

Reflection Paper

When can children be unattended? Reflections from researching the unclear Canadian framework.

My interest in the legal framework for when children can be unattended emerged from observing drastic shifts in the level of independence provided to children. The social expectations for childhood supervision are far stricter now than what I experienced during my childhood in the 1990s in rural Nova Scotia. While researching for my term paper I wanted to understand the legal environment and how it is reflected in practices of child welfare authorities. Do the shifting social norms around supervisory practices influence legal expectations of parents under provincial and territorial child welfare legislation?

My focus was on what might be described as grey zone cases, where allowing the child to be unattended falls outside the norm but still arguably within the realm of a reasonable (even if not ideal) parenting decision. I was curious to know if it is possible to raise children today with the level of independence I experienced as a child. Unfortunately, this question remains unanswered as there is no clear answer in the law and there is a lack of data available to analyse extrajudicial enforcement from child welfare agencies. There is a significant lack of case law available to determine how child welfare laws on this subject are applied, which I found surprising. Using multiple databases and searching various related terms, it was found that majority of case law concerns either circumstances where the children was left unattended at an exceptionally young age or for a prolonged period of time or where the lack of supervision was just one element of concern in a family facing other challenges (e.g. violence, medical neglect, addiction).

As my topic was focused on the grey zone of when children can be unsupervised, I did not anticipate that this topic would require reading through so many difficult child welfare cases involving child abuse. While acknowledging the injustices in the child welfare system, it made me appreciate how emotionally difficult it is to work in the field of child welfare.

The two cases that did deal with grey zone circumstances of children being unsupervised both took place in British Columbia which – like most provinces– does not have a statutory minimum age when a child is allowed to be left unattended. The details of both cases include a child welfare agency that was operating on a set of unwritten *de facto* criteria for when it is acceptable for children to be unsupervised. It is not clear if agencies in other provinces are doing the same as there is not case law available of the matter being adjudicated. The lack of a set criteria for when children can be unattended allows for circumstances surrounding the child's age, maturity, community environment, etc. to be considered. However, without guidelines or case law it is difficult to know how the matter is treated by child welfare authorities and how shifting social norms towards stricter supervision may impact their response to reports of unattended children.

The lack of available case law was itself an interesting – albeit unsatisfying finding. There is a lack of clarity on the age and circumstances when a child can be left unattended. Reports to child welfare agencies will be based on the criteria of the different agencies and their discretion. This raises concerns about impact of bias and possible contribution to overrepresentation of

Indigenous and racialized groups in the child welfare system. It also highlights the lack of transparency on how this issue is treated and creates confusion for community members and professionals who work with children and have a duty to report. I can understand why this might be difficult for parents themselves as they have to make parenting decisions with incomplete information on legal expectations for supervision. It would be understandable that one might err on the side of caution (and over supervision) to avoid prompting a child welfare investigation.

Although the trend towards stricter supervisory practices is well documented, there is growing body of literature discussing the possible negative impacts on mental and physical health during childhood. Benefits of autonomous exploration, independent mobility and risky play have all been documented. Although it has not been established, the possibility of a connection between increased supervision and increased anxiety in childhood has also been raised. After doing this term paper I would like to continue to follow emerging research on the relationship between independence in childhood and mental and physical health outcomes.

Supervision is a tool in injury prevention and protection from “stranger danger” but there is significantly less attention on the potential adverse effects of over supervision and the benefits of greater autonomy in childhood. My interest in urban planning and the use of public spaces has been stoked after reading literature on childhood independent mobility (e.g. walking or biking to school). When we speak of the impact of car-centric landscapes, I believe there is room to investigate the impact this has not only on safety but also childhood health and development. In my own environment I have found myself looking at distances to schools, parks, libraries and if the routes to access these spaces are safe and child-friendly and at what age I personally think would be reasonable to allow a child to walk unattended. It highlights the reason why it is so challenging to develop clear criteria for when children can be unsupervised, as a slight change in circumstances can drastically alter the level of risk.

As well as the childhood health and development literature I also want to follow any legal developments on this issue. With parenting philosophies emerging that diverge from the current social norms on supervisory practices, such as the so-called free range parenting style, I think it is likely that Canadian courts are going to have to deal with this issue more in the near future.

Annotated Bibliography: Selected Sources on children and the law

Case law

Crook v British Columbia (Director of Child, Family and Community Service) 2020 BCCA 192.

This was a high profile case of a parent who allowed several of his children to travel on public transport unattended as part of his intentional parenting philosophy. *Crook* lost at trial with the trial judge finding the decision from the child welfare that his children did not meet the criteria for when children can be unattended to be reasonable. This was overturned on appeal with BCCA deciding that the child welfare agency does not have the authority to dictate such provisions. The court refrained from providing its own

guidelines on when children can reasonably be unattended.

Director v BR and KK, 2015 BCPC 0419

This case revealed that the child welfare agency was operating based on the age of ten being the minimum age any child can be left unattended, without room for consideration for any individual circumstances. Although the judge disagreed with this position and stated circumstances may exist where it would be reasonable for a child to be unattended under age ten, the agency was successful in its application to the court. The use of this *de facto* criteria continued (as observed in *Crook*).

Legislation

Child Neglect Amendments, 2018 General session, State of Utah, SB 65.

This amendment in Utah protects proponents of the free-range parenting movement from the state's child neglect legislation.

Secondary Sources

Breen, Claire, *The Standard of the Best Interests of the Child: A Western Tradition in International and Comparative Law*, (Leiden, The Netherlands: Brill, 2002).

This book was helpful in providing an overview of the paramountcy of the principle of the best interests of the child in matters concerning law and children. The book highlighted the subjective nature of determining best interests and the challenges face in its interpretation and application that leads to inconsistencies. The principle best interests of the child was important for this research as it sought to question whether dominant supervisory practices represent the best interests of children and their health and development.

Committee on the Rights of the Child: Canada CRC/C/CAN/CO/3-4, 5 2012.

This report prepared for the Committee on the Rights of the Child highlighted shortcomings in the application of the principle of the best interests of the child. Specifically, that the principle is not uniformly applied in policies or administrative and judicial matters concerning children. The recommendation explicitly recommended clear procedures, guidelines and criteria be developed to help professionals and legislative and administrative bodies determine the best interests of the child. International recognition of this was helpful as the principle of best interests of the child is more developed in the area of family law.

Swift, Karen & Callahan, Marilyn, "Problems and Potential of Canadian Child Welfare" in Freymond, Nancy & Cameron, Gary *Towards Positive Systems of Child and Family Welfare*:

International Comparisons of Child Protection, Family Service, and Community Caring Systems (Toronto:University of Toronto Press, 2006).

This chapter provided an overview of the history and functioning of the child welfare system in Canada. It provided a lot of important contextual information for the term paper. Including information on things trends in child welfare interventions and imposition of mandatory reporting requirements. It also suggested alternative community-based alternative approaches to the current child welfare system.

Grégoire-Labrecqu, et al “Are We Talking as Professionals or as Parents?’ Complementary views on supervisory neglect among professionals working with families in Quebec, Canada” (2020) 118 *Children Youth Service Rev.*

This article is based on qualitative research conducted with a variety of professionals working with children, including child welfare workers, police, teachers, medical professionals. As these are the professionals that both make referrals and those who do the investigations/interventions. Their discussion on what constitutes age-appropriate child supervisory practices highlighted how their views were shaped by their own personal experiences.

Klassen, Christina et al, “‘I’m just asking you to keep an ear out’: parents’ and children’s perspectives on caregiving and community support in the context of migration to Canada” (2020) *J Ethnic & Migration Studies*

This research with racialized immigrant families in Montreal discussed the values, cultural norms, preparation, and thoughtful parenting decisions that were involved in parents’ decision to allow children to be unsupervised or allow sibling-care arrangements. These decisions may not align with the standards enforced by child welfare agencies but were assessed to be the best option by parents. The parents interviewed also referred to the cold cultural climate of raising children in Canada where there is less support and concerns they had about unjustified reporting to child welfare agencies.