

# Maintaining Lines of Professionalism – Advocacy and Avoiding Becoming a Witness in Child Protection Defence and OCL work”

## 1. OPENING HYPOTHETICAL FROM AN ACTUAL CASE

Lawyer has been retained by a Husband and Wife whose child “John” was apprehended by the CAS amidst concerns associated with lack of food, inappropriate living conditions, repeated absence from school, and inability to engage with Community Supports. There is no indication of domestic violence, but there have been repeated instances where the worker has attended at the home and encountered the Mother at the door in a state of drowsiness and slurred speech. The lawyer canvases rules relative to conflicts that could arise in representing the Husband and Wife together, they sign acknowledgments and, after initial supports are put in place, and the clients access food supplies from the Downtown Mission and a Local Church, and after a period of observed cleanliness of the home, the child is returned on a temporary basis.

Christmas comes and the lawyer’s office decides to play “Santa” and the lawyer goes to the home unexpected with anonymous gifts and groceries. Upon arrival she finds the child on the front step, locked out of the house and cold, indicating that he didn’t actually go to class that morning, hadn’t eaten since the day before, and didn’t know where the Mother and Father were.

The lawyer knocks on the door and ultimately the Mother answers but just woke up and is barely coherent. The child enters the house as normal and the Mother closes the door.

## 2. SECOND HYPOTHETICAL FROM AN ACTUAL CASE

### SECOND HYPOTHETICAL

A lawyer has been retained by a Mother on a child protection matter involving her 15 year old daughter that will soon turn 16. Protection concerns are associated with the child’s externalizing behaviours, inappropriate relationships that expose her (the child) to partnership (boyfriend-girlfriend) violence, truancy, running away, and repeated assaults on the Mother. The Mother has shown only token follow-through relative to counseling and therapy for the child, and the child is now resistant to such interventions.

The child is in the Mother’s care, when the child chooses to stay there, subject to Society supervision.

Just as an Agreed Statement of Facts has been signed resolving the case, the Mother’s boyfriend attends with “important information for the lawyer”. He asks if the lawyer can “keep this between us, because I don’t want to hurt the Mother.” The Lawyer explains that there is no privilege or confidentiality between him and the boyfriend and that he would be obligated to disclose to the Mother anything the boyfriend says that may impact on her legally.

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The boyfriend continues anyways, and discloses that the child has just turned 16 and that the Mother has set up a Pay-per-view site for the child to make some extra money, falsely indicating to the site operators that the child is “barely 18”. The boyfriend just wants you to speak to the Mother and warn her. He also thinks that you could have a positive impact in discouraging the child if you talk to her. He offers screenshots of the Online Screening and Application form that he found in the Mother’s “secret email” with the child’s details, and altered photo i.d. No naked or suggestive images have been produced or communicated “yet”.

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HYPOTHETICAL 2(B) – (What if the boyfriend had produced evidence that the child was already participating in the inappropriate web-camming? What advice would you give the boyfriend? What is your ethical obligation towards the Mother? What is your legal obligation having regard to the provisions of the Child and Family Services Act, or the Child, Youth and Family Services Act? Does it matter that the child is now 16 years old? And CYFSA has been Proclaimed? What if the child was 14? Is the lawyer receiving this in the context of “solicitor-client privilege” or is it “litigation privilege”? Does it make a difference?)