

ontario association of children's aid societies

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the voice of child
welfare in ontario

OACAS, in support of its members is...

the voice of child welfare in Ontario, dedicated to providing leadership for the achievement of excellence in the protection of children and in the promotion of their well-being within their families and communities.



Priya Sibal is the daughter of Karen Sibal, Communications and Policy Development Coordinator at the OACAS

Correction Notice: The cover page of the July 2002 issue of the *journal* gave an incorrect volume and issue number - Volume 45 Number 3. It should have read Volume 46 Number 2. The OACAS apologizes for any inconvenience this may have caused.

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Message from OACAS Executive Director Jeanette Lewis

With the end of summer 2002 comes an opportunity to reflect upon the past months and some of the achievements at the OACAS.

In August, Jim Carey, President, Marguerite Annen, Past-President and I had our first formal meeting with Minister Brenda Elliott, Minister of Community, Family and Children's Services and her staff. Our key messages included the need to review the funding formula and we referred to the *Child Welfare Funding: A Promise to the Children of Ontario* document. Questions from the Minister and her staff indicated that they were seeking clarification of the breadth of the child welfare mandate as practiced in various communities. They were also interested in the burgeoning numbers of crown wards and the access orders that preclude many of these children from adoption opportunities. In our advocacy regarding the need to complete child welfare reform, we reviewed with the Minister our July 2002 position paper, *The Implementation of Child Welfare Reform: A Progress Report*.

While no promises were made, the Minister did not use the meeting to give messages regarding cut-backs to the sector. It was agreed that meetings every 3-4 months would be helpful so that productive dialogue on emerging issues could occur.

This summer, a business plan was completed to support a new model for adoption in Ontario that will be more effective in meeting the needs of chil-

dren for whom this is an appropriate option. The expected outcome is more adoption homes for children who are eligible for adoption. The OACAS Board approved this project at its September Board meeting. We will proceed to seek funding support for the next phase of this project, the development and approval of a new adoption model.

There have been a number of recent efforts to streamline child protection in the court process that have included participation by the OACAS. The Child Protection Backlog Steering Committee was formed to oversee the child protection backlog initiative and to find ways to reduce delays in child protection proceedings. The Child Protection Working Group, an adjunct to the Family Law Rules Committee, has proposed amendments to the Family Law Rules, the forms and the child protection timetable for the purpose of streamlining child protection court procedures. Generally, there are proposals to reduce the number of court forms to be filed and the number of court attendances to be made and to make the forms easier to use. It is anticipated that these proposed amendments will be approved in October, 2002 with implementation either by the end of 2002, or in early 2003.

This summer saw the completion of the final report for the Ontario Child Protection Training contract and completion of the program evaluation report.



As well, OACAS received an extension to the contract for the delivery of new worker, authorized worker, and supervisor/manager training that was effective on July 1 and continues for 6 months. We have also signed a contract for 6 months to adapt the PRIDE curriculum for foster care training.

It has been a hectic summer and a very productive time. As the fall approaches, we are looking

forward to supporting member agencies with their Purple Ribbon Campaigns against child abuse and neglect in October, and with planning events for Canadian Foster Family Week which occurs October 20 - 26, 2002. Indeed, the fall promises to be an equally challenging time as we advance our agenda of advocacy for children - especially those in care.



Canadian Foster Family Week

October 20 - 26, 2002



Canadian Foster Family Week provides opportunities to recognize the work and dedication of foster families and to highlight the need to recruit new foster homes.

During Foster Family Week, Children's Aid Societies will be honouring those families who give of their time and themselves to serve the community by being foster parents.

Children's Aid Societies can contact the OACAS at (416) 366-8115 to receive an Information Resource Kit to help plan Foster Family Week events.



Highlights from the Ontario Incidence Studies Of Reported Child Abuse

By Nico Trocmé, Ph. D, University of Toronto
Roy Walsh, Executive Director of Halton CAS

Child welfare caseloads are increasing across Ontario, but factors driving this increase are poorly understood. The 1993 and 1998 *Ontario Incidence Studies of Reported Child Abuse and Neglect (OIS 1993/OIS 1998)* provide a first opportunity to examine changes in the number and type of cases referred to children's aid societies (CASs) across Ontario.

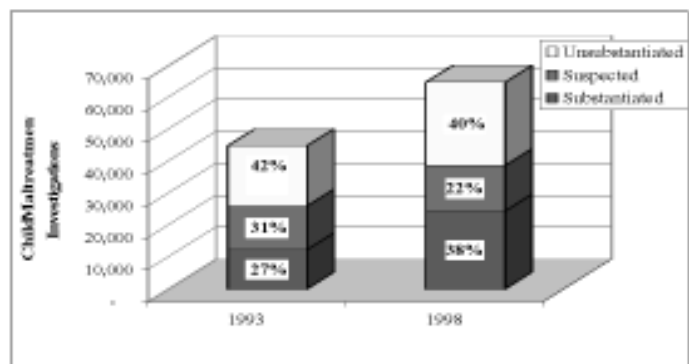
The 1993 *Ontario Incidence Study of Reported Child Abuse and Neglect (OIS 1993)* was the first survey conducted in Canada to examine the characteristics of children and families investigated by child welfare authorities. *OIS 1998* was conducted as part of a national study of reported maltreatment: *the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS 1998)*. *OIS 1993* collected information on a sample of 2,447 child maltreatment investigations conducted by a random sample of 15 Ontario CASs. *OIS 1998* was based on a second sample of 3,053 child maltreatment investigations conducted in Ontario in 1998. For more information about these studies, please refer to the OIS reports available at <http://www.cccw-cepb.ca>. Figures presented in this article are weighted estimates and do not include maltreated children who were not reported to a children's aid society.

Cases of substantiated maltreatment have doubled in five years

Between 1993 and 1998, the estimated number of child maltreatment investigations increased 44% in Ontario, from 44,900 to 64,800. The

number of substantiated investigations of child maltreatment nearly doubled, from 12,300 in 1993 to 24,400 in 1998 (Figure 1). At least three possible explanations can account for such a significant increase: (1) more children are being abused and neglected, or (2) more cases are being reported, or (3) more reports are being investigated.

Figure 1: Child maltreatment investigations by level of substantiation in Ontario, 1993/1998.



Source: OIS 1993/1998, Table 1.

The most troubling possible explanation for increasing child welfare caseloads is that more children are being abused and neglected than before. There is no simple way to test this explanation by using statistics on reported child maltreatment since, by definition, these statistics do not track unreported cases. Without direct evidence of an increase in maltreatment, researchers typically look for changes in other indicators that are known to be associated

with rates of maltreatment. Low income, poor housing and lack of social supports are three of the key factors that have been shown to be associated with higher rates of maltreatment in some neighbourhoods. The changes in the income support programs and decreased availability of social housing in Ontario between 1993 and 1998 lend some support to the argument that poor families are under more stress than ever before and may be experiencing more parenting difficulties. The dramatic drop in social assistance caseloads in Ontario could also be a factor underlying increasing maltreatment rates. This could affect maltreatment rates in at least two ways: some parents may be under more stress and more likely to maltreat their children, other parents may have had to enter the work force and may not be in a position to adequately supervise their children.

Improved detection and reporting are the factors that most researchers have favoured in explaining increases in rates of investigated maltreatment. Child welfare caseloads have increased four-fold in Ontario over the last 30 years. Such a long-term increase cannot be attributed to a corresponding 30-year deterioration in conditions for families in Ontario. Inquests, more specific reporting laws, changes in professional regulations and directives - the Ontario College of Teachers and the Ontario Medical Association, for example, have taken strong positions on the obligation to report - and growing public awareness and training for professionals who come into contact with children are generally attributed to the overall increase in reported child maltreatment.

Two particular findings from the *OIS 1993* and *OIS 1998* comparison lend significant weight to the improved detection and reporting explanation. The first is that the increase in caseloads is driven in large part by investigations of neglect and exposure to domestic violence, two types of maltreatment that have drawn attention in the

latter half of the decade. Particular attention has been given recently to child neglect in Ontario, as reflected in the changes that were made to the *Child and Family Services Act*, and by the introduction of neglect-specific eligibility standards in the provincial Risk Assessment Model. As with the recognition of sexual abuse in the 1980s, there is growing awareness of the harmful effects on children of exposure to domestic violence. The second relevant finding is that the increase in investigations is primarily due to increases in reports made by professionals, while there has been little change in the numbers of reports made by family members, neighbours and acquaintances. If the overall number of maltreated children has increased dramatically, one would expect that reports from families, neighbours and acquaintances would have increased to the same degree as reports from professionals.

The introduction of the Eligibility Spectrum as part of the province-wide Risk Assessment Model may be a third factor underlying the caseload increase. As investigation practices are standardized, some agencies report that they are now opening and investigating cases they would not have opened in the past. Standardized response times and the use of the Safety Assessment tool may also be contributing to the increase in substantiation rates.

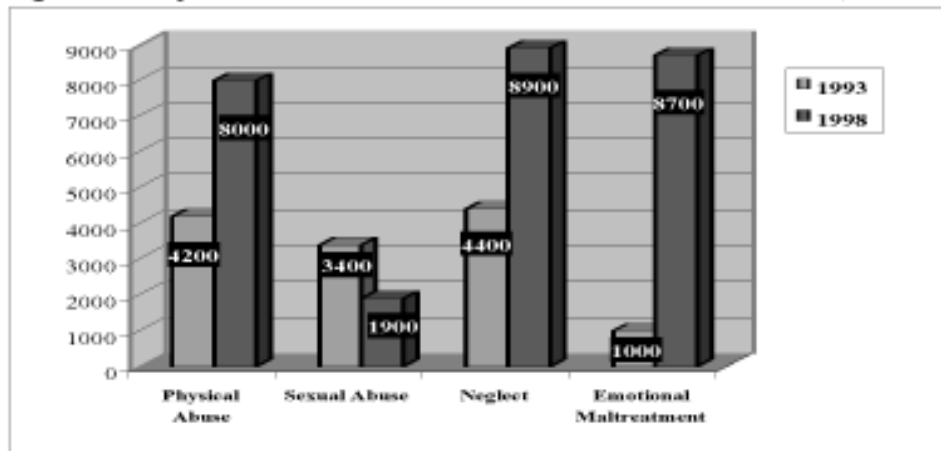
Increase varies by form of maltreatment

The increase in substantiated maltreatment documented by the *OIS 1993/OIS 1998* varies considerably by form of maltreatment. Figure 2 describes the increase in the four major categories of substantiated maltreatment.

Because many cases involved more than one form of maltreatment, the totals in Figure 2 add up to more than 24,400 (the total number of substantiated maltreatment investigations).



Figure 2: Major forms of substantiated maltreatment in Ontario, 1993/1998.



Source: OIS 1993/1998, Tables 2a-2d.

90% increase in cases of substantiated physical abuse

The number of substantiated investigations of physical abuse nearly doubled, growing from an estimated 4,200 in 1993, to 8,000 in 1998. In 1998, 71% of substantiated investigations of physical abuse involved inappropriate punishment. In fact, nearly one-quarter of all substantiated investigations of child maltreatment in 1998 involved physical abuse caused by inappropriate punishment.

44% decrease in substantiated sexual abuse

The number of substantiated investigations of sexual abuse decreased by 44%, from 3,400 investigations in 1993, to 1,900 investigations in 1998. This decrease is consistent with decreases reported across the United States. Such a dramatic decrease requires careful analysis. While it could indicate that sexual abuse prevention programs and criminal charging policies may have acted to effectively deter sexual abusers, it is also possible these same policies are causing victims and their parents to be less willing to disclose and report sexual abuse.

Neglect cases have doubled in five years

The number of substantiated investigations of neglect doubled between 1993 and 1998 from 4,400 investigations, to an estimated 8,900 investigations. Increases were noted across all forms of neglect tracked by the OIS 1998, particularly in cases involving inadequate supervision, medical neglect, and permitting maladaptive or criminal behaviour.

Investigations involving exposure to domestic violence up 87%

The most dramatic increase in the last five years has been with respect to investigations of emotional maltreatment. A nearly nine-fold increase brought the number of substantiated emotional maltreatment investigations from 1,000 investigations in 1993, to 8,700 investigations in 1998. Emotional maltreatment was recorded in 36% of all investigations of substantiated child maltreatment in 1998.

This increase has been largely driven by investigations involving exposure to domestic violence, a category not specifically included in the 1993 study. Reports from professionals, and in particular the police, are responsible for most of the increase in domestic violence

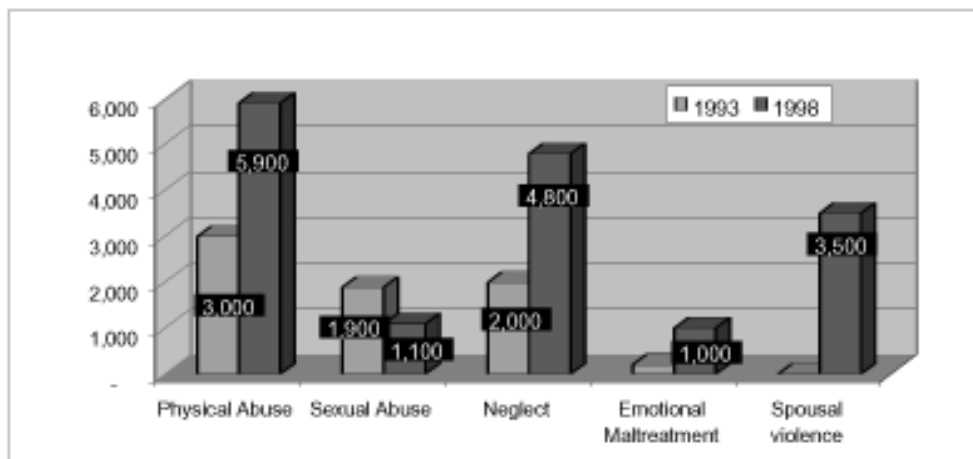


cases. Exposure to domestic violence is not specifically mentioned in Ontario's *Child and Family Services Act*, however, the dramatic increase in these investigations reflects an important shift in attitudes towards the effects of domestic violence on children. This increase requires the development of services and inter-agency protocols designed to meet the needs of these children without further compromising the victimized parent.

Increase driven by reports from professionals

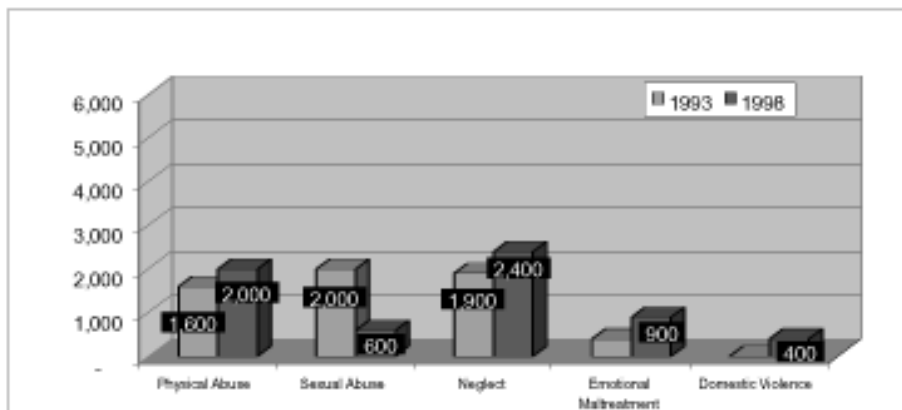
Analysis of reporting patterns underlying this increase points to a significant shift in reporting practices by professionals. Figures 3 and 4 examine the increase in major forms of substantiated maltreatment as a function of referrals from professionals compared to referrals from parents, victims, relatives and family acquaintances.

Figure 3. Reports from professionals in substantiated child maltreatment investigations in Ontario, 1993/1998.



Source: OIS 1998, Table 8-1.

Figure 4. Reports from family, relatives or acquaintances in substantiated child maltreatment investigations in Ontario, 1993/1998.

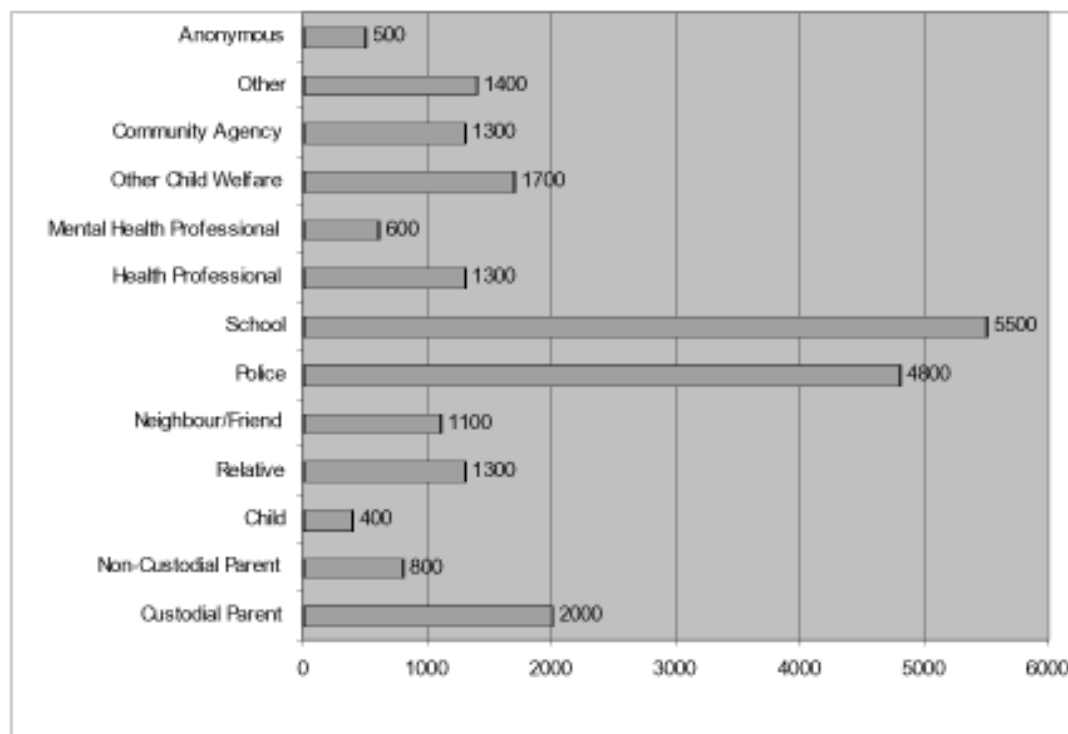


Source: OIS 1998, Table 8-1.



Figure 5 provides a detailed breakdown of substantiated investigations by source of referral in Ontario in 1998. Referrals from schools and the police accounted for 45% of substantiated cases.

Figure 5. Substantiated child maltreatment investigations by source of referral in Ontario, 1998.



Source: OIS 1998, Table 8-1.

In 1993, reports from professionals accounted for just over half of all substantiated investigations of child maltreatment, compared with nearly three-quarters of substantiated investigations in 1998. Across all forms of maltreatment, other than child sexual abuse, reports from professionals account for the majority of new cases of substantiated maltreatment being served by CASs in Ontario. In cases of sexual victimization, reports from both sources have decreased significantly, with the decrease in cases reported by parents, victims, relatives and family acquaintances being most pronounced at 70%.

Reports from professionals account for most domestic violence cases

The most significant change in child welfare caseloads between 1993 and 1998 has been the emergence of exposure to domestic violence as a leading form of child maltreatment. Nearly half of the additional investigations of substantiated maltreatment documented in the OIS 1998 are cases involving exposure to family violence. Reports from professionals account for nearly 90% of these cases. As with the recognition of sexual abuse in the 1980's, there is an increased understanding and awareness of the harmful effects on children of exposure to family violence.



140% increase in neglect cases reported by professionals

Neglect is the second fastest growing form of substantiated maltreatment being served by Ontario CASs. Substantiated investigations of neglect reported by family, relatives and acquaintances increased 26% from 1993 to 1998. During the same period, the number of reports from professionals increased 140%, from 2,000 to 4,800. The significant increase in rates of neglect may be a result of a growing awareness on the part of professionals, driven in part by a series of tragic inquests focusing on child neglect. A more explicit reference to neglect in Ontario's child welfare legislation and the introduction of neglect-specific eligibility standards in the provincial Risk Assessment Model could also explain this increase.

Outcomes of Investigations

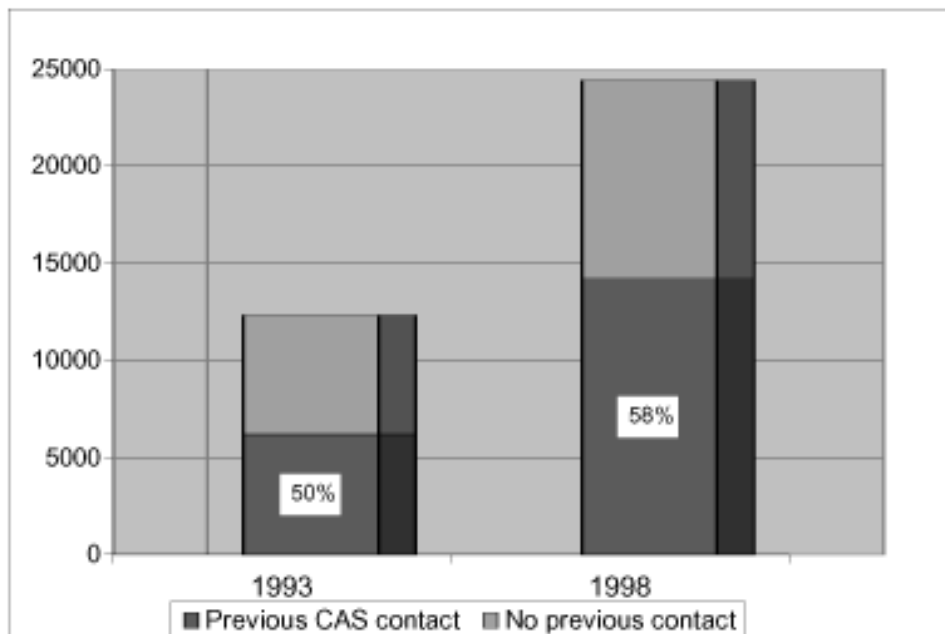
The short-term outcomes for child maltreatment investigations were tracked in both the *OIS 1993* and the *OIS 1998*.

and the *OIS 1998*. Information was collected at the point when the initial investigations were completed and therefore only includes service activity that occurred during the investigation.

Previous CAS contact in 58% of investigations

One of the most important changes noted between 1993 and 1998 was the very significant increase in the number of victims whose families had previous involvement with a CAS. The number of substantiated child maltreatment investigations with families who had previously been involved with a CAS increased 129% from 6,200 in 1993, to 14,200 in 1998 (Figure 6). Previous contact does not necessarily mean the child had been previously abused, as the investigation may have been unsubstantiated or may have involved a sibling. However, this significant increase is one of the only available indicators of how effectively children are being protected.

Figure 6. Substantiated child maltreatment investigations with previous CAS contact in Ontario, 1993/1998.



Source: *OIS 1993/1998, Table 5.*



Placement in out-of-home care

The *OIS 1993* and the *OIS 1998* also tracked out-of-home placements and court activities that occurred during the investigations. These do not include placement and court activities that took place after completion of the investigation. An estimated 1,800 investigations of maltreatment resulted in placement in out-of-home care in 1993, compared to 2,200 in 1998.

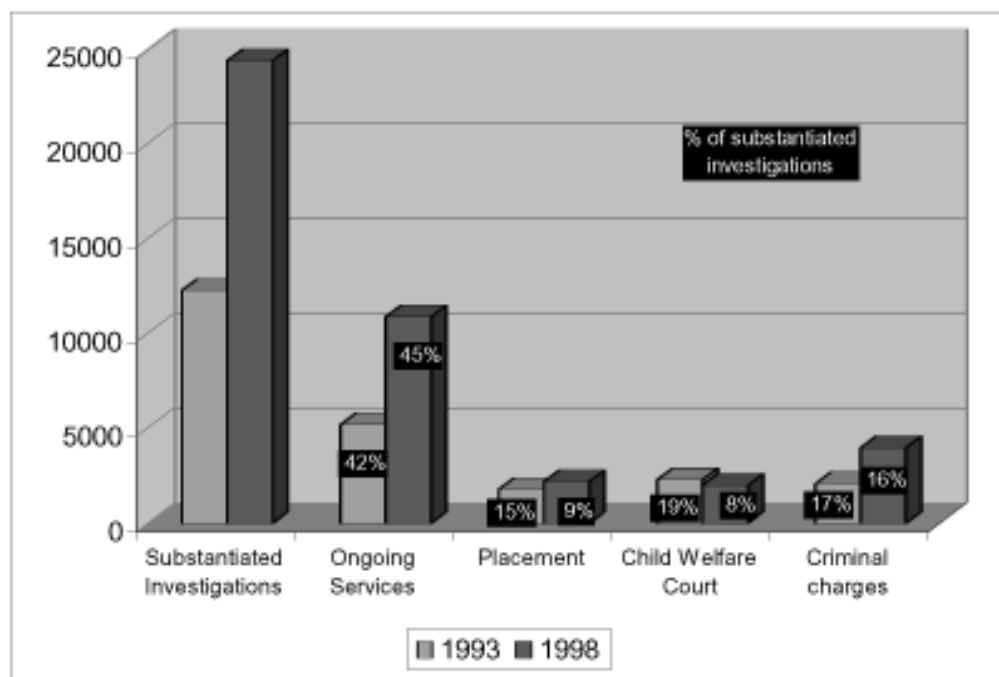
Considering the very significant increase in cases of substantiated maltreatment, the proportion of victims placed in care actually decreased, from 15% in 1993, to 9% in 1998

stability in admissions to care, the number of children in care has increased from an average of 10,000 on any given day, to over 16,000. Compounding this increase is an increase in the cost of providing out-of-home care, and a decrease in the availability of placements. To understand this increase, it will be important to determine to what extent the increase is driven by more children being placed in care or by longer stays in care. Further analysis of these trends is clearly needed.

Increasing use of criminal courts

The number of substantiated investigations resulting in child welfare court proceedings

Figure 7. Outcomes for substantiated child maltreatment investigations in Ontario, 1993/1998.



Source: *OIS 1993/1998, Table 6.*

(Figure 7). It is important to note that since 1998, the number of children placed in care has increased dramatically. After a period of relative

decreased from 2,300 in 1993 to 2,000 in 1998. The decreasing use of child welfare courts reflects the focus on favouring, where possible,



less intrusive interventions. In contrast, the use of criminal courts increased significantly. The number of substantiated investigations leading to criminal charges increased from 2,100 in 1993, to 4,000 in 1998. The extent to which the increase in charge rates may provide a partial explanation for the decrease in sexual abuse cases raises some potentially troubling questions about the relative effectiveness of the criminal response versus the "less intrusive" child welfare response that has dominated our response for other types of maltreatment.

Discussion

Child welfare caseloads are increasing across Ontario. Underlying the overall caseload increase is a significant shift in the types of maltreatment being investigated and substantiated. Exposure to domestic violence has increased nearly nine-fold and the proportion of neglect investigations has more than doubled, while investigations of sexual abuse are decreasing. The two Ontario incidence studies only provide partial explanations for the changes that have occurred between 1993 and 1998; however, the findings from these two snapshots point to two sets of issues:

- (1) the importance of a differential response that takes into greater consideration the issues specific to different forms of maltreatment, and
- (2) greater consideration needs to be given to the services and supports that can be effectively provided, beyond reporting to CASs.

The potential merits of a differential service response need to be examined in light of the growing evidence that many cases require in-depth assessments rather than protection investigations conducted under tight timelines. In

response to the growing recognition and reporting of exposure to domestic violence, child welfare agencies need to develop services tailored to the complex needs of these families, and intervention strategies that do not further victimize mothers caught in violent relationships. Long hidden by service statistics that focused primarily on documenting abuse, child neglect has only recently emerged as a service priority in Ontario. The chronic nature of neglect and its negative long-term effects on child emotional and cognitive development require service and support strategies that go beyond the short-term protection of child safety. The large proportion of physical abuse investigations involving inappropriate punishment raises questions about the need for broad-based public education strategies aimed at encouraging more effective parenting strategies. The decrease in sexual abuse needs to be examined carefully. Is the decrease the positive outcome of the unique prevention efforts made for this type of maltreatment, or is it the result of child welfare and criminal justice systems that have not been responsive enough to the needs of sexually abused children? The development of effective practice and policy responses hinges on pursuing these questions further and responding to each form of maltreatment on its own terms.

Notwithstanding the importance of developing maltreatment specific services, the overall increase in child welfare caseloads brings to public attention a growing number of children whose protection and well-being require services and supports that CASs are unlikely to be able to provide in isolation. Exposure to domestic violence is a case in point. Increased awareness of the problem leading to more reports to CASs is only a solution if CAS investigations lead to effective services. Unfortunately, there is little indication that reports to CASs are leading to such a response. Documentation of the effectiveness of CAS services in Ontario



continues to be limited. Relevant indicators available through the incidence studies are not encouraging: less than half of all substantiated child maltreatment investigations and less than a third of all investigated investigations received ongoing services in 1998, while the proportion of substantiated investigations that had previous CAS contact increased from 50% in 1993 to 58% in 1998. Faced with rapidly increasing caseloads, a dramatic increase in the number of children placed in out of home care and limited capacity to provide services to all the children and families who need them, it is increasingly clear that we need to expand child welfare reform beyond children's aid societies to include the development of better integrated community-based models of services and supports.

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Privacy and Children's Aid Societies: A Response to the Draft *Privacy of Personal Information Act, 2002*

By Marvin Bernstein

Background

Children's Aid Societies have traditionally been required to collect, use and disclose "personal information" and "personal health information" in the course of carrying out their legislated functions and purposes. Such information can relate to any number of individuals, including family members in the community (children as well as adult caregivers) and to children in the care of a CAS.

In 1985, the *Child and Family Services Act* (CFSA) was proclaimed and replaced the *Child Welfare Act*. Part VIII of the CFSA, which is captioned *CONFIDENTIALITY OF AND ACCESS TO RECORDS* was, however, never proclaimed, with the exception of one section. At the same time, Freedom of Information and Protection of Privacy legislation, both at the provincial and municipal levels, was never made applicable to CASs.

Several Coroner's Inquests, which occurred in 1997 and 1998, examined the deaths of children receiving services from CASs. These Inquests resulted in recommendations directed to more open sharing of information by professionals (including those involved in health care) and by persons in the community with Children's Aid Societies, as well as by CASs with professionals and individuals in the community. The Inquests heard repeatedly how there are legal safeguards that protect confidentiality - sometimes at the expense of the safety, protection and best interests of children.

In November of 1997, Minister Janet Ecker appointed an Expert Panel to review the *Child and*

Family Services Act to determine whether it had achieved a suitable balance between the autonomy of the family and the best interests of the child. The resulting report, *Protecting Vulnerable Children*, makes a number of recommendations designed to ensure that the "safety, protection and well-being of each child" is paramount, including a strong recommendation that Part VIII of the CFSA be reviewed, updated and proclaimed.

Previous OACAS Position Paper/Consultation Responses

In November 1996, the OACAS CFSA Task Force prepared a report, entitled *Proposed Amendments to the Child & Family Services Act: Plain English Interpretation*, wherein the following observations were noted:

[Part VIII] has never been proclaimed as part of the CFSA. Therefore, the task force proposed many amendments to this [Part]. While many CAS respondents supported the need for legislation in this area, most agreed that a more complete reworking of [Part VIII] would be essential in order to address the practice currently adopted throughout the province.

However, in reference to the amendments suggested, several agencies and individuals commented on liability concerns and the impact such legislation would have on workloads. The workload issue is particularly troublesome if time frames are attached to the provision of information.



Others were concerned about the practice of information sharing that currently varies widely from agency to agency. This has resulted in inconsistency and unfairness in some areas and has created a situation where crown wards are entitled to less information than those who were placed by CASs for adoption.

...While this is a PRIORITY 1 item, a complete review of [Part VIII] should be undertaken in light of the current legal climate, legislative changes undertaken in other areas...and cost and service implications.

In the Ministry of Health and Long-Term Care's Consultation Paper, dated September 2000, entitled *Ontario's Personal Health Information Privacy Legislation for the Health Sector (Health Sector Privacy Rules)*, there was a statement that the definition of "health information custodian" would include "service providers who provide services under the *Child and Family Services Act*, except children's aid societies."

In correspondence, dated October 6, 2000, in response to the September 2000 Consultation Paper, the following position was set out by the OACAS, based on the Consultation Paper's statement that Children's Aid Societies would be excluded from the definition of "health information custodian":

OACAS supports the development of legislation that regulates the collection, use and dissemination of personal health information. We are pleased to see that these rules would not apply to children's aid societies and this provision is clearly stated on page 12 of the consultation document. As you are aware, children's aid societies must be able to access health information readily to properly fulfill their mandate of protecting vulnerable children. Furthermore, children's aid societies may need to access and/or disclose personal health information for specific purposes related to their statutory functions in protecting children.

*We do wish to draw to your attention that Part [VIII] of the *Child and Family Services Act*, which contains specifics regarding privacy of children's records and family records, was never proclaimed. This section includes important matters of privacy including access to records, provisions for disclosure of records, consent to gathering and release of information related to service delivery to children, protection from liability and codes of procedure for service providers. We suggest that this part of the *Child and Family Services Act* should be reviewed, updated as necessary, and proclaimed so that the privacy of sensitive information about children and families is protected.*

In the approximate two month period between the OACAS response on October 6, 2000, commenting favourably on the exclusion of CASs as "health information custodians" and December 7, 2000, when the *Personal Health Information Privacy Act, 2000* (Bill 159) was introduced into the legislature, a change in policy direction was made, which resulted in CASs being included under the definition of "health information custodian". In response to this central change in Bill 159, the OACAS prepared a written submission to the Standing Committee on General Government in March 2001, which expressed, among other things, the following concern:

The provisions of Bill 159 will regulate the collection, use, disclosure, retention and disposal of personal health information by "health information custodians." This will create a whole new bureaucratic structure, with more onerous obligations being imposed upon Children's Aid Societies. Some of these new obligations are explicitly stated in Bill 159, while others will be the subject matter of future regulations. However, these personal health information activities are more applicable to health care providers and do not represent the primary functions of a CAS, which are set out in s. 15(3) of the CFSA.

New Approach Taken by the Draft *Privacy of Personal Information Act* 2002

The draft *Privacy of Personal Information Act, 2002* was released in February 2002, as part of a larger consultation process, and is, in some respects, a response to the federal privacy legislation, the *Personal Information Protection and Electronic Documents Act*, which would become operational in Ontario on January 1, 2004, in the absence of "substantially similar" provincial privacy legislation. However, the draft *Privacy of Personal Information Act, 2002* is more far-reaching than its federal counterpart and will apply to the collection, use and disclosure of personal information by an organization subject to provincial jurisdiction, and unlike the federal privacy legislation, will not require commercial activity with respect to the personal information in order to trigger its application. In this regard, it is important to note that because of the "commercial activity" component, CASs, as non-profit corporations, would not be subject to the federal privacy legislation in any event.

Unlike the earlier Bill 159, the *Personal Health Information Privacy Act, 2000*, which applied only to "personal health information", the draft *Privacy of Personal Information Act, 2002* will apply to all "personal information", with special additional rules applying to "personal health information" subject to a limited number of exemptions based on the need to "help support public safety, health, security, and balance the protection of personal information with other legitimate activities performed by government and others" (Province of Ontario's "A Guide to Ontario's Consultation on Privacy Protection", at p.1).

Of particular significance to CASs is the exemption for "service providers within the meaning of the *Child and Family Services Act*", set out in s. 7(1)(j) of the draft *Privacy of Personal Information Act, 2002*. However, it should be

noted that s. 7(5) of the draft privacy legislation provides the authority to repeal this exemption. The explanation given as a commentary to this provision is as follows:

The non-application of the Act to service providers within the meaning of the Child and Family Services Act is a temporary measure to provide sufficient time to develop amendments to that statute or the proposed privacy legislation to entrench appropriate privacy rules.

The central question for CASs, then, is whether privacy and access to records issues involving a CAS should be dealt with in an amended and updated Part VIII of the *CFSA* or by way of special provisions to be incorporated into the draft privacy legislation.

Preference for Updating and Amending Part VIII of the *CFSA* and Potential Consequences Resulting from the Application to CASs of Special Provisions in the Draft *Privacy of Personal Information* *Act 2002*

The OACAS has consistently taken the position that Part VIII of the *Child and Family Services Act* should be comprehensively reviewed, updated and proclaimed, so that there would be a consistent code regulating confidentiality and access to all records involving a CAS. In this regard, the OACAS takes the position that privacy and access to records issues involving a CAS should be dealt with in an amended and updated Part VIII of the *CFSA*, rather than by having further special provisions added into the draft *Privacy of Personal Information Act, 2002* at some later date.

In our view, it would be both inappropriate and impractical, in the context of daily child protection functions, to have the collection, use and



disclosure of personal information regulated by added special provisions in the draft *Privacy of Personal Information Act, 2002*, for the following reasons:

- The draft *Privacy of Personal Information Act, 2002* is already a multi-layered and highly complex piece of legislation, which will regulate the collection, use, disclosure, retention and disposal of "personal information". The draft Act already contains general principles applicable to "personal information", and then sets out special provisions applicable to "personal health information", "personal mental health information" and "genetic information", sometimes with apparent competing priorities. Consequently, it would be impractical to superimpose upon this intricate draft Act further special provisions relating to the unique needs of Children's Aid Societies
- The purposes of the draft *Privacy of Personal Information Act, 2002* are described in s. 1 of that Act as being, among other things, "to protect the privacy of individuals by establishing rules governing the collection, use and disclosure of personal information by organizations ...". In contrast, the child-focused Declaration of Principles in s. 1 of the *Child and Family Services Act* provides that "the paramount purpose of this Act is to promote the best interests, protection and well being of children". The Declaration of Principles in the *CFSA* is better suited for the determination of competing rights and the resolution of disclosure and access to records disputes. In addition, the case law, which has already interpreted the statutory language of the Declaration of Principles in the *CFSA* would be helpful in providing greater clarity and certainty when these issues arise.

Importance of the Existence of No Gap in the Event of the Repeal of the Time-Limited Exemption for CASs

It is important that there is no gap in the event that the time-limited exemption for Children's Aid Societies is repealed. In the case of such a repeal, it is important that CASs be covered either by amendments to Part VIII of the *Child and Family Services Act* or by special additional CAS amendments to the draft *Privacy of Personal Information Act, 2002*. If neither of these amendments were in place at the time of the exemption being repealed, then the general provisions of the draft privacy Act would apply, thereby creating the following potential problems for CASs:

- The records of Children's Aid Societies contain blended types of information, only some of which is "personal health information". The process of separating "personal health information" from other forms of "personal information", as contemplated by the draft *Privacy of Personal Information Act, 2002*, could be complicated by the fact that "personal health information" is broadly defined as, among other things, identifying information that "relates to the physical or mental health of the individual." As a result, CASs could end up applying different rules to various parts of their files. Simply put, this would create an administrative labyrinth and produce unnecessary work within a resource system that is already overtaxed.
- A CAS would be subject to the general limitations prescribed in the draft privacy Act, which would represent additional encumbrances for a CAS in the course of discharging its child protection mandate. This would mean, for example, that a CAS would



not be permitted to collect, use or disclose personal information, if other information could serve the purpose, and could not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be. To the extent reasonably possible, CASs would also be required to collect, use or disclose personal information in a manner that does not unnecessarily expose the identity of the individual. This could cause difficulties for a CAS, in the course of carrying out its responsibilities as a statutory parent on behalf of children in its care, which include, pursuant to the Regulations under the *Child and Family Services Act*, the obligations to assess and then meet the medical, dental, psychological and psychiatric needs of such children, including the provision of examinations, assessments and recommended treatment in a timely fashion, and the recording of all such examinations, assessments and treatments

- A CAS would be required to designate a "contact person," from among its staff, to help comply with the requirements of the draft privacy Act, to respond to inquiries about its information practices and to receive complaints from the public. This requirement could be quite onerous, especially when one considers that s. 68 of the *Child and Family Services Act* contemplates a different stream and procedures for the resolution of service complaints involving a CAS
- Under the new collection, use and disclosure rules in respect of personal information and personal health information in the draft privacy Act, a CAS would have to obtain the consent of the individual to whom the information relates, subject to specific limited exceptions. The CAS would also be precluded from collecting, using, or disclosing the information consented to, if other non-personal information would serve the purpose of the collection, use or disclosure. If, however, an organization

such as a CAS, collects personal information in contravention of the draft *Privacy of Personal Information Act, 2002*, it is prohibited from using or disclosing such personal information, even where the contravention is inadvertent

- Under the new "disclosure" obligations, it would appear that a child under the age of 16 years and in the care of a CAS, whose personal health information records were in the possession of a health information custodian, would have the authority to consent or withhold consent to the disclosure of his/her own records to a third party, if he/she had the requisite capacity, regardless of the position being taken by the CAS. Under these new rules, there would be a presumption that the child had such capacity, regardless of age. This could cause difficulties for a CAS that was of the view that such disclosure would be detrimental to the child or some third person
- Under the draft privacy legislation, a CAS would be required, upon an individual's request, to provide direct and complete access to the individual's personal information record, subject to specified limited exceptions. The problem for CASs, in this instance, is that they generally have policies that require only the identification of the authors and the general nature of the information collected from others (e.g. hospital records, psychological assessment records) to the subject individual, with the expectation that the subject individual would then seek access to that information directly from the author or source. This practice is supported by the Ministry of Community and Social Services Case Information Disclosure Policy, which stipulates that "the service provider may withhold the contents of a medical, emotional, developmental, psychological, educational or social assessment performed by a person who is not employed by the service provider, but may not withhold that person's name"



- The proposed time for a CAS to respond to access requests in respect of an individual's personal information or personal health information would raise serious workload concerns. For example, under the draft privacy legislation, the CAS would have a 30-day period, in which to comply with or refuse the request, subject to the right of the custodian CAS to seek a 30-day extension, provided certain prescribed criteria are met. A maximum 60 day period may, however, not be sufficient in those cases where there are voluminous blended records and extensive consultation must occur with outside professionals before a final decision can be made by a CAS with respect to a request for access to an individual's personal information or personal health information records. In this regard, the number of records affected could be enormous, given the retroactive application of the draft privacy Act
- Under the provisions of the draft privacy Act, a CAS would be placed in the difficult position of being required, within a 30 day time period, with an additional 30 days' extension, if certain preconditions are satisfied, to consider an individual's request to have his/her personal information in the Children's Aid Society's records corrected, even though such information may have been authored by someone else. This course of action could also have serious repercussions for a CAS that corrects such personal information after relying upon it, perhaps in pleadings or affidavit material, for the purpose of initiating child protection proceedings or removing a child from the care of a parent
- In the event of a complaint by an individual in respect of a refusal by a CAS, in whole or in part, to grant him/her access to requested personal information or personal health information, the individual would be entitled to have the complaint resolved by the Office of the Information and Privacy Commissioner.

This could mean that a CAS could spend a great deal of time involved in a complaints resolution process, after having potentially dealt with the same complaint under the complaints review procedure set out in s. 68 of the *Child and Family Services Act*. This situation would be further exacerbated by the fact that the complaints procedure before the Information and Privacy Commissioner is not set out in the draft Act and an adverse determination by the Commissioner can only be appealed on questions of law, but not on questions of fact

- Under the provisions of the draft Act, a CAS would be required to destroy or delete a record of personal information or de-identify it after the purpose for which the information was collected has been fulfilled, unless the CAS could bring itself within the exception that "it reasonably requires the record for purposes related to its operation". Given the fact that CASs are institutional litigants, who often rely upon historical records to defend lawsuits and to initiate protection proceedings on the basis of "past parenting" history, it would be highly prejudicial for CASs to be bound by these personal information record destruction requirements
- While the draft privacy legislation provides protection to the Information and Privacy Commissioner and his/her employees for acts done in good faith and reasonably in the circumstances, the penalty for various offences is quite substantial, being a fine of not more than \$50,000 in the case of an individual, and not more than \$250,000 in the case of a corporation or organization.

Positive Aspects of the *Privacy of Personal Information Act 2002*

There are some positive aspects of the draft *Privacy of Personal Information Act, 2002* for Children's Aid Societies, specifically in the areas



of the non-application of the draft *Act* and in CASs being authorized to gain access to personal health information records under the control of a "health information custodian". We would support these provisions remaining in the draft *Privacy Act*, independently of CASs having client and third party privacy and access issues regulated by an updated and amended Part VIII of the *Child and Family Services Act*. In this regard, the provisions we recommend retaining are as follows:

- "Service providers" within the meaning of the *Child and Family Services Act* are excluded, at least on a temporary basis, from the application of the draft *Privacy of Personal Information Act, 2002*
- Personal information relating to an individual, that is collected or created for the purpose of the child abuse register, the adoption disclosure register, an adoption order or young offenders records, is not subject to the application of the draft *Privacy of Personal Information Act, 2002*
- A health information custodian would have the discretion to disclose personal health information about an individual to a Children's Aid Society, without the consent of that individual, so that the CAS can carry out its statutory functions. This would mean that in some cases a CAS would not have to resort to a warrant or court order to access relevant personal health information
- A health information custodian could disclose personal health information if permitted or required under any other Ontario statute. This would not, therefore, detract from a person's reporting duty under s. 72 of the *Child and Family Services Act*, particularly if our recommendation were to be adopted that this section of the *CFSA* be given an explicit statutory override in s. 7(3) of the draft *Privacy of Personal Information Act, 2002*

- There is no limitation on the disclosure of personal health information about an individual, without that individual's consent, in protection proceedings under Part III of the *Child and Family Services Act* and in secure treatment proceedings under Part VI of that *Act*.

Impact of the Draft Privacy of Personal Information Act 2002 Upon the Integrity of the Duty to Report Under the CFSA

Subsection 5(2) of the draft *Privacy of Personal Information Act, 2002* provides that "in the event of a conflict between a provision of this *Act* or the regulations and a provision of any other *Act* or the regulations made under it, this *Act* and its regulations prevail unless this *Act* or its regulations specifically provide otherwise". There is the concern, however, that although subsection 72(1) of the *Child and Family Services Act* stipulates that the duty to report applies "despite the provisions of any other *Act*", the operative override provision must be contained in the draft *Privacy of Personal Information Act, 2002*, rather than in the *Child and Family Services Act*. In order to safeguard the integrity of the duty to report under the *CFSA*, it is accordingly recommended that subsection 7(3) of the draft *Privacy of Personal Information Act, 2002* be amended, so as to include s. 72 of the *Child and Family Services Act* in the list of other statutory provisions that will prevail over the draft *privacy Act*.

Recommendations

Having reviewed the draft *Privacy of Personal Information Act, 2002* in detail, we respectfully make the following recommendations:

- That at the very least, CASs be exempted from the application of the draft *Privacy of Personal Information Act, 2002* until such time as CASs are covered either by updated and proclaimed



amendments to Part VIII of the *Child and Family Services Act* or by special additional CAS focused amendments to the draft *Privacy of Personal Information Act, 2002*

- That Part VIII of the *Child and Family Services Act* be comprehensively reviewed, updated as necessary, and proclaimed optimally no later than January 1, 2004, so that there would be a consistent code regulating confidentiality of and access to all CAS records, in lieu of introducing special additional CAS focused amendments into the draft *Privacy of Personal Information Act, 2002*
- That the positive features of the draft *Privacy of Personal Information Act, 2002* for CASs, as outlined above, be retained, specifically in the areas of the non-application of the draft *Act* and CASs being authorized to gain access to personal health information records under the control of a "health information custodian"
- That the issue of any conflict relating to the duty to report under s. 72 of the *Child and Family Services Act* be addressed by amending subsection 7(3) of the draft *Privacy of Personal Information Act, 2002*, so as to include s. 72 of the *CFSA* in the list of other statutory provisions that will prevail over the latter *Act*
- That s. 44(e) of the draft *Privacy of Personal Information Act, 2002* be further amended to read "a health information custodian may disclose personal health information about an individual without the consent of the individual ...to **or by** the Public Guardian and Trustee, the Children's Lawyer, or a children's aid society so that they can carry out their statutory functions". This would ensure that personal health information could flow both into and out of a CAS for purposes of carrying out its statutory functions

Conclusion

Children's Aid Societies presently operate in a legislation vacuum with respect to the areas of collection, use, disclosure, retention and disposal of information generally. The combination of the non-proclamation of virtually all of Part VIII of the *Child and Family Services Act*, and the exemption of Children's Aid Societies from both the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* has left CASs in a state of information sharing limbo, with divergent practices emerging across the province.

In order to address this legislation vacuum, it is necessary to review, update and proclaim Part VIII of the *CFSA*, rather than having CASs fall victim to omnibus privacy legislation in respect of particular kinds of records and for limited and specific purposes. In this way, there will be uniform confidentiality and disclosure practices operating on a province-wide basis for CASs, with any outstanding contentious information sharing issues being determined in accordance with the child-focused Declaration of Principles set out in s. 1 of the *CFSA*.

In the final analysis, any framework for the collection, use, disclosure, retention and disposal of personal information must facilitate and support information sharing for the purpose of protecting children and ensuring their best interests and well being. It would be of concern to the field if any proposed legislation in this area served to impede information flow, or compromised the mandated investigative function of child protection workers. These same points were underscored in the report of the Panel of Experts on Child Protection, where the following statement appears:

...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 portions...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.

Additionally, the Coroner's Jury in the Helkamp Inquest followed an earlier proposal of the Panel of Experts on Child Protection, in delivering its Recommendation #26:

...that the Child and Family Services Act should be amended to include a new provision in Part III (Child Protection) that authorizes child protection agencies to have access to information and records related to a person, without the need for 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 (Child Protection) of the Child and Family Services Act;*
- *If the information is necessary for monitoring court orders*

In light of these recent pronouncements, we are of the view that it would be retrogressive to set up excessive "privacy" barriers, which would obstruct Children's Aid Societies in the fulfillment of their statutory mandate to protect and ensure the safety of vulnerable children.

About the author

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Prévention et intervention en cas de suicide

De Véronique Bouchard

English Abstract

The author presents the serious problem of suicide intervention in Canada among children and youth. Statistical data supports the evidence that intervention needs to take place in order to stop or decrease the growing number of suicides. The first step, prevention, is based on a sound knowledge of the myths surrounding beliefs about suicide, a deep understanding of the contributing factors to commit suicide and an understanding of the clues that allow the assessment of the degrees of risk. The second step consists of establishing a successful intervention plan.

Le suicide de par sa définition est une action portée sur soi-même et ce, par différents moyens généralement violents ayant tous le même but : l'autodestruction du sujet. Le suicide est une réalité et un problème grave dans notre société. Au Canada, selon les dernières statistiques, approximativement 3 500 à 4 000 personnes meurent du suicide chaque année. Le taux annuel de suicide au Canada s'élève en moyenne à 13 pour 100 000 habitants. Toutefois, dans certaines régions comme dans la municipalité régionale de Sudbury où la population est d'environ 160 000 personnes la réalité est différente. Selon des statistiques quinquennales obtenues par la police régionale de Sudbury, il y aurait eu : 26 suicides en 1995, 15 en 1996, 25 en 1997, 31 en 1998, 26 en 1999 et 21 en 2000.

Lors d'ateliers que j'anime menant à une certification en intervention en cas de suicide, la question relative au suicide chez les enfants est

souvent soulevée par la clientèle provenant de milieux divers tels que les centres correctionnels, les écoles, les travailleurs sociaux, les médecins, les policiers, etc. Même s'il est difficile de l'admettre, il est reconnu que, malgré le nombre peu élevé de suicides chez les enfants selon les données statistiques, beaucoup de jeunes ont des idées suicidaires (ce qui ne figure pas dans les statistiques).

Les recherches ont démontré que les enfants entre 8 et 9 ans, donc du niveau de troisième année en milieu scolaire, ont une bonne compréhension de la signification du suicide et que les plus jeunes comprennent le concept "de se tuer" (Mishara, 1999). Selon les données de Statistiques Canada, 229 enfants canadiens de 5 à 14 ans se sont suicidés dans la période de 1993 à 1997. Les enfants du sexe masculin affichent le plus haut taux de suicides, soit 155 contre 72 de sexe féminin. Dans quatre-vingt dix pour cent des cas, le fusil et la pendaison étaient les méthodes choisies. Les enfants peuvent être confrontés à des événements ou à des situations qui leur paraissent tellement difficiles à surmonter, qu'elles leur donnent l'impression d'être sans issue. La situation devient intolérable à vivre et seule la mort peut faire cesser cette souffrance.

Par ailleurs, environ 700 jeunes, entre 15 et 24 ans, se suicident chaque année au Canada, soit un rythme d'à peu près 2 par jour. Le suicide est la deuxième cause de décès chez les canadiens âgés de 15 à 24 ans. Plusieurs croient que les jeunes sont tellement impulsifs qu'on ne peut rien faire pour les empêcher d'en arriver là. Les adolescents et les jeunes adultes vivent de



profondes modifications biologiques et ont aussi à apprendre de nouveaux rôles et de nouvelles responsabilités. Les jeunes sont généralement plus impulsifs que les adultes, mais ce n'est pas le cas de tous. Les jeunes qui agissent de façon impulsive ont souvent des antécédents bien connus de comportements à risque. Même chez eux, le suicide est une décision mûrement réfléchie. La plupart du temps, les jeunes qui songent au suicide donnent des signes de leur intention. Il peut être difficile de reconnaître leur appel à l'aide, mais cela ne veut pas dire qu'il n'y a pas eu de perche tendue. Si l'on prend la peine d'entrer en relation avec eux, il y a de bonnes chances de pouvoir reconnaître les candidats au suicide.

La prévention est sans aucun doute un outil important pour prévenir les décès prématurés dus au suicide. La démarche de prévention est d'abord d'acquérir des connaissances qui aident à dissiper les idées préconçues, les mythes ou les fausses croyances sur le suicide.

Aujourd'hui, le suicide reste encore un sujet tabou. Il en résulte des réactions de dénégation, de silence et d'évitement. Le silence et le secret sont les alliés du suicide. Le dialogue et l'ouverture sont les éléments clés d'une communauté secourable. Il est important de connaître les mythes entourant le suicide puisqu'ils peuvent entraver la disponibilité et l'aptitude à apporter une aide immédiate à quelqu'un qui songe au suicide.

Le suicide est un phénomène complexe. Il faut l'envisager dans un cadre multidimensionnel tenant compte de plusieurs facteurs tels que les éléments individuel, familial, social, financier et culturel. C'est l'interaction de plusieurs facteurs qui semble poser les plus grands risques de comportements suicidaires. En tant qu'intervenants ou aidants nous devons reconnaître les événements stressants et considérer les sentiments ainsi que les réactions de la personne suicidaire face à ces événements

comme des appels à l'aide. La majorité des gens envoient des signaux pour communiquer leurs réactions ou leurs sentiments à l'égard des événements qui les poussent à en finir. Ces signaux d'alarme ou " appels à l'aide " peuvent se transmettre sous forme de messages verbaux directs, de signes physiques, de réactions émotives ou d'indices comportementaux.

Les intervenants ou aidants doivent pouvoir évaluer l'urgence de chaque appel, par conséquent, la connaissance des facteurs clés permettant de déterminer le niveau de risque est importante. Tout intervenant ou aidant qui désire connaître les signes avertisseurs courants, les indicateurs de risque, l'évaluation du risque, les principales mesures d'intervention et bien entendu les principaux éléments d'un plan d'intervention peuvent participer à des ateliers de formation appliquée en intervention par des formateurs accrédités.

Au sujet de l'auteure

Au sujet de l'auteure Véronique Bouchard, Coordinatrice des ateliers de formation appliquée en intervention en cas de suicide, a 15 ans d'expérience en enseignement au niveau collégial.

About the author

Véronique Bouchard is a Coordinator and Certified Trainer for workshops on intervention in case of suicide with 15 years of experience.

Child Welfare: Addressing and Meeting the Needs of Lesbian, Gay, Bisexual, Youth in Care

By Sharlene Weitzman

In a multi-cultural society where social services, specifically child welfare, claim to espouse the goal of meeting the needs of diverse populations, lesbian, gay, and bisexual (LGB) youth have been neglected for far too long.

From the perspectives of LGB persons who have been, or are currently living in the care of a C.A.S., were or are their "best interests" being met by the child welfare system?

Child welfare service provision is designed to address the needs of **all** children to whom it provides service. In a review of the literature related specifically to lesbian, gay and bisexual youth in out-of-home-care settings, a number of concerns arise. The most glaringly apparent among these is that this is a topic which has historically been unidentified and thus overlooked. Carol T. Tully, in *Lesbians, Gays & The Empowerment Perspective (2000)* indicates that this area of study is still "an emerging topic of scientific inquiry" (p. 113).

Legislative Issues: Best Interest Policy

The *Child and Family Services Act (CFSA)* is the primary piece of legislation that governs child welfare services in Ontario. Amendments to this legislation by the proclamation of Bill 6 in 1998 were implemented, "in order to better promote the best interests, protection and well-being of children" (p.5). The Act further recognizes that cultural, religious, regional, physical and mental health differences be respected (p.6). Notably absent from this list of 'differences' is the issue of sexual orientation. In failing to identify this issue as a difference in needs requiring specialized services, the issue has been virtually ignored within the child welfare system.

Societal Issues

The omission of sexual orientation/identity within the legislation and risk assessment tools within the field of child welfare reflects the heterocentrism and homophobia of society at large. This failure to address issues related to sexual orientation/identity continues the historical denial of heterosexism and homophobia as child abuse issues.

Heterocentrism is defined as, 'the assumption that the world is and should be heterosexual' (Mallon, 1998, p.12). Societal heterocentrism combined with ingrained overt and covert homophobia defined as 'a fear, dislike or hatred of gays, lesbians and bisexuals' (Appleby and Anastas, 1998, p. 4) has perpetuated the denial of the existence of LGB youth by child welfare systems both in legislation and in implementation.

Children involved in and living within the child welfare system, hide their identities for a number of reasons including: discrimination and violence, hostility, staff's lack of knowledge, stereotypes and myths regarding gay persons, inequality of treatment, peer responses, familial responses, and impact of race, religion and culture (Mallon, 1998). It is only within the last ten years that an emphasis is being placed on identifying and addressing the needs of the gay, lesbian and bisexual communities, particularly children and adolescents. However, that change is not systemic, but rather is limited to specific agencies and individual groups.



Historical Review

The issue of homosexuality cannot be discussed in full without placing it in the larger social context of homophobia or heterocentrism that remains present in our society. Until 1974 the American Psychiatric Association classified homosexuality as a psychiatric disorder (Mallon, 1999). Further, Mallon (1994) states that the declassification of this sexual orientation shifted the paradigm of the "illness model" (p.77), from a theory that proposed "curing" (p.77) homosexuals to one that opened the door for alternative theory development.

Although the stigmatization of homosexuality as a psychiatric disorder has been removed, societal stigmatization and homophobia remain systemic in North American culture and within the social services infrastructure. The history of this invisible minority of gay, lesbian and bisexual children and adolescents (DeCrescenzo, 1994; Mallon, 1998; Schneider, 1997,1998) is rooted in survival through hiding, secrecy and denial. Although for many lesbian, gay and bisexual persons this remains true, as societal views have shifted since the 1970's and increased social activism has grown within the gay community. Today, adult homosexuals are living lives of increased openness and dignity.

It is, however, important to recognize that the adult LGB population does not face many of the same issues the youth population does (Brown, 1988). According to Laurie Bell, Carol-Anne O'Brien and Robb Traverse (1993) in *No Safe Bed; Lesbian Gay and Bisexual Youth in Residential Services*, the differences are seen most glaringly within child welfare services and the "notable absence of research literature on the treatment of lesbian and gay youth in residential care" (p. 47). This suggests that although the social context within which these services are provided has seemingly changed, the actual impact in practical terms for children

that these changes have had on the area of research and implementation have been minimal.

Theoretical Review

Sullivan (1994), Mallon (1994) and Bell (1993) agree that historically, child welfare services paramount objectives were to meet the needs of the child and to preserve the family unit wherever possible. Several authors; Bell (1993), DeCrescenzo (1994), Mallon (1994), Schneider (1997), Sullivan (1994) and Tully (2000) have reiterated throughout the literature, the dismal failure of the child welfare system to identify and address the needs of LGB youth in care. There remains a remarkable lack of theoretical frameworks for dealing with this unrecognized, stigmatized and under served sexual minority. As previously noted, this is as a result of the continued "legacy of denial" (Sullivan, 1994).

The literature unanimously purports that the needs of gay, lesbian and bisexual youth in residential care setting are unique as are the developmental challenges that these children face when 'coming out' (Sullivan, 1994; Mallon, 1997; Phillips et al, 1997; McCullagh, 1995). As well, there is unanimous support for the theory that this group is a sexual minority who are a:

"vulnerable, multi-risk population of young people, at high risk of violence from their families and peers; frequently disowned and forced to leave home; disproportionately represented among the street youth population; in danger of drug and alcohol misuse, sexually transmitted diseases, including HIV/AIDS; and three to five times more likely to attempt suicide than their peers." (McCullagh, 1995, p. 20).

Given this information and the overwhelming support for it in the literature, the need for child welfare policy makers to undertake a systemic investigation of the problems facing this minority group seems immutable.



Methodological Review and Recommendations for Practice and Policy

In Ontario, the leader in the move toward identifying and implementing child welfare models to address the needs of this minority group is the Children's Aid Society of Toronto (CAST). In 1995, this agency, acting independently among Children's Aid Societies, published *We are Your Children Too; Accessible Child Welfare Services for Lesbian, Gay and Bisexual Youth*. As a result of the Steering Committee of the Lesbian, Gay and Bisexual Youth Project established in 1993 by a funding proposal called, *Lesbian and Gay Youth: Needs Analysis*, this agency published a report which directly dealt with service delivery to young clients of homosexual orientation within an agency environment that is "welcoming and accessible, providing programs and services that are competent and appropriate" (p. 2).

This report has led the way in methodological approaches to the research on this topic. The identified systemic barriers to be overcome before child welfare agencies can deliver "equitable, accessible and quality services to these youth" (p. 3) are listed as: invisibility, pathologization, tolerance of anti-lesbian/gay behaviour and denial of relationships. The report makes a number of recommendations to effect change, but overall recommends the following changes to assist in creating "integrated and effective" (p. 4) approaches to child welfare services: agency policy, advocacy, programs and services and professional development (p. 4).

These same concepts are reiterated in the collected works of G.P. Mallon in *Let's Get This Straight, A Gay-Lesbian-Affirming Approach to Child Welfare, and Gay and No Place to Go: Assessing the Needs of Gay and Lesbian Adolescents in Out-Of-Home-Care Settings*.

Mallon conducted his research from an ecological perspective as a participant-observer in multiple interviews with gay youth in care and their service providers. Despite the use of a different methodological approach, CAST and Mallon's conclusions remain the same. Mallon proposes the following for improving services to gay and lesbian youth in care: staff training, advocacy and prevention. As with CAST, Mallon notes the decided lack of research and literature regarding this population.

Other researchers and service providers, such as the Central Toronto Youth Services, have documented the needs of gay, lesbian and bisexual youth with the assistance of video camera, and have created tapes such as *Pride and Prejudice; The Life and Times of Gay and Lesbian Youth*. The methodological approach differs from those previously mentioned, but the results remain consistent with the following issues being seen as the most prevalent: safety, suicide, depression, homelessness, lack of service support, lack of role models, lack of gay-affirmative information and support.

Overall, research has been based upon interviews with gay and lesbian youth and service providers. As a result of limited literature, rigor of data collection and analysis has proven to be minimal on this topic, however, overall rigor of research has proven quite high in terms of triangulation and identification of the pitfalls of separate versus integrated services for gay lesbian and bisexual youth within the child welfare system. It is the finding of just how limited the data is that has led to the completion of the following research.

Analysis and Discussion of Research Findings

Video-taped interviews were completed with 3 LGB youth in care in March and April 2002.



Interviewees were selected based upon their experiences of having been, or currently being, in care as an LGB person. These tapes were transcribed and line-by-line coding for each of the transcripts was completed. For organizations sake these "meaning units", were linked to concepts and themes. Coding was open, without prefabricating any of the codes used in the research. The process was iterative throughout. The themes and sub- themes that were established are as follows:

1. Coming Out: denial, neutral language, secrecy, no one asked questions, silence

Each participant went through a process of denying their sexuality and fighting against it. In the wake of this denial came struggles with the secrecy and silence.

2. Religion: family (biological), placements

No questions were asked about religion; however, each interviewee brought the issue of religion up early in the interview process. Religion was related to their negative experiences in their homes of origin and within their foster placements.

3. School: pride, alienation, desire to speak with gay peers, rural verses urban

While the interviewees saw school as a positive source of pride, each was alienated and alone in semi-rural communities where they were either forced to remain closeted or were out and subsequently ridiculed by their peers and not protected by the school staff.

4. Mental Health: depression, anxiety, guilt, confusion, fear, shame, low self - esteem, substance use, counselling, self-harm

Two of the interviewees have been prescribed psychotropic medication, the other self-

medicated with street drugs to deal with her anxiety.

5. Relationship with Social Worker and CAS: support pride day, rights, relationship with social worker, meaning of having been in care

All of the participants spoke about the enormous value in being able to speak with and be supported by their social worker with respect to their sexual orientation.

Recommendations Based Upon Research Analysis

- Value the role relief caregivers can play in the life of a child in care.
- Complete assessments during the recruitment phase of family's religious beliefs and the impact on their ability to accept and support sexual orientations other than heterosexuality.
- End the secrecy/conspiracy of silence with open dialogue about sexual identity.
- Acknowledge that sexuality is not a choice nor should the granting and implementation of rights be a choice.
- Address and implement the need for gay positive/openly displayed literature in agencies and foster homes.
- Create and implement a formal mechanism to allow for placement change based upon sexual orientation discrimination.
- Additions to the Risk Assessment Tools that specifically speak to the issue of sexual orientation as a risk factor for abuse and victimization.
- Opening up a dialogue about sexual orientation within the field and with local school boards.



- Create policies and procedures that identify needs and instruct our staff on how to help ensure that children of sexual minorities have all of their needs met.
- Value the primacy of a child's relationship with their social worker.
- While consistency of care is extremely important, quality of care takes precedence.
- Peer support in the form of agency initiated LBG youth support groups
- Providing role models /recruiting and hiring gay workers/foster parents to allow kids to see that it is safe for these people to be themselves in an open and honest manner.
- All staff trained in sensitivity to issue related to sexual orientation.
- Pairing, sexual identity should be an area for discussion when determining placement
- Support kids attendance at pride day/pride parades.
- Rural agencies should learn from urban agencies in their ability to support and encourage diversity.
- The CFSA must identify sexual orientation in the legislation as a category for non-discriminatory practice and as a special need requiring special services to meet that need.

Conclusion: Implications for Social Work

A handful of progressive child welfare agencies in the province of Ontario have begun to identify the presence of gay, lesbian and bisexual youths within their ranks, and the high risks associated with this population. The need for systemic investigation of those problems is being espoused unanimously in the small, but cohesive

literature available in this field of research. It is impossible to address the needs of these children if the system of child welfare continues to deny their existence. This poses a challenge to a society that continues to be strongly influenced by Judeo-Christian values.

The necessary change required within child welfare extends throughout the ranks and hierarchy of that social service. Change begins with having informed intake investigators, educated and supportive protection workers, open communicative and affirmative children's services workers, and informed managers and boards of directors. It also includes active advocating and having educated resources departments, foster families and parents.

To ensure these changes, continued research around the needs of these children and policy change and development within each agency and the field as a whole is necessary. The government will also be required to play an active role in engaging the general population to support and address the needs of these children, encouraged by the fact that many of them are the children whom they have raised in heterosexual households as homosexual children.

Lesbian, gay and bisexual children are not a displaced or dispersed population, but live amongst the rest of society albeit hidden or "out" whether society is approving or not. It is a change of mindset that will support the development of a strong self-image through gay affirmative teachings that the child welfare system can begin to make the necessary changes so that it no longer continues to overtly or covertly fail to provide appropriate services to these children.

Homophobia is entrenched in our institutions and schools. Members of sexual minorities continue to struggle for legal equality that is automatically

afforded to their heterosexual counterparts. Let us not continue to make this same mistake within the child welfare field.

The child welfare community must be a leader in granting equality to the sexual minority children who are in their care. Active changes are needed now. Delay in making the necessary changes will result in a cycle of victimization imposed upon children by the agencies that have been given the authority to remove them from situations of victimization. It will take courageous and dedicated people to make this happen.

Best Interests

This research has shown that we meet many of the best interests of the children in our care; we do not however, meet their best interests when it comes to issues related to sexual orientation. While the mandate is the basis upon which we strive to meet those best needs, it is this same legislation that is limiting and non-inclusive with respect to sexual orientation. By identifying this flaw and sharing this information it is hoped that positive change will occur to allow for the best interests of lesbian, gay, bisexual, transgender, transsexual, two spirited kids in care to be met. Unfortunately, this is currently not the case.

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About the Author

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Purple Ribbon Campaign

1992 - 2002

10th Anniversary

October is Child Abuse and Neglect Prevention Month

Ontario's Children's Aid Societies are participating in a province-wide
Child abuse and Neglect Awareness Prevention Campaign

Support the campaign against child abuse and neglect.

Wear a Purple Ribbon in October

Ministry of Community,
Family & Children's Services

Office of the Minister

Hepburn Block
Queen's Park
Toronto ON M7A 1E9
(416) 325-5225

September 16, 2002

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collectivité, à la famille et à
l'enfance

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Mr. James J. Carey
President
Ms. Jeanette Lewis
Executive Director
Ontario Association of Children's Aid Societies
75 Front Street East
2nd Floor
Toronto, Ontario
M5E 1V9

Dear Mr. Carey and Ms. Lewis:

Thank you for your letter concerning the Purple Ribbon Campaign which coincides with
Child Abuse and Neglect Prevention Month, to be held in October.

I appreciate the time you have taken to write, and I will share your letter with
appropriate ministry staff. Allow me to commend your organization for continuing to
bring awareness to the issues affecting children and for promoting child protection.

Once again, thank you for writing.

Sincerely,

Brenda Elliott
Minister



Task Force Request

For

Evidence-Based Research in Social Work

The Image of the Profession Task Force, the membership of which is comprised of representatives from the Ontario Association of Children's Aid Societies, Family Service Ontario, Toronto Catholic Children's Aid Society, the Ontario Deans and Directors of Social Work Committee and the Ontario Association of Social Workers (OASW), was formed as a result of the negative media coverage related to the Inquest last year into the starvation death of Baby Jordan Heikamp. The Task Force is developing an inventory of current (past 2-3 years), evidence-based research that focuses on service delivery in the field of social and health services and demonstrates the efficacy of social work interventions and/or models of practice involving social workers. Once compiled, the inventory will be available through OASW to be used to demonstrate the value of employing social workers and funding services provided by members of our profession. Your assistance in this important initiative would be very much appreciated. For any enquiries, please e-mail or phone Joan MacKenzie Davies, Chair of the Image of the Profession Task Force and Executive Director of OASW; tel.: (416) 923-4848 ext. 232; e-mail: jmd@oasw.org



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