NOVA SCOTIA
Community Services

REPORT

Ministers Advisory Committee on

Children and Family Services Act and

Adoption Information Act

May 2008

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Overview

This report reflects the work of the Minister's Advisory Committee on the *Children and Family Services Act* and the *Adoption Information Act*. The Committee for this report was established in November 2005 in accordance with the mandate of the Advisory Committee as stated in Section 88(1) of the *Children and Family Services Act.* This section states:

> The Minister shall establish an advisory committee whose function is to review annually the provisions of this *Act* and the services relating thereto and to report annually to the Minister concerning the operation of the *Act* and whether the principles and purpose of the *Act* are being achieved. [*CFSA* Section 88 (1)]

The Advisory Committee experienced significant problems in meeting its mandate. Lack of provision in the legislation to specify terms of office coupled with the current system of making appointments annually presents obstacles to the ongoing functioning of the Committee. Additionally there have been significant delays in filling vacant positions as they became available due to expiration of terms, resignations and controversy concerning appointments made. These issues are addressed in Part 3 of this report, *Section 88 Advisory Committee.*

The Committee did its best to obtain meaningful input from individuals and community groups throughout the Province, discover experiences and insights concerning child welfare and adoption information issues and services in Nova Scotia, and review current child welfare and adoption literature trends (See Bibliography). Coupled with the fact that has been more than seven years since the previous Advisory Committee Report (1999) was released, the Committee found that it required much longer than a year to produce a report that would adequately meet its mandate.

As part of the consultation process, the Advisory Committee held 27 all day meetings over a 23 month period. During the spring and summer of 2006 a campaign was developed and implemented to solicit feedback from the community. Letters were sent to approximately 250 organizations/individuals throughout the Province requesting written submissions, with invitations to present in person to the Committee. One-page flyers were included with the letters asking organizations to place them on their notice boards. A newspaper advertisement was placed in the major newspapers throughout the Province and, in September 2006, notices were included with Income Assistance cheques. The notices advised individuals, who may not have been involved with organizations, of the Committee's mandate, and solicited their input through written and/or personal presentations about their experiences with the *Act* and its' implementation as well as any suggestions for improvement. Contact information via email, postal address and web page information was included with all campaign literature. The *Children and Family Services Act* and the *Adoption Information Act* was made available on the Internet. (See Appendix' B Campaign Literature)

Over an eight-month time frame, the Advisory Committee received 51 written and verbal submissions, 14 of which were presented in person from groups and individuals from throughout the Province. Most submissions came from people who had direct experience with child protection services - as professionals providing services to families, parents whose children had been in need of protective services, and youth who are/were in care. Many submissions from individuals were received in the form of hand-written letters, email messages, typed personal letters and/or oral presentations to the Committee describing personal situations and experiences of their involvement of child protection services. About 20 percent (11) submissions were from people who had experience with the *Adoption Information Act*. The Committee appreciates the time and dedication from these individuals and organizations represented.

To establish a basis for this report, the Committee also reviewed recommendations and follow-up actions from the three previous committee reports:

Report Ministers Advisory Committee on *Children and Family Services Act*, 1993;
Report Ministers Advisory Committee on *Children and Family Services Act*, 1996;
Report Ministers Advisory Committee on *Children and Family Services Act*, 1999.

A summary of recommendations from the 1999 report is included in Appendix ‘C’ Summary of Follow Up to Previous Reports from the Advisory Committee Report, 1999 and Current Status.

Eight major themes emerge from reports and submissions received. They are as follows:

- **The Nova Scotia *Children and Family Services Act* (*CFSA*) is generally considered to be a good *Act.***
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- **There is a critical lack of resources to implement the *CFSA* in accordance with its principles.**
- **16-18 year olds receive inadequate protection, insufficient services and have little input into decision-making.**
- **Extended family has little if any involvement in custody/protection plans.**
- **There were divergent opinions regarding Section 22 of the *CFSA*.**
- **There is a lack of trust in the child protection system by recipients of services and the members of the public.**
- **There is a need for the establishment of a Children's Advocacy Office.**
- **There is a trend toward open adoption and disclosure of adoption information.**

This report has been divided into three parts.

Part One -	Service issues and Child Protection Legislation.
Part Two -	The *Adoption Information Act*
Part Three -	The Mandate of the Advisory Committee as stated in Section 88(1) of the *Children and Family Services Act*.

ADVISORY COMMITTEE - *CHILDREN & FAMILY SERVICES ACT*

Member List 2005-2006

Minority Representative - Section 88(2)(e)
Ms. Mira Musanovic
Metropolitan Immigrant Settlement Association
Halifax, Nova Scotia
15/12/05-14/12/05

Parent Representative - Section 88(2)(a)
Mr. Frederick Francis Benson
Halifax, Nova Scotia
01/02/06-28/02/06

Community Member- Section 88(2)(f)
Ms. Barbara Sowinski
Dartmouth, Nova Scotia
01/11/05-31/10/06

Community Member- Section 88(2)(f)
Ms. Cheryl Gillett Harawitz (chair)
Halifax, Nova Scotia
01/11/05-31/10/06

Community Member- Section 88(2)(f)
Ms. Trena Slaunwhite Gallant
Parent Resource Centre
Halifax, Nova Scotia
01/11/05-31/10/06

Legal Aid Lawyer - Section 88(2)(d)
Ms. Kathy Briand
Antigonish, Nova Scotia
01/11/05-31/10/06

Minority Representative - Section 88(2)(e)
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Department des sciences de l'éducation
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Point-de-l'Église, Nouvelle-Écosse
15/12/05-14/12/06

Ministerial Representative – Section 88(2)(c)
Ms. Lynn Cheek (resigned, December, 2006)
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Halifax, Nova Scotia
1/12/05-31/12/06
Resigned October 2006

Agency Representative - Section 88(2)(b)
Mr. Richard B. Gruchy
Department of Community Services
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01/11/05-31/10/06

Parent Representative - Section 88(2)(a)
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01/11/06-24/04/07

ADVISORY COMMITTEE - *CHILDREN & FAMILY SERVICES ACT*

Member List 2007-2008

Minority Representative - Section 88(2)(e)
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15/12/06-14/12/07

Parent Representative - Section 88(2)(a)
Ms. Audrey MacNeil
Port Hawkesbury, Nova Scotia
02/07/2007 – 03/07/08

Agency Representative - Section 88(2)(b)
Gary Newcombe
Yarmouth, Nova Scotia
(Nov. 2007 – Oct. 2008)

Community Member- Section 88(2)(f)
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Halifax, Nova Scotia
(Nov. 2007 –Oct. 2008)

Community Member- Section 88(2)(f)
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Legal Aid Lawyer - Section 88(2)(d)
Ms. Kathy Briand
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Minority Representative - Section 88(2)(e)
Vacant

Ministerial Representative – Section 88(2)(c)
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Vacant

Parent Representative - Section 88(2)(a)
Mr. Robert Seymour Wright
Halifax, Nova Scotia
(March 2007 – Feb 2008, resigned in May 2007)

Introduction

The Committee has struggled for many months beyond its original timeframe to ensure that the views of the many stakeholders consulted would be translated into terms consistent with its mandate.

However, we feel we would be remiss in our obligations to the Minister if our recommendations on the degree to which "the principles and purposes of the *Act* are being achieved" were delivered without consideration of the societal context in which the *Act* operates.

In its literature review "Working Conditions for Social Workers and Linkages to Client Outcomes in Child Welfare"[1,] the Canadian Association of Social Workers (CASW) noted the following:

- Thousands of Canadian families and children are struggling with significant difficulties associated with discrimination, poverty, a lack of employment or education opportunities, substance use and abuse, poor parenting, family violence and parental psychopathology.

- Research has shown that outcomes for children deteriorate exponentially the more risk factors are involved. The presence of two risk factors increases the probability of negative outcome by a factor of four, while four or more risk factors increase the probability of negative outcome tenfold:

- The relationship between children's outcomes and family income is so firmly entrenched in our understanding of human development that the term 'children at risk' has almost become synonymous with 'children living in poverty'. (Page 4)

- Other negative factors include the continuing crisis in foster care, the continuing absence of investment in prevention and early intervention, and ever-continuing negative public attitudes towards poor and disadvantaged citizens.

[1] Child Welfare League of Canada/Ligue pour le bien-être de l'enfence du Canada; Working Conditions for Social Workers and Linkages to Client Outcomes in Child Welfare: A Literature Review, Canadian Association of Social Workers, 2005.

At page 9 the review quotes from one of its sources:

> If we in Canada were assigned the task to deliberately design systems that would frustrate the professionals/paraprofessionals who staff it, anger the public who finance it, alienate those who require or need its services and programs, that would invest in reactive responses to cope with symptoms of problems as opposed to being proactive...we could not do a better job than our present children's protection services.

Another source, quoted at page 15 puts it equally bluntly:

> Child welfare in Canada consists of poorly funded, residual programs designed to assist only when families cannot cope. Child welfare policy represents a reflection of the consequences of a society that has consistently shrunk from the task of distributing power and income between men and women, between races, and between classes in a fair and equitable fashion.

In summary, the review suggests that the “residual thinking” that characterizes most of the child protection program, with its emphasis on reaction to crises, cannot adequately address the real needs of families in difficulty because there is no connection between the underlying societal problems of poverty, inadequate housing, access to justice, oppression, and cultural diversity and the rigid and individual-oriented structures that child protection proceedings provide. For example, the report notes that while B.C.'s risk assessment form contains over 100 questions, none ask about the adequacy of income or housing or the safety of the neighbourhood, nor do risk assessments address issues of gender, race or culture.

The Committee strongly endorses this contextual approach to the problem of child and family welfare. While resolving these societal issues is not within the mandate of the *CFSA* or the Committee, any recommendations that follow must be considered in the light of these very real underpinnings to child welfare issues and with the knowledge that while wholesale adoption of this report’s recommendations will help address the symptoms of the problem, they will not ameliorate the problem itself.

Part One

Service Issues

and Child Protection Legislation

1. The *Children & Family Services Act* is Generally Considered to be a Good *Act*.

In general, most people who presented to the Committee indicated that they believed the *Children & Family Services Act* was fundamentally a good piece of legislation. No one actually advocated for the development of an entirely new *Act*. There were concerns about the interpretation and implementation of the provisions of the *Act*, and there were also recommendations for modifying particular sections of the *Act*. The exception was Section 22, where there were divergent opinions about the issue of children being exposed to violence as an indication of risk.

2. There is a Critical Lack of Resources to Implement the *Act* in Accordance with its Principles.

The dominant theme throughout all submissions and presentations was the lack of resources to implement the *Act* in accordance with the philosophy and spirit of the legislation. This was experienced as:

- Child protection processes being negatively influenced by imposed time constrictions, heavy caseloads and insufficient resources,
- Parents being frustrated, angry and mistrustful of child protection services,
- Public confusion and mistrust of the child protection system.

Dr. Rollie Thompson, a principle author of the *Act*, provides the following clarification concerning the intent of the *Act*:

> The fundamental principle animating the Children and Family Services is that of the least intrusive intervention consistent with the child's best interests. In practical terms, "least intrusive intervention" means a preference for voluntary services to families rather than court proceedings, alternatives to apprehension of children from their parents, family placements as alternatives to foster care, and services to assist the reintegration of families after apprehension. As a member of the Legislation Committee and as one of the two drafters of the 1990 statute, I can say that we expected proper funding by the Department [of Community Services] of the services required to make these legislative principles reality. And that's why the statute is explicitly entitled "the *Children* & *Family Services Act*": services lie at the heart of modern child protection, to keep children with their families whenever possible.

Sections 9 & 13 - Functions and Services

Section 9 of the *Act* specifies the functions of an agency as follows:

(a) protect children from harm;

(b) work with other community and social services to prevent, alleviate and remedy the personal, social and economic conditions that might place children and families at risk;

(c) provide guidance, counseling and other services to families for the prevention of circumstances that might require intervention by an agency;

(d) investigate allegations or evidence that children may be in need of protective services;

(e) develop and provide services to families to promote the integrity of families, before and after intervention pursuant to this *Act;*

(f) supervise children assigned to its supervision pursuant to this *Act;*

(g) provide care for children in its care or care and custody pursuant to this *Act;*

(h) provide adoption services and place children for adoption pursuant to this *Act;*

(i) provide services that respect and preserve the cultural, racial and linguistic heritage of children and their families;

(j) take reasonable measures to make known in the community the services the agency provides; and

(k) perform any other duties given to the agency by this *Act* or the regulations.

Section 13 of the *Act* specifies services to promote integrity of family as follows:

13 (1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

(2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counseling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(i) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations.

The Committee notes recommendations of previous Advisory Committee reports and subsequent response from the Province. For example, the 1999 report recommends:

- that co-pay provisions in Social Assistance and Family benefits of $3.00 be removed on medication for children;
- that sufficient resources be allocated to maintain appropriate access between children and their parents/caregivers;
- that more be done for young persons 16-18;
- urge that mediation services be promoted as the first option for dispute resolution.

Following these recommendations, the Province actually increased the amount Income Assistance recipients had to pay for children's medication, from $3.00 to $5.00. No additional resources were provided to ensure appropriate access between children and their parents/caregivers, and the use of mediation services has dwindled almost to the point of non-existence.

The Advisory Committee commends the Province for the development and implementation of the Low Income Pharmacare for Children (LIPC) program (which extends Pharmacare coverage to children in low-income families who do not qualify for Income Assistance benefits), Early Language and Learning projects, home visiting programs and its support of a variety of parent education/support programs. (See Appendix 'Summary of Follow Up of Previous Reports).

At the same time, critical problems of poverty related concerns addressed in previous reports might have actually worsened. Recommendations to address the need for breakfast and lunch programs at school, food budgets based on the food guidelines on the Canada Food Guide and school start-up supplies and clothing have received little attention and no new programs developed or implemented.

The Committee heard repeatedly from numerous written submissions and personal expressions of extreme frustration at the lack of resources to effectively implement the *Act* in accordance with its principles.

The Nova Scotia Association of Social Workers captures these sentiments thus:

> Many issues relate more to the implementation of the *Act* than to the *Act* itself, mainly related to such things as the increasing complexity of cases and the resources needed to carry out its provisions…Clearly, the overriding concern about the *Act* is the scarcity of resources to carry it out properly. Also, at a conference this week [June 2006] related to values and ethics in child welfare practice, a prominent theme was the impact of limited resources on ethical dilemmas and distress. The availability of suitable placements is particularly problematic. It has been noted, for example, that siblings often are placed at great distance from one another with little ability to consider comprehensively what is in their best interests. Workers often are happy to find a placement without being able to give much consideration to its suitability or probable stability. There is a strongly held view that limited resources severely compromise the integrity of the *Act*.

Within a context of socio economic risk factors known to adversely affect the health and well being of children and families, the literature reveals that social workers in child welfare are continually confronted with impossible challenges in terms of balancing their responsibility for protecting children and their practice principles of providing services to families. This theme is prevalent throughout child welfare literature in Canada and North America in general illustrating a growing unease about the impact on children and their families, of cutbacks in services.

According to the study 'Working Conditions for Social Workers and Linkages to Client Outcomes in Child Welfare: A Literature Review', child welfare policy and practice focuses on the risk factors to children from personal difficulties such as abuse, neglect, drug abuse, and violence within the family, in isolation from the structural risk factors of poverty, inadequate housing, justice, oppression, diversity and community. This study refers to a disconnect between personal and structural risk factors, placing child welfare agencies in a "'scapegoat' [position] to bear the brunt of public criticisms should a child be harmed in any way... despite the dedication and commitment of social workers, supervisors and administrators working in these systems. They are in the unfortunate position of having legislative responsibilities without the financial and human resources to fulfill them."

At the time of writing this report, there were 10 private and 10 district offices providing child welfare services in Nova Scotia. There are 24 residential facilities, operated by 12 organizations; one serves youth from 8 to 12 years of age. These facilities serve troubled children/youth in the care of a child welfare agency. Most of these facilities are operated by private, non-profit organizations in partnership with the Department of Community Services. A smaller number are operated by private for-profit organizations on a fee for service basis.[2]

In Nova Scotia during the 2002-03 year, (the latest statistics available) there were 2,154 children in care in Nova Scotia compared to 1,967 in the 1999-2000 year. At the same time, there has been a decline in the availability of foster homes, i.e., 991 foster homes for the period 1999-2000, reduced to 713 in the 2002-03 year. Thus 187 more children were in need of care and protection in 2002 with 278 fewer foster homes. Furthermore, higher numbers of children between the ages of 10 and 15 are coming into care with more challenging behaviour and emotional difficulties.

In a 2005 presentation to the Hansard Committee[3] a senior social worker reported that "foster care coordinators are carrying caseloads of anywhere from 45 to 62" (the Department's standard for child protection caseloads is 20), that children are sometimes housed in hotels or overcrowded foster homes, that siblings are often split up and children are placed in homes that "we would consider less than desirable for them." In one situation in 2004, this social worker reported that a five-year old child was placed in an apartment with hired childcare staff for a week before a foster home was found.

[2] Child Welfare in Canada 2000 - January 2000.

[3] Hansard Nova Scotia House of Assembly Committee on Community Services January 27, 2005.

The minutes of this same Hansard committee meeting go on to report this:

> all agencies in all areas just seem to be managing crises… They are frustrated, the government's frustrated, taxpayers are frustrated … government services [are] being cut to the bare bones… they are expecting all these non-profit organizations…[that] are also stretched to the limit, whether it be foster care or Children's Aid Society, to provide these services and are stretched to the limited because there's nothing in the budget and you're expected to pick up these services.

Social workers and parents repeatedly spoke of the inability to access services except through the narrow window of apprehension or temporary custody orders, which parents experience as cruel and threatening. One parent described this critical lack of resources this way, “It is while families are fighting to retain their children that they need help, assistance and direction to force the system to work the way it should.”

According to Katherine Covell, in an article titled “The Rights of Children Part Four: Child protection and youth on the street”, since 1998, the number of children in care has increased 65%, the average number of placements for a foster child is 7 and 50% of street children were formerly children in care. Dr. Covell is a professor of psychology at Cape Breton University, and the executive director of the Children's Rights Centre. She goes on to state:

> *We know that the greater the number of placements a child experiences, the greater the likelihood that the child will be homeless and involved in the criminal justice system. Stability is necessary to help the child overcome her early maltreatment and to form the new attachments that allow for his mental health and self-esteem.*

In addressing prevalent risk factors leading to youth crime, The Nunn Commission notes two central themes run through the established approach to the broad issue of youth at risk. The first is early intervention, and the second is prevention. It reasonably follows that our resources must be directed primarily to those areas…As I have indicated earlier, the need for support and services for families of whatever nature is crucial. A coincidence of need is availability. When help is needed now, it is useless to offer it six months hence. Can one really understand the turmoil where a parent has reached the stage to call for help only to find that none is available and she is left to her own devices? Consider the personal cost on her health, on her other relationships with spouse and other family members, or on her work. It must be devastating and, in many cases, can lead to disastrous consequences in family terms.

The report goes on to state this:

> The Province must emphasize a commitment to early intervention as the underlying philosophy and approach in promoting the welfare of children at risk and as part of its collaborative strategy. This will help prevent later young offenders...this must be a function of the Department of Community Services (DCS), which presently operates under the *Children and Family Services Act*. As I understand it, this *Act* is 90 per cent directed to child protection; and the provisions relating to family services fall far short of providing for the real needs, focused especially on early intervention and prevention of family dysfunction. There has been a strong suggestion that today's society is much more willing to seek professional help in this area than was the former situation. Nevertheless, I suggest that any system created to meet this need be kept separate from that relating to protection. The protection aspect has unfortunately led, in the minds of some, to somewhat of a lack of comfort or a stigma against voluntarily requesting help from DCS.

The report recommends the following:

> that the Province of Nova Scotia consider establishing a separate division within the Department of Community Services empowered and with adequate resources to provide a full range of services more particularly directed towards promoting the integrity of the family. Its main thrust should be directed to preserving the family unit and to responding without delay to requests for assistance or other occasions of obvious need. Collaboration with others involved is essential. The provision of some of these kinds of services is already noted in section 13 of the *Children and Family Services Act.* These services should be more widely available and part of the overall strategy for dealing with youth and families at risk. I am aware that implementation of this recommendation may prove costly. Nevertheless, this must be done, and the ultimate return should far outweigh the initial costs if the commitment to this approach is kept. It is another element of the prevention of youth crime.

Since the release of the above-mentioned report, the Nova Scotia government created a new position and appointed an Executive Director of a Youth Care Strategy. A first report titled “Our Kids are Worth It” was released in December 2007. In introducing new initiatives for 2008, the report reads as follows:

> Introducing and expanding programs, services, and supports province-wide;

- piloting six demonstration projects—all with a focus on working together to effectively meet the unique and complex needs of children, youth, and families. Each demonstration project will be evaluated, and those that show the best results will be expanded to other parts of the Province;

- New or expanding province-wide programs and supports include the following:

- ***A new “well child” system—with standards, goals, and expected outcomes under development—to bring a team and comprehensive approach to support*** effective parenting and healthy childhood development;

- More child-care spaces, particularly in rural communities, making them more affordable, adding bursaries for child-care educators, improving programs for children with special needs, and developing more information for parents;

- A new screening tool for all grade primary students to assess their educational and general well-being;

- New Family and Youth Services and Child and Youth Strategy offices (including regional specialists to work with local advisory groups);

- A new partnership with Kids' Help Phone to ensure that Nova Scotia youth get relevant, targeted information to meet their needs;

- New youth navigators to provide integrated case planning, particularly for youth at risk between 16 and 18 years old. This involves working with families, mental health, social workers, probation, and police to help the individual, as well as to keep communities safe;

- A Provincial Youth Advisory Network where all young people see and help create meaningful opportunities to get involved and express themselves in positive ways;

- A social policy research group to support effective decision making and evaluation;

- A Parenting Journey Program with support services (including home visits) for families needing help with children from ages;

- Schools Plus where a team of people and programs are brought together to serve the changing and full range of needs of children, youth, and families in a familiar and welcoming place;

- Wrap-Around Services, where, again, a team of professionals work together to develop an individual program plan that "wraps services" around the changing needs of high-risk youth and their families, over time and amid changing circumstances;

- A Wait List Measurement and Management project in mental health, which (a) establishes criteria so wait lists can be measured consistently and (b) shortens wait lists through better front-end screening and greater collaboration among people working with children on wait lists;

- A telephone coaching and support program to help families deal with their children's behavioural problems and reduce wait lists for mental health services;

- A Place to Belong project, where we work with community partners to help at-risk children and youth learn and develop through non-traditional means, such as art, adventure, and recreation.

The report emphasizes the following need:

> [to monitor and] link with the work going on elsewhere in government that supports healthy families and communities, perhaps most critically, through the development of our poverty reduction strategy. Similarly, we believe that everyone must understand and share responsibility for their actions. This includes ensuring that young people expect clear and swift consequences for harmful, criminal behaviour. While we are currently limited in some ways by the federal *Youth Criminal Justice Act*, our work will be closely linked with the provincial Crime Prevention and Reduction Strategy, which will include specific actions related to youth crime.

The Committee did not receive submissions concerning aboriginal children and their families. However in a 2004 study by the Centre of Excellence for Children, based on 1998 data, one in every 17 children in Canada who live on reserves is placed in child welfare care compared to approximately one in every 200 children for non aboriginal children.4 The study concludes that:

- Socio-economic disadvantage and related parental problems (e.g. poverty) account for the over-representation of Aboriginal children.

- Child characteristics were not strongly associated with substantiation and placement decisions.

- More comprehensive measures are needed to address the social problems that put Aboriginal communities at risk

We do know that there is a difference between the collection and reporting of data for aboriginal and non-aboriginal children in need of care and protection. For example, in order for aboriginal children to receive funded services, the child must be identified as a child in care and included in data collected and reported, versus non-aboriginal children who may receive services, but not be identified as a child in care. Nonetheless, while this may explain to some degree, the apparent disparity between aboriginal and non-aboriginal children in care in a Nova Scotia context, the issues facing aboriginal children and their families in Nova Scotia is unclear to the Committee.

[4] INAC, 2002, *calculation based on 1998 data of 7.18 million children in Canada and the figure of 42,250 non-Aboriginal children in care.

Since the Committee did not receive submissions concerning aboriginal children and families in Nova Scotia, a number of questions arise which cannot be addressed in this report.

Recommendations:

1. The Committee supports the recommendations of the Nunn Commission and *Our Kids are Worth It.*
2. From a social policy and funding perspective, there should be more focus on proactive rather than reactive services, and that the emphasis should not be on child welfare/ child protection to provide prevention services to families.
3. There should be a broadening of service sources, more collaborative services, and streamlining of availability of services, with multiple entry points.
4. That a central clearinghouse for family related information similar to the Senior Secretariat be developed.
5. That funding be established for preventative services on a secure/ongoing basis including but not limited to the following:
    - Family in-home support services in all communities
    - Family resource centres
    - Family life education programs in schools
    - Programs and services related to issues pose risk to children such as substance abuse, family violence, and gambling
    - Programs to address barriers to preventative services such as transportation, language, and child care

Mediation

The preamble of the *Act* directs consideration of a number of issues, including

- That children have a right to special safeguards for their rights
- That the basic rights and fundamental freedoms of children include a right to the least invasion of privacy compatible with their protection.
- That social services are essential to prevent or alleviate the social and economic problems of individuals and families.
- That intervention in individual and family rights must be governed by the rule of law.
- That children have a right to special safeguards for their rights
- That the basic rights and fundamental freedoms of children include a right to the least invasion of privacy compatible with their protection.
- That social services are essential to prevent or alleviate the social and economic problems of individuals and families.
- That intervention in individual and family rights must be governed by the rule of law.

Section 21(1) of the *Act* states the following:

"An agency and parent or guardian of a child may at anytime agree to the appointment of a mediator to attempt to resolve matters relating to the child who is or may become a child in need of protective services." In a presentation from Nova Scotia Legal Aid Lawyer, it is noted that mediation has been defined as follows:

> The intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision making power, but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.

The under-utilization of mediation in the context of child protection proceedings is a recurring theme in presentations made not only to this committee but to previous committees. One individual stated the following:

> Court action needs to be the last and not first resort to issues of divorce, parenting, and access. Mediation is in the best interests of the child because it teaches our children co-operation and conflict resolution. Children learn through modeling. It is also the most cost effective and least intrusive solution. Court time and lawyers are very expensive. Court costs are also prohibitive to parents who lack the financial means of the typically lengthy court proceedings.

The Antigonish Women's Resource Centre stated this:

> In section 41(3) a the plan is required to include a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protective services... Furthermore, when there is a disagreement between parents and DCS workers it has been our experience that DCS has not made available to parents or informed parents of the option of a mediator as described in section 21(1).

The wording of 21(1) clearly contemplates the use of mediation services outside of the court process as a pre-emptive measure, in addition to its use after protection proceedings are commenced:

> 21(2) Where a mediator is appointed pursuant to subsection 1 after proceedings to determine if the child is in need of protective services have been commenced, the court, on the application of the parties, may grant a stay of the proceedings for a period not exceeding three months.

Again, quoting from Nova Scotia Legal Aid:

> According to M.M. Bernstein, 'Child Protection Mediation: It's Time Has Arrived' (1998) 16 CFLQ 73 lists 25 benefits of mediation. I will only quote the first and last:
>
> > (1) Mediation is generally less expensive in terms of dollars, when contrasted to the expense of protracted litigation.

> (25) Mediated settlements tend to be more elegant and durable over time, and if a later dispute results, the parties are more likely to utilize a co-operative form of problem solving to resolve their differences.

Nova Scotia Legal Aid went on to summarize studies on the use of mediation in long term planning for children in care, specifically studies reviewed by Bernstein in the American context. In a two-year pilot project in Oregon called the Co-operative Adoption Mediation Project (CAMP), findings included the following:

- Of 36 CAMP cases entering mediation, 86% (31 cases) were resolved co-operatively and avoided trials
- Of 31 cases resolved by mediation, permanent co-operative plans included co-operative adoptions in 90% of the cases (28), return home plans in 7% (2) and long term foster care in 3% (1).
- There was a substantial cost savings in the adoption mediation process: the average cost of a contest termination of Parental Rights case was $22,000.00 whereas the average cost of a mediated settlement was $3500.00.

Bernstein's final conclusion, after reviewing projects in Colorado, Connecticut, California, and Ontario was that “There have been high settlement rates, in the range of 80%, whenever child protection mediation has been employed.”

One significant roadblock in the use of mediation, particularly once proceedings have commenced, is the discretionary nature of this section of the *Act*. Unless both parties agree to mediation it does not occur. In theory there should be no difference in how the issue of mediation is approached based on state involvement versus a strictly private dispute between parents. The same principle governs both: what parenting arrangement is in the best interests of the child?

In the Unified Family Court of Nova Scotia (in Sydney and Halifax), the issue of mediation is addressed as follows:

> 70.11(1) The parties may be referred to mediation at any time during or before a proceeding by a Court Officer or by a Judge.
>
> (2) Upon the referral of the parties to mediation the mediator shall meet with the parties with a view to reaching a satisfactory and fair agreement.

> (3) The mediator may meet on one or more occasions with the parties, the children, and such other persons including lawyers as the mediator sees fit in an attempt to mediate the issues.
>
> (7) Where no agreement is reached, evidence of anything said or of any admission or communication made in the course of mediation is not admissible in any legal proceeding and no mediator is competent or compellable in any legal proceeding to disclose any admission or communication made to that person in his or her capacity as mediator.

As a result of rule 70, the Province has made mediation services available to private parties involved in family law disputes, but only in those areas where the Unified Family Court process is in place. Mediation services are provided by court staff and at a pro-rated fee depending on income.

The Court Services mission statement as outlined on the Nova Scotia government website declares that the goals of court services in the Province are as follows:

- To strive for superior quality in service delivery, and to meet the unique needs of our diverse client and stake-holder groups while ensuring consistency and equity over all.
- Ensure that those who use court services find them to be prompt and courteous, understandable and accessible, fairly administered and priced... The Court Services division's processes are driven by client and stakeholder needs and expectations...
- To seize every opportunity to reduce the need for intervention by encouraging initiatives that empower people to resolve their own disputes and by actively collaborating on preventive and diversion programs with other departments and agencies.

On its face, nothing in the Court Services mission statement precludes more widespread use of mediation services including in child protection proceedings. Despite this, and despite a history of similar recommendations by prior committees, the lack of mediation services province wide and the failure to access those services more broadly in protection proceedings continues to be a significant problem.

Recommendations:

6. That mediation services be available in all Family Court jurisdictions and not just in the Unified Family Court.

7. That the *CFSA* be amended to provide the trial judge with the jurisdiction to direct the parties to mediation in terms similar to rule 70.11 with the provision that 70.11(7) be amended for the purpose of child protection proceedings to re-affirm the obligations set out in section 23(1) of the *CFSA.*

8. That the *CFSA* require agency workers to notify parents at the earliest stage of any protection proceeding, even when no court action is contemplated, of the option for mediation outlined in section 21.

9. That section 21(2) be amended to confirm that the suspension of the proceedings is 3 months in total over the course of the proceedings.

10. That updated training for mediators be provided to build up a province-wide roster of child protection mediators. The training should include an orientation about the special concerns and sensitivities around domestic violence.

11. That protocol usage training on the use of mediation for all child protection workers be instituted.

12. That the Department of Community Services partner with Family Mediation Nova Scotia, Nova Scotia Legal Aid, the Nova Scotia Transition House Association to increase awareness, availability and use of mediation services.

Services to Persons 16 to 18 Years Old

Currently the *CFSA* defines a child as a person under the age of 16 years. Services to persons 16-18 years of age are provided on a discretionary basis under section 14.2 and under Section 19 of the *CFSA*, by way of a special needs agreement. To date there have been no special needs agreements provided under Section 19.

The Advisory Committee received numerous submissions concerning the critical gap in services to 16-18 year olds; from social workers, service agencies and individuals. The report submitted by the Nova Scotia Association of Social workers following a questionnaire distributed to all child protection workers in the Province stated the following:

> Services to 16 - 18 year olds - …the inability to serve youth who are 16 - 18 (unless they already are in care) is a serious gap in service. It is significant that this age group is viewed much differently today than was the case a few decades ago when the upper age for child protection first was designated. Today youth of this age still are considered to be in need of considerable guidance and support. It is significant that the *Youth Criminal Justice Act* deals with youth up to 18. It is clear that currently there is a significant and serious gap in services to this segment of youth.

On a similar note The IWK Health Centre Child Protection Team state that:

> ….it is important to realize that youth, defined by the World Health Organization as encompassing ages 12-24, is a period of ongoing brain maturation and that few persons are truly mature enough to be responsible for their own protection at the age of 16. To deny this fact will only perpetuate the human tragedy experienced by marginalized youth who suffer from poorly coordinated health care, relative homelessness, lack of vocational preparation, and increased involvement in criminal behaviour.
>
> We recommend changing of the definition of child to include anyone under the age of 18 years. To do so would acknowledge the fact that simply turning 16 years of age does not equate with a lesser risk of adverse consequences due to maltreatment and would allow for provision of services to troubled/rebellious youth who may not see the value of having an Agency involved in their life at that age.

Furthermore, the IWK Child Protection Team submission recommends this:

> An explicit reference to the UN Convention [United Nations Convention on the Right of the Child] would broaden the principles of the interpretation of the *CFSA* and lead child advocates to consider the needs of Nova Scotians in the broadest and noblest of contexts.

The Nova Scotia Department of Justice states the following:

> …children placed in the care and custody of child protection agencies are often the victims of abuse and have special needs which require greater protection than other children…Unfortunately some courts… do not permit an Order to Locate and Detain a Runaway Child where (a) the child is in the care and custody of and agency and (b) the child is over sixteen…these children are often the ones most at risk of harm and exploitation…. [no provision for] protection services for youth between the ages of 16-18 years…results in crisis management for these youth when they are involved in the justice system.

According to a submission titled "Gaps in Services in Nova Scotia for Adolescents Ages 16 – 18 Years of Age" from several Dalhousie Social Work students such provision is usually reserved for "an adolescent turning sixteen when they have a significant or profound disability (mental and/or physical). The caring parent may not have the resources available to them and the child cannot be maintained in his/her home."

The submission goes on to state:

> …. If an allegation is received that a person sixteen or older is being abused, child welfare agencies can only advise that the person has a right to lay a complaint of assault with police. If they are not already involved (i.e. child is currently in their care) they cannot get involved. They very rarely, if ever, offer requested services to adolescents sixteen years of age and older."

This sentiment was endorsed by the Second Story Women's Centre of Lunenburg who strongly recommended the provision of services, "to address these very serious gaps in services for children, particularly adolescents…"

Following the hit and run death of Theresa McEvoy by a youth who had been known to the provincial youth courts, child protection, health and social service delivery systems for years, the Nunn Commission Inquiry, brought about because of public questions and concerns about youth slipping through the cracks, reveals this:

> [there was] serious deficiency in their [professionals] ability to provide help; service providers could only act in their area of interest; and [services deal with only] part of the child, rather than the whole child…part of the problem is the very structure of the departments themselves as each department is directed to a different aspect of life. The suggestion was presented that changes have to be made to bring about substantial improvement in the collaborative delivery of services"[5]

In contrast, child welfare legislation in Alberta, Manitoba, Quebec, and the Yukon provide protective services for children up to the age of 18 years and in British Columbia, all children under the age of 19 years are afforded the provisions of child protection legislation.

Recommendations

13. To change the wording of Section 3 (1) (e) to read "child means a person under the age of 19 years unless the context otherwise requires," and eliminate Section 14. (2).

14 To change the wording of Section 19 to "Service Agreements with child 16-18."

15. That funding be made available for the creation of a program to serve this age group.

[5]A presentation titled **The Nunn Inquiry: A Road Less Traveled** by Glenn R. Anderson, Q.C., Jacqueline E. Scott at the Atlantic Canada Child Welfare Forum in May 2007.

Section 48 (1)

The Committee heard from several individuals and groups concerning the discrepancy between the *Maintenance and Custody Act* and the provisions of the *Children and Family Services Act*. At a presentation to the Committee by several individuals from the Voice, a Halifax based newsgroup of young people in care, a number of young people expressed their frustration at having to drop out of degree programs because they had reached the age of 21 years and services to them had been terminated. The Committee notes that according to Part 1, Sec 15, of the Canadian Charter of Rights and Freedoms (Canadian Constitution Acts, 1982), "Every Individual is equal before and under the law and has the right to the equal… benefit of the law without discrimination based on ….age…." The Committee further notes that under the *Maintenance and Custody Act* children over 21 have a right to be supported by their parent(s) while they are still in school. In contrast, custody of children in care under the *Children and Family Services Act* is terminated at twenty-one years old despite being in the midst of an education program. The Committee felt that such discrepancy represents a legal discrimination against children and youth in care, versus children who are in the custody of their parents. The IWK Child Protection Team states the following:

> Many youth beyond the age of 21 still look to their families for various forms of support as is evidenced by the term "boomerang generation". As surrogate parents of youth in Care and Custody, agencies should have an obligation - and a means - to provide support beyond 21 to those who desire and need it. Some agencies currently seek creative ways to fulfill this responsibility, but must find ways outside the authority of the *Act*."
>
> Moreover, they state in their recommendations for change in the *CFSA* that "it is important to realize that youth [are] defined by the World Health Organization as encompassing ages 12-24…" On a similar note, included in recommendations submitted to the Committee by the Nova Scotia Department of Justice, "… the Court [should] be given the authority to order that an order for permanent care and custody be extended [until] the child reaches the age of twenty-one or completes or withdraws from an educational program."

The Advisory Committee commends the Department of Community Services for its recent amendment to its policy 6.9.6 Post-Secondary Education - Educational Bursary Program to approve an extension in provisions for youth in care who are attending an educational program and who are over 21 years of age.

Recommendation

16. That section 48 (1) (a) of the *CFSA* be amended so that all provisions are consistent with the provisions of Section 9 of the *Maintenance and Custody Act*.

Extended Family has Little, if any, Involvement in Custody/Protection Plans

The Advisory Committee received a number of submissions and heard compelling stories from grandparents who were distressed because they felt they were denied opportunity to become involved in decisions affecting their grandchildren. These concerns were expressed as follows:

> "…double standards for agency care versus family care "
>
> "Courts don't ask if relatives have been approached to provide care or be involved in decisions affecting our grandchildren…"
>
> "[There is] no concern for religious or family background."
>
> "It is in the best interests of the child to have access to their grandparents, and their history. It grounds a child and helps mold their identity and sense of belonging in the larger scheme of life."
>
> "Agencies favour non-related foster parents. There are even different foster rates for family and non- family foster parents."6

Several submissions cite provisions of Article 9 and Article 12 of The United Nations Convention on the Rights of the Child which state:

Article 9.1: In any proceedings pursuant to paragraph 1 (a child shall not be separated from his or her parents …except [in cases] involving abuse or neglect of the child by the parents) of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

Article 12.1: Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

6

Board rates are the same for all foster parents, whether or not they are related to the children for whom they care. Special rates, based on the child's particular needs, are approved on a case by case basis.

Article 12.2: For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. Article 13.1: The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

A. Current Legislation and Trends in Canada Regarding Extended Family Involvement

The Advisory Committee also reviewed a number of studies concerning the rights of grandparents in decisions affecting their grandchildren. In 2007, the Nova Scotia Law Reform Commission completed a study of this issue, concerning the legal provisions available for grandparents with respect to custody and access issues. The study states the following:

> At present the relevant legislation in all Canadian jurisdictions makes it possible for grandparents to apply for custody of, or access to, their grandchildren. There is no jurisdiction in Canada, however, which provides to grandparents automatic access as of right -usually referred to as a presumptive right of access.

There are two basic approaches to grandparent provisions in Canadian legislation. Legislation based on a parental autonomy approach places the burden of responsibility on the grandparents to prove that contact with their grandchild is in the interest of the child. Legislation based on a pro-contact approach is founded on the premise that in general, contact between a child and their grandparent is beneficial, and therefore access should not be denied unless it can be shown to be harmful. Legislation in Newfoundland, New Brunswick, Quebec, Alberta, British Columbia, the Yukon and Manitoba leans toward a pro-contact approach and makes explicit reference to grandparents.

Quebec has the longest history of providing specific rights to grandparents. Indeed, prior to 1996, grandparents were legally responsible to provide financially for their grandchildren. Under Article 605 of the Civil Code of Quebec, either a parent or a third person may apply for custody or access to a child and Article 611 of the Civil Code provides that, " in no case may the father or mother, without grave reason, interfere with personal relations between the child and his grandparents." Without agreement between the parties, the court decides the terms and conditions of these relations. In Newfoundland, Section 27 of the *Children's Law Act* provides that a parent of a child or other party may apply to the court for an order for custody or access. As well, Section 69(4) of the *Act* expressly provides that 'other party' includes a grandparent of the child.

In New Brunswick, the *Family Services Act* mandates that determination of access must be made in the best interests of the child taking into consideration love, affection and ties that exist between the child and each grandparent of the child.

In Alberta, the *Provincial Court Act* was amended in 1997 to make specific provision for a grandparent to make an access application. Section 32.1(2) of the *Act* provides that "If a grandparent at any time is refused access to a child, the court may on application make an order as it sees fit regarding the grandparents right of access to the child." The British Columbia the *Family Relations Act* specifically directs a Court to consider the love, affection and similar ties that exist between the child and other persons defined as parents, grandparents, other relatives of the child and persons who are not relatives of the child. In the Yukon, Section 31 of the *Children's Act* provides that a parent of the child, or any other person, including the grandparents, may apply for a custody or access order. The *Act* mandates that in determining the best interests of the child with respect to a custody or access application, the Court "must consider, amongst other things, the bonding love, affection and emotional ties between the child and each person entitled to or claiming custody of or access to the child, other members of the child's family who reside with the child, and persons, including grandparents involved in the care and upbringing of the child."

The Manitoba *Child and Family Services Act* provides that a grandparent, step-parent or other member of a child's family who does not have a right to apply for access to the child under any other provision of the *Act* or under a provision of another *Act* may apply to court for access to the child. The **Act** directs the Court when determining the best interests of the child to consider all relevant matters, including "that a child can benefit from a positive, nurturing relationship with a grandparent." Legislation in the other provinces, contains no special provisions for grandparent access and require anyone who has connections with the child, to apply to the Court for an order to make an application to the court for access and /or custody. A careful reading about how the courts arrived at their decisions concerning individual cases[7], reveals that relationships between the child and his/her grandparent consistently influence courts' decisions in grandparent access disputes. In fact the importance of a child's relationship with all significant others including aunts, uncles, siblings and other persons with whom the child has an going trusting relationship appears to be the determining factor in decisions. In concluding comments leading to recommendations, the Nova Scotia Law Commission Report refers to the provisions of the *Children and Family Services Act* to serve as guidelines for its recommendations regarding extended family access decisions. Specifically the report cites Section 3 of the *CFSA*, which reads as follows:

[7]Nova Scotia Law Commission: Grandparent-Grandchild Access, Final Report, 2007

2) Where a person is directed pursuant to this *Act*, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
> (b) the child's relationships with relatives;
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
> (d) the bonding that exists between the child and the child's parent or guardian;
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
> (f) the child's physical, mental and emotional level of development;
> (g) the child's cultural, racial and linguistic heritage;
> (h) the religious faith, if any, in which the child is being raised.

The Law Reform Commission of Nova Scotia recommends this:

> 1) In order to help guide judges, parents, grandparents and other interested persons, the *Maintenance and Custody Act* be amended to provide a best interests of the child list of factors to consider, similar to the provisions in the *Children and Family Services Act*.
> 2) Section 18(2) of the *Maintenance and Custody Act* be amended to provide that an application for access may be made by a parent or a guardian or other person, including grandparents or other members of the child's family, with leave of the court. 3) The leave provision in section 18(2) of the *Maintenance and Custody Act* be retained.

B. Other Approaches to Extended Family Involvement

There are two general approaches for involving extended family – a parental autonomy approach and a pro-contact approach. Parental autonomy approaches reflect cultural values that place child-rearing responsibility solely with the parents. In contrast, pro-contact approaches tend to based on cultural values, which assume that children are the responsibility of the larger community as well. Thus in First Nation communities polices and practices tend to be rooted in pro-contact principles. An example of legislation that is founded on a pro-contact approach, is New Zealand's *Children, Young Persons and Their Families Act,* (*CYPFA*)

The central feature of the *CYPFA* is the Family Group Conference, (FGC) which is used in every case to develop protective plans for children identified to be in need of care and protection, and in youth justice situations, to resolve young offender issues. The *CYPFA* provides for family members, including grandparents, and those with close connections to the child or young person, the right to be involved in decision-making processes affecting the child or youth.

New Zealand's *CYPFA* is rooted in Maori traditions based on the principle that families and young persons should be involved in decisions effecting their lives, and the belief that when families and young persons make decisions for themselves, they are more likely to work. Initially, the FGC was intended for use in child protection cases only. However, as discussions deepened it became clear that the same principles for FGC in child welfare matters, also apply to youth justice situations.

In New Zealand, the FGC is used in every situation in which it has been determined that a child is in need of care and protection. A FGC coordinator is appointed and the extended family, including the child (where possible) is invited to a meeting with the professionals involved in the investigation. The family is provided with private time to develop a plan of safety for the child. If the child protection worker approves the plan, resources to implement the plan are negotiated, details discussed with the family, and the plan is implemented. Court involvement is minimal and usually used only to endorse the plan or where the plan is not acceptable, to order a different plan of care and protection. According to research, FGC plans in New Zealand and elsewhere are approved by the social worker 98 percent of the time.

In the United States, as of 2006, 25 states are currently discussing or implementing some form of a family group conference program. In 2005 the report "Connected and Cared For" released by Washington State, reports outcomes involving 81 family group conferences, conducted for 96 children between 11 and 18 years of age, living in group homes. Karin Gunderson, director of the Connected and Cared For Project states the following:

> *We have had a lot of great FGC outcomes in Washington State since 1996, so we were optimistic when we started out with this project..... the outcomes for these youth were even better than we hoped for. Especially considering that this was a population of very high needs youth in group/congregate care with difficult therapeutic needs and lost family connections. We were able to connect over 90% of them with family and get a significant percentage home.*

> *More importantly, we realized what a powerful permanency planning process FGC is ....before the conference, I think most people were just aiming for "stabilization" of these youth...after the conference, it was very clear that these kids were going to leave care with no permanent connections if someone didn't step in. For me, this was, by far, the most important outcome we achieved.*
>
> *We were also able to see the impact that these revitalized connections had on the youth. Even though many of them were not able to return home to family after the conference, the fact that they were reconnected gave them the "dignity of family" as one person framed it...permanence took on a larger meaning than just placement permanence. We felt like we "jump started" a trajectory back to family with this process.*
>
> *We were humbled by the family turnout. Prior to the conferences, it was believed that these youth had no family, or that family had "washed their hands" of them. The opposite was true, not only was there family, but they were competent, caring individuals who were very interested in reaching out to youth. 8*

Of the 57 youth included in the study, 36 percent had, at the end of a six-month period, either returned home or left the group home to live with relatives.

Texas, USA, set up FGC (called Family Group Decision-Making) in multiple sites across the state. In 2003, 37 counties were offering FGC. Based on the success of these programs, FGC was expanded to 58 counties as of 2006. As a voluntary program, it is available following removal of a child and for youth who are preparing for adult living. It is anticipated that FGC will be offered to all families at various stages of child protection involvement. According to the final evaluation report the following:

> *Whether placed in foster care or relative care, the children whose families participated in FGDM conferences were less anxious than children from families experiencing traditional services. However, it seems that both the experience of an FGDM conference as well as the placement that followed made a difference in the adjustment of children to their new living arrangement. The children of families who received a conference were better adjusted when they were placed with a relative and less well adjusted when placed in a foster home, compared to children whose families received traditional services.*

Comments written by Karen Gunderson in an email message to Cheryl Harawitz September 6, 2005.

Titled the Daybreak Dove Project in Portsmouth England, FGC is used exclusively in family violence situations. According to project director Alison Powney, just one program involving six families in 2005 was so successful that it expanded to nine programs a year later.

In Canada, several FGC programs exist. British Columbia has, since the early 1990's, included FGC provisions in the *Children and Families Services Act*.

In the Etobicoke Children's Centre, and the George Hull Centre for Children and Families a FGC project was launched as early as 1998. Since then the project has expanded and includes Native Child and Family Services and in 2005, Yorktown Child and Family Centre. "The structure and balance of the partnership is unique and critical to the Toronto Family Group Conferencing Project. It allows the model to sit in a "neutral space" thereby affording a strong adherence to the original philosophical framework."

In Nova Scotia, the Mi'kmaq FGC pilot program is up and running, and according to Joan Glode, Executive Director of Mi'kmaq Family and Children's Services, is showing positive results. 9 Based in Halifax, Family Services of Support, a metro-based support service for families whose children are at risk of abuse and/or neglect, has agreed to implement a FGC pilot project if there is full commitment from the Department of Community Services. A draft proposal to develop and implement this project has been forwarded to senior staff within the Department. The Nova Scotia's *Children and Family Services Act* is appropriate legislation to support Family Group Conferencing.

Not surprisingly, child welfare research in Canada and elsewhere confirm that family-based care is the preferred placement option when compared to group residential options. At the same time, placement in foster care is becoming increasingly difficult due to increases in the number of children coming into care, more children coming into care at older ages, many of whom arrive into care with significant emotional problems. Indeed, research reveals that there is little dispute among professionals, families and communities, that children do best in family-based settings.

Kinship foster care is one type of family-based care, where children are placed in foster homes with relatives. Several studies found that kinship care in the United States has increased significantly over the past eight years (Child Welfare League of Canada, 2003, Washington State US, 2006, Texas Dept. Family & Protective Services, 2007.) However, according to the Child Welfare League of Canada study, there are some problems associated with kinship care. The study reveals that:

[9] See www.familygroupconference.com for details of these and other FGC studies and commentaries.

> Both the children in care, and relatives are reluctant to enter into an adoptive relationship for fear of undermining existing familial relationships, and due to strong cultural resistance to the termination of parents rights…As a result, another emerging option of family-based care is evolving, namely guardianship care. Guardianship care is a status between that of foster care and adoption; guardianship care status is granted to a known family or specified friend, to indicate permanency of care. The Province would retain legal guardian status until child reaches adulthood...Preliminary research demonstrates outcomes for children in guardian relationships are similar to the outcomes of children in adoption relationships, using measures of stability of relationship, and permanency (Barbell & Freundlich, 2001, p. 22).

The *CFSA* supports involvement with and continued connection to extended family for children who enter care.

Recommendation

17. That the Department of Community Services fully commits to implementing a pilot project on the use of Family Group Conferencing.

There were Divergent Opinions Regarding Section 22 of the *CFSA*

Section 22 of the *CFSA* charts the circumstances and conditions that must be met for mandatory government intervention in the lives of families for the care and protection of children. Almost all submissions and presentations received and heard by the Advisory Committee concerning child protection matters include references, either directly or indirectly related, to the provisions of this section of the *CFSA*. The provisions of Section 22 are as follows:

> 22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence. (2) A child is in need of protective services where
> (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
> (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
> (c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(d) there is a substantial risk that the child will be sexually abused as described in clause (C);
(e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;
(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;
(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;
(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);
(k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;
(l) the child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another person's property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, or refuses or is unavailable or unable to consent to, the necessary services or treatment;
(m) the child is under twelve years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of a parent or guardian of the child or because of the parent or guardian's failure or inability to supervise the child adequately.

Two themes emerge with respect to Section 22 of the *CFSA*:
A. There appear to be gaps and confusion re: the provisions of Section 22 (2)
B. There are Differences of Opinion Concerning Section 22.2 (I)

A. There Appear to be Gaps and Confusion re: the Provisions of Section 22

The Committee received a number of submissions regarding specific amendments to include drug abuse, third party sexual assault and delinquent behaviour.

Many submissions refer to problems concerning interpretation of Section 22 and parents repeatedly spoke of their bewilderment, anger and frustration concerning discrepancies in the interpretation of what constitutes abuse and neglect according to the *CFSA*. One presenter specifically talked about lack of definition of emotional harm under Section 22 (f, g, h, i) and how current definitions open doors to many interpretations and misinterpretations. Another talked about lack of definition of 'substantial risk' under Section 22 (b, d, g, j). After considerable deliberation and a lengthy review of the existing provisions within the *CFSA*, the Committee concluded that the *CFSA* was deliberately worded to be interpretive rather than prescriptive, and that the existing provisions are adequate to address these issues. Thus, a certain amount of confusion concerning this provision is inevitable.

B. There are Differences of Opinion Concerning Section 22.2 (I)

Submissions and presentations reveal that Section 22. 2 (i) is extremely controversial. Concerns from women's representative groups (Transition Houses Association of Nova Scotia, Women's Innovative Justice Initiative) spoke of conflicting instructions from the Criminal Courts and the Family Courts in which a Criminal Court can issue a 'no contact' order and the Family Court in the same situation may issue an access Order. In child protection situations, women can lose their children, which in effect hold them accountable for the abuse they experience. A parent who had left her partner due to his violence toward her vividly expressed this sentiment, stating that she felt victimized and "bullied" by the child welfare worker and "blamed for failed relationships."

Frustrations regarding conflicting orders often arise from a misunderstanding of the roles of the various courts that may become involved as a result of domestic violence – one is solely for criminal matters, and the other is for the family issues including child protection and custody/access; therefore some conflict is inevitable due to the differing mandates of each court.

Other professionals, including the IWK Child Protection Team, IWK Assessment Services and the Nova Scotia Association of Social Workers, believe that this section of the *CFSA* is "very limited and does not fit with current knowledge, policy, nor practice in relation to what is known about domestic violence."10 The inclusion of exposure to domestic violence as a definition of a child is need of protective services is considered to be "a monumental and progressive step" in the legislation. 11 IWK Assessment Services recommends the removal of the word "repeated" in this Section to empower child protection workers to intervene sooner.

Section 22 (2) (i), as grounds for intervention in domestic violence situations is restricted to:

> The child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence.

Social Workers expressed concerns around the difficult involved in documenting all three criteria from this section in order to substantiate risk when dealing with reports of domestic violence. Current provisions require that a worker must be able to demonstrate the following:

1. The child has suffered physical or emotional harm (documented by a medical professional)
2. Exposure to repeated domestic violence (at least two reports)
3. Refusal or failure to obtain services or treatment to remedy or alleviate the violence (by person(s) responsible for the care/protection of the child are willing to take action to remedy/alleviate the violence)

Social workers raised concerns that at the time of a referral, it is nearly impossible to know if all three of these criteria apply. Instead, they must rely on provisions (22 (2) b, f and g) that were not intended to justify investigating cases of domestic violence.

According to the Canadian Incidence Study of Reported Child Abuse and Neglect - Major Findings – 2003, close to 50% (49, 994) of substantiated child abuse investigations occur each year across Canada (excluding Quebec) because of exposure to domestic violence. The report states that domestic violence as a child abuse category is a growing trend and is included in most provincial child welfare legislation.[12]

[10] October 2006. Submission by the Nova Scotia Association of Social Workers
[11] October 2006. Submission by the IWK Child Protection Team
[12] 2003. Canadian Incidence Study of Reported Child Abuse and Neglect – Major Findings.

The Committee discussed at length the risks to women who are survivors of domestic violence and the real risks involved in leaving violent partners. A recent news release reported that women are at least seven times more likely to be murdered by their violent partners when they leave the relationship than they are while remaining in the relationships. Research also confirms that children are also at high risk of murder at this time. For example, a recent report reveals, "In 2006, 27 women and 12 children in Ontario were murdered in situations where the intimate male partner was either charged with the murder, or committed suicide. 20 children were left motherless. One woman was pregnant." 13 In a recent United States study, in 1997, 27% of domestic violence homicide victims in Florida were children.14 Obviously, this puts a woman in a position of having to choose between leaving her children at risk of cumulative harm by continued exposure to domestic violence or being murdered when she leaves.

The Committee reviewed current legislation provisions to address risks to children exposed to domestic violence.

Legislation in Canada and elsewhere in recent years include exposure to violence as a definition of child neglect. In Canada, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Ontario, Saskatchewan, Alberta, Northwest Territories and Nunavut now include domestic violence as an indication that the child is at risk of substantial harm. 15

In 1999, Minnesota amended its definition of child neglect to include domestic violence resulting in a massive increase in child neglect reports from police and court personnel. The Minnesota Association of County Social Service Administrators estimated that counties would need $30 million per year in additional resources to respond to these reports. In 2000, the Legislature repealed the amended definition. (Christian, S, January 2002.)

In some instances child welfare involvement in cases of children's exposure to domestic violence have taken steps to address concerns raised by battered women's advocates. Utah for example, adopted a policy to support the non-offending caregiver and to require that child protection workers take the following actions, among others, in child welfare cases involving domestic violence:

- Consult with a domestic violence professional to address the specific domestic violence dynamics of the case and appropriate strategies;

[13] www.stepitupontario.ca/about/make-every-day-mothers-day.html
[14] May 2003. North Caroline Division of Social Services
[15] 2008. Child Welfare League of Canada – Email correspondence from Carrie Reid (Jan. 31, 2008).

- Compile an inventory of resources available to the non-offending caregiver and her children; and
- Assist the non-offending adult with a safety plan and with referrals to licensed shelters and/or domestic violence service providers.[16]

Section 30 of the Nova Scotia *CFSA* permits the agency to obtain from the Supreme Court, a Protective Intervention Order lasting up to six months. A Protective Intervention Order pursuant to Section 30 of the *CFSA* can prohibit contact between an abuser and a child or other parent, remove him or her from the home, and can include such other conditions, as the Court considers appropriate. It is also renewable for up to six months at a time. An Emergency Protection Order, on the other hand, can only extend to a maximum of 60 days. Use of both legislative provisions would provide more protection for children at risk on a less intrusive basis.

The Committee acknowledges that child protection services and policing services in Nova Scotia have improved their responses to domestic violence through their training programs and joint coordination of services. At the same time, funding for domestic violence prevention and for transition houses has dwindled. For example studies reveal that the number of women with children staying in shelters has dropped in the past decade. Many advocates believe that this decline may be linked to new child welfare reporting rules and rising poverty.

The Committee acknowledges the fact that women are often severely disadvantaged when it comes to the resources necessary for survival of herself and child. For example, in Ontario, almost 40% of lone parent families headed by women are poor. This study also found that the average female-led lone parent family lives $9,400 below the poverty line and that female-led lone parents live on less than 60% of the income of male-led lone parents. The report further reveals this:

> In 2000, the median annual income of Aboriginal women was $12,300—about $5000 less than all women and $3000 less than Aboriginal men. Women of colour earned $3000 less than other women and $9000 less than men of colour. 35% of women who recently immigrated to Canada lived in poverty in 2001 compared to less than 20% of women who arrived before 1981. Women with disabilities earn an average $5000 less per year than other women and almost $10,000 less than men with disabilities. [17]

[16]Christian, S, NCSL State Legislative Report Analysis of State Actions on Important Issues, Children's Exposure to Domestic Violence: Is It Child Abuse? Volume 27, Number 1, January 2002

[17] Step it Up Ontario, End Violence Against Women, Make Every Day Mother's Day!,

The Committee discussed the implications of removing children from their non-abusive parent and the risk children in those situations, of losing connection with their non-abusing parent. In Nova Scotia, little in the way of domestic violence prevention programs exists for specific targeted groups such as immigrants, youth, seniors or persons with disabilities.

Recommendations:

18. That the word “repeated” be removed from 22 (2)(i) of the *CFSA*.

19. That a “risk of” clause similar to Section 22 (2) (b), (d), (g), (ja) be added after 22(2)(i) to identify the substantial risk to children as a result of domestic violence.

20. That child protection agencies more frequently consider utilizing Section 30 of the *CFSA* in situations of domestic violence.

21. That the Department of Community Services provides ongoing core funding dedicated to prevention, education, treatment, and support to alleviate domestic violence in Nova Scotia.

22. That domestic violence prevention initiatives and services be specially designed for specific targeted groups (e.g. immigrants, teenagers, persons with disabilities and senior citizens).

Lack of Trust in Child Protection Services

The Committee heard repeatedly, of a basic lack of trust in child protection services, from individuals who had received protection services, community organizations, professionals, and the media. In particular, the Committee received and heard directly from several individuals and groups who had concerns about the handling of the Finck/VandenElsen case of 2004.

Albeit the mandate of the Committee does not include investigation or review of individual child protection cases, public reaction concerning this case, mirrors in general, a lack of trust expressed in many submissions. Parents reported their experience of being subjected to long-term adversarial struggles with child protection workers and the system as a whole, feelings of profound injustice, and disempowerment. Many parents reported feelings of being controlled, manipulated and forced to comply with imposed plans. Social workers and parents spoke of the inability to access services except through the narrow window of apprehension or temporary custody orders, which parents experience as cruel and threatening.

Reports from social workers and professionals of support services echo the statement by J. Lafrance that “The overall paradigm in child protection agencies seems to be moving toward increasing power and control over clients and away from interpersonal elements necessary for the achievement of child welfare activities and which are central to agency goals.” (Working Conditions for Social Workers and Linkages to Client Outcomes in Child Welfare: a Literature Review, Ken Barter, 2005).

It is clear to the Committee that confusion and fear are prevalent concerning child protection matters, at both private and public levels. Given that the intrinsic nature of child protection work mandates intrusion into private family matters, and given the restrictions concerning disclosure by professionals, of confidential information, a certain level of mistrust in child protection intervention is inevitable.

At the same time, the Committee heard from parents and professionals that lack of resources posed serious obstacles to establishing trust between families and child protection workers. Many individuals proposed compelling arguments for the use of mediation and the involvement of extended family members in decision-making, as a means to foster trust between agencies and families. The Committee heard and responds to these issues through its recommendations concerning resources, the use of mediation and extended family involvement. (See Recommendations Part One).

The Parent Education in Child Protection Matters Committee, headed by Justice Moira Legere-Sers is working on streamlining; formulating and making available educational materials for parents involved in child protection proceedings. The focus of the educational materials is an understanding of the process and procedures involved in child protection matters as well as the legal rights of all participants. The Committee was created to address long-standing concerns about the degree to which parents are uninformed about the complexities of child protection proceedings, the lack of access to legal representation and its implications when parents appear in court.

In general the Committee felt that by involving families in decisions affecting their children, through collaborative policy and procedure decision making involving community organizations, and by making available information concerning the process of child protection investigation more trust could be fostered in promoting public confidence in the child welfare delivery system.

Recommendation:

23. .That the Department of Community Services and the Department of Justice examine the work of the Parent Education in Child Protection Matters Committee and commit to the development of parent education materials that are understandable, available, and accessible to the public

There is a need for the establishment of a Children's Advocacy Office

Associated with lack of trust and frustration with the current system the Committee heard from individuals who raised concerns about professional accountability. Several individuals expressed frustration in trying to get their concerns adequately addressed through the Nova Scotia Office of the Ombudsman despite the inclusion of a child and youth mandate. The Committee felt that the current Ombudsman office that deals with children, youth and seniors should be separated and a children and youth office established to deal specifically with their unique needs.

Children's Advocacy offices have been created in Alberta, Saskatchewan, Manitoba, Newfoundland, Ontario and New Brunswick (in New Brunswick, the office is combined with that of the provincial Ombudsman). In general, their mandate is to represent the rights, interests and viewpoints of children and youth who are, or should be receiving services under child welfare legislation.

Recommendation:

24. The establishment of an Office of the Children's Advocate, which would report directly to the Legislature (much like the Office of the Ombudsman).

    The mandate would be as follows:
    - To engage in public education
    - To work to resolve disputes
    - To conduct independent investigations
    - To conduct investigations into the deaths of children in care
    - To recommend improvements in programs for children

Part Two

Adoption Information Act

There is a Trend Toward Open Adoption and Disclosure of Adoption Information

Adoption Information Act

The Advisory Committee received eleven submissions including three verbal presentations concerning adoption issues. The presentations were primarily concerned with Sections 13 and 19 of the *Adoption Information Act*, which provides as follows:

ACCESS TO AND DISCLOSURE OF IDENTIFYING INFORMATION

13 An adopted person may apply to the Director of disclosure of;

(a) the adopted person's birth name;
(b) the name of the adopted person's birth mother;
(c) the name of the adopted person's birth father;
(d) where there are adopted birth siblings of an adopted person, the birth names of those persons;
(e) where there are adopted birth siblings of an adopted person, the adoptive names of those persons.

19 (1) Subject to the regulations, upon receiving an application pursuant to Section 13, 14, 15 or 16, the Director shall conduct a discreet inquiry to locate the family member regarding whom information is being requested.
Upon receiving an application from an adopted person pursuant to Section 13, where the Director determines that the family member being sought is a birth parent who has previously signed a no-contact request pursuant to the *Children and Family Services Act*, the Director may, notwithstanding that a no-contact request has been signed, contact the birth parent to confirm the birth parent's wish for no contact with the adopted person.

(3) Where the Director is successful in locating a family member as the result of an inquiry conducted pursuant to subsection 1, the Director shall, prior to releasing to the applicant the information concerning the family member requested pursuant to Section 13, 14, 15 or 16, as the case may be, obtain the written consent of the family member to the release of the information.

(4) Where a family member provides the written consent required pursuant to subsection 3, the Director shall release to the applicant the information requested, except information that, in the opinion of the Director, poses a risk to the health, safety or well-being of any person to whom the information relates.

(5) Where a family member refuses to provide the written consent required pursuant to subsection 3, the Director shall advise the family member that the family member may file with the Director a written statement including;

(I) the family member's reasons for not wishing to disclose identifying information

(ii) where the family member is a birth parent, a brief summary of any available information about the medical and social history of the birth parents and their families, or

(iii) any other non-identifying information

(5b) advise the family member that, if a statement is filed pursuant to clause (a), the non-identifying information contained in the statement will be given to the applicant; and

(5c) give to the applicant the non-identifying information contained in the statement.

The Minister's Advisory Committee received 11 submissions on the *Adoption Information Act*. One individual expressed concerns about the adoption process, and another raised concerns about the legal rights of adopted youth to leave home in search of their biological parent. She was asking for specific law provisions for adoptive parents to be able to restrict this behaviour until "full adulthood." The Committee recognizes that it cannot recommend restrictions for adopted youth that don't apply to youth being raised by their birth families.

Nine submissions strongly recommended opening adoption records to enable adults who were adopted, to access their birth records. Under the current provisions of the *Adoption Information Act*, the Director of Child Welfare has the discretion to release identifying information to the applicant, except where she/he believes the information may pose a risk to the health, safety or well-being of any person to whom the identifying information relates. Under article 44 of the Convention of The United Nations, the Committee on the Rights of the Child, in October 2003, issued the following statement concerning conclusion with respect to Canada:

> The Committee is also concerned by the fact that certain provinces do not recognize the right of an adopted child to know, as far as possible, her/his biological parents…The Committee recommends that the State party consider amending its legislation to ensure that information about the date and place of birth of adopted children and their biological parents are preserved and made available to these children. (Section 30, 31)

The Nova Scotia Association of Social Workers supports, in principle, the concept of Open Adoption stating, "We received only one comment regarding the *Adoption Information Act* which commented positively about the Openness Agreements in Adoptions." Comments from other submissions include "Adoption is always said to be in the interest of the child, I believe it [Nova Scotia legislation] is in the interest of the adoptive parents." This individual, (a sibling of an adopted child and reunited forty plus years later) reported that she had been able to reunite 111 families, that in her experience, Nova Scotia legislation does not protect the rights of adoptees, does not conduct timely searches, and fails to search beyond Nova Scotia borders for parents of adoptees. As well it was pointed out that even after parents and adoptees have been reunited, long form birth certificates are not available.

Another submission from an adult adoptee states that the new *Adoption Act* of 1997 "was no more than lip service in addressing the concerns of Nova Scotia Adoption Community." In a report attached to this submission it was pointed out that "Nova Scotia's Adoption Community had poured out their hearts to the then Ministerial Committee in 1993 …[that] contained 14 recommendations in addressing the outdated *Family and Children's Service Act*, 1984 [and that]... not one of those recommendations was incorporated into the new *Adoption Information Act."*

In an attempt to enlighten the Committee about an adoptee experience, an adult adoptee explained it thus:

> When I was blessed with the birth of the first of my two children…that particular day…had not only brought …my first and only connection to another birth generation belonging to me…I became aware of a loneliness that had plagued me for a good part of my life. What if in later years little…was to look back inquisitively of her roots and heritage, would she not feel as short changed as I had felt, in not knowing truth.

The Committee also heard from an individual who had in 2004 adopted a baby through the Department's adoption services revealing an extremely frustrating experience, in particular, with flawed processes causing delays, misinformation and inconsistency. While the Committee recognizes that the adoption process is not part of the *Adoption Information Act*, the Committee wants to reflect all concerns and submissions received regarding the adoption process. This individual stated that, "the biggest thing is that there needs to be training around the adoption piece, especially around SENSITIVITY..[and] people should be crossed trained in the event of absence."

The Advisory Committee reviewed current legislative trends in Canada concerning adoption disclosure issues. Four Canadian provinces have unsealed their adoption records: British Columbia, Alberta, Ontario and Newfoundland.

British Columbia, Alberta, and Newfoundland include adoption disclosure legislation that applies retroactively but provides a "disclosure veto." Ontario has no veto provision in its legislation.

Adults over the age of 19, adopted in British Columbia, and their birth parents may have access to information identifying each other through the Vital Statistics Agency (VSA) at the Ministry of Health. Adults adopted in British Columbia may apply for a copy of their original birth registration and their birth name (including names of any birth parents on record) and a copy of their adoption order. Birth parents can apply to the Vital Statistics Agency (VSA) for a copy of the adopted person's birth registration with any amendments including the following:

the person's name following adoption
a copy of the adoption order

Persons wishing to restrict access to identifying information must file a "disclosure veto" in which case no identifying information is released, (British Columbia, Ministry of Children and Family Development). In Alberta since November 1, 2004 adult adoptees (18 or older) and birth parents are able to access identifying information about each other, including name, address and date of birth. This applies to adoptions, which happened in Alberta before January 1, 2005. Adult adoptees and birth parents who want to preserve their privacy could block release of their identifying information by filing a disclosure veto, by November 1, 2004. Furthermore, if a veto is filed before the government gets a request for information, the government will not release identifying information. A veto may be cancelled at any time, and is no longer in effect when the person who filed the veto dies. Even if a veto is on file, adult adoptees and birth parents will continue to receive non-identifying information in the adoption record, as they have in the past.

Adoptees who are turning 18 have six months from their 18th birthday to file a veto. Birth parents will not be given information about a biological child until six months after the adoptee's 18th birthday, to allow the adoptee time to file a veto.

All adoptions granted in Alberta on or after January 1, 2005 will have open records**.** Birth parents and adult adoptees will not have a veto provision, however they can file a contact preference. Alberta statistics reveal the following:

- More than 83,000 adoptions have taken place in Alberta since the early 1900s.
- Since 1985 Alberta's Post Adoption Registry has received
- Approximately 33,000 inquiries.
- More than 25,500 requests for information contained in adoption records.
- Approximately 430 disclosure vetoes.

According to Wendy Rowney of Coalition for Open Adoption Records (COAR), Ontario has "the most progressive adoption disclosure law in North America." The Adoption Council of Canada has fully supported Bill 183 of the Ontario *Children and Family Services Act*, which provides birth parents and adult adoptees access to original birth certificates and adoption orders including identifying information. The Ontario legislation provides for birth parents and adopting parents to specify that a 'no contact' option be placed on their file. Persons seeking information from a file with a 'no contact' option, must sign an agreement to not contact such individuals. Violation of a 'no contact' agreement can result in penalties of up to $50,000

Mr. Justice Edward Belobaba struck down the Ontario *Act* as unconstitutional on September 19th, 2007. According to Ontario's Information and Privacy Commissioner, Ann Cavoukian, "a disclosure veto for past adoptions represents a principled and balanced approach appropriate to the competing interests and the Canadian context." (Fact Sheet on Adoption Information Disclosure, June 2005).

Following the aftermath of the Supreme Court decision, TV host, Stacey Stevens of "Strictly Legal" presents some opinions concerning the decision:

> After the decision was released, opinions on both sides of the issue were expressed in letters to the editor, on news programs and radio call-in shows. One of the more interesting opinions, I thought, was expressed by Margaret Somerville of the McGill Centre for Medicine, Ethics and Law in Montreal. She suggested that privacy does not always need to be a two-way street. Her view was that emphasis should be placed on the rights of the child, such that, if a child sought disclosure of adoption records, the information should be disclosed whether the parent who placed the child consents or not. The child had a right to know. The reverse, however, would not necessarily be true. In Ms. Somerville's approach, an adult would only be entitled to information about a child who had been placed for adoption if the child consented. I think this suggestion should be given consideration.

According to an article published in *The Windsor Star*, September 19, 2007 titled 'New Ontario adoption law struck down on privacy concerns, "Attorney General Michael Bryant may now appeal the decision or go to the legislature and have the law re-enacted." We are reviewing the decision and considering all options," Bryant said in a statement. "We remain confident that the legislation is constitutional."

The Adoption Council of Canada (ACC) in a statement released October 7, 2007 declares this, "[ACC] strongly urges the Ontario government to act swiftly to bring in amendments to the new *Adoption Information Disclosure Act*." ACC recommends the following:

- Provide unqualified access for the adult adoptee to their original birth registration.
- Provide birth parents of adult adoptees unqualified access to the original birth registration that bears their name and the amended birth registration.
- Reinstate the Adoption Disclosure Register as a fully active register functioning to search and seek consent to the disclosure of adoption information from adult adoptees and birth family members.
- Ensure this search service is retroactive, efficient and accessible.

ACC goes on to state the following:

- *This new law was the culmination of over a decade of effort on the part of adoption advocates across Ontario. The unique features of this law, which include access to information for both adult adoptees and birth parents and the inclusion of a "No Contact" order, were deemed inadequate to protect the privacy of those who did not wish to have their identities revealed.*

- *We recognize the difference between the release of information and a relationship and do not believe the two are necessarily linked. Adoptees and birth parents, like other adults, can make decisions about their own lives provided they have the information to do so, "The Adoption Council of Canada continues to believe that adult adoptees' rights to learn about their history and therefore their identity is fundamental, as is their unqualified access to their original birth registration.*

In a summary published on-line by ACC, the *Newfoundland Adoption Information Act* of 2003 provides the following:

- If you are an adopted person, age 18 and older, or a birth parent whose adoption was finalized before April 30, 2003, and want to protect your privacy, you can choose a disclosure veto or a no-contact declaration.

- Disclosure Veto -- Filing a disclosure veto prevents the government from releasing identifying information which would identify you. You have until April 30, 2004 to file a disclosure veto.

- No-Contact Declaration -- Filing a no-contact declaration allows releasing a copy of the original birth registration and the adoption order, but legally prohibits personal contact with you. Violating a no-contact declaration can lead to fines up to $10,000 or jail terms up to 90 days, or both. You have until April 30, 2004 to file a no-contact declaration.

- You may apply to the Vital Statistics Division to obtain copies of records on file. Vital Statistics will start releasing information on April 30, 2004. The one-year delay allows people time to file their disclosure veto or no-contact declaration. If you have already filed a disclosure veto with Post Adoption Services you must file a new veto or no-contact declaration with Vital Statistics.

- The choice to file a disclosure veto or a no-contact declaration is yours. You may feel that, though not able to proceed with contact, you want to explain your choice, or pass along details of your family and medical history. You can do this by filing a written statement with Vital Statistics.

The Committee consulted with a Social Worker with the Adoption Disclosure Services Program who expressed concerns about current restrictions regarding birth fathers. Currently, according to the requirements of the *Vital Statistics Act*, a birth father who was not married to the birth mother at the time of the child’s birth, can only be included on a birth certificate if the birth father acknowledged paternity.

This same issue was identified in a memo from the Manager of Adoption Services who forwarded an excerpt from a decision of the Adoption Appeal Committee as follows:

> The Appeal Committee of the *Adoption Information Act* in an appeal decision under the *Act* stated the need for an "expansion of the definition of the birth father under section 3(h)… to include an individual named as the birth father by the birth mother in the birth record, regardless of whether there is an acknowledgment of paternity, where there is credible and trustworthy evidence that the individual named is indeed the birth father. While the Appeal Committee recognizes that these recommendations are not binding, we feel strongly that they should be included in this decision for consideration by the Director of Child Welfare.

In terms of requests for searches, program staff state that current practice is to search extensively world wide to connect birth parents and adoptees and that there is no waiting list.

Although the Committee did not receive submissions from First Nation constituents, the Committee recognizes that in other parts of Canada, many Aboriginal children were removed from their communities, usually placed in non-native foster homes, or adopted into non-native homes, particularly during the 1960s, (often referred to in the literature as "the sixties scoop")18. The Committee is not aware that this is an issue in Nova Scotia.

[18] The Committee reviewed a report by the Native Children and Family Services Toronto which cites United Native Nations, Gitxsan Reconnection Program, Wet'su wet'en Repatriation Program), and Manitoba (Manitoba First Nations Repatriation Program), and the study '*Identity lost and found: Lessons from the sixties scoop', Raven, 2005*

Recommendations:

25. That Nova Scotia follow the example of the Newfoundland legislation:

> If you are an adopted person, age 18 and older, or a birth parent whose adoption was finalized before [12 months before the declaration of the change to the *Act*], and want to protect your privacy, you can choose a disclosure veto or a no-contact declaration."
>
> Disclosure Veto -- Filing a disclosure veto prevents the government from releasing identifying information which would identify you. You have until [12 months after the change in the legislation] to file a disclosure veto.
>
> No-Contact Declaration -- Filing a no-contact declaration allows releasing a copy of the original birth registration and the adoption order, but legally prohibits personal contact with you.

26. That violation of a "no contact" order result in severe penalties (i.e, $50,000 plus a prison term or provisions consistent with the Section 94 (4) of the *CFSA*).

27. The definition of the birth father under section 3(h)… be changed to include an individual named as the birth father by the birth mother in the birth record, regardless of whether there is an acknowledgment of paternity, where there is credible and trustworthy evidence that the individual named is indeed the birth father.

Part Three

Mandate of the Advisory Committee as stated in Section 88(1) of the *Children and Family Services Act*

Advisory Committee – Section 88

The Mandate of the Advisory Committee is stated in Section 88(1) of the *Children and Family Services Act.* This section states:

88(1) The Minister shall establish an advisory committee whose function is to review annually the provisions of this *Act* and the services relating thereto and to report annually to the Minister concerning the operation of the *Act* and whether the principles and purpose of the *Act* are being achieved.

The Advisory Committee experienced significant problems concerning the functioning of the committee. This is due in part to the lack of provision in the legislation to specify terms of office to ensure that the committee functions on a continuing basis versus the current system of making appointments annually.

The impact of having annual appointments affects the efficiency of the committee in terms of its ability to produce an annual report. This Committee found the task of reviewing the *Act* in its entirety to be particularly daunting, especially since the last report was submitted eight years ago, in 1999. A standing committee would allow the members to build an ongoing annual report focusing on different sections of the *Act* annually.

Another difficulty the committee faced was the time commitment necessary to fulfill the mandate of Section 88 of the *Act*. Some members were required to travel from distances across the Province to attend all day meetings, and a great deal of time was spent between meetings to review materials and prepare reports. Clear expectations regarding the level of commitment and effort involved in the work of the committee should be conveyed to potential new committee members.

Additionally there have been significant delays in filling vacant positions as they became available due to expiration of terms and resignations and controversy concerning appointments made.

In particular questions arose concerning the two appointments required under s.88 (a) *two persons whose children have been, are or may be in need of protective services.* The Advisory Committee sought the advice concerning interpretation of this provision from Dr. Rollie Thompson, Professor, Dalhousie Law School, and one of the original authors of the *Act*. His comments are as follows:

> The clear intent of section 88 was to construct a balanced and independent advisory committee, reflecting the many interests involved under the *Act*. Consistent with that intent, the section carefully identifies the interests and experiences of seven of those to be appointed. While the Minister makes all the appointments, the idea was that the Minister would comply with the letter and spirit of s. 88, in order to get balanced and independent advice.

> The intent of para. (a) is to appoint two parents with direct experience with the child welfare system as a parent, either in the past, present or immediate future, either in the court system or on a child welfare agency caseload. At a minimum, I would think, these persons would have to have had at least an open file at a child welfare agency as parents who got past the intake stage and received services from an agency…

To suggest that "any parent in Nova Scotia" might qualify under s. 88(a) would ignore the reality that most parents never have contact with a child welfare agency and certainly never have a file opened with an agency. The vast majority of parents who would qualify under paragraph (a) are low-income parents, mostly women. Many are black or Mi'kmaq. The parents appointed under paragraph (a) would be expected to reflect that reality.

Moreover, it was felt that there should be representation on the committee from youth who are currently in care or who were recently in care.

Recommendations:

28. That Section 88 of the *CFSA* be amended to provide for a standing committee, with members appointed for two-year terms. This would ensure continuity.

29. Clear expectations regarding the level of commitment and effort involved in the work of the committee should be conveyed to potential new committee members.

30. That Section 88 of the *CFSA* be amended to provide for the inclusion of a youth who is currently in care, or was recently in care.

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Appendix A

Organization Submissions and/or Presentations

Antigonish Women's Centre
Association of Psychologists of Nova Scotia
Cumberland Community Health Services
IWK Health Centre Child Protection Team
IWK Health Mental Health Program, Court Assessment Services
Nova Scotia Advisory Council on the Status of Women
Nova Scotia Department of Justice
Nova Scotia Association of Social Workers
Nova Scotia Legal Aid (supporting documents: Nova Scotia Child Welfare Reform, compiled by the Centre of Excellence for Child Welfare, February, 2002; Child Protection Mediation: It's Time has Arrived, Canadian Family Law Quarterly, Volume 16, 1998)
Mona Clare Committee for a Public Inquiry, 2004
Response: A Thousand Voices
Second Story Women's Centre
The *Voice*, a Nova Scotia Youth in Care Newsletter group
Transition House Association of Nova Scotia
Women's Innovative Justice Initiative
Avalon Sexual Assault Centre
Elizabeth Fry Society, Cape Breton
Elizabeth Fry Society, Mainland Nova Scotia
N.S. Association of Women and the Law
Transition House Association of Nova Scotia
Women's Centres CONNECT

The Committee received input from an additional 35 individuals in the form of presentations and/or letters. The Committee received 37 submissions in writing and 14 verbal presentations from individuals and groups for a total of 51 submissions received.

Error!

Appendix B
Campaign Literature

Campaign Literature

What do you think about Nova Scotia's *Children and Family Services Act*?

The Minister's Advisory Committee on the *Children and Family Services Act* and *Adoption Information Act* is looking for your input.

The Advisory Committee reviews the requirements and services under the legislation and provides advice to the Minister of Community Services. Your input will be considered as part of the Advisory Committee's review.

The Advisory Committee membership includes parents, persons from the cultural, racial or linguistic minority communities, a legal aide representative, and a child welfare agency representative.

If you have any recommendations or concerns with respect to the *Children and Family Services Act* or the *Adoption Information Act*, or would like to meet with the Advisory Committee, please contact:

Cheryl Harawitz
Advisory Committee Chair, *Children and Family Services Act*
P.O. Box 696, Halifax, N.S., B3J 2T7
FAX: 902-424-0708

* All submissions are subject to the provisions of the Freedom of Information and the *Protection of Privacy Act.* Please identify if you would like your submission, or parts of your submission to remain confidential.

Que pensez-vous de la loi sur les
services à l 'enfance et à la famille de la Nouvelle Écosse?

Le comité consultatif du ministre pour la loi sur les services à l 'enfance et à la famille (Children and Family Services Act),, ainsi que la loi sur l'information concernant l'adoption Adoption nformation ct),, ouhaite obtenir vos commentaires.

Le comité consultatif examine les exigences et les services en vertu de la loi et offre des conseils au ministre des Services communautaires. Vos commentaires seront pris n considération dans e cadre de 'examen du omité consultatif.

Si vous avez des recommandations ou des préoccupations relatives à la loi sur les services à l 'enfance et à la famille ou à la loi sur l 'information concernant l 'adoption, ou si vous souhaitez rencontrer le comité consultatif,veuillez communiquer avec :

Cheryl Harawitz

Présidente u comité onsultatif

Loi sur les services 'enfance t à la amille
C.P. 96, alifax N.-ÉÉ.) 3J T7
Télécopieur : 02-4424-0708
Courriel FSA _aadvisory_ccommittee@gov.nns.cca

La ate limite e présentation es oumissions st e 20 ctobre 006.
**** Toutes les soumissions sont sous réserve des dispositions de la loi sur l'accès à l'information et la protection de la vie privée (Freedom of Information and Protection of Privacy Act). Veuillez indiquer si vous souhaitez que votre soumission, en tout ou en artie, oit traitée de açon onfidentielle.***

NOVA SCOTIA
Advisory Committee to the
Minister on the *Children and*

P.O. Box 696
Halifax, N.S. B3J 2T7
Phone: 424-5036
Fax: 424-0708

Dear Ms.:

A new Minister's Advisory Committee for the Children and Family Services and Adoption Information Act has been appointed. Your group provided significant information to assist in the creation of recommendations included in previous Advisory Committee reports. One of our fist tasks is to review those reports. We would appreciate your input again.

We are accepting written submissions until October 20, 2006. If you prefer, we can make time available for you to meet with us to discuss issues you would like the Committee to address. Written submissions can be sent by email to CFSA_advisory_committee@gov.ns.ca or mailed to the above address.

I enclose a copy of an advertisement requesting input from the community. We would appreciate it if you could post it in a public space so that individuals with interests in the Children and Family Services Act and Adoption Information Act can contact us to submit their opinions.

Thank you for your help.

Yours sincerely,

Cheryl Harawitz, MSW, RSW
Chair Minister's Advisory Committee for the Children and Family Services Act and
Adoption Information Act

Enclosure

Appendix C

Advisory Committee to the Minister 2008

Summary of Recommendations

Part One: Service Issues and Child Protection Legislation

1. The Committee supports the recommendations of the Nunn Commission and *Our Kids are Worth It.*

2. From a social policy and funding perspective, there should be more focus on proactive rather than reactive services, and that the emphasis should not be on child welfare/child protection to provide prevention services to families.

3. There should be a broadening of service sources and more collaborative services, streamlining of availability of services, with multiple entry points.

4. That a central clearinghouse for family related information similar to the Senior Secretariat be developed.

5. That funding be established for preventative services on a secure/ongoing basis including but not limited to the following:

Family in-home support services in all communities

Family resource centres[19]

Family life education programs in schools

Programs and services related to issues pose risk to children such as substance abuse, family violence, and gambling

Programs to address barriers to preventative services such as transportation, language, and childcare

6. That mediation services be available in all Family Court jurisdictions and not just in the Unified Family Court.

7. That the *CFSA* be amended to provide the trial judge with the jurisdiction to direct the parties to mediation in terms similar to rule 70.11 with the provision that 70.11(7) be amended for the purpose of child protection proceedings to re-affirm the obligations set out in section 23(1) of the *CFSA.*

[19] Child Welfare in Canada 2000 - January 2000.

8. That the *CFSA* require agency workers to notify parents at the earliest stage of any protection proceeding, even when no court action is contemplated, of the option for mediation outlined in section 21.

9. That section 21(2) be amended to confirm that the suspension of the proceedings is 3 months in total over the course of the proceedings.

10. That updated training for mediators be provided to build up a province-wide roster of child protection mediators. The training should include an orientation about the special concerns and sensitivities around family violence.

11. That protocol usage training on the use of mediation for all child protection workers be instituted.

12. That the Department of Community Services partner with Family Mediation Nova Scotia, Nova Scotia Legal Aid, the Nova Scotia Transition House Association to increase awareness, availability and use of mediation services.

13. To change the wording of Section 3 (1) (e) to read **"**child means a person under the age of 19 years unless the context otherwise requires,**"** and eliminate Section 14. (2).

14 To change the wording of Section 19 to "Service Agreements with 16-18."

15. That funding be made available for the creation of a program to serve this age group.

16. That section 48 (1) (a) of the *CFSA* be amended so that all provisions are consistent with the provisions of Section 9 of the *Maintenance and Custody Act*.

17. That the Department of Community Services fully commit to implementing a pilot project on the use of Family Group Conferencing.

18. That the word "repeated" be removed from 22 (2)(i) of the *CFSA*.

19. That a "risk of" clause similar to Section 22 (2) (b), (d), (g), (ja) be added after 22(2)(i) to identify the substantial risk to children as a result of domestic violence.

20. That child protection agencies more frequently consider utilizing Section 30 of the *CFSA* in situations of domestic violence.

21. That the Department of Community Services provide ongoing core funding dedicated to prevention, education, treatment, and support to alleviate domestic violence in Nova Scotia.

22. That domestic violence prevention initiatives and services be specially designed for specific targeted groups (e.g. immigrants, teenagers, persons with disabilities and senior citizens).

23. That the Department of Community Services and the Department of Justice examine the work of the Parent Education in Child Protection Matters Committee and commit to the development of parent education materials that are understandable, available, and accessible to the public.

24. The establishment of an Office of the Children's Advocate, which would report directly to the Legislature (much like the Office of the Ombudsman).

Part Two: *Adoption Information Act*

25. That Nova Scotia follow the example of the Newfoundland legislation:

> If you are an adopted person, age 18 and older, or a birth parent whose adoption was finalized before [12 months before the declaration of the change to the *Act*], and want to protect your privacy, you can choose a disclosure veto or a no-contact declaration."
>
> Disclosure Veto -- Filing a disclosure veto prevents the government from releasing identifying information which would identify you. You have until [12 months after the change in the legislation] to file a disclosure veto.
>
> No-Contact Declaration -- Filing a no-contact declaration allows releasing a copy of the original birth registration and the adoption order, but legally prohibits personal contact with you.

26. That violation of a "no contact" order result in severe penalties (i.e, $50,000 plus a prison term or provisions consistent with the Section 94 (4) of the *CFSA*).

27. The definition of the birth father under section 3(h)… be changed to include an individual named as the birth father by the birth mother in the birth record, regardless of whether there is an acknowledgment of paternity, where there is credible and trustworthy evidence that the individual named is indeed the birth father.

Part Three: Advisory Committee Mandate

28. That Section 88 of the *CFSA* be amended to provide for a standing committee, with members appointed for two-year terms. This would ensure continuity.

29. Clear expectations regarding the level of commitment and effort involved in the work of the committee should be conveyed to potential new committee members.

30. That Section 88 of the *CFSA* be amended to provide for the inclusion of a youth who is currently in care, or was recently in care.