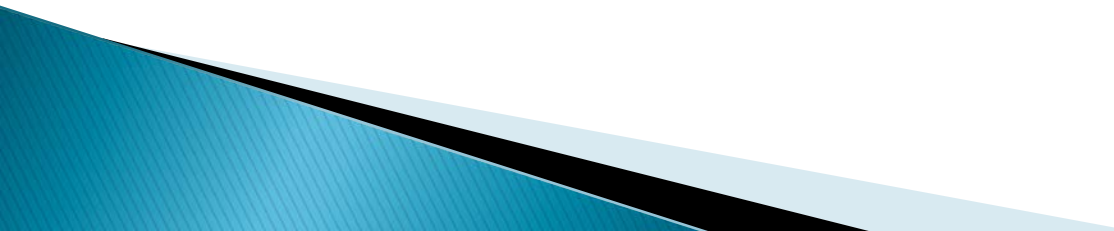
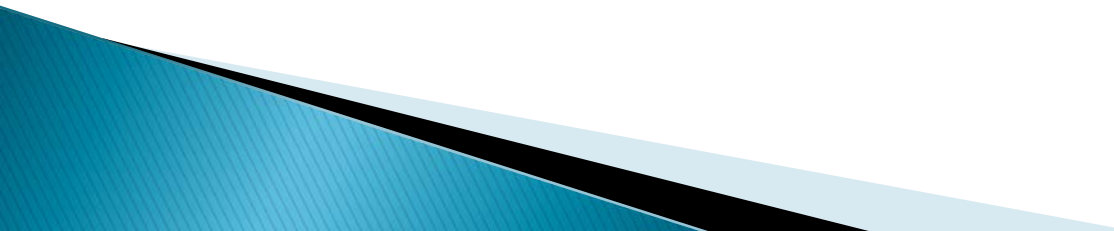


Legal Proceedings

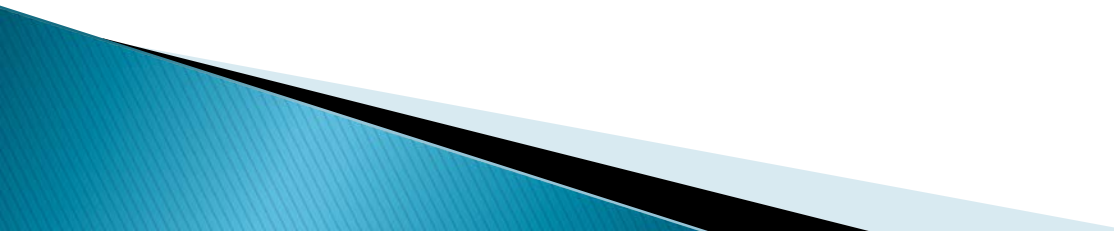
FINDING

- ▶ The first step in any legal proceeding is to determine the “grounds” of why the child is in need of protection
 - ▶ Physical abuse, neglect, sexual abuse, emotional harm and risk of harm for all categories, child requires treatment and parent has not secured it
 - ▶ Part V, section 74 (2) of the CYFSA
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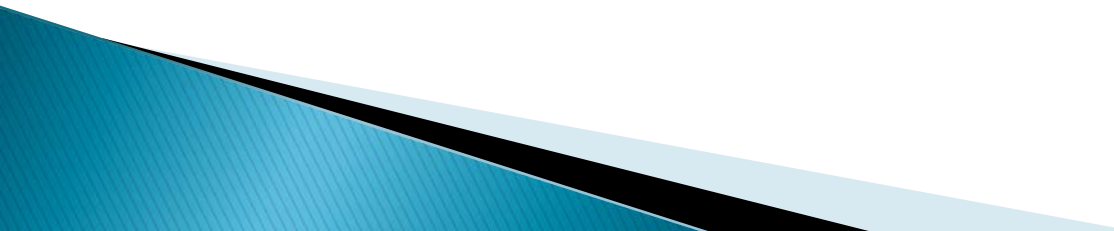
DISPOSITION

- ▶ The permanency plan the Society is seeking
 - ▶ Supervision order placement with parents
 - ▶ Supervision order placement with kin
 - ▶ Interim Society care for a period of time
 - ▶ Extended Society care with or without access
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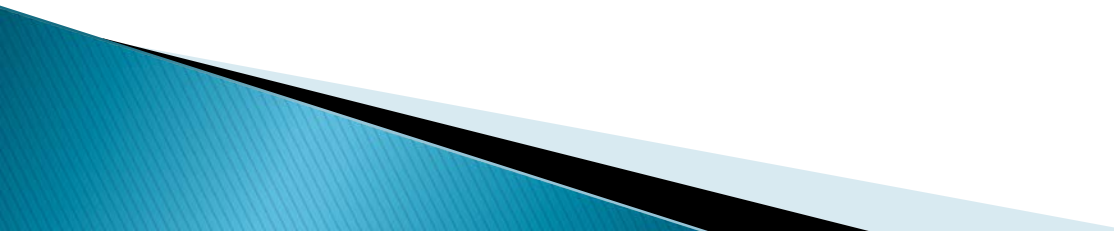
FAMILY LAW RULES

- ▶ Child protection proceedings follow the family law rules
 - ▶ Initial court appearance – within 30 days of filing court papers or within 5 days of an apprehension
 - ▶ If child was apprehended or ordered into care, within 30 days of first appearance there is a temporary care hearing
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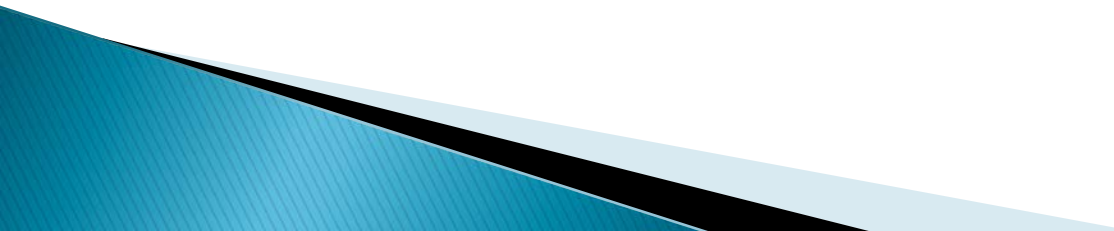
STATUS REVIEW

- ▶ A final order has been made and it returns after a period of time for the court to review it (i.e. a six month order of supervision)
 - ▶ Or a final order for ESC has been made and the child is not placed on adoption probation, the parent may seek a review of the ESC order for either access or return to them
- 

FAMILY LAW RULES

- ▶ Case conference to occur within 60 days from the 1st court appearance or temporary care hearing
 - ▶ Settlement conference – judge hears both sides and determines if there are issues the CAS, parents, OCL can agree to settle
 - ▶ Trial management conference – last step before going to trial – judge hears the issues that will be brought up in the trial
- 

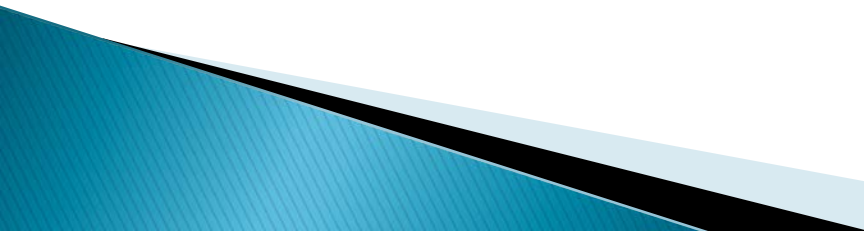
TIME IN CARE

- ▶ Children under the age of six are not to spend more than 365 cumulative days in care before a permanency decision is made
 - ▶ Children over the age of six are not to spend more than 730 cumulative days in care before a permanency decision is made
- 

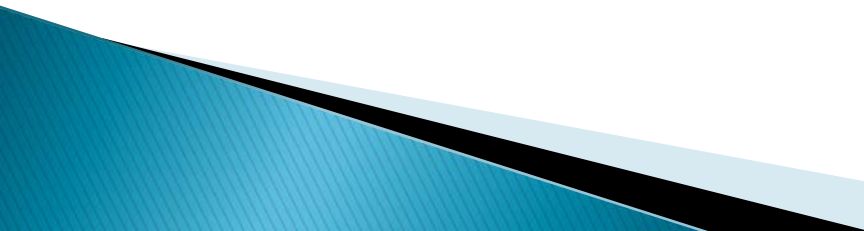
WHAT ARE THE BARRIERS TO TIMELY COURT DECISIONS?

- ▶ Finding and Serving to court papers to all of the parents and parties to the court proceeding (both initial application and any changes that are made)
- ▶ Parent's ability to find and secure legal counsel
- ▶ Parties not filing their answers or responses within 30 days
- ▶ When the Society request a parenting capacity assessment or assessments from outside experts
- ▶ Getting records to the judge (i.e. parents do not sign consent and a court order is required to release records)
- ▶ Trial time– have 4 weeks a year in the two counties have to share with family court

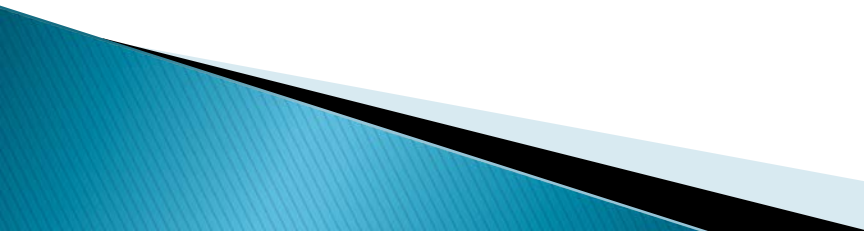
SUMMARY JUDGEMENT VS TRIAL

- ▶ Summary judgement – Society can bring a motion to hear a permanency decision via summary judgement
 - ▶ Judge must determine there is no triable issue
 - ▶ Could have a finding or disposition or both heard by summary judgement
 - ▶ Summary judgement is done by filing affidavits
- 

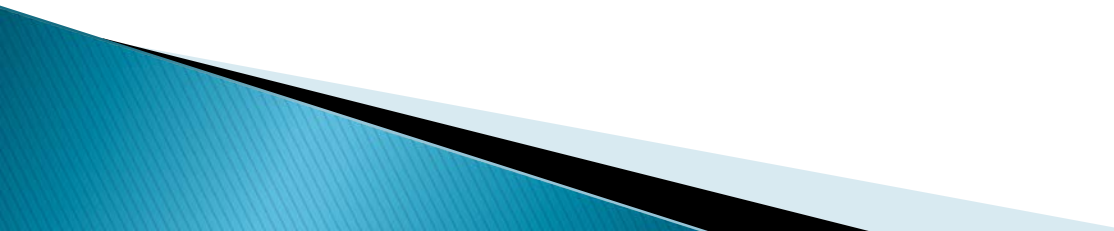
ACCESS OR NO ACCESS

- ▶ Change in the CYFSA
 - ▶ Decisions about access to a parent are based on best interest test
 - ▶ Child's views and wishes must be given due weight
 - ▶ In case of a FNIM child the judge must consider the importance of their culture, heritage, traditions and preserving the child's identity and connection to community
- 

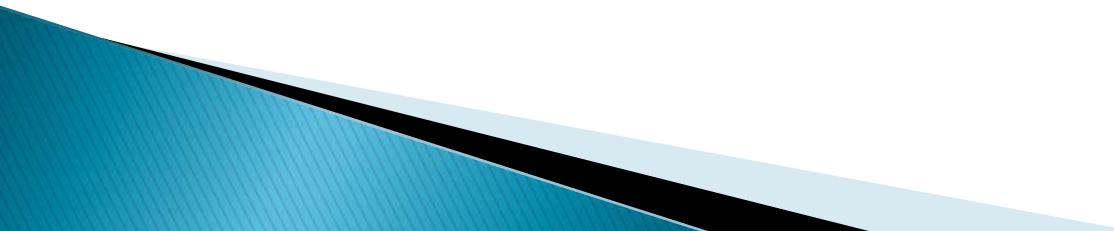
ESC NO ACCESS

- ▶ Judge must first determine if it is in the child's best interest to have access to a parent
 - ▶ Then determine if the relationship to the parent is beneficial and meaningful
 - ▶ Then determine if access will impair opportunity for the child to be adopted
 - ▶ Increasing seeing with access orders being made and then converting this to an openness order
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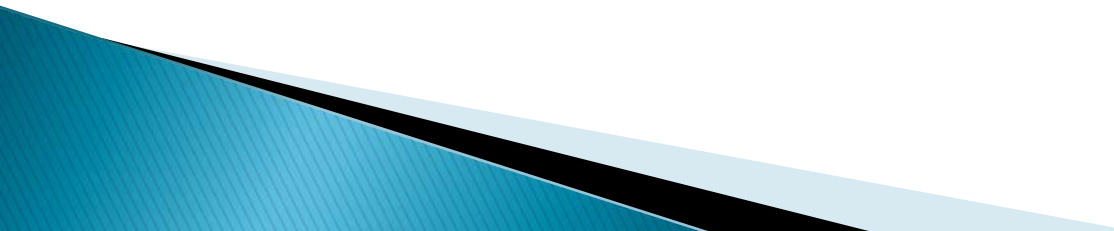
OPENNESS AGREEMENTS/ORDERS

- ▶ Openness is any form of contact post-adoption with birth family.
 - ▶ Agreement is a formal contract between adoptive parents and birth family
 - ▶ Order is a court order between the child and the access recipient
 - ▶ Child may apply to vary the openness order
 - ▶ FNIM children may have an openness order to their Band
- 

APPEALS

- ▶ Trend to file an appeal after ESC order
 - ▶ Parent has 30 days to file appeal
 - ▶ Most of the time the parent files a notice of appeal meaning they intend to appeal
 - ▶ The parent must then perfect their appeal i.e. file the evidence of why the judge made a mistake
- 

APPEALS

- ▶ Most parents do not perfect their appeal
 - ▶ WHY? To retain a lawyer through legal aid – legal aid must believe there is a reasonable prospect they will be granted another hearing
 - ▶ Legal aid seeks two opinion letters from lawyers who review the decision
 - ▶ If the lawyers don't think there is reasonable grounds then legal aid doesn't grant
- 

APPEALS

- ▶ Superior court is lenient with people self representing themselves – extensions are given
- ▶ Society must appear and argue that parents have not perfected appeal
- ▶ If the parents are successful in appealing at the Superior court level and don't agree with the decision they can appeal to the Ontario Court of Appeals and then to the Supreme Court of Canada
- ▶ Society is unable to move forward in placing a child on adoption if an appeal is in progress