

PROTECTING VULNERABLE CHILDREN

**Report of the Panel of Experts
on Child Protection**

March 1998

March 9, 1998

The Honourable Janet Ecker
Ministry of Community and Social Services
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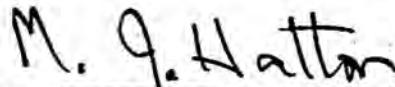
Dear Minister Ecker:

The Panel of Experts on Child Protection has completed its review of key provisions in the Child and Family Services Act. We are pleased to submit our report, Protecting Vulnerable Children.

The completion of this legislative review has been a rewarding and challenging task for the panel members.. We have welcomed the opportunity to offer our views on the future direction of child protection in this Province. Within the time allotted, we have endeavoured to give full and fair consideration to the legislative issues within the context of the Panel's mandate.

The Panel has been impressed by the preparation, energy and commitment of those who made oral and written presentations. We were particularly impressed by the young persons interviewed; they were eloquent in their plea for a more caring and more effective child protection system. We hope our recommendations will improve the safety, protection and well-being of all vulnerable children in this Province and enhance their opportunities for secure, affectionate and nurturing care.

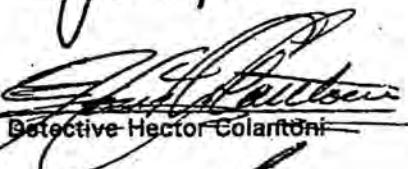
Yours very truly,



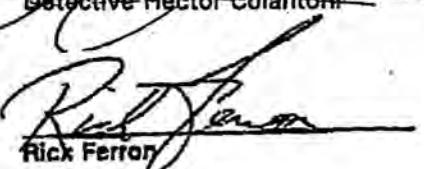
Judge Mary Jane Hatton (Chair)



Justice Grant Campbell



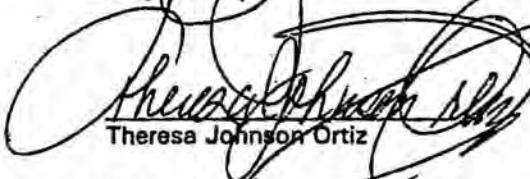
Detective Hector Colantoni



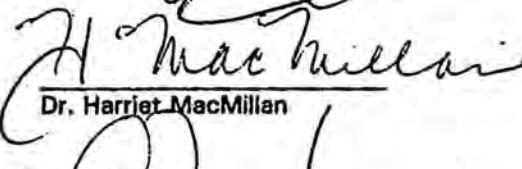
Rick Ferron



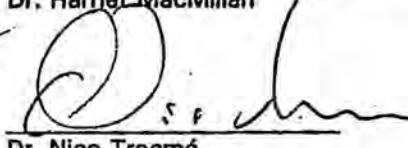
Dr. Dirk Huyer



Theresa Johnson Ortiz



Dr. Harriet MacMillan



Dr. Nico Trocmé

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EXECUTIVE SUMMARY

Following the deaths of Ontario children while receiving child welfare services the Minister of Community and Social Services created a panel of eight experts to examine the *Child and Family Services Act*. The Panel was asked to indicate whether or not the legislation should be amended.

The Panel determined that the declaration of principles and the criteria for best interests in the Act require revision to ensure that the safety, protection and well-being of each child are paramount. The needs of the child must be the dominant factors in making any decision.

The Panel gave careful consideration to whether the current legislation addresses adequately the issue of children suffering from neglect. The Panel concluded that while opinions vary as to whether neglect is included in the Act, practice regarding intervention in neglect is inconsistent. Even if the Act could be interpreted to cover neglect leading to physical harm, it does not cover neglect leading to developmental or emotional harm. The Panel recommended that neglect be included in the Act with a definition and examples.

The Panel concluded that changes were necessary to the grounds for finding a child in need of protection. There should be more focus on the characteristics, past conduct and behaviour of the caregivers when determining the risk of physical, developmental or emotional harm to a child. Exposure to family violence should be included as a separate ground for protection and the Act should authorize the removal of the perpetrator from the child's residence.

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The Panel determined the requirement that the risk of harm be "substantial" was too onerous and did not always adequately protect children. A less onerous test, such as likelihood of harm, should be considered. The Panel recommended that assessments and information about past parenting be available and admissible at any stage of the court process.

The interpretation of the Act was found to be inconsistent within sectors and across all sectors. There is considerable variation in the interpretation and application of such key concepts as the least restrictive course of action, substantial risk and the autonomy and integrity of the family. Lengthy delays in the decision-making process are common. In the report, the Panel discusses these problems and recommends legislative changes.

The Panel determined that, for the most part, the legislation is clear with respect to roles and responsibilities. However, the provisions for duty to report and the provisions for information-sharing in the legislation are inadequate. There is also a wide variance in how roles and responsibilities are carried out. For example, there is lack of adherence to mandatory time limits and failure to enforce court orders. A number of legislative and non-legislative recommendations have been made to address these issues.

The Panel recognizes that legislative change is only one aspect of the solution. Of critical importance are the Panel's recommendations regarding the availability of adequate resources and the need for a mandated review of the interpretation, application and impact of legislative change.

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BACKGROUND

The recent deaths of Ontario children while receiving child welfare services have raised concerns about child protection practices, policies and legislation in Ontario. The Child Mortality Task Force and Coroners' juries which examined these deaths raised specific concerns as to whether or not the legislation adequately protected children from abuse and neglect. The task force and individual juries recommended amendments to the legislation that governs child protection, the *Child and Family Services Act*.

At the same time the views of those working in the child protection system differed greatly as to whether the problem was the legislation itself or the way in which the legislation was being interpreted. There was also no consensus on what constituted neglect, and whether it was included in the present legislation.

To address these issues, the Minister of Community and Social Services, Janet Ecker, announced the creation of a panel of eight experts to examine key aspects of the *Child and Family Services Act*. The Panel was asked to provide a report which specifically indicated whether or not the legislation should be amended.

The Panel has recommended legislative changes. It is important to emphasize that legislative amendments are only one aspect of the solution to the current problems in the delivery of child protection services. The Panel recognizes the importance of many other initiatives which intersect with and impact on these legislative recommendations.

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The issues to be addressed are complex and require a careful consideration of many factors. The present lack of empirical data regarding practice and implementation issues was ascertained by the Panel. However, there was a broad consensus of experience and views from many sectors on the key issues examined by the Panel.

Critical to the successful implementation of any legislative change is the provision of adequate resources. Throughout the review, the Panel was continually reminded that adequacy of resources affects the ability of service providers to intervene, assess and treat.

Equally important is the need to ensure that child welfare is addressed as a community responsibility affecting each citizen. Growing knowledge with regard to the importance of early childhood experiences supports the need to ensure that a range of community services are available to families from birth to adulthood. Members of all sectors expressed their desire and willingness to collaborate and plan as equal partners with child protection agencies to ensure the protection and well-being of vulnerable children.

METHODOLOGY

The Panel was announced on November 14, 1997. The eight members of the Panel were Judge Mary Jane Hatton (Chair), Justice Grant Campbell, Detective Hector Colantoni, Mr. Rick Ferron, Dr. Dirk Huyer, Ms. Theresa Johnson Ortiz, Dr. Harriet

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MacMillan and Dr. Nico Trocmé. The members were chosen based on their demonstrated experience, expertise and commitment to child welfare. Their collective backgrounds include frontline, management and professional experience in the fields of child welfare, social work, law, justice, education, foster care, Native service delivery, law enforcement, medicine, psychiatry, and forensic investigation.

As a guide to their activities the Panel was specifically asked to consider the following questions:

1. *Do the provisions in the legislation reflect the right balance between protection of children and family preservation?*

2. *Is the legislation clear with respect to "child in need of protection"?*

3. *Is the burden of proof for finding a child in need of protection from abuse or neglect at an appropriate level?*

4. *Is the legislation being properly interpreted and applied at key decision points, e.g., intake, type of service, court proceedings, planning for the stable and long-term placement of children?*

5. *Is the legislation clear about the roles and responsibilities of different service sectors?*

The Panel was asked to examine selected materials including relevant court decisions, recommendations from Coroners' inquests, the report of the Child Mortality Task

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Force, recent research, practice in other jurisdictions and emerging themes from compliance reviews.

The Panel convened its first meeting in mid-November 1997 and moved through initial orientation into the development of an action plan within a four-month time frame as required by the Minister. The action plan called for a comprehensive review of selected materials and research. Panel discussion of this material was followed by twenty-six oral presentations to the Panel in late November and throughout December. Information developed during this two month period was compiled and used to guide focus group discussions held in communities across the Province. At these locations, the Panel also met with selected groups of individuals representing child welfare, justice, health, foster parents, parents, youth and varied community service providers. Ice storms in eastern Ontario necessitated a change in two of the planned visits; these two focus groups were later conducted via teleconference. In total the Panel spoke to over three hundred and fifty individuals between November and February representing all major geographic regions in Ontario, and a mix of urban and rural communities (see Appendix C). The Chair of the Panel was present at all meetings.

The Panel received written submissions from eighty-six individuals and organizations.

Throughout the course of its work the Panel encountered diligence, cooperation and commitment from all sectors. Individuals and groups went out of their way to accommodate the Panel's deadlines and schedules. The quality of the presentations and submissions was excellent.

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In February, the Panel reviewed all written submissions and presentations to formulate the recommendations and to prepare the written report for submission to the Minister in early March 1998.

OVERVIEW

The ***Child & Family Services Act***, which was proclaimed in 1984, replaced ***The Child Welfare Act*** of 1978. The new Act afforded greater legal rights, both substantive and procedural, to parents and children. The ***Child & Family Services Act*** limited the intrusion of child protection agencies into the family, except in cases of clearly defined harm to children. A set of principles was introduced into the Act for the delivery of integrated services to families and children and a best interests test was developed to guide the decisions and the planning for children.

Although the ***Child & Family Services Act*** achieved many of its goals, the Panel has concluded that key provisions in the current legislation have limited the ability of child protection agencies to protect children from serious harm or risk of serious harm. The legislative principles regarding the least restrictive or disruptive course of action and the autonomy and integrity of the family have been emphasized to the detriment of the child's safety, protection and well-being.

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Where the rights of the parents have been in conflict with the needs of the child, the legislation has not always been interpreted in accordance with its apparent primary purpose to promote the best interests of the child.

The ***Child and Family Services Act*** did not anticipate the changes in society which have affected child protection in the last decade. Since the writing of the ***Child and Family Services Act***, there is increased recognition and understanding of the importance of early childhood development. There is also an increased awareness and appreciation of the needs of older children and young adults for continued care and stability.

After careful review, the Panel has reached the conclusion that the principles and best interests test require revision to ensure that the interests of the child predominate in any decision or in any action. The Act requires simple concepts and plain language which will contribute to a common understanding and interpretation.

The ability of protection workers to intervene early and assess the family's ability to meet the child's physical, developmental and emotional needs is crucial. The focus on non-intrusion into the family by the state has contributed to barriers in obtaining crucial information about a child. Accurate, timely reporting and information-sharing is necessary for the investigation, assessment and planning regarding the needs of children and their families.

Not only is information about the parent's current situation important but access to records related to past parenting of any child and past conduct in general is equally

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vital. This information is essential to a thorough investigation and early assessment by protection workers. It is also crucial that this information be made available to the judge at all decision-making stages of the court process.

Protection workers must be able to have access to the child and to have the authority to apprehend the child if required. The tests for apprehension and for seeking interim care of the child should be consistent and should focus on the safety and well-being of the child, in addition to the least disruptive intervention for the child.

The present grounds for determining when a child is in need of protection have limited the ability of agencies to protect children. The requirement that the child be at substantial risk of harm is too onerous.

There is new knowledge and understanding regarding the damaging impact of child neglect, emotional abuse and exposure to domestic violence. These developments need to be more explicitly reflected in the spectrum of legislative interventions.

It is hoped that earlier intervention will prevent or at least minimize the damage to vulnerable children and increase the opportunities for effective and earlier services to children and parents. Earlier investigation and assessment by protection workers is a key component of any child protection intervention.

The protection worker must receive specialized training and have the time, ability and resources to accurately assess the risk factors to the child as well as the parenting capacity of the primary caregivers. The evidence, knowledge, training and opinions

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that caused the protection worker's interventions should be admissible in court proceedings. Not only will the evidence of the protection worker be instructive, it will be subject to appropriate scrutiny and evaluation.

Provided the parents have the capacity and motivation to change, the appropriate available services should be provided. The intervention plan by the agency must establish realistic goals for the child, the parents and the service providers, and must include measurable outcomes. Where there is opposition to the agency's plan of care, the parents should prepare their own plan of care which sets out their parenting responsibilities and goals.

Each intervention should be the least disruptive for the child, rather than the least intrusive for the family. The over-riding consideration must remain the safety, protection and well-being of the individual child. If the child cannot be protected from harm nor provided with the necessary stability and continuity of care within the family, a plan for the child's permanent care must be developed. Any such plan must be child-focussed. The need for stability and permanency is particularly important for children in their earliest years.

If a permanent wardship order is being made, the issue of the child's need to maintain meaningful positive relationships with significant others and the need to secure permanency for the child through adoption must be carefully weighed. Both considerations may need to be accommodated.

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All children, but particularly younger children, suffer from lengthy delays in planning and decision-making for their permanent care. Maximum time limits in the legislation must be geared to the age of the child. However, the legislation must clearly indicate that these are absolute maximums of the accumulation of all periods in care and not just continuous time in care on the most recent occasion. The maximum times are not appropriate targets in cases when earlier decision-making is warranted.

If a non-agency assessment is necessary and will address issues not already covered in the protection worker's assessment, the non-agency assessment should be arranged at the earliest possible stage in the proceedings. The referral or order should include specific instructions outlining why the assessment is needed and which clinical issues are to be addressed. Assessment reports should be provided to the agency workers, the parents and the judges at all decision-making stages of the court process. The assessments must be delivered within reasonable time frames to minimize delay for the child.

Procedural and evidentiary requirements of the court process appear to cause significant delay in permanency planning for children. There is a compelling plea for the legal system to address, in a comprehensive way, the need for timely decision-making. This system should include effective caseflow management, efficient evidentiary procedures and a civil standard of proof. Judicial decisions should respect the child's need for stability, continuity and permanence as early as reasonably possible, taking into account the child's developmental stage. Court orders for supervision and wardship should reflect the plans of care and set out explicit goals,

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services and outcomes. These orders should be monitored. Non-compliance with these orders must be reported and consequences identified for such non-compliance.

Other alternatives to the potentially adversarial court process are available and should be considered by parties and judges. Mediation by trained and knowledgeable persons and other dispute-resolution strategies could be beneficial in certain cases and should be made available on a voluntary basis.

The legislation must clearly and unequivocally establish that the paramount objective of our society is to ensure each child's entitlement to safety, protection and well-being. The prevention of child abuse and neglect and the appropriate interventions to alleviate harm to children is everyone's responsibility. This shared goal begins with the timely reporting of abuse and neglect and the cooperative sharing of information across all sectors. It continues through the investigation and assessment stages and during the provision of family support services. When intervention and court action are required, there is a strong need for all of the participants in the justice system (including protection workers, service providers, assessors, lawyers, judges and administrators) to work together in a coordinated collaborative way to achieve the most fair, efficient and effective decision-making process for children and their caregivers. All of the sectors, including other service providers and other ministries, must be clear about their roles and responsibilities in ensuring compliance, consistency and accountability throughout the child protection system.

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RECOMMENDATIONS

DECLARATION OF PRINCIPLES

Section 1 of the Act sets out a list of guiding principles for the interpretation and implementation of the legislation. The principles attempt to balance the rights of the family to be free from involuntary unwarranted state interference and the need for state intervention; where appropriate, to protect the well-being of vulnerable children. Although the Act sets out as a paramount objective the promotion of the best interests, protection and well-being of children, other potentially competitive principles such as "the autonomy and integrity of the family unit" and "the least restrictive or disruptive course of action to help a child or family" are also set out as important objectives. These other objectives have been interpreted in such a way as to over-emphasize the rights and interests of parents rather than the needs of the child. This over-emphasis on the rights of the parents has impacted several areas of child protection policy, practice and decision-making. For example, it has been difficult to obtain information about a child's situation, to investigate adequately and to intervene in an effective and timely manner for the child. In the event of a conflict between the rights of the parents and the needs of the child, the lack of clarity as to which principle has priority has compromised the safety, protection and well-being of some children.

The declaration of principles needs to state clearly that each child is entitled to safety, protection and well-being as the fundamental and dominant purpose of the legislation

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and that all other purposes are secondary. This over-riding principle should stand apart from any list of other purposes to emphasize its importance.

The other purposes must focus on the least disruptive intervention for the child and the child's needs.

DECLARATION OF PRINCIPLES

The Panel recommends that the declaration of principles be reworded to include the following paramount purpose and other purposes as follows:

- The paramount purpose of this Act is to ensure each child's entitlement to safety, protection and well-being.
- The secondary purposes of this Act are:
 - to recognize that a family is the preferred environment for the care and upbringing of a child and the responsibility for the safety, protection and well-being of each child rests primarily with the parents
 - if, with available support services, a family can ensure the safety, protection and well-being of the child, to provide such support services
 - to recognize that the least disruptive intervention for the child that is available and appropriate should be considered
 - to make decisions relating to the child in a timely manner that respects the child's stage of development, the child's views, the child's needs and the importance of stability, continuity and permanence in the child's care

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- to preserve, where possible, the cultural, racial, religious and linguistic identity of the child
- to recognize that Native people should be entitled to provide, wherever possible, their own child & family services, and that all services to Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of extended family

BEST INTERESTS

There is confusion caused by the different considerations in the list of purposes in Section 1 of the Act and the list of criteria for best interests in Part III of the Act. Where the court is directed to make certain decisions based on best interests in Part III, it is unclear whether the court is required to refer to the guiding principles in addition to best interests. The criteria for best interests should be consistent with the guiding principles wherever possible.

All interim and final orders for supervision, wardship and access should be decided using the same criteria and that criteria should be the child's best interests.

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BEST INTERESTS

The Panel recommends that best interests be the sole criteria for making orders of supervision, wardship and access, including interim orders.

The criteria should include:

- the child's entitlement to safety, protection and well-being as the paramount consideration
- the child's physical, mental, developmental and emotional needs and the appropriate plan of care to meet those needs
- the importance of stability, continuity and permanence in the child's care as early as reasonably possible
- the quality of the relationship the child has with a parent, sibling or other person, the importance to the child of maintaining the relationship and the effect of maintaining the relationship on the stability, continuity and permanence of the child's care
- the effect on the child if there is delay in making a decision
- the child's views and wishes if they can be reasonably ascertained
- the child's cultural, racial, religious and linguistic identity

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SUBSTANTIAL RISK

The use of the test of substantial risk has left children in dangerous situations. The Panel frequently heard that too much evidence is required to meet the test and the burden of proof is too onerous. Since the introduction of this test there has been a wide range of judicial interpretations on the meaning of the word "substantial". A less onerous test is necessary to ensure the safety, protection and well-being of children.

SUBSTANTIAL RISK

The Panel recommends that the test of substantial risk should be eliminated and replaced by another less onerous test as appropriate. Words such as "likelihood of risk" have been suggested and may be more appropriate.

EXPANSION OF GROUNDS FOR PROTECTION

The Panel heard that there are some situations where children may be in need of protection, and these situations are not covered adequately in the current legislation. These situations include behaviour and characteristics of caregivers which may increase the likelihood of harm to children. A child may be in need of protection if such behaviour and characteristics are present and are associated with physical, developmental or emotional harm. It is difficult to separate physical, developmental and emotional harm.

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EXPANSION OF GROUNDS FOR PROTECTION

The Panel recommends that the grounds for finding a child in need of protection be expanded to include physical, developmental or emotional harm, or the risk of such harm as a result of:

- the mental, emotional or developmental condition of the parent or any person having charge of the child
- the age or level of maturity of the parent or any person having charge of the child
- significant alcohol or drug abuse by the parent or any person having charge of the child
- a history of criminal acts against any child by the parent or any person having charge of the child
- a history of abuse or neglect of any child by the parent or any person having charge of the child

NEGLECT

Opinions varied significantly as to whether neglect is included in the Act. There was agreement, however, that practice regarding intervention in neglect cases is inconsistent. Even if the Act could be interpreted to cover neglect leading to physical harm, it does not cover neglect leading to developmental or emotional harm.

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Special reference to the term neglect as a separate heading in the Act will emphasize that it is a ground for protection. The Panel received many requests that neglect be included in the Act and that the term be defined with examples. The Panel considered the disadvantages of a descriptive list, namely, a list may restrict professional judgment and may fail to cover all neglectful situations. The Panel concluded that the need to move toward a common understanding of neglect across all sectors of the province was important. Therefore the Panel has recommended that neglect be defined with examples.

NEGLECT

The Panel recommends that neglect and risk of neglect be explicitly included as a ground for protection. Neglect should be linked to physical, developmental or emotional harm. The definition of neglect should include a non-exhaustive list including the following factors:

- failure to provide the necessities of life such as adequate living conditions, adequate nutrition, adequate education and adequate medical care
- failure to provide adequate affection, adequate emotional support and adequate stimulation
- failure to adequately supervise, protect or control the child

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EMOTIONAL ABUSE

The definition of emotional harm in the present Act is seldom used because the test is too onerous. The present test which focusses on symptoms of the child should be replaced by a test which focusses on the behaviours of the caregiver.

EMOTIONAL ABUSE

The Panel recommends that the present test for emotional abuse be eliminated and replaced by the following list of considerations:

- a pattern of rejection of the child
- a pattern of humiliating and belittling the child
- a pattern of threats of harm and accusations towards the child
- the reinforcement or rewarding of criminal or anti-social behaviour by the child

DOMESTIC VIOLENCE

The Panel gave very careful consideration to the inclusion of exposure to domestic violence as a ground for protection. Educators, health professionals and agencies, as well as a review of literature, indicate that children exposed to violence are at an increased risk of abuse and long-term emotional harm.

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The Panel discussed the complexity of domestic violence issues with individuals who work with these children and with their families. There was acknowledgement that these children do suffer. At the same time, there was awareness that the caregiver who is also a victim should not be blamed for the behaviour of the perpetrator.

After careful consideration the Panel has recommended that exposure to domestic violence should be included as a ground for protection. The Panel cannot ignore the significant negative impact that this behaviour has on a child. An intervention when a parent is the victim, not the perpetrator, of the violence, may revictimize that parent. The Panel recommends that the legislation provide for the removal of the perpetrator of the violence. The court must have the ability to order restraining orders at any time and for longer periods.

DOMESTIC VIOLENCE

The Panel recommends that exposure to family violence be included as a separate ground for protection.

The Panel recommends that the Act authorize the removal of the perpetrator from the child's residence.

The Panel recommends that the Act allow interim and final restraining orders. The duration of restraining orders should be extended to twelve months.

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PAST HISTORY

Both the child welfare and the justice system acknowledge the critical importance of past history to their decision-making. Experience and research suggest that past behaviour is the best predictor of future behaviour. The current system wastes time and duplicates effort in its failure to provide effective means by which to share and utilize past history. The potential caregiver's past history should be considered when determining whether the person will be given the opportunity to care for children.

PAST HISTORY

The Panel recommends that evidence regarding the past parenting and past conduct of caregivers be admissible at any stage of the court proceeding including the interim motion, the finding and the disposition.

ASSESSMENTS

In some situations a judge may require an assessment which goes beyond the expertise of the protection worker. These assessments may be necessary at any stage in the proceedings. The results of these assessments should be admissible in any proceeding related to any child.

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There were concerns about the inappropriate use of assessments which lead to unnecessary delays. If the assessment provided by the protection worker is adequate, further non-agency assessments should not be ordered. When the assessments are appropriate the areas for assessment should be specified. In order to reduce delay, a realistic time frame for the completion of the assessment should be established.

ASSESSMENTS

The Panel recommends that the legislation be amended to permit non-agency assessments at any time during the court proceedings. The assessment reports should be admissible in any proceeding related to any child.

The Panel also recommends that the judge specify the reasons why an assessment is necessary in addition to the protection worker's evidence and opinion. The assessment order must specify the areas of concern to be addressed and the time period for completion and filing of the report.

CHILD-CENTRED PLANS OF CARE

Each child in the protection system should have a plan of care which has goals and measurable outcomes. From the outset, permanency should be a key consideration. All parties who wish to accept responsibility for the child, including the parents, should

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be responsible for identifying appropriate goals and how these goals will be achieved. Any person proposing an alternate plan to the agency plan must file a plan of their own. All parties affected by the decision must have a clear understanding of their responsibilities and be held accountable for achieving them.

As a general principle, the system should be focussed on the long-term care of the child from entry into the child protection system. A plan of care should be developed at the outset and should be utilized by the agency and court continually throughout the process. Given that continuity of care is important for any child, the court must be notified of residency and school changes while the child is in care.

It may be difficult for some parents to formulate a plan of care. Therefore it will be necessary to provide parents with easily understood forms. It will be imperative that duty counsel be available to assist unrepresented clients.

PLANS OF CARE

The Panel recommends that plans of care must be filed by the agency and by any person with an alternate plan. These plans must be filed when requesting an interim or final order of supervision and wardship. The plans of care must contain goals, services, measurable outcomes and timeframes. The plans should be child-centred and attainable.

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The Panel recommends that the plans of care filed at a status review hearing must contain information about changes in placement and school.

PERMANENCY PLANNING

Currently, long-term planning does not begin until after a finding that the child is in need of protection. There are long delays before the plan is implemented. During this period a child may be moved frequently from one temporary placement to another.

The younger the child, the more urgent is the need for permanence. Experts in the field advise that it is vital for children to form a meaningful, long-term relationship with at least one person. If children do not do so, they are likely to suffer serious developmental harm. Therefore, it is imperative that young children are placed in a permanent setting as soon as possible. The present Act limits the amount of time a child is in the care of the agency to a maximum of twenty-four months. The Act also requires a judge to be satisfied before making an order of crown wardship that the parents' situation is unlikely to change within a period of time not exceeding twenty-four months. These sections have come to be known as "the twenty-four month rule". Although referred to as "a rule" it was apparently intended in legislation as a maximum time allowed for decision-making leading to crown wardship. It is unfortunate for many children that this "rule" has reportedly become a standard in many parts of the province.

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Children should not be left in temporary situations any longer than is necessary. Permanence should be achieved as soon as possible within the legislated timeframes. The legislation must indicate that the calculation of the length of time in care must be based on the accumulation of all periods in care. Too often an application for crown wardship is not made until the time ordered for society wardship has ended. The child may be in temporary care for months until the crown wardship hearing is completed. This unnecessary delay can be eliminated by a requirement that an application must be completed before the expiry of a society wardship order and by the use of strictly enforced judicial case management.

PERMANENCY PLANNING

The Panel recommends that the maximum period for society wardship should be based on the child's age as follows:

twelve months for children under age two

eighteen months for children age two to four

twenty-four months for children age five and over

The legislation must indicate that the calculation of the length of time in care must be based on the accumulation of all periods in care.

The Panel recommends that the Section 57(6) be repealed to eliminate the need to show that circumstances are unlikely to change within the next twenty-four months.

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ADJOURNMENTS

There was considerable concern expressed from all sectors about the number of adjournments granted in court proceedings. There often did not appear to be a valid reason for the adjournment. Adjournments contribute to unnecessary delay in permanency planning.

ADJOURNMENTS

The Panel recommends that adjournments should be permitted for valid reasons only. The impact of the delay on a child should be considered before an adjournment is granted.

ADOPTION WITH CONTACT

For some children, adoption is a reasonable and permanent solution to their future. Early decisions will allow children an opportunity for adoption in a more reasonable timeframe. Early intervention and decision-making will reduce the likelihood of permanent physical and emotional impairment.

Current legislation prohibits the adoption of children with access orders. The granting of access when children are made crown wards varies widely across the province; in some areas access is regularly granted despite the present presumption against access.

PROTECTING VULNERABLE CHILDREN

The 1996 provincial crown ward review reports that access is exercised fifty-five percent of the time. This means that there are a significant number of children who are deprived of the adoption option and at the same time receive no benefit from their access order.

A number of parents in child protection proceedings may be more willing to agree to the permanent placement of children if there is some form of contact or access available. In private adoptions, many birth parents continue to have varied forms of access and contact with their children. At the same time the Panel heard the concern that adoptive parents may be less willing to adopt children with special needs if they are required to provide ongoing direct access to the birth family.

A range of access or contact solutions should be considered by the Ministry. Forms of contact could include indirect contact carried out by exchange of information, letters or photographs.

The Ministry should ensure that financial concerns are not an impediment to adoption. For example, foster caregivers who are willing to adopt a child with special needs should not be unable to adopt by reason of family finances.

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ADOPTION WITH CONTACT

The Panel recommends that the legislation be amended to expand the permanent placement of children through adoption with contact and/or access orders where appropriate. Access with a crown wardship order should only be made where access is beneficial to the child.

The Panel also recommends that subsidized adoptions be more available for children with special needs and for foster caregivers who are willing but financially unable to adopt children.

INTERIM ORDERS

It is important that decisions about a child's interim care be made as early as possible. The Panel heard that there is a wide variance of practice in the procedures adopted for interim care and interim access motions. Some courts hear oral evidence; other courts rely on affidavits but allow lengthy cross-examinations on the affidavits. These procedures can lead to lengthy delays before a decision is made about the child's interim placement.

The requirement for interim plans of care will focus both the society and the parents on the long-term needs of the child from the beginning of the process. It will also provide the court at an earlier stage with better information on which orders may be

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based. This change will contribute to continuity of care for the child and focus the entire process on the child.

As with all other decisions regarding care of and access to a child, the sole criteria for decision-making at this interim stage should be the child's best interests.

There is no test in the present legislation for determining when an interim order can be varied; this omission has lead to some confusion and discrepancies in interpretation and practice.

INTERIM ORDERS

The Panel recommends that the interim care and access motion should be decided within thirty days from the commencement of the court application. The evidence should be presented in written form. Interim plans of care should be filed by the agency and the parents. The best interests test should be the basis for decision-making.

The Panel recommends that the test for the variation of an interim order be stated in the Act as a material change in circumstances.

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SUPERVISION ORDERS

The Panel heard that supervision orders intended to secure the ongoing safety and well-being of the child were often ineffective and not enforced. The terms of supervision orders must be consistent with the plan of care. If the terms in the plan of care are included in the supervision order, all parties will be more accountable to the court.

Agencies should be required to monitor the implementation of these orders. Protection workers must know where the child lives, be able to see the child at any time and be allowed to enter the home unannounced. If this authority is not explicitly stated parents will be able to refuse the worker access to the child when such access may be necessary.

SUPERVISION ORDERS

The Panel recommends that there be a standard form for supervision orders.

Every supervision order shall contain the following terms:

- the protection worker has the right to enter the residence where the child is living at any time, announced or unannounced
- the child protection worker has the right to access to the child at any time
- the parents must notify the agency in advance of any change of the child's residence

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The following terms should be considered in each case:

- details of the treatment and service to be obtained for the child or the parents as set out in the plan of care
- the expectations placed on all parties as set out in the plan of care
- any restrictions on who may live or have contact with the child

SOCIETY WARDSHIP

As with supervision orders, it is important that the goals and anticipated outcomes of the plan of care be incorporated into orders of society wardship. Otherwise, there is no means to ensure that the plan of care which includes both agency and parental obligations is implemented. This requirement will focus all parties on the actions necessary to achieve permanency for the child.

SOCIETY WARDSHIP

The Panel recommends that the legislation be amended to permit terms to be included in society wardship orders.

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ENFORCEMENT OF ORDERS

The current effectiveness of orders is undermined by the lack of enforcement. There must be enforcement to ensure that orders are taken seriously. All orders with respect to care, supervision and access must be enforced. This includes orders and agreements made in another province with respect to families who move into Ontario. There should be an ability for the judge to vary an order in the event that services are unavailable.

Many of the presenters voiced their frustration about a system which holds the agency fully accountable, when it is the parents who have failed to fulfill their responsibilities. When parents fail to comply with court-ordered terms, the onus or obligation to explain the non-compliance should be placed on the parents.

ENFORCEMENT OF ORDERS

The Panel recommends that there be a requirement to return matters to court as soon as there is non-compliance with court-ordered terms.

The Panel recommends that the legislation include a provision for the recognition and enforcement of out-of-province orders and agreements.

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The Panel recommends that where a parent is non-compliant with provisions of a supervision order there be a reverse onus on the parent to justify the child remaining in the parent's care.

DUTY TO REPORT

The duty of the public and professionals to report is an essential element of the child protection system. Members of the public and professionals have stated that they are confused by the present legislation. They do not know what and when they have an obligation to report. This confusion is particularly the case where there may be a suspicion of abuse or neglect without proof or where an agency may already be involved.

The purpose of the duty to report is to notify the agency that a child may need protection. This duty presently overrides all professional privileges with the exception of solicitor-and-client privileges. Lawyers should not be exempt unless the duty to report will interfere with the lawyer's ability to represent his or her client in a child protection proceeding.

Investigation is the role of the agency. The person making the report should not conduct his or her own investigation or interrogation of the child. Repeated

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interrogations of a child may have a negative impact on the child and may compromise the police or agency investigation.

The Panel believes that failure to report should continue to be an offence. The duty to report and the penalties for not reporting should be placed together in the Act. This will assist in clarification and simplification.

It should continue to be an offence for both professionals and the public to fail to report abuse or suspicion of abuse. Since professionals have extensive training and are subject to rules of professional conduct, they have a higher responsibility than the public to report their suspicions.

The Panel's recommendations regarding duty to report, in the context of the Panel's expanded definition of a child in need of protection, will require an increase in resources. Experience in the United States has shown that increased reporting without accompanying resources leaves children at more risk. This is because resources are directed to investigation rather than treatment. Education, training and protocols will also be necessary.

DUTY TO REPORT

The Panel recommends that the duty to report and penalties should be placed at the beginning of Part III.

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The Panel also recommends that the Act be amended to include the following requirements:

- everyone has a duty to report a suspicion that a child is or may be in need of protection
- the report must be made promptly and must include particulars of the facts upon which the suspicion is based
- the duty may not be delegated to another person
- the duty to report is a continuing obligation and includes the duty to report new suspicions
- the duty includes a duty to report breaches of supervision orders
- it is not the duty of the informant to investigate or validate the suspicion
- failure to report is an offence for both professionals and the public
- professionals should have a higher financial penalty and should be reported to their professional organizations
- the duty to report should override the solicitor-and-client privilege, unless the communication to the solicitor was made during or related to a protection hearing

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INFORMATION AND RECORDS

Early access to accurate and relevant information is important to an effective agency investigation. Early access to personal information may reveal that it is not necessary to remove a child from his or her home. The Panel received a consistent message that Part VIII must be updated and proclaimed. The Panel would encourage the Ministry to determine the extent to which Part VIII should be revised and to proclaim the revised provisions. The Panel suggests that the recommendations on information and records in protection matters be included in Part III following the provisions on duty to report.

The Panel recognizes that there are significant concerns raised by increasing the accessibility to personal information. It is the Panel's position that the safety, protection and well-being of children must always take precedence. Confidentiality and personal privacy rights should be safeguarded where possible; however, the protection of children must be paramount.

An expanded duty to report will be of little value if the agencies cannot obtain information necessary to properly assess and investigate. Representatives from many agencies reported that information sharing without the consent of a parent, or any other person, was necessary for effective child protection. Many submissions called for expeditious procedures to obtain information and for the elimination of court applications to obtain relevant information.

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Professionals such as educators and health care providers expressed frustration with the current system which does not provide feedback after a report is made. Many of these individuals work with these children on a daily basis. This information is often necessary for the ongoing support and monitoring of the child's care.

In order to encourage reporting and information sharing it is necessary to clarify that those acting in good faith will not be held liable in a civil action.

The Panel supports the development of an interactive database for use by child welfare agencies. The Panel consistently heard that the existing Child Abuse Register is not an effective tool for the investigation and tracking of abuse.

INFORMATION AND RECORDS

The Panel recommends that the Act should be amended to include a new provision in Part III that authorizes child protection agencies to have access to information and records about a person, without that person's consent or a court order, in the following circumstances:

- if the information is believed to be necessary to investigate allegations that a child is or may be in need of protection
- for the purpose of a proceeding or possible proceeding under Part III of the CFSA
- if the information is necessary for monitoring court orders

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The Panel recommends that the Act permit the child protection agencies, at their discretion, to share information about the outcome of the investigation with the source of the report.

The Panel recommends that the legislation protect persons who report and share information from all civil liability provided they have acted in good faith.

The Panel recommends that when an interactive database is implemented, the provisions requiring the Child Abuse Register be repealed.

INVESTIGATION

The agency should be given reasonable access to the child during an investigation. This is a much less intrusive alternative than apprehension.

INVESTIGATION

The Panel recommends that where a child protection agency cannot gain access to or have contact with a child, the agency may apply to the court for an order directing the location, time and other requirements of such access or contact.

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The Panel recommends that the orders to produce be expanded to permit the court to order that the child be produced to the court or to another appropriate location or person.

APPREHENSION

There is a range of practice among agencies regarding the use of warrants to apprehend a child. The Panel heard submissions that in some areas a warrant is routinely obtained prior to apprehension, while in others it is seldom obtained. The legislation is confusing with respect to when a warrant of apprehension is required and when it is not. The test should be simpler and should be consistent with the statement of principles.

The process required to obtain a warrant in some jurisdictions can lead to unnecessary delay in early decisive intervention. Concerns were expressed that considerations which lead to the granting of a warrant vary widely. This variation was noted both within the same jurisdiction and across different jurisdictions.

The Panel believes that well-trained child protection workers are the most appropriate persons to make decisions to apprehend provided there are appropriate consultative mechanisms within agencies.

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After an apprehension, the common practice on the first court appearance is for all parties to request an adjournment due to the lack of preparation time and the availability of information. A longer period of time would allow all parties to address the child's immediate needs, collect and present required information and develop an appropriate plan of care.

APPREHENSION

The Panel recommends that the requirement to obtain a warrant to apprehend a child be eliminated.

The Panel recommends that the present test for apprehending a child be replaced by a less onerous test of reasonable and probable grounds to believe a child is in need of protection and there is no less disruptive way of ensuring the child's safety, protection and well-being.

The Panel recommends that the first court appearance after apprehension be changed from five days to ten days.

CIVIL PROCEEDING

The present hearing process as currently set out constitutes an impediment to early and permanent planning for the care of a child.

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Strong emphasis is placed on the finding of a need for protection and not on the plan of care, which is required only after a finding of protection has been made.

The current bifurcated (two-step) hearing leads both to longer hearings and greater possibility of delay if it is necessary for a witness to re-attend. There is a duplication of evidence which would be avoided if a witness could testify fully on a single occasion. The separation of the two parts of the protection hearing is based on a criminal model, that is, a finding of guilt followed by sentencing. A child protection hearing should be based on a civil model, not on a criminal model. This current bifurcated hearing prevents early consideration of a permanent plan.

There is a need for more flexibility in the process and for the elimination of unnecessary formality in order to arrive at an expeditious and permanent resolution.

CIVIL PROCEEDING

The Panel recommends that the process be (a) civil in nature and (b) as informal as a court may allow. No order shall be set aside because of any informality at the hearing.

The Panel recommends that the requirement of a bifurcated hearing be eliminated and changed to a single, early hearing to determine the need for protection and the making of an appropriate order.

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EVIDENCE

A court should be able to receive the evidence of the child without the necessity of the child being present in the courtroom. The legal test for admissibility of a child's out-of-court statement should be reliability and the test for necessity should be eliminated.

The protection worker is responsible for preparing and presenting an assessment. It is important that the court receive the opinion of the protection worker to evaluate the worker's assessment of the child's circumstances. The court will be able to decide on the weight to be given to this opinion, based on the worker's professional qualifications, knowledge, experience and familiarity with relevant literature. Protection workers can be cross-examined and held accountable for their assessments.

The hearing should be conducted in the most expeditious manner possible. The court should utilize summary judgements, written forms, electronic filing, affidavits and teleconferences. Affidavit evidence should be used unless there is a demonstrated need for oral evidence.

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EVIDENCE

The Panel recommends that the legislation permit the court to make orders concerning the admission of a child's evidence, as appropriate, including:

- use of out-of-court statements by the child as a preference over a child's oral testimony in court
- use of the test of reliability, not necessity, for out-of-court statements
- directions regarding the presence of others during oral testimony
- use of child friendly strategies when a child must testify

The Panel recommends that the legislation allow the admissibility of the protection worker's opinion which formed the basis for any intervention. The court determines the appropriate weight to be given to the opinion of the worker.

The Panel recommends that the use of available and appropriate technology be encouraged, in order to facilitate more efficient processes and hearings.

The Panel recommends that affidavit evidence be used unless there is a demonstrated need for oral evidence.

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JUDICIAL CASE MANAGEMENT

The current system of administrative and judicial management in the courts contributes to unnecessary delays in child welfare proceedings. In many multi-judge courts, cases move from judge to judge. The lawyers must update the presiding judge at each court attendance. Cases are frequently adjourned without sufficient consideration of or focus on the effect of the delay on the child.

Implementation of judicial case management would allow the same judge to assume responsibility and accountability for the procedural and substantive decisions in the case.

JUDICIAL CASE MANAGEMENT

The Panel recommends that the Attorney General adopt a system of judicial case management which includes:

- judicial caseload management of each case from intake to trial
- assignment to the judge at time of filing
- same judge assignment to each case
- more judicial responsibility for the process
- a focus on early resolution of the case
- timetable driven process
- collaboration among the judicial, legal and administrative sectors

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The Panel recommends that child protection proceedings should have priority in court scheduling. Trials should be scheduled on consecutive days from commencement to conclusion.

MEDIATION

The legal system is adversarial, complex, costly and time-consuming. Mediation can reduce the litigious aspects of conflict resolution through co-operative and non-coercive problem solving. This can lead to the earlier resolution of child protection disputes and the meaningful involvement of parents and, where appropriate, children. The protection, safety and well-being of the child must be the primary objective of all mediated agreements

MEDIATION

The Panel recommends that the legislation require the courts to consider mediation in appropriate circumstances

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LEGISLATIVE REVIEW

The Panel heard repeatedly that the current legislation did not contain a provision requiring a review of the interpretation and implementation of the legislation. A timely and ongoing review of this legislation is required.

LEGISLATIVE REVIEW

The Panel recommends that the Act require a review of the implementation of the legislation to assess its interpretation, application and impact on child protection. The review should be conducted every three years. The Ministry should begin immediately to outline data requirements and to ensure collection and evaluation of such data. This review should include an assessment of the availability of services and resources.

NATIVE CONSIDERATIONS

The Panel met with members from a wide range of Native communities. These communities were located both on reserve and off reserve, and included remote, rural and urban environments. The Panel encountered a diverse range of opinions during these consultations.

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The Panel was made aware of a number of circumstances which might make implementation of the Panel's recommendations in some of these communities problematic. For example, the recommendations with respect to timeframes may be impossible to achieve in communities where a circuit judge visits only once a month.

Recommendations with respect to temporary care, access and adoption will need careful consideration in the context of the value placed on the responsibility of the extended community to support families and children.

Protection of Native children will at times require removal from their family home. The Panel was told that placement of these children in Native foster homes is made impossible by foster care standards not attainable in some of these communities. Similarly, in several areas, services to Native children and families are limited and difficult to access.

Many of the presentations expressed the hope that the Panel's review would cause the Province to reconsider current legislation and practice including the current legal system, as it relates to recognition of Native values and rights. Specifically the Panel was made aware of the need to resolve issues related to designation of Native child welfare agencies, the role of bands and councils, customary care and treatment of off-reserve Native children.

The Panel does not believe it is within its mandate or its timeframes to make carefully considered recommendations with respect to these very important issues. The Panel

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expects that the ongoing review of Native child welfare will also identify these, and other issues and make appropriate recommendations.

FURTHER CONSIDERATIONS

The Panel was asked to address both legislative and non-legislative recommendations which would improve the protection and well-being of children in Ontario. The Panel is aware that the Ministry has initiated other actions which will address these issues. The Panel expects that these reports, and other Ministry initiatives, may address the following non-legislative recommendations. However, the Panel believes that the following recommendations are important and will serve to support and emphasize the need to implement these other efforts.

TRAINING AND EDUCATION

It is imperative that changes to the legislation be followed by extensive education and training of all sectors involved in child welfare. The Panel's review demonstrated that there was considerable variance in practice with respect to the implementation of the existing legislation, including the duty to report, information-sharing and intervention. There was strong consensus that ongoing and comprehensive training would have increased the consistency.

PROTECTING VULNERABLE CHILDREN

Child protection workers play a key role in the protection of Ontario's children. They require the education, support and recognition necessary to do this job well. Post-secondary curriculum places little emphasis on child protection.

TRAINING AND EDUCATION

The Panel recommends that the Province develop comprehensive training and education for the public and professionals with respect to its implementation of amendments to the *Child and Family Services Act*.

The Panel recommends that the Province work with relevant education and professional bodies to create strategies which will develop expertise, support and professional recognition for child protection work.

FOSTER CARE

There are many who will raise concern that the implementation of these recommendations may increase the number of children in care. However, the intent of the Panel's recommendations is that early identification and intervention will increase the opportunity for children to remain with their families. When this is not possible, it is the Panel's expectation that early permanency planning will increase the children's opportunities for earlier stability and adoption.

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For those children who must be taken into care there must be a network of stable, safe and nurturing homes in which these children may be placed. The Panel was made aware of several major issues regarding the current foster care system, including frequent moves and variability in the quality of care. The Panel believes that the number of moves while in care can be reduced if children are assessed accurately and placed in environments suitable for their needs. Appropriate training and support of foster caregivers will assist in maintaining a stable system of foster care.

FOSTER CARE

The Panel recommends that the Ministry work with agencies and the Ontario Association of Children's Aid Societies to ensure consistent recruitment, training and standards for foster caregivers.

FUNDING AND RESOURCES

The Ministry has an ongoing responsibility to provide leadership in the form of legislation, funding, standards, compliance and monitoring. The Panel expects that the accountability review will address a number of these issues.

Many individuals and groups suggested that the existing legislation has not been as effective as intended because of the lack of services. The decision to intervene by agencies is affected by their available resources. Legislative change alone will have

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minimal positive impact without the funding necessary to provide both mandated protection services and necessary support services.

FUNDING AND RESOURCES

The Panel recommends that the Ministry continue to review funding of child protection with a view to ensuring that adequate funding is available in a timely manner and families are provided the necessary services, where appropriate, to assist them in caring for their children within the family.

CHILDREN OVER 16

The Panel interviewed many youth who are or have been in care throughout the province. Many described their frustration and dissatisfaction with a system which fails to address the safety and protection needs of young people between the ages of 16 and 18, and which fails to support them beyond the level of secondary education.

CHILDREN OVER 16

The Panel recommends that the definition of child in Part III should include children aged 16 and 17.

PROTECTING VULNERABLE CHILDREN

The Panel recommends that extended care and maintenance be extended to provide support for young persons in care until the completion of undergraduate level training or equivalent or age 23, whichever comes first.

RESEARCH

The Panel was made aware of the limited amount of relevant data about the Ontario child protection system and the effect of intervention. Both the child protection and justice systems require ongoing information about what is known, based on research, regarding effective intervention.

RESEARCH

The Panel recommends that the Province provide financial support for systematic research on the effect of child protection services.

JUDICIAL EXPERTISE

Child welfare is a complex field. Judges involved in these proceedings must make critical decisions that affect the lives of children and their families. In order to make

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informed decisions a thorough and current understanding of issues affecting child welfare practice and policy should be encouraged.

JUDICIAL EXPERTISE

The Panel recommends that judges with an interest and expertise in child protection be selected to hear child protection proceedings.

TRIBUNALS

The Panel heard submissions that child protection matters could more appropriately be heard by specialized tribunals, rather than by courts. The tribunals would consist of persons with knowledge and expertise in the areas of child development, child protection and children's mental health. Tribunals can be more informal, less technical, and less adversarial.

The Panel gave careful consideration to a recommendation for the creation of tribunals on a pilot basis. However, the Panel believes this action is premature. The Panel has recommended significant changes to achieve more efficient and effective court processes. If these changes result in improved decision-making for children, tribunals would not be a preference.

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CONCLUSION

These recommendations are intended to improve protection of children through earlier intervention, more effective services to families and timely decision-making. The Panel supports the following statement in UNICEF's State of the World's Children 1990 Report:

"failure to protect the physical, mental and emotional development of children is the principal means by which humanity's difficulties are compounded and its problems perpetuated".

The Panel's hope is that children will be safe from harm and that the opportunities for children to have secure, affectionate and nurturing care will be maximized.

APPENDIX "A"

LIST OF LEGISLATIVE RECOMMENDATIONS BY SECTION IN THE CHILD AND FAMILY SERVICES ACT WITH LEGISLATIVE REFERENCE FROM OTHER JURISDICTIONS

DECLARATION OF PRINCIPLES: CFSA S.1

The Panel recommends that the declaration of principles be reworded to include the following paramount purpose and other purposes as follows:

- The paramount purpose of this Act is to ensure each child's entitlement to safety, protection and well-being.
- The secondary purposes of this Act are:
 - to recognize that a family is the preferred environment for the care and upbringing of a child and the responsibility for the safety, protection and well-being of each child rests primarily with the parents
 - if, with available support services, a family can ensure the safety, protection and well-being of the child, to provide such support services
 - to recognize that the least disruptive intervention for the child that is available and appropriate should be considered
 - to make decisions relating to the child in a timely manner that respects the child's stage of development, the child's views, the child's needs and the importance of stability, continuity and permanence in the child's care
 - to preserve, where possible, the cultural, racial, religious and linguistic identity of the child
 - to recognize that Native people should be entitled to provide, wherever possible, their own child & family services, and that all services to Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of extended family

(Reference: British Columbia S.2(b))

CHILDREN OVER 16: CFSA S.37(1)

The Panel recommends that the definition of child in Part III should include children aged 16 and 17.

BEST INTERESTS: CFSA S.37(3)

The Panel recommends that best interests be the sole criteria for making orders of supervision, wardship and access, including interim orders.

The criteria should include:

- the child's entitlement to safety, protection and well-being as the paramount consideration
- the child's physical, mental, developmental and emotional needs and the appropriate plan of care to meet those needs
- the importance of stability, continuity and permanence in the child's care as early as reasonably possible

- the quality of the relationship the child has with a parent, sibling or other person, the importance to the child of maintaining the relationship and the effect of maintaining the relationship on the stability, continuity and permanence of the child's care
- the effect on the child if there is delay in making a decision
- the child's views and wishes if they can be reasonably ascertained
- the child's cultural, racial, religious and linguistic identity

SUBSTANTIAL RISK: CFSA 37(2)(b)(d)(g)

The Panel recommends that the test of substantial risk should be eliminated and replaced by another less onerous test as appropriate. Words such as "likelihood of risk" have been suggested and may be more appropriate.

(Reference: British Columbia S.13)

EXPANSION OF GROUNDS FOR PROTECTION: CFSA S.37(2)

The Panel recommends that the grounds for finding a child in need of protection be expanded to include physical, developmental or emotional harm, or the risk of such harm as a result of:

- the mental, emotional or developmental condition of the parent or any person having charge of the child
- the age or level of maturity of the parent or any person having charge of the child
- significant alcohol or drug abuse by the parent or any person having charge of the child
- a history of criminal acts against any child by the parent or any person having charge of the child
- a history of abuse or neglect of any child by the parent or any person having charge of the child

NEGLECT: NEW

The Panel recommends that neglect and risk of neglect be explicitly included as a ground for protection. Neglect should be linked to physical, developmental or emotional harm. The definition of neglect should include a non-exhaustive list including the following factors:

- failure to provide the necessities of life such as adequate living conditions, adequate nutrition, adequate education and adequate medical care
- failure to provide adequate affection, adequate emotional support and adequate stimulation
- failure to adequately supervise, protect or control the child

(Reference: Manitoba S.17, New Brunswick S.31, Newfoundland S.2, Nova Scotia S.22(2)(j), Prince Edward Island S.1(2)(h))

DOMESTIC VIOLENCE: NEW

The Panel recommends that exposure to family violence be included as a separate ground for protection.

The Panel recommends that the Act authorize the removal of the perpetrator from the child's residence.

The Panel recommends the Act allow interim and final restraining orders. The duration of restraining orders should be extended to twelve months.

(Reference: Nova Scotia S.22(i), Prince Edward Island S.1(2)(i), Saskatchewan S.11(a)(vi))

EMOTIONAL ABUSE: CFSA S.37(2)(f)

The Panel recommends that the present test for emotional abuse be eliminated and replaced by the following list of considerations:

- a pattern of rejection of the child
- a pattern of humiliating and belittling the child
- a pattern of threats of harm and accusations towards the child
- the reinforcement or rewarding of criminal or anti-social behaviour by the child

INVESTIGATION: CFSA S.40

The Panel recommends that where a child protection agency cannot gain access to or have contact with a child, the agency may apply to the court for an order directing the location, time and other requirements of such access or contact.

The Panel recommends that the orders to produce be expanded to permit the court to order that the child be produced to the court or to another appropriate location or person.

APPREHENSION: CFSA S.40(2)

The Panel recommends that the requirement to obtain a warrant to apprehend a child be eliminated.

APPREHENSION:CFSA S.40(7)

The Panel recommends that the present test for apprehending a child be replaced by a less onerous test of reasonable and probable grounds to believe a child is in need of protection and there is no less disruptive way of ensuring the child's safety, protection and well-being.

CIVIL PROCEEDING: (NEW)

The Panel recommends that the process is (a) civil in nature and (b) as informal as a court may allow. No order shall be set aside because of any informality at the hearing.

(Reference: Manitoba S. 36, British Columbia S. 66)

TIME OF DETENTION LIMITED: CFSA S.46(1)

The Panel recommends that the first court appearance after apprehension be changed from five days to ten days.

EVIDENCE: CFSA S.50 NEW

The Panel recommends that the legislation permit the court to make orders concerning the admission of a child's evidence, as appropriate, including:

- use of out of court statements by the child as a preference over a child's oral testimony in court
- use of the test of reliability, not necessity, for out-of-court statements
- directions regarding the presence of others during oral testimony
- use of child friendly strategies when a child must testify

(Reference: British Columbia S.67)

The Panel recommends that legislation allow the admissibility of the protection worker's opinion which formed the basis for any intervention. The court determines the appropriate weight to be given to the opinion of the worker.

The Panel recommends that the use of available and appropriate technology be encouraged, in order to facilitate more efficient processes and hearings.

The Panel recommends that affidavit evidence be used unless there is a demonstrated need for oral evidence.

PAST HISTORY: CFSA S.50

The Panel recommends that evidence regarding the past parenting and past conduct of caregivers be admissible at any stage of the court proceeding including the interim motion, the finding and the disposition.

BIFURCATED HEARING: CFSA S. 50(2)

The Panel recommends that the requirement of a bifurcated hearing be eliminated and changed to a single, early hearing to determine the need for protection and the making of an appropriate order.
(Reference: British Columbia S.40)

INTERIM ORDERS: CFSA S.51

The Panel recommends that the interim care and access motion should be decided within thirty days from the commencement of court application. The evidence should be presented in written form. Interim plans of care should be filed by the agency and the parents. The best interests test should be the basis for decision-making.

The Panel recommends that the test for the variation of an interim order be stated in the Act as a material change in circumstances.
(Reference: British Columbia S.35)

ADJOURNMENTS: CFSA S.51

The Panel recommends that adjournments should be permitted for valid reasons only. The impact of the delay on a child should be considered before an adjournment is granted.

ASSESSMENTS: CFSA S.54

The Panel recommends that the legislation be amended to permit non-agency assessments at any time during the court proceedings. The assessment reports should be admissible in any proceeding related to any child.

The Panel also recommends that the judge specify the reasons why an assessment is necessary in addition to the protection worker's evidence and opinion. The assessment order must specify the areas of concern to be addressed and the time period for completion and filing of the report.

PLANS OF CARE: CFSA S.56

The Panel recommends that plans of care must be filed by the agency and by any person with an alternate plan. These plans must be filed when requesting an interim or final order of supervision and wardship. The plans of care must contain goals, services, measurable outcomes and timeframes. The plans should be child-centred and attainable.

The Panel recommends that the plans of care filed at a status review hearing must contain information about changes in placement and school.

PERMANENCY PLANNING: CFSA S.57(6) AND S.70

The Panel recommends that the maximum period for society wardship should be based on the child's age as follows:

- twelve months for children under age two
- eighteen months for children age two to four
- twenty-four months for children age five and over

The legislation must indicate that the calculation of the length of time in care must be based on the accumulation of all periods in care.

The Panel recommends that the Section 57(6) be repealed to eliminate the need to show that circumstances are unlikely to change within the next twenty-four months.
(Reference: British Columbia S.45)

SUPERVISION ORDERS: CFSA S.57(8)

The Panel recommends that there be a standard form for supervision orders. Every supervision order shall contain the following terms:

- the protection worker has the right to enter the residence where the child is living at any time, announced or unannounced
- the child protection worker has the right to access to the child at any time
- the parents must notify the agency in advance of any change of the child's residence

The following terms should be considered in each case:

- details of the treatment and service to be obtained for the child or the parents as set out in the plan of care
- the expectations placed on all parties as set out in the plan of care
- any restrictions on who may live or have contact with the child

SOCIETY WARDSHIP: CFSA S.57(8) NEW

The Panel recommends that the legislation be amended to permit terms to be included in society wardship orders.

CROWN WARDSHIP WITH ACCESS: CFSA S.59

Access with a crown wardship order should only be made where access is beneficial to the child.

CROWN WARD; CONTINUING CARE: CFSA S.71(2)

The Panel recommends that extended care and maintenance be extended to provide support for young persons in care until the completion of undergraduate level training or equivalent or age 23, whichever comes first.

DUTY TO REPORT: CFSA S.72

The Panel recommends that the duty to report and penalties should be placed at the beginning of Part III.

The Panel also recommends that the Act be amended to include the following requirements:

- everyone has a duty to report a suspicion that a child is or may be in need of protection
- the report must be made promptly and must include particulars of the facts upon which the suspicion is based
- the duty may not be delegated to another person
- the duty to report is a continuing obligation and includes the duty to report new suspicions
- the duty includes a duty to report breaches of supervision orders
- it is not the duty of the informant to investigate or validate the suspicion
- failure to report is an offence for both professionals and the public
- professionals should have a higher financial penalty and should be reported to their

- professional organizations
- the duty to report should override the solicitor-and-client privilege, unless the communication to the solicitor was made during or related to a protection hearing

CHILD ABUSE REGISTER: CFSA S.75

The Panel recommends that when an interactive database is implemented, the provisions requiring the Child Abuse Register be repealed.

ADOPTION WITH CONTACT: CFSA S.140(2)

The Panel recommends that the legislation be amended to expand the permanent placement of children through adoption with contact and/or access orders where appropriate.

The Panel also recommends that subsidized adoptions be more available for children with special needs and for foster caregivers who are willing but financially unable to adopt children.

INFORMATION AND RECORDS: CFSA PART VIII NEW

The Panel recommends that the Act should be amended to include a new provision in Part III that authorizes child protection agencies to have access to information and records about a person, without that person's consent or a court order, in the following circumstances:

- if the information is believed to be necessary to investigate allegations that a child is or may be in need of protection
- for the purpose of a proceeding or possible proceeding under Part III of the CFSA
- if the information is necessary for monitoring court orders

The Panel recommends that the Act permit the child protection agencies, at their discretion, to share information about the outcome of the investigation with the source of the report.

The Panel recommends that the legislation protect persons who report and share information from all civil liability provided they have acted in good faith.

ENFORCEMENT OF ORDERS: NEW

The Panel recommends that there be a requirement to return matters to court as soon as there is non-compliance with court ordered terms.

The Panel recommends that the legislation include a provision for the recognition and enforcement of out-of-province orders and agreements.

The Panel recommends that where a parent is non-compliant with provisions of a supervision order there be a reverse onus on the parent to justify the child remaining in the parent's care.

LEGISLATIVE REVIEW: NEW

The Panel recommends that the Act require a review of the implementation of the legislation to assess its interpretation, application and impact on child protection. The review should be conducted every three years. The Ministry should begin immediately to outline data requirements and to ensure collection and evaluation of such data. This review should include an assessment of the availability of services and resources.

JUDICIAL CASE MANAGEMENT: NEW

The Panel recommends that the Attorney General adopt a system of judicial case management which includes:

- judicial caseload management of each case from intake to trial
- assignment to the judge at time of filing
- same judge assignment to each case
- more judicial responsibility for the process
- a focus on early resolution of the case
- timetable driven process
- collaboration among the judicial, legal and administrative sectors

The Panel recommends that child protection proceedings should have priority in court scheduling. Trials should be scheduled on consecutive days from commencement to conclusion.

MEDIATION: NEW

The Panel recommends that the legislation require the courts to consider mediation in appropriate circumstances.

(Reference: British Columbia S. 22)

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Inquests, Recommendations, Toronto, [REDACTED]

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APPENDIX B
SUMMARY OF SUBMISSIONS AND PRESENTATIONS TO THE PANEL

PRESENTATIONS MADE TO THE PANEL

Dr. Colin Maloney, Catholic Children's Aid Society of Metro Toronto
Dr. Paul Steinhauer, Hospital for Sick Children
Dr. Marcellina Mian, Hospital for Sick Children
Suzanne Hamilton, Joanne Leatch, Ministry of Community and Social Services
Chris McGoey, Crown Attorney's Office
Carol Ann Bauman, Crown Attorney's Office
Roselyn Zisman, Family Lawyer
Ian Mang, Family Lawyer
Susan Switch, Family Lawyer
Carole Curtis, Family Lawyer
Dr. Dan Offord, Centre for Studies of Children at Risk
Barry Lewis, ARA Consulting Group Inc.
Mary McConville, Ontario Association of Children's Aid Societies
Sandy Moshenko, Ontario Association of Children's Aid Societies
Steven Bailey, Children's Aid Society of Elgin County
Marv Bernstein, Catholic Children's Aid Society of Metro Toronto
Kristina Reitmeier, Metro Toronto Children's Aid Society
Sandra Scarth, Child Welfare League of Canada
Dr. David Wolfe, University of Western Ontario
Willson McTavish, Office of the Children's Lawyer
George Thomson, Department of Justice and Attorney General of Canada
Judge Heather Katarynych
Phil Schwartz, Andrew Koster, Ministry of Community and Social Services
Bina Ostoff, London Battered Women's Advocacy Centre
Dr. Marlies Sudermann, London Family Clinic
Dr. James Cairns, Office of the Chief Coroner

SUMMARY OF SUBMISSIONS SENT TO THE PANEL

Academic: 4
Community: 6
Education: 28
Health: 11
Justice: 17
Social Service: 18
Union: 2

APPENDIX C
SUMMARY OF CONSULTATION PROCESS

Locations of Focus Groups, Oral Presentations and Interviews

Hamilton
Niagara Region
Ottawa
Owen Sound
Peel
Pikangikum First Nations
Sioux Lookout
Sudbury
Thunder Bay
Toronto
Windsor

Focus Groups by Teleconference

Cornwall
Kingston

Oral Presentations and Interviews

- lawyers for parents, children and child protection agencies
- frontline workers, supervisors, managers and Executive Directors of child protection agencies
- youth in care, in independent living or living at home
- youth advocates
- parents
- foster caregivers
- women's advocates including shelter workers
- law professors
- Native community including Native women advocates
- Francophone community
- multicultural community
- family support services
- mental health professionals including assessors
- public health/high risk nurses
- judges/justices
- family mediators

Sectors Represented in Focus Groups

- frontline child protection worker
- counsel for parents
- teacher or guidance counsellor
- medical doctor
- counsel for child
- children's mental health professional
- foster caregiver
- police officer
- family support service provider

Appendix "D"

Biographies of Panel Members

Mary Jane Hatton is a judge in the Provincial Division of the Ontario Court of Justice. She has extensive experience in child protection and family law, as a judge and a lawyer. She is a director of the Association of Family and Conciliation Courts, an international organization that promotes better ways to resolve family law issues. Judge Hatton was a presenter at the Second World Congress on Family Law and the Rights of Children and Youth in San Francisco in June 1997.

Grant A. Campbell has been a judge for 14 years and is presently a justice in the General Division, Family Court Branch of the Ontario Court of Justice in London. He is a member of the Family Rules Committee which makes rules regarding practice and procedure in all family law proceedings in Ontario. Justice Campbell was a member of the Ministry's advisory committee on children's services from 1988 to 1990. He was also on the board of the Ontario Mental Health Foundation.

Hector Colantoni is a Detective with the Metropolitan Toronto Police, supervising investigations of child physical and sexual abuse for the 14 Division Youth Bureau. [REDACTED] he is also co-chair of a district child abuse and neglect protocol committee composed of police, social workers, children's aid society workers, educators and parole officers.

Richard Ferron is a public school principal in North Bay. He is a member of the Community Project for Children, a group of Nipissing District children's agencies that is working to promote healthy growth and development of children. He is also a member of Family First Forum, a community group dedicated to addressing family and children's issues. Mr. Ferron was a co-winner of the Leadership in Education Award from Reader's Digest Canada in 1995.

Dirk Huyer is a physician with the Suspected Child Abuse and Neglect (SCAN) program at the Hospital for Sick Children in Toronto and a lecturer with the department of pediatrics at the University of Toronto. He has extensive experience in diagnosing child abuse and providing expert opinion in legal cases concerning child abuse. Dr. Huyer is also an Ontario Coroner.

Harriet MacMillan is a Hamilton pediatrician and child psychiatrist. She is an associate professor in Psychiatry and Pediatrics at McMaster University and is the director of the Child Advocacy and Assessment Program at the Hamilton Health Sciences Corporation. Dr. MacMillan is also involved in a number of research studies related to child welfare and is a member of the Centre For Studies of Children at Risk.

Theresa Johnson Ortiz of Richmond Hill is a Master of Social Work with extensive experience in child welfare, including training foster caregivers for the Catholic Children's Aid Society of Metropolitan Toronto. [REDACTED] she has been a member of the Board of Directors of the Catholic Children's Aid Society and Native Child and Family Services of Toronto.

Nico Trocmé is an assistant professor in the Faculty of Social Work at the University of Toronto and an associate of the Centre for Studies of Children at Risk at McMaster University in Hamilton. He has experience working with children and families as a social worker and as a child protection worker with the Children's Aid Society of Metropolitan Toronto. Dr. Trocmé has been involved in a number of studies related to child welfare.

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