

# CAS & YOUR CHARTER RIGHTS - A LAYMAN'S GUIDE \*

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*Sorry to be a 'downer', but the Canadian Charter of Rights <sup>(1)</sup> can't be used to dismiss a CAS case! >> The media reports criminal cases being dismissed for Charter violations and parents naturally expect the same applies to CAS cases too, it doesn't. Parents are presumed guilty <sup>(2)</sup> and must disprove CAS claims to win the case. Case Law shows the very limited application of Charter Rights in a CAS case. If your only defense is a Charter Rights claim to dismiss a CAS case, you'll lose! Once that happens you'll have no grounds for appeal. <sup>(3)</sup>*

*This Guide is a "heads up" so you won't make the mistake others made! There are easier and more effective ways to win a CAS case – disprove CAS claims! We'll go through the details in this guide so you'll know what lawyers won't bother to tell you! <sup>(4)</sup> Then decide for yourself what way you want to go!*

Whenever possible try to obtain independent legal advice and as a minimum seek counsel from a Family Law Information Centre (FLIC) lawyer located in most courts in Ontario. This publication discusses practical methods of dealing with CAS and your Charter Rights under the following headings:

**NO CHARTER RIGHTS ?** see 1) - 6)                      **CHARTER RIGHTS IN CRIMINAL CASES** see 7) - 11)

**CASE LAW TO KNOW** see 12) - 30)                      **DISPROVING CAS CLAIMS** see 31) - 35)

**NO "PRIMA FACIE" CAS CLAIM** see 36) - 42)                      **APPEALS** see 43) - 44)

**CONCLUSION** see 45) - 51)

## **NO CHARTER RIGHTS ?**

1) OK, we're all upset. We don't have any significant Charter Rights in a CAS case! Knowing that now and not making the mistake of trying to use Charter Rights as a defense saves you from making a huge mistake for which there is no appeal! <sup>(3)</sup>

2) After years of looking at decisions, there's no cases where a CAS was *dismissed* on a Charter claim. The Charter has very limited application in a case and is not a defense. Bad lawyers and CAS workers want to mislead you so you lose big time. Read the rest of this guide and decide for yourself.

3) Why no Charter Rights for parents? First, parents don't lose their "liberty" with a prison sentence in a family court CAS case. Further, the courts decided that the Charter Rights of a parent can't get in the way of a "child's best interests". It also means parents are presumed guilty but are never told by courts *up front* or in government materials at FLIC offices <sup>(5)</sup>. The (Ontario) government <sup>(6)</sup> for the last 100 years has lied to the public about key material facts about CAS cases so that parents are more likely to lose!

4) The Ontario <sup>(7)</sup> CFSA (and the new CYFSA in 2018) "provides" for the "best interests of the child" which means the Charter Rights can't be used to argue interests of the child as a back-door parent's defense in a case. It's been tried and failed! Now you know!

5) **NOTE:** When a parent insists on a Charter challenge, they have to serve the Attorney General of Canada and the Attorney General of Ontario as required by s109 of *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended. The Attorney Generals may or may not participate in a case. If they do and a parent loses on the Charter issue, they can seek legal costs against a parent!

\* See page 8 for terms. ( ) See Footnotes on page 8.

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6) Charter claims by parents can span sections 2 to 24(2) of the Charter in CAS cases with s 7 and s 8 as the most common claims. Later in this guide, cases are cited with links so you can read them in full and know what happens in a poor Charter claim.

### CHARTER RIGHTS IN CRIMINAL CASES:

7) Charter Rights were created as it applies to Canadian Criminal Code violations where a person can go to jail if convicted. In a criminal case, the court does not automatically 'protect your rights' on their own except in the simplest instances.

8) The Supreme Court of Canada (SCC) has made many decisions as to how a person's Charter Rights are applied. It's not always clear-cut. This means an accused person typically needs a lawyer to be sure their Rights are protected. On it's own, Charter Rights won't stop a justified conviction.

9) The SCC has also set aside in part, some rights by degrees where, say, an improper police search found items extremely dangerous to public safety. In those cases, the defendant lost their SCC appeal because their Charter Rights cannot come over public safety.

10) On occasion, SCC decisions on Charter Rights have varied over time and can be slightly "fluid", the Charter can't be used to commit or shield a crime.

11) Not only do Charter Rights rarely apply in CAS cases, they don't apply in most civil court cases like lawsuits either, even if the other party is a government funded agency! However, a severe actual Charter breach supported by evidence could lead to a Tort offense <sup>(8)</sup> for a lawsuit.

### CASE LAW TO KNOW:

12) In this section we'll cover cases that are instructive so that parents don't make mistakes that lead to a loss of their matter. See the comments that are made for each case so you'll understand it better.

13) It's key to read 'good' and 'bad' decisions to understand the limits of a defense a parent wants to use. You can be sure the CAS will use decisions against parents whenever possible. So it's key you learn from them beforehand.

#### >> **Decision # 1:**

14) In the decision below, a CAS worker knocked on a door that was answered by a child wearing only underwear. The worker could see total disarray in the home and detect a strong smell of feces. In an attempt to locate an adult, the worker entered home and found a woman and man in the living room whom she could not rouse. The worker and a police officer re-entered home to rouse mother and inform her of apprehension. The officer then informed the mother that the worker would be taking pictures of the home, the mother gave no verbal response. The CAS worker toured the house, taking many photographs that CAS then tried to use in court.

*Chatham-Kent Children's Services v. K.(J.),*  
2009 ONCJ 589

See para 1 to 3 and 46 to 78

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15) In court, a “*voir dire*” hearing <sup>(9)</sup> was conducted to see if the pictures could be admitted as evidence. For the reasons stated in the decision, they were excluded. So did this help the parents? Nope! There was so much other actual incriminating evidence collected in the case, that the parents lost anyway. So you see, even when the Charter “helped” it cannot undo *actual* neglect or abuse.

### >> **Decision # 2:**

16) In the decision below, parents who were Jehovah's Witness refused on religious grounds a blood transfusion for their new-born child who was suffering infantile glaucoma. The doctors believed that surgery and a blood transfusion was necessary to save the child's life. A court order was sought by the CAS to have the child made a temporary ward and the operation and transfusion was done.

17) The court decided that a parent's religious beliefs cannot place a child's health or safety at risk or prevent modern accepted medical treatment. A parent can also be subject to criminal prosecution for avoiding or delaying treatment. “Holistic” treatment is not a defense.

*B. (R.) v. Children's Aid Society of Metropolitan Toronto*,  
[1995] 1 SCR 315, 1995 CanLII 115 (SCC)

**Get PDF:** <https://app.box.com/s/1wvityxagqc9vya7x1xwql2bgv1gx> (large file 9.7MB)

18) The parents were attempting to use s. 7 of the Charter for “*liberty and security of the person*” however, the child's “*liberty and security of the person*” is distinct from that of the parents and it requires proper medical care regardless of a parent's ‘belief system’.

19) Unfortunately, the problem of improper medical treatment of children due to religious grounds occurs often and those parents believe they can rely on the Charter for s. 7 rights that they cannot use. As a result, they often lose custody.

### >> **Decision # 3:**

20) In the decision below, a mother in a case objected to the immediate apprehension of a new born baby and in the case claimed a violation of the Charter of Rights s. 7 and s. 24(1). The claim is for security of person and delay of a case. The court decided against these claims. What can we learn from this?

*Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519  
2000 SCC 48 (CanLII)

See Pgs 1 to 4 and para 1 to 140

**Get PDF:** <https://app.box.com/s/u6p3nis6maqz8qn2buaz2icymmqd6l5c>

21) In the s. 7 claim, the security of person of a mother is separate from the security of person for the child. Most people don't know there is a difference between the two, so this mistake is made often by parents desperate to get their kids back. Now that you know, don't repeat this mistake and wind up losing!

22) The s. 24(1) blanket claim is for delay in s. 11(a)(b) in the Charter. For parents, separation from a child for any length of time is nearly intolerable. The delay in the case was greater than the Manitoba *Child and Family Services Act* provides, but it was not over a time that violates other SCC decisions.

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**23)** The lesson here is that as a self-rep parent, you *need time* to learn a new job – learning the law as it applies to the CAS in your province! If you could rush a case, you would likely lose over all the issues in court that everyday people never get to know! Of course, being under duress in a CAS case and having to learn lots of new material is tough and tiring! But it's the only path to success other than hiring a very good lawyer and having evidence on your side!

**24)** Many Charter claims by parents are an attempt to take a 'short-cut' to end the case and avoid the nitty-gritty details and knowledge that's needed to understand and win a case.

**25)** It's key to know there's no automatic right of appeal to the Supreme Court of Canada, applicants file a "leave for appeal" where a panel of 3 Judges decides if the legal question asked in the appeal has been addressed by the court before and if it meets other tests that are applied to cases before it can be accepted. The court can only accept a limited number of cases every year, usually less than 100. The actual court is 9 Judges that decide each case together. Considering that the court has about 47 working weeks a year, deciding nearly 100 cases is a significant work load!

### >> **Decision # 4:**

**26)** In the decision below, parents sue the Children's Aid Society of Toronto and make claims of Charter violations without evidence and lose the lawsuit. When a plaintiff loses a lawsuit, they're ordered to pay the legal costs of other parties! Sad.

*R. v. Children's Aid Society of Toronto et al,*  
2011 ONSC 4261  
See para 42 to 46

**Get PDF:** <https://app.box.com/s/0gss3wo60p324xvxow609tetosux1u4l>

**27)** The entire decision gives reasons throughout why parents lost and the mistakes they made. It's worth reading so you don't make the same mistakes! They made claims that overreached and assigned blame to CAS employees that were not *direct actors* in their case. To learn more about suing the CAS and the mistakes made by others see the PDF below:

" CAS LAWSUIT PRIMER 101 "

**Get PDF:** <https://app.box.com/s/utbqipzktfpa4hnz2ek42tkm7ep7ev0u>

**28)** This decision shows how Charter claims can be improperly used in various types of cases, protection cases, lawsuits and appeals. In nearly every case reviewed, the parents could have taken a more successful path and if they still lost, their case would have far better grounds for appeal. Overreaching with a Charter claim and losing *cannot* be successfully appealed.

### >> **Decision # 5:**

**29)** In the decision below, a parent and a bad lawyer use Charter claims as a strategy to mislead and delay a Summary Judgment hearing that contributes to the parent losing and the lawyer paying costs!

*The Children's Aid Society of Waterloo Region v. A.L,*  
2017 ONCJ 194  
See para 29 to 40

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**30)** The take away here is that novel, misleading, obstructive or delaying tactics using the Charter will be quickly pointed out by other parties in a case not just the CAS. When that happens, the court will be compelled to make a decision that does not favor the parent. It's simply not possible to fool a Judge and everyone else in the case.

### **DISPROVING CAS CLAIMS:**

**31)** The best path to dismissing a CAS case is the detail work of finding, creating and using evidence in your favor that disproves CAS claims in court.

**32)** Where there is parenting neglect that is correctable, then a parent needs to take steps and collect evidence of *progress* and *results* to improve to dismiss the CAS claims.

**33)** Where there is actual abuse, usually the evidence is often but not always too great to overcome. Some types of abuse are such that there can be no return of custody. Those children go from the 'frying pan' of their home to the 'fire' of an abusive CAS Crown Ward system where systematic abuse is kept secret.

**34)** Collect evidence from various places that help disprove CAS claims as applicable:

- School records, report cards, school assessments
- Doctors records, Dr's opinion letters, Dr's letters on specific CAS claims or misquotes
- Drs letter confirming the CAS never obtained records
- Criminal background checks, actual copies of Police incident reports
- Financial records
- Any 3rd party document that provides date, time, place and / or details
- Any records of drug tests
- Dr prescription records
- Pharmacy dispensing history print outs
- Any records of courses taken and results
- Emails and Letter correspondence
- Dated bills and receipts
- Knowledge of CAS cases or criminal convictions of other parties in the case
- Photographs
- Court certified transcripts of comments or claims in earlier court appearances
- Other court records in your possession

**35)** Many parents make the mistake of trying to convince the CAS but not the courts and lose. If a CAS stubbornly lies, then save your best evidence for serving and filing just before the final hearing where a permanent custody decision will be made.

### **NO "PRIMA FACIE" CAS CLAIM:**

**36)** A "Prima Facie" (*Pri-ma Face-ee* or *Pri-ma Fah-sha*) claim is when the facts is evident "on it's face". That is, the CAS provides *exhibit documents* that show abuse of some form and is "self evident" in the material, ie, bad drug test, etc. The same applies to a parent, that you supply Prima Facie evidence that disprove CAS claims. If you only rely on a 'flat denial' of abuse with no supporting material, then you have not successfully disproved the CAS claim. It's possible for the CAS and a parent to supply convincing evidence, but one set of evidence will likely be slightly better than the other to decide the outcome.

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**37)** A parent needs to disprove CAS claims can then argue if applicable, the CAS has no “Prima Facie” claims too. It's best that all self-rep parents apply both: disprove and show CAS case has no Prima Facie case. That's a ‘double whammy’ that's hard for a court to ignore.

**38)** It's key to do both, since courts thru the presumptive rule will favor a CAS case when a parent has a weak defense. It's a parent's job to make it hard for a court to rubberstamp a Crown Ward order. Only a well conducted case by a parent has a chance and grounds in an appeal court.

**39)** So what does a **no** Prima Facie case look like? CAS often make these ‘mistakes’ since they rely on abusing the presumption of the court to win a case, so they seldom actually do the ‘work’ required by their “Statutory Duty to investigate”. *They don't expect parents to catch on and articulate it in court.*

**40)** After you disprove CAS claims with evidence as exhibits attached to your affidavits and then *discuss* them in court in your verbal submissions <sup>(10)</sup> then you point out that the CAS has “no Prima Facie case” for the possible following reasons *as they apply*:

- The CAS affidavit claims are NOT supported by 3rd party exhibit evidence <sup>(11)</sup>
- The CAS quoted sources who did not swear an affidavit
- The CAS misquoted sources as per the letter / affidavit from them <sup>(12)</sup>
- The CAS claims are repeated by other workers amounting to Oath Helping <sup>(13)</sup>
- The CAS claims & submissions show they did NOT perform their Statutory Duty to investigate
- The CAS claims are supported only by incomplete hearsay <sup>(14)</sup>
- The CAS claims are supported only by hearsay sources are 2nd or 3rd hand <sup>(14)</sup>
- The CAS sources and claims fail the test as ‘reliable and trustworthy’
- The CAS affidavit claims are self-serving and / or one-sided
- The CAS lawyer overreached the sworn affidavits and gave evidence from the counsel table <sup>(15)</sup>
- The CAS claims fall short of the “balance of probabilities” compared to other evidence <sup>(16)</sup>
- Specific CAS claims have been dismissed already, Res Judicata applies <sup>(17)</sup>

**41)** You'll want to ‘script’ your verbal submissions on cue cards, etc and practice at home well before court. Good submissions must be to the point and short enough not to waste court time or you'll be cut off. Here's a sample that show ‘tone’ and structure:

*“ Your honour, the CAS has stated their claims, but they are unsupported by 3rd party evidence they should have collected as part of their Statutory Duty to investigate over the last 18 months. There's no excuse. It looks like they planned to abuse the presumption of the court. The worker, by swearing affidavits without investigating did so with no honest belief. The worker has unavoidable knowledge of what their duties are.*

*I have rebutted the claims with my 12 exhibit documents that I've pointed out to the court. I have exceeded the balance of probabilities with my evidence. The CAS has not made a Prima Facie case and therefore their motion for Crown Ward must be dismissed.”*

**42)** You get the idea now. Tailor your script(s) to your circumstances and facts. Remember to *convince* the court not the CAS! You can create small scripts, say, for each exhibit you plan to discuss on cue cards, etc. Depending on your personal strengths and weaknesses, your scripts can be talking points or more detailed, see what works for you. Practice at home and see.

*“ Your honour, please turn to Volume 4 Tab 6 of the Continuing Record for my affidavit. (pause) In my affidavit is Exhibit ‘B’ with 9 sets of drug tests done with my family Dr, they show I was clean the entire time. Yet when I faxed these results to the CAS worker, she still made drug claims in her affidavit in Volume 4 Tab 5 in paragraphs 20 to 29. These claims are without honest belief and are not within qualified privilege to make while ignoring evidence. The worker wants to mislead the court. See Exhibit ‘C’ for my cover fax and fax receipt. The CAS acts in Bad Faith.*  
“

## **APPEALS:**

**43)** So far, appeals are a no-go on failed Charter claims. There's three main reasons for this:

- a) Once dismissed in a family court, Judges give full reasons that are appeal-proof.
- b) The threshold for a successful Charter claim that also respects the child's interests is very high.
- c) A Charter claim cannot make evidence go away or replace the requirement to disprove CAS claims with evidence.

**44)** Appeals can't be used as a "do-over", "re-hearing of a case", or an attempt to correct mistakes by a parent in the conduct of original case. This high expectation of parents and how the government and agencies mislead the public so they can't know the material facts in time of how cases are actually conducted is entirely indefensible as noted in para 48).

## **CONCLUSION:**

**45)** The decisions and other parts of this guide show that a Charter claim cannot dismiss a CAS case since the claims of the CAS in a sworn affidavit must be disproved, the Charter cannot override this requirement. Family courts are not criminal courts. Criminal courts are allowed to dismiss a case entirely when a serious breach of the Charter occurs. This is because the considerable power of police agencies to arrest, beat, shot, kill or detain people must be limited with the risk of dismissal. It's no doubt that the public confuses the dismissal power of the Charter.

**46) TIP:** Often parents try to inject the Human Rights Commission, Geneva Convention, United Nations, etc, into their CAS cases, not knowing that family courts jurisdiction cannot include these bodies! When these parent rely on a claim involving these entities, they lose. It's far better bet to disprove CAS claims with evidence and use Canadian case law to support you in court.

**47)** In CAS cases, the child's risk of harm can't be ignored because of a Charter violation of a parent. So far no courts have made any significant orders to protect children from CAS abuse that would stop agency abuse cold!

**48)** Since it was necessary to dispel myths about misapplying the Charter as a defense in a CAS case is critical, alternate solutions to defend a case was also provided, something Judges and lawyers writing law books for public use refuse to do! Check this PDF guide for law books and other resources mislead:

`` BAD Self-Help Law Books ``

**Get PDF:** <https://app.box.com/s/mr8vq83rcfi4fu1uvgw9ezseiycal59>

**49)** Overcoming CAS claims requires the skills of a good lawyer **and** good evidence that clears an innocent parent. If there's no favorable evidence, then no lawyer no matter how good can overcome CAS claims because of the Presumptive Rule in CAS cases in Ontario and across Canada.

**50)** If you are a self-rep parent in a CAS case, then you need to learn and apply *many* new skills within the timeline of the case. Failing to present a complete defense with evidence and then using an appeal as a 'do-over' is not permitted by appeal courts. Know it *now* and act accordingly.

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**51)** In the many cases reviewed for this Guide, it's notable that few family lawyers made Charter claims when there's always a more direct approach to winning a case. The majority of poor Charter claims are by self rep parents who then lost. Now that you know, don't be one of them!

## \* 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. The proceeding 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!! However, still try to obtain independent Legal Advice if you can or seek FLIC counsel if available.

(1) Canadian Charter of Rights: See link: <https://app.box.com/s/qwwe2l6tnki1xi3pccxx>

(2) Parents are presumed guilty as stated in case law

(3) Appeal grounds cannot amount to a "do-over" of a case as stated in case law.

(4) Lawyers don't want to deal with upset parents. See para 48) for a link to a list of dishonest law books.

(5) FLIC offices stock misleading brochures as noted in the link in para 48).

(6) The Ontario government proclaimed the Children's Aid Society Act in 1903 and allowed CAS abuse since then.

(7) Other Canadian provinces and territories engage in the same practices.

(8) "Tort offense" is a specific term for a type of civil wrong doing that must be declared and linked with specific acts of a sued party, ie, the defendant.

(9) A "*voir dire*" ("*vwahr deer*") hearing is a like a "trial within a trial" typically to decide if specific evidence is admissible without prejudice to the overall case.

(10) You must make verbal submissions about your affidavit evidence and exhibits or it does not become part of the "evidence in the hearing" or the court transcript.

(11) A good reason **not** to agree to a PCA, the report, however wrong or dishonest becomes "evidence" in the case.

(12) Follow up sources CAS claims and show them what a CAS said about them and get their written comments.

(13) See this PDF on Oath Helping: " CAS 'Oath Helping' Scams " <https://www.box.com/s/m3k36oq4nkl4dqd4agkk>

(14) In child protection cases, first hand, complete hearsay materials are often allowed.

(15) A lawyer is not allowed to "testify" from the counsel table and give facts that are not part of a sworn affidavit.

(16) The 'balance of probabilities' in most cases is 51%, while other decisions use "compelling evidence".

(17) " Res Judicata" is Latin for "decided before". The term Res Judicata is used in court a lot, it's a good idea to know what it means. See PDF: " CAS Violates Res Judicata " <https://www.box.com/s/ycm2zo6nrndwp670vwjh>

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