

# **Two Decades of Legislative Change – One Defence Lawyer’s Perspective**

Prepared For: Legal Education Society of Alberta  
*Child Welfare*

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For Presentation In:

Edmonton – February 4, 2014

Calgary – February 6, 2014

**TWO DECADES OF LEGISLATIVE CHANGE**  
**- One Defence Lawyer's Perspective -**

**The Child Welfare Act / The Child Youth and Family Enhancement Act / The ?**

**By April C. Kellett**

Objective: An exploration and discussion of some of the significant amendments to the CYFEA over the past decade and those still to come, from a child welfare defence lawyer's perspective. The focus is on Part 1, Division 1,2,3 and 5; Part 4; and Part 5 of the CYFEA as they relate to intervention services and orders.

Note: References and citations are not included below but will be provided at the session.

**Introduction**

1. The Child Welfare Act was a groundbreaking piece of legislation in 1984, although there had been a predecessor developed in the 1960's. The 1984 CWA was the first comprehensive child protection statute in Alberta's history having come about after extensive research and consultation and many hours of drafting by some of Alberta's top legal minds including Judge Russell of the Provincial Court of Alberta who later was appointed to the Court of Appeal where she sat for many years. The CWA was in large part a reaction to stories of children bouncing around in care for years and the suicide death of one boy who had had numerous foster homes with no real plan for his care in place. Planning for the child and the family and accountability for that planning were priorities in the CWA as evidenced by the requirement for a plan for care under both the matters to be considered, and temporary guardianship order provisions and the requirement to file the plan with the Court if a TGO was granted. The Child Welfare Act saw very few changes in the first 18 years of its existence.

2. Beginning with the Government's response to the Court of Appeal's decisions in the T.S. cases of 2002, the Child Welfare Act (CWA)/ Child Youth and Family Enhancement Act(CYFEA) has undergone numerous and frequent amendments, many seemingly reactive to Court decisions.

**Protection to Intervention**

3. With the change of the this wording in s.1(2) and throughout the Act in 2005, comes a broadening in application of the Act. Need of "protection" sounds more onerous to prove than a mere need of "intervention" (a much softer word.)

**Matters to be considered**

4. The addition of a provision to provide services to abused persons to alleviate the need to remove the children from the abused person, seems to have had very little to no impact in practice from this defence lawyer's perspective. Abused person's do not appear to be offered any more supports to ensure protection of them with their children than prior to the addition. The addition of the ability of the Director to apply for restraining orders under s.30, has also seemed to have no