' for the acts of it's employees anyway, so there's no need to name directors, etc. ⁽³⁾

- [3] No Cause of Action:

Self-drafted Statement of Claim by parents often include claims that are not matched up with the correct Tort Offence, a CAS will claim "no cause of action" and the court will be prompted to dismiss. Under the *Rules of Civil Procedure*, your lawsuit will be dismissed.

- [4] One Action only:

Some folks think that if you lose in one tribunal or court, you can pursue the CAS in another court. It's seldom true. If you launched a complaint at the Human Rights Commission and you lost, trying to sue them afterwards will be used against you and the second case dismissed with Costs against you as well!

If you have a genuine case and tons of evidence, use a lawsuit rather than a claim at a Human Rights Commission. The Commission doesn't have the jurisdiction to cover the wider range of abuses that a lawsuit can address. Since the Commission is a 'Tribunal' in law, it follows all the rules of court and rules of evidence, so they are just as onerous as any other case with fewer beneficial outcomes.

- [5] Poorly written Statement of Claim:

In addition to all the other notes and issues raised in this Guide that apply to Statements of Claim, it's not uncommon to see content like this:

(a) We seek against the CAS general damages in an amount to be determined before trial for: unlawful seizure, child abuse, perjury, misfeasance by authorities, pain and suffering, emotional and mental stress, human rights violations, violations of child's rights, defamation of character, abuse of legal proceedings, abuse of due process, denial of due process, breach of mandate, breach of fiduciary duty and obligations, oppression by colour of office, undue and illegal influence, failure to provide life necessities, discrimination, coercion, conspiracy, intimidation, denial to legal representation, traumatization, deprivation, alienation, isolation and blackmail.

CAS LAWSUIT PRIMER 101

- A LAYMAN'S GUIDE

Pg 6 / 12

This jumble of claims lacks specific details and the appropriate Tort Offences, other claims belong to the criminal code while other claims are duplicated under another name and claims of defamation do not apply in CAS child protection cases.

The plaintiff parents in this case *will* lose if they file a Statement of Claim written like this. Any time you lose a lawsuit you'll be *ordered to pay the other side's costs even if it's unfair !*

- [6] NO "Duty of Care" owed to Parents:

Several court decisions all the way up to the Supreme Court of Canada ⁽⁴⁾ say that a CAS **does not** owe a *duty of care* to parents since the CAS and parents have adverse interests. However a CAS is not entitled to mislead parents or lie in court – but of course they have for the last 100 yrs! They count on the fact millions of parents have no legal training and no resources to defend a case fully and sue the CAS afterwards. To the CAS it's a 'numbers game' where they win 98% of the time!

CASs do owe a *duty of care* to kids who are in society custody or as Crown Wards. CASs count on these kids being so messed up that they can't organize themselves to gather evidence and sue within the time limits of the *Limitations Act*.

- [7] My Claim has Mistakes, I'll just "seek the Court's Leave to Amend":

People get the idea they can throw as many claims in the pot and ask the court for 'leave to amend' when their mistakes are pointed out. This idea comes from the practice of Crown Attorneys in criminal cases seemingly piling on numerous charges including charges that look like duplications.

In lawsuits, plaintiffs (you) are obligated to carefully and objectively assemble your case and Statement of Claim. Once it is served and filed it is frozen as-is. The defendant's lawyers (CAS) will often comment by letter on a few of the issues with your claim giving you a clue how they will defeat you. They often advise you to withdraw your case. The lawyers the CAS use are not their own, they use outside law firms that specialize in lawsuits.

Some parents realize there are mistakes and may ask the court for 'leave to amend', problem is, such leave is seldom given, it amounts to a "*do-over*" to give plaintiffs a second kick at the cat to change their claim. The lesson here is to do it right the first time even if it's a lot of work and the learning required is onerous.

- [8] Pushing a Claim for "Public Interest":

Some people may be so fixated by real or perceived injustice by the CAS they will ignore or avoid all or some of the critical work and evidence needed for a case to win in the name of Public Interest. The courts don't waive requirements or rules of evidence because a parent's claim has such a high public interest that it's "justified". Those cases are dismissed. It's been tried and failed. The courts consider that the public interest in ALL cases for or against is equal for all, no one case can avoid the rules. There's no shortcuts.

- [9] Too Little Evidence – "Prima Facie Case not made":

Adequate evidence for a CAS case is governed by 6 *basic* factors: The *Evidence Act*, *Rules of Civil Procedure*, *Family Law Rules*, the *CFSA*, Case Law and "Prima Facie case not made".

"Prima Facie" is Latin for "*on the face of it*" or "*at first sight*" and accepted as true until proven otherwise.

Pronounced as *Pri-ma Face-ee* or *Pri-ma Fah-sha*. Both pronunciations have been seen in Supreme Court of Canada hearings on CPAC.

CAS LAWSUIT PRIMER 101

- A LAYMAN'S GUIDE

Pg 7 / 12

Your case cannot be a “he said, she said” dispute where one side produces little or no exhibits, transcripts, etc, that proves the case. The court will dismiss your lawsuit. Knowing and feeling that a CAS did wrong is understandable, but it’s not enough, you need to prove every claim you make.

Your evidence must be good enough that the CAS cannot produce evidence that is “better” than yours or you’ll lose. If your key evidence is sketchy or indirect, it can be trumped by the CAS.

With a properly conducted case and conclusive evidence of CAS abuse, you can say in court: “*Your Honour, with all the evidence presented here, a Prima Facie case has been made for an order against the CAS*”.

- [10] Lawsuit Constructed out of Anger:

Of course there is anger, we all feel it. But when the motivation above all else is anger, mistakes will be made. Some folks feel if their anger is great enough and stubborn enough, it will lead to success. That’s not true. Only in movies, not in real life. Pure “will” and “justice of a case” is not enough. To win a lawsuit everything has to be right, it can be done, you just have to knuckle down and do it. No short cuts.

Some folks believe if they force their case even with mistakes, they can “punish” the CAS. The CAS doesn’t care, you can’t waste their money defending a case since they will get a court order for legal costs against you when you lose. The lawsuit is handled by outside law firms, actual CAS lawyers won’t spend any time on your lawsuit, they make their money in family court lying on new cases!

36) There you have it, the “*Top Ten*” pitfalls of lawsuits. Of course, there’s still more ways for a case to go wrong depending on the issues and evidence of your case. Always seek independent legal advice for your case. Free consultations are not enough. Once you have drafted a claim and collected your evidence, then it’s time to *pay* a lawyer to provide written advice. Don’t settle for verbal “summary advice” since that’s really a “fart in the wind”, like it never happened. The filing fee for a lawsuit at this time in Ontario stands at \$750, and your legal bill when you lose will be thousands, so don’t be cheap.

EVIDENCE:

37) The quality and directness of the evidence in your case is critical. Your evidence must also meet “admissibility” requirements specific to the case as well as legislation *and* Case Law. You must create a prima facie case. Your evidence must be better than CAS will use in their defence.

38) What kind of evidence do you need? *Start* with the following, as applicable and “material” to the case:

- CAS affidavits
- your affidavits
- CAS worker cases notes
- CAS emails or letters
- Other parts of CAS disclosure
- medical evidence the CAS avoided
- police records / reports
- new expert evidence, reports, your and theirs
- Court transcripts of the original case ⁽⁵⁾
- signed consents the CAS refused to use
- letters from 3rd party sources the CAS avoided
- etc.....

39) Then you need to look at the evidence with a “fresh pair of eyes” and see how it ties together. Often it’s possible to see new connections in evidence or to parts of the law you missed in the original CAS protection case because of duress.

40) You’ll need to learn how to clearly communicate and argue the evidence and the connections between evidentiary exhibits, the law, the case law and show how each act is an actionable “tort”.

DAMAGES:

41) You’d be surprised to find that unsupported damage claims can kill your case! You can’t pull big \$\$ numbers out of the sky and expect a court to award it, amounts are defined in Case Law.

42) The categories of damages in a lawsuit are very specific and must be carefully applied right from the day you state them on your Statement of Claim. Rules apply. Several good law books on the “Law of Damages” will spell it out over several hundred pages - key reading.

43) Damage claims often have to be supported with *expert evidence* so the degree of damage can be quantified. Without this in many cases, you can win a case on the evidence, but lose the damage claim since it is not supported! You need to get any expert evidence needed in advance.

44) Case Law on previous lawsuits of all kinds, not just CAS cases, will be needed to support your damage claim. The CAS will use Case Law to *minimize* your claim and what they would have to pay. All this is after you win, years away from the day you launched your case.

45) The categories of damages *may* include:

- General
- Compensatory
- Punitive
- Aggravated
- Emotional harm
- Emotional Distress
- Special damages
- Loss of companionship
- Legal costs
- Pre-Judgment Interest

46) Not all damages apply in all cases. The list of damage claims is *not a shopping list* to go bananas with, rules apply throughout. Lawsuit awards in Canada are significantly lower than in the USA. Both countries use ‘tort reform’ to limit awards, so be careful and realistic.

47) **TIP:** You may have incurred significant legal costs in your original CAS case where they tried or did rob you. Those legal costs *at the time* should have been claimed under Family Law Rules for bad faith conduct by the CAS. Don’t try to recoup those costs specifically in a lawsuit years later or the CAS *may* use the FLR rules against you. Absorb the costs within your damage claim or write it off.

‘DIVIDED SUCCESS’ – A KILLER:

48) “Divided Success” means you won part of your case while the CAS won too by dismissing some of your claims. Hard to believe, but it happens all the time.

49) If you have, say, 20 allegations and the CAS disproves 5 of them or finds an excuse or technicality, then those 5 claims are dismissed.

50) This means the court must reduce your damages claim, often by a lot, you stand to lose 50 to 90% of your damage claim. This is often before Case Law is used to adjust your award either up or down. A \$100 million damages claim by a single plaintiff will never turn into a \$100 million award - not in Canada.

51) The lesson here is to sort all the claims and acts and be sure all material claims are supported by evidence and Case Law. Some acts by the CAS commits is to rub you the wrong way and will have to be discarded for more substantive claims that the court will accept. Using every issue as a claim will hurt you when they are dismissed. You need to win 100% of the case, so sort the '*wheat from the chaff*' or the court will do it for you at your expense.

OFFERS TO SETTLE:

52) Offers to Settle are a big deal. Don't ignore a CAS Offer to Settle or it'll be used against you later.

53) When you launch a lawsuit, your lawyer will typically recommend that you make a written offer to settle for about 30% of your total damages. The courts want people to settle out of court to preserve court resources. The courts view 20% - 30% offers as reasonable, if you push for 100%, the court will rule against you.

54) Offers to Settle are **never** discussed in court until a court makes a lawsuit decision and moves to the awards or costs phase. Mentioning that you or the CAS made an Offer in court at any other time would prejudice the proceeding, it will put you in the hot seat, ie, you lose instead.

55) If a CAS makes you an Offer to Settle with or without a compensation amount, you must consider it **very** carefully. If you refuse or ignore an offer and you force the case to court and the court makes an order for the same or less then the offer, then you will be hit with the legal costs of the other side from the date the offer was made! This turns a win into a loss that can wipe out any compensation, worse, you may have to pay them!

56) You can always make a counter-offer. This is a critical process as well. Usually a counter offer wipes out the original offer and it's no longer on the table. Also note offers can expire on a certain date, they are not open indefinitely. Your counter offer must be *reasonable* as seen by the courts and Case Law. An unreasonable or unrealistic offer by you damages your case.

57) Don't violate the *Rules of Civil Procedure* on Offers to Settle or the CAS will use it against you.

CONFIDENTIALITY:

58) Often part of Offers to Settle are confidentiality terms usually around the settlement amount. As parents see it, if the amounts were always public, then the deterrent value would help stop abuse.

59) Surprisingly, courts fail to see the value in that. They don't seem to understand when a CAS lies to parents, they lie to courts as well. The court's jurisdiction to know the facts is infringed if not completely nullified. Still, the courts fail to take offence to powerful agencies abusing the 'applicant' role under the CFSA.

60) So far, family courts, appeal courts and civil courts on lawsuits have failed or refused to properly link the avoidance or failure of the CAS Statutory Duty with CAS claims “sworn with no honest belief” as a deliberate bad faith act that cannot have any protection of “qualified privilege” or “litigation privilege”. CAS lawyers and workers have *unavoidable* knowledge of what they should be doing.

61) Some parents may feel that public knowledge of the terms is so important that you may consider bargaining away some compensation for full public disclosure. At this point we have no idea if that has worked.

62) Certainly, many parents would like a public on-the-record admission of guilt, but courts view this as an ‘unfair’ burden on an agency! (it almost encourages CAS lying from the get-go!) The courts have claimed a CAS could “not function” if they had to admit guilt! Jeez!!

63) Where a CAS makes no offer to settle and you made a reasonable offer that they ignored, a case would proceed to a finding by the court of guilt, if you did everything right!

64) If a CAS makes an offer to settle and you accept it with confidentially terms, you must abide by them or you can be ordered to pay back the award, now or 20 years later!

ABANDONING / WITHDRAWING:

65) Once you serve and file a Statement of Claim, the ‘money clock’ at the CAS starts. They will send your case over to an *outside law firm* that handles lawsuits. They will spend time reading it and looking at the CAS file as needed.

66) If you realize you can't follow thru and ignore the case and court dates set, the case will be dismissed as “abandoned”, but the CAS hired lawyers need to be paid. Abandoning a case is the same as losing. You are liable. If you abandon a case early on and default, there is a cost but not as much as say, 3 years later.

67) This is meant to encourage careful consideration before launching a lawsuit. Of course, a legal system and law books that keep all kinds of details secret makes up-front consideration difficult.

68) You have the option of filing on all parties and the court a proper Withdrawal form, that stops the case for you and the defendant CAS. They may ask for costs up to that point, it depends how long it took before you filed.

69) If you realized you made significant errors in your claim and the CAS lawsuit lawyers point that out in their first letter to you, don't get the idea you can push on and win, defective Statements of Claim are seldom granted a “leave to amend”. This would be the ideal time to withdraw before a huge costs are accrued. Lawsuit lawyers seldom lie in writing, if they mention “no cause of action” because of your Statement of Claim, they're likely right.

IF YOU LOSE – WHAT HAPPENS:

70) Lawsuits by self represented parents fail + 98% of the time for all the mistakes noted here and more. This does not mean parents deserved to lose, but improper carriage of the case without legal training, not knowing or ignoring the law means you lose all the same – big time.

71) If the court makes a decision dismissing your lawsuit, it will state the reasons and rationale in a written decision after a Summary Judgment hearing or after a trial including weighing your evidence against the CAS evidence. Many lawsuits are dismissed at a Summary Judgment hearing. ⁽⁶⁾

72) Typically the judge will announce a 'reserved decision' in court with the written decision to be issued a few weeks or months later. In rare cases, a Judge may mention which way the case will go where the CAS is proven at fault, but the details will be in the written decision.

73) When a written decision is made where you lose, the Judge will allow the CAS lawsuit lawyer to issue a *Costs Outline* and *Costs Argument*. In reply you can issue a *Costs Argument* to reduce the costs. Typically the loser in a case must pay costs either "full indemnity costs" or "costs on a partial recovery basis" each have requirements that apply. Case Law on costs can be used by either side to argue costs.

CONCLUSIONS:

74) Are Lawsuits winnable? Yes – But only if everything is done right and all the evidence is there. It's usually a multi-year commitment to see the case thru. You have to know now if you're up for it.

75) A few people claim one case was the very first successful suing of a CAS, we'll never know if that's true since other lawsuit plaintiffs may have settled cases confidentially.

76) The cases claimed are cited below. The father in the case was knowingly and falsely accused of sexual abuse, the father ultimately won and became an outspoken "advocate" but learned nothing useful from the case to teach parents other than "CASs are corrupt". As a result 20 years was wasted while he acted like a public spectacle discrediting the movement for CAS accountability. The father claims "he" beat the CAS, when the lawyers did all the work, we know this from the low level of insight displayed by the parent's public comments over the years. ⁽⁷⁾

77) In your case, concentrate on the issues in court, advocacy and politicizing CAS abuse needs to be done separately. No elected politician has "standing" in a court to intervene in your matter.

The original CAS child protection case:

D.B. v Children's Aid Society of Durham Region

1987 CarswellOnt 459

> **Get PDF:** <https://app.box.com/s/abpkjsx298cxl4sb64j3>

CAS Appeals lawsuit, loses:

B(D) and B(R) and B(M) v CAS of Durham Region & Marion Van Den Boomen

1996 CanLII 1067 (ON C.A.)

> **Get PDF:** <https://www.box.com/s/iwg9x6a3m0po1dcdnvkp>

78) In the cases above, the parent got legal costs of the protection case and the lawsuit and only \$110,000 damages while spending about 9 years in court.....no wonder CASs lie!

79) If you found this paper is too long or difficult, then you're not ready for the long haul process to sue a CAS. Sorry. It's tons of work and worth it for those that can endure reliving the CAS abuse, have the resources and are fully committed to the task.

80) If you decide you can't sue the CAS, there are other ways to pursue CAS abuse. By fully deconstructing how CAS abused you, your children and the courts, you can help others. It's all about timing – if all parents had access to what they needed to know from day-one of a CAS case, many cases would end differently, but our government and courts don't want that ⁽⁸⁾ – if they did, they would have solved CAS abuse - after all, they've had 100 years to "perfect" child protection cases!

CAS LAWSUIT PRIMER 101

- A LAYMAN'S GUIDE

Pg 12 / 12

* LEGAL NOTE :

This paper is based on actual use and a guide only for the reader, your needs may vary. It's up to each person to assess their own circumstances. Extra steps in your proceeding may occur due to complexity, number of parties, bad faith acts, abusive litigation. Canadacourtwatch.org cannot be responsible for use, misuse or misfortune in a proceeding. This guide is not 'legal advice' but the experience of fellow respondents subjected to the criminal acts of your local corrupt, Perjuring, child abusing CAS!! Each recipient is required to assess their situation to the best of their ability, outcomes depend on the relative strength / weaknesses / errors of each party's case, exhibits, affidavits, submissions, case law, etc. Interactions of other Laws, Acts, Regulations and Case Law up to the recipient. No claim for errors or omissions. CFSA s 45(8) applies. Lawyers don't like 'layman's guides' and may lie to cast doubt and increase your dependence on their services even though the content here is fact-checked and based on direct experience of many people!!

NOTE : For any lawsuit, obtain *comprehensive* independent legal advice. This means using a free 20 minute consultation is not adequate. Assemble your evidence, your claims and pay a lawyer to give a written opinion of your case as a bare bones minimum. DIY Lawsuits are extremely risky, when you lose, (as 98% of self represented cases do) you are liable for the other side's legal costs that can run \$8,000 for one day in court to over \$300,000 for several years in court. The CAS can obtain an enforcement order that can follow you the rest of your life.

(1) "Tort", (noun) French for "wrong," a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs which result in harm. Therefore tort law is one of the major areas of law (along with contract, real property and criminal law) and results in more civil litigation than any other category. Some intentional torts may also be crimes. The person who commits the tortious act is often called a "tortfeasor", but you don't have to, just call the CAS 'the defendant'.

(2) \$300,000 legal costs against plaintiffs who alleged abuse but lost case. Victimized again by losing & paying Costs.

Cavanaugh v. Grenville Christian College,

2011 ONSC 4786

2012 CanLII 47233 (ON SC) para 39 - 40

> **Get PDF:** <https://app.box.com/s/w879o76jnypld7c2qchtp4f2dnh7pa0>

(3) Wrong parties named in a CAS lawsuit:

D.M. v. York Region Children's Aid Society et al,

2011 ONSC 5635

para 6, 7, 11, 12

> **Get PDF:** <https://www.box.com/s/kdahgw9pxeaqgruh2jef>

(4) "Duty of care" NOT owed to parents:

Syl Apps Secure Treatment Centre v. B.D.,

[2007] 3 S.C.R. 83, 2007 SCC 38

> **Get PDF:** <https://app.box.com/s/ev9fe0ubcv6tj9g2kqh2qm8fxok8ispb>

(5) There's a time limit on ordering CAS Family Court transcripts before the court recordings are erased ! Usually 5 years or so, if you want transcripts, order them ASAP. Once transcribed, the cost for each certified copy is reasonable, usually three are needed for appeal. Order spares for future use, lawsuits, etc, and save receipts.

(6) Many lawsuits are dismissed at a Summary Judgment Motion by the defendants. The criteria is that the lawsuit has defects that prevent it from winning at a trial. This is done before any actual evidence of the tort offences is considered! Sad but true. Now you know! Don't file a lawsuit with errors.

(7) The parent has publicly named themselves. However, we won't due to CFSA s 45(8).

(8) The Ontario government and Ministry for Child and Youth Services even hides from the public the "presumptive rule" the CAS, the lawyers and the courts use to force children into the foster system even when CAS claims are false.

Rev 0 - Sep 27 2016 written by: **no_ethics_at_CAS** Copyright 2016 www.canadacourtwatch.ORG

For comments, corrections or suggestions, email:

no_ethics_at_the_cas@yahoo.ca

or

info@canadacourtwatch.ORG