

Cecilia

The following case study was discussed on the ACCPC discussion forum in 2010. A summary of the issues is shared here. All names are fictional.

Cecilia is a 35-year-old woman who has been married for 10 years. She and her husband, Frank, have 2 children: Owen, who is 7 and Jessica, who is 4. Shortly after Jessica's birth, Cecilia had a stroke, which left her with some physical mobility limitations and a severe speech and language disability. She understands everything that is said to her, and can read and type. She has difficulty finding the words she wants to say and often says words that she doesn't mean and then corrects herself (expressive aphasia). When communicating, Cecilia speaks, uses gestures, points to words and pictures and writes down words when she communicates. She communicates very much like "Stuart" on the following video (he appears at time 0:58):

<http://www.youtube.com/user/ConnectUK1#p/a/u/1/TDQNeOomWrY>

Cecilia continued to provide the primary care to her children, with some support from a personal attendant and from Frank. The two children adapted quickly to Cecilia's speech and were able to communicate effectively with her. Frank continued to work fulltime, often travelling away from home for 2 or 3 days at a time. There were no safety concerns expressed by anyone about Cecilia being on her own with the children.

Frank and Cecilia have separated and they are involved with the family court to resolve a number of issues, primarily custody and access. Frank is seeking sole custody of the children, claiming Cecilia's disabilities make her an unfit mother. He has called in the CAS because he says the children are in need of protection when they are with their mother.

Cecilia wants joint custody with Frank, with the children spending as much time with each of them as is practical, given the travel demands of Frank's job.

What constitutes Abuse?

It is worth noting that Frank never raised concerns about Cecilia's parenting while they were together. In fact, he was often away from home for a few days at a time for work and Cecilia was on her own with the children. As Cecilia moves through the family court process, she needs to be aware that he may try to intimidate her or wear her down so she agrees with what he wants.

Legal bullying is a very common tactic used by abusive and controlling men in family court. Cecilia might want to get some support from a violence against women agency to assist her in developing a strategy to resist Frank's bullying.

Custody and Access Issues for Cecilia

In Canada, decisions about the custody and access of children are made using the **best interests of the child** test. This test, while slightly different province to province, contains a number of common elements:

- The status quo arrangement for the children is very important. Cecilia is in a strong position in this regard, because she has been the primary caregiver.
- Supporting contact between the children and the non-primary parent is also important. Cecilia wants joint custody with the children spending lots of time with both parents, which is consistent with this element of the test.
- Cecilia's disability is only relevant if it affects the children's best interests. Most likely Cecilia will have to demonstrate to the court how she has parented to date and the ways in which the children accommodate her needs. Indeed, she will likely be able to show the court ways in which their relationships are enriched and enhanced because of her lived experience around disability.
- Cecilia may want to call an expert witness to talk about her disability and its impact on her parenting.
- The court will also consider the views and preferences of the children, so Cecilia may want

to ask the court for either a family court assessment or for the appointment of a lawyer for the children through the Office of the Children's Lawyer, so their ideas can be obtained.

- Cecilia will need to provide the court with a parenting plan, because another one of the best interests of the child factors is the plan of each parent for the children's future upbringing

Many women with disabilities have had similar experiences to Cecilia. Unfortunately, many court personnel have biases about disability issues. She should be able to use the best interests of the child test to her advantage.