Child Apprehension:
Policy and Process

Peter Bowal

Children, due to their vulnerability, enjoy a privileged place in the law. There is no other subset of the population that benefits from as many protections.

They are not held responsible for most contracts they enter into. The employment of children is closely regulated. They are essentially judgment-proof for most civil wrongs which they commit. They cannot be charged with a criminal offence until age 12 and then they may not face the full brunt of penal sanctions until they are 18 years old. As a matter of right, children are entitled to a legal aid lawyer when they are charged with criminal offences, regardless of family ability to pay. On the other hand, adults who abandon, abuse or otherwise endanger children face strict sentences and their access to legal aid is rationed.

In the family relationship, the "best interests of the child" is the paramount standard for custody, access and financial support decisions when the parents separate. Professionals such as teachers and physicians are mandated to report suspicions of abuse or neglect to the authorities. Provinces operate "Departments of Child Services." Child advocates and government lawyers independently represent children in family disputes.

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There are many statutes to protect children. In Alberta alone, in addition to the general protections of human rights and minimum legal duties for all persons, we have the following list of legislation, the primary purpose of which is the welfare and protection of children:

- *Drug-Endangered Children Act*
- *Protection Against Family Violence Act*
- *Extra-Provincial Enforcement of Custody Orders Act*
- *Family Day Act*
- *Public Trustee Act*
- *International Child Abduction Act*
- *Maintenance Enforcement Act*
- *Age of Majority Act*
- *Child Care Licensing Act*
- *Protection of Children Abusing Drugs Act*
- *Child, Youth and Family Enhancement Act*
- *Protection of Sexually Exploited Children Act*
- *Family and Community Support Services Act*
- *Family Law Act*
- *Family Support for Children with Disabilities Act*
- *Maternal Tort Liability Act*
- *Protection For Persons in Care Act*
- *Youth Justice Act*
- *School Act*

It would seem that virtually everyone is on the side of the child.

Has the state perhaps gone too far in intervening in the business of the family? Have parents been losing too much ground to the government in discharging their duty and prerogative to raise their children as they determine and are able?

I will not attempt to enter upon such a political contention. Instead, as a Presiding Justice of the Peace in Alberta, speaking generally from my own experience over 11

years, I will describe the policy and process when the roles of the parent and state most critically intersect – child apprehension applications.

The Alberta Child, Youth and Family Enhancement Act

This statute, which is similar to those in other Canadian provinces, was updated in the last few years. The name change expunged the simple "Child Welfare" to reflect the more modern and broader embrace of family and to signal the focus on strengthening or enhancing the whole family as compared to providing welfare for the youngest members.

The Act provides for several different types of agreement and order. Our focus is the Apprehension Order.

Let's start with a summary of the multitude of principles that guide decision-making relating to apprehensions. Section 2 sets out a long list of factors which must be considered by the Justice. These recognize the family as the basic unit of society that needs to be supported and preserved, the value of stable, permanent and nurturing relationships for the child, minimal disruption, consideration of the child's "opinion," that every child should be a wanted and valued member of a family, that a child should be removed from the family only when other less disruptive measures are inadequate, the availability of community services, and the option of placement within the extended family.

The concept of "in need of intervention" is central to child apprehension applications. The Alberta legislation defines it as reasonable belief that the survival, security or development of the child is endangered because the child is lost, or has been abandoned or neglected, is substantially at risk of (or has suffered) physical injury or sexual abuse, or has been emotionally injured (this is also defined).

Section 4 requires "any person" with "reasonable and probable grounds to believe" that a child is in need of intervention to make that report to a designated child services worker. A fine up to $2000 can be levied, and up to six months imprisonment imposed if it is not paid. Failure to report is unlikely to be prosecuted, except in the most egregious case of professional default. Families and children can also request intervention, and workers may learn of intervention needs from any other source.

The report is assessed and, if found credible, investigated. If intervention is called for, the worker must attempt to obtain satisfactory resolution with the family, or render temporary emergency care. The effectiveness of various voluntary supervision, custody and guardianship agreements are canvassed. Workers must first consider how the family unit can be preserved. Most parents oppose apprehension (often vehemently); those few who consent to intervention are usually in a position to co-operate with the social worker on what form the intervention should take.

Often a parent cannot be contacted or is in a position that is too compromised to adequately care for the child. If the worker has formed a reasonable belief that the child is in need of intervention, he or she may then apply to a court to remove the child from his or her home on an *ex parte* basis (without anyone else participating

in the application). These applications are best made in person before the Justice of the Peace, but invariably they are made by telephone, on the basis, that "it would be impracticable to appear personally." The Alberta courts have been set up for many years to expedite such applications at any time of the day or night by telephone. The application is digitally recorded and transcribed. These telephone applications are received and processed with the utmost priority.

The practice at this point varies considerably from Justice to Justice as the application is considered. Some readily grant the Apprehension Order if the worker states she believes the child is in need of intervention. Others will note the worker's belief but inquire further to test the case for intervention. I favour the latter approach. Otherwise, the need to call a Justice for the Order would be a waste of everyone's time if the Justice was bound to do what the worker requested. The Justice must independently review the grounds for the worker's belief in the need for intervention. The state removal of a child from his or her home is a serious matter, not one to be taken lightly.

I find that occasionally the worker making the telephone application, though sworn to truth, has no personal knowledge of the case being presented. He did not even try to speak to the parents, which violates the principle of minimal disruption of the family. He may not have even seen the child and I have had cases where the worker does not even know that the child exists. The basis upon which the application rests may be so slender as to constitute mere conjecture (as in "the teacher thought Johnny had a bruise on his arm") or a personal view of child-rearing that is sought to over-ride parental discretion (as in "no child should have to do all that work at home").

Each child apprehension case is unique on its facts. These are important but not easy cases since no one can know the outcome of the various alternatives.

There are meritorious cases for apprehension, but the case should be made on first hand, credible, objective evidence. The parents are not part of the court proceeding and, usually, have not been notified that it is taking place. It falls to the Justice, therefore, to obtain the clearest picture of overall risk, when only one side is speaking.

Given the ease of making the apprehension application, workers sometimes concede that it will be used as a negotiating tool to bring the parents around to what the worker wants. Occasionally, the worker applies to apprehend with little more to justify intervention than the fact that the parent was unco-operative. In my view, the Justice should guard against such abuses of state power over families.

A child welfare worker or peace officer may apprehend a child without an order if she believes the child's life or health is seriously and imminently endangered through abandonment or the child running away from home. The legislation allows children to be repatriated from other provinces.

Immediately after apprehension, the guardian must be notified and, if the child is not, within two days after being apprehended, returned to the guardian, a Child Services worker must apply to the court for a supervision order or a temporary or permanent guardianship order. The guardian must be served notice of this application, which cannot take place more than 10 days after the apprehension, and will be heard upon attendance. If the apprehension is upheld, the child will be placed in foster care.

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Conclusion

Every province has child protection legislation that is multi-dimensional. One form of this protection facilitates the policy objective that a society's children all enjoy security, stable social relationships, satisfaction of basic needs, and minimal exposure to harm within the family unit. Not all parents and guardians, for various reasons, consistently meet the challenge. Accordingly, a legal framework for state intervention and care exists to help those children who cannot help themselves.

Each child apprehension case is unique on its facts. These are important but not easy cases since no one can know the outcome of the various alternatives. The Alberta legislation favours a conservative approach to intervention and regards intervention and apprehension as final recourses in the child welfare framework. A system has developed which is nimble and immediately responsive, yet which has built-in checks and balances. The state's professional social workers and the Justices can be counted on in good faith to have the best interests of the child and family cohesion in mind at the same time.

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