

by Nicholas Bala

REFORMING CHILD WELFARE POLICIES: DON'T THROW OUT THE BABY WITH THE BATHWATER

Les médias canadiens font souvent état de la crise qui sévit au sein du système d'aide sociale à l'enfance, des décès d'enfants victimes d'abus et des enquêtes publiques menées au sujet des revers des systèmes provinciaux de protection de l'enfance. D'aucuns ont fait des suggestions utiles pour amener les agences sociales à mieux traiter les enfants dont les parents sont incompetents, mais les participants à ce débat ne disent pas toujours clairement ce qu'ils entendent par « parents incompetents » ou comment il convient de remédier aux carences du système. Certaines des propositions formulées récemment risquent même de rendre le système trop interventionniste et éventuellement préjudiciable aux intérêts des enfants et des familles. L'auteur analyse le plan de réforme de la politique de protection de l'enfance qui a été mis de l'avant par le gouvernement ontarien en juin 1998.

The Canadian media have been filled with the news that the child welfare system is in crisis, with reports of child abuse deaths and public inquiries into the failings of provincial child welfare systems. While some sound proposals are being made to improve how public agencies deal with children whose parents are "inadequate," some of the public dialogue fails to account for the complexity of defining and responding to "inadequate parenting." And some of the recent proposals risk creating a child welfare system that is overly intrusive, and ultimately harmful to children and families.

Public reviews of child welfare problems have been undertaken in New Brunswick, Quebec, Ontario, Manitoba and British Columbia. This article critically examines the plan for child welfare reform in Ontario released in June of 1998.

The political context

Child welfare services in Canada are generally administered by the provincial ministry that deals with a range of services for the poor, including welfare. Over the past decade, the major political preoccupation in these ministries has been reducing welfare expenditures and fraud. In the present era of fiscal restraint, child-related services that have a broader constituency, such as education and child health, have often had greater public support than child protection.

At least in part, the traditional lack of public concern reflects the reality that the child welfare system tends to deal with those with little or no political power — children, especially those from lower socioeconomic groups, female-headed families, and aboriginal and immigrant communities. Child welfare agencies are disproportionately involved with low-income families, who are the most stressed and reliant on public agencies for support. The agencies have some involvement with middle class families, especially in sexual abuse cases, but these families can afford a range of services that lessen the likelihood of abuse or obvious neglect, and have the resources to resist unwanted intervention by a state agency.

Although there is no evidence that child abuse is a more serious problem now than in the past, professionals have a better understanding of the extent and consequences of abuse, while the media has heightened public awareness of tragic child abuse deaths. There is reason for cautious optimism about public policies in this area, since there is a growing recognition that failing to deal adequately with problems of child abuse and neglect has enormous long-term social costs for the welfare, correctional and social service systems. But there is a danger that collective guilt at the failure to protect our most vulnerable citizens will produce an insensitive overreaction that fails to address adequately complex issues and lacks the sustained commitment and resources to effect systemic change.

In Ontario after several highly publicized Coroner's inquests into child abuse deaths, the Conservative government appointed a "Panel of Experts" headed by

Court Judge Mary Jane Hatton. The Panel members were two judges, two doctors, two social work professionals, a police officer and a school principal; absent were any advocates for children or parents. The volunteer Panel had only a few months to work and a small budget. They held no public hearings, and produced a short, conclusory report. At the same time as releasing the Hatton Report, the government released a reports on child welfare training and administration prepared by a consulting firm and a ministry bureaucrat.

The Hatton Report (*Protecting Vulnerable Children*) advocates very substantial legislative changes to permit faster and broader intervention in situations where social workers believe that there is a threat to a child's "safety, protection or well being." Some of the proposals in the Report are aimed at improving the efficiency of the court system and increasing the information available to child welfare agencies and the courts. The effect of other proposals for changes in principles, grounds for intervention and reductions in judicial scrutiny will be a substantial "widening of the net" for the involuntary state intervention.

By way of contrast, British Columbia's New Democratic government gave Family Court Judge Thomas Gove a year and a half as well as sufficient resources to conduct public hearings and independent research into one highly publicized child abuse death and more broadly into the failings of the child welfare system. The 1995 Gove Inquiry Report focused on problems of administration, training and resource use, as well as proposing limited legal reforms. In response to the Gove Report the BC government has begun a process of fundamental restructuring of its children's services system. While the legal changes have been limited, a new Ministry of Child and Family Services has been created to better deliver and coordinate service delivery. Although there have been significant difficulties in implementing the changes and problems remain in BC, fundamental issues have been recognized and are being addressed.

Family preservation policies

Canada's first child welfare agencies were established at the end of the last century to provide state sanctioned aid to children "in need of protection." While there was nominal judicial control over these agencies, in practice they had very broad discretion to deal with socially marginalized children, those who were orphans, poor migrants in urbanizing Canada, or born out of wedlock and hence "illegitimate." The agencies were the primary means by which the state aided the care of children; there was, for example, no public

financial support for women who had children out of wedlock.

The 1970s and 1980s saw a number of related developments that changed the child welfare system throughout North America, supporting the concept of "family preservation" and placing greater emphasis on the rights of parents and children. There was a growing recognition that too many children were being taken into state care, often with harmful long term consequences. Some children in state care were victims of abuse, most obviously in the large child welfare institutions, like the infamous Mt. Cashel orphanage in Newfoundland. Many children removed from parental care were not being placed in stable, supportive environments, but rather would "drift" through a series of unsatisfactory placements.

The removal of children from parental care was also being challenged based on psychological "attachment" theory. The separation of children from long-term caregivers to whom they are attached is emotionally damaging, even if the parents were far from ideal. These psy-

chological theories were reflected in the development of "permanency planning" policies, which favoured "family preservation" — leaving a child with parents whenever supports could be provided to minimize risks — and making decisions as early as possible in life to remove children from inadequate parents and

place the child in another "permanent" home.

There was also a growing recognition that too often the decisions to remove children from parental care reflected biases of class or race. In Canada, the issue of systemic bias was most apparent in regard to aboriginal children. As the aboriginal residential schools began to close in the 1960s, child welfare agencies began to provide services on reserves, but often in a culturally insensitive fashion. The removal of large numbers of aboriginal children from their communities was characterized as "cultural genocide," and there were growing concerns about the identity problems experienced in adolescence by aboriginal children adopted by white families.

Canada was becoming a more "legalized" and rights-oriented society. In the child welfare context, parents, and in some provinces children, were given access to lawyers. Agencies had to devote greater attention to satisfying the requirements of the court system and justifying involuntary intervention in the family. The move to a "family autonomy" model was most apparent in the Ontario and Alberta reforms of 1984. Legislation included statements of principle that favoured "support to the autonomy and integrity of the family." Vague grounds for agency intervention, like "parental unfit-

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ness,” were eliminated, and the basis for state intervention was restricted to situations where there was a clear risk of serious harm to the child. If state intervention was sanctioned by a court, there was an onus on the agency to justify removal of the child from the home rather than providing support in the home. There was encouragement for the involvement of aboriginal communities in child welfare decision making and service provision.

Accompanying legislative reforms were profound changes in the agency caseload and services. The number of unwed mothers placing their newborn infants for adoption declined dramatically; single mothers generally now keep custody of their children, sometimes with agency support. Agencies developed an expectation that the child would remain with the family unless there was a substantial risk of harm. Cases were increasingly dealt with on an “informal” basis, with court proceedings and removal from parental care a “last resort.” While the number of children coming into agency care was falling, those who were taken into care tended to be older and often more troubled than in the past.

Child welfare in the “grim” 1990s

The past decade has been a difficult period in the public sector in Canada, with budget cuts and morale problems for child welfare agencies, as well as for many related services. Some of the cuts have directly affected the ability of welfare agencies to provide services. Other cuts, for example to welfare payments in Ontario, have indirectly affected agencies, by placing poor families under greater stress and increasing demands for agency help.

In significant measure, “family preservation” policies were premised on the expectation that a range of preventative and support services for high-risk families would be provided in the community. Frequently these were the first services cut, raising concerns about the viability of “family preservation” policies in the 1990s. The earlier family preservation policies were also premised on a set of political and social beliefs about the importance of providing social supports for “the family.” The 1990s is a conservative time, with more emphasis on individual responsibility and accountability, and less on societal support. “Family values” remain important, but the term has a different meaning than in earlier decades as society is prepared to be more judgmental and less supportive of parents who are seen to be inadequate.

Recent child development research emphasizes the importance of the first years of life in terms of social, psychological and neurological development. This has led to a questioning of those “family preservation” policies that leave children, especially very young children,

in homes where parental care is viewed as lacking in stimulation or neglectful. But studies also continue to document that agencies often fail to provide good care for children who are removed from parental care, especially older children who may be hard to place for adoption. And there continue to be cases where agency workers, often inexperienced and with high caseloads, improperly conclude that there has been abuse or

neglect and unnecessarily remove children from parental care, traumatizing children in the process.

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The Hatton Report

While there is no clear evidence that the child welfare system is providing

children with less protection than in the past, the public is now focusing on child abuse deaths, especially in situations where the agency had knowledge that the children were at risk but left them in parental care. In Ontario, the government’s response was to commission the Hatton Report, requiring a quick, low budget study of some complex issues.

Declaration of principle: The Report recommends that “the paramount purpose” of the Ontario Act should be “to ensure each child’s entitlement to safety, protection and well being.” All other considerations, such as stability of care and preservation of families, are to be “secondary.” This recommendation goes further than the Gove report in BC which resulted in a statute that specifies that one of the “paramount” principles is that “children are entitled to be protected from abuse, neglect, and harm,” but recognizes that this must be balanced against important concerns of family autonomy and cultural preservation.

Child in need of protection: The Hatton Report proposes a very substantial broadening of the definition of “child in need of protection” to include physical and emotional neglect, as well as situations where a parent fails to “adequately supervise, protect or control the child.” Also included will be cases where there is a “risk ...of physical, developmental or emotional harm” by reason of parent’s age, level of maturity, mental or emotional condition, or significant drug or alcohol use. Some of the terms used are vague and potentially very broad.

Reporting child abuse and neglect: The Report would expand the duties for members of the public and professionals to report suspected abuse and neglect, as well as increase agency access to records and information about children and their parents in order to investigate allegations and monitor court orders. When American states increased reporting obligations, there was a significant increase in reports, but a substantial portion of them were unfounded.

Apprehension decisions: The apprehension of children from their homes is a very intrusive step, though sometimes necessary to protect a child from harm. The

Hatton Report proposes facilitating the process of apprehension and reducing court control over this vital stage of the process. In BC the Gove Inquiry focused more on improving the training and decision making of child protection workers about apprehension, and less on legislative change. While there is a need to improve the efficiency of the court process and there have clearly been cases in which children have been left in situations of danger by child protection workers, the Hatton Report advocates a broad extension of state powers for protection workers.

Making tough decisions sooner. Ontario's legislation presently has a "24 month rule" as a maximum period for "temporary" decisions to be made about children. Such a lengthy period is appropriate for older children, who are more difficult to place permanently and who are psychologically bonded to their relatives. But this is too long for very young children who have not yet formed deep psychological bonds to caregivers and who will benefit the most from being placed in stable, permanent adoptive homes. Following reforms in other provinces, the Hatton Report wisely recommends that "permanent" decisions for younger children be made within 12 months for children under the age of two, and within 18 months for children two to four.

Reducing delay and mediation. In some courts, especially in large urban centres, child welfare trials often drag on for months, with a few hours of hearing at a time. Delay is harmful to children and unfair to parents. There is a pressing need to reduce delay in child protection proceedings. The Hatton Report recognizes that reducing delay will require more judicial control over the court process. In appropriate cases there may be judicial referrals to mediation. Mediation of child welfare cases is already being used in some places in Canada, but some child welfare cases are not suitable for mediation, such as those where there are substantial risk concerns, and an attempt to compromise is not appropriate.

A number of other recommendations should produce savings of court time, including encouragement of affidavit evidence, and facilitating the reception of evidence from children and social workers. Ultimately, however, issues of resources for judicial appointments, court rooms, support staff and legal services must also be addressed if delays are to be reduced.

Child welfare reform in context

With hindsight, one can clearly identify cases where children have been inappropriately left with abusive or neglectful parents. But the evidence of systemic under-intervention is less clear, and some of the problems of over-intervention and inappropriate intervention are

not being adequately considered in some of the recent discussions.

Agencies can change their approach to intervention without legislative reform; in Ontario in the last year, without any change in the law, agencies have responded to the concerns about child abuse by increasing apprehensions. While legal changes are needed to increase protection for children, it is important to maintain a balance and recognize the costs of "over-intervention."

Innovative community based programs have been established in Canada, working with parents at risk of abusing or neglecting their children, starting at a pre-natal stage and making use of community paraprofessionals. These programs are more supportive than coercive, and may be operated separately from the child welfare system because of concerns about parental mistrust of child welfare agencies. These initiatives are very promising, and different models should be tried, but they require government financial commitment.

If a child is "temporarily" removed from parental care, agencies should work more effectively with parents and promote maximum parental contact with the child to facilitate a successful return of the child to their care. Whenever possible foster parents should also be working with biological parents.

Improving the child welfare system requires an understanding of the challenges faced by those who work in this field. Child welfare work can be less satisfying and more stressful than other types of social work. Protection staff are often required to make extraordinarily difficult decisions about the future of children. If a child is left in an abusive situation and harmed, the worker will feel enormous guilt, but if a child is removed from a home, the parents, and often the child, will express great hostility toward the worker. It is only with hindsight that one can assess whether a decision was really "right," and even then one really can only be certain if the decision turns out to have been "wrong."

Social workers go into child welfare with the objective of helping individuals, but many of the "clients" (*i.e.*, parents and children) view them not as hav-

ing a helping role, but as adversaries — as investigative agents of the state who pose a threat to the family. This makes child protection work frustrating and contributes to a high turnover and lack of experienced staff (a problem exacerbated by budget cuts) which in turn results in poor case management. Child welfare requires workers who have appropriate education, training, supervision and remuneration.

While recent research on child development and child abuse has been significant, there is a lack of empirical data regarding how the child welfare system in

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Canada is actually operating, as well as a lack of knowledge about optimum intervention strategies for children at risk. Research in this field is difficult, for example with ethical and legal constraints on experimentation of the different placement alternatives. While the development of policy cannot wait until we have "perfect knowledge," the absence of good analysis and research should make us cautious about substantial policy changes, especially ones that call for dramatic changes in social relationships or massive increases in state intervention in the most important and sensitive of human relationships.

We must learn from the tragic deaths of children from abuse and neglect. But we must also recognize that it is not possible to have a "perfect" child welfare system, which protects all children and never inappropriately intervenes. We can, however, do better than we have done in the past few years in trying to achieve a balance between under and over apprehension.

There are many sound ideas in the Hatton Report. But improving the legal system and the decision making that is its central function will have only a limited role in improving the child welfare system in Canada. Administrative, resource and training issues are central in addressing the problems in child welfare but they may not receive sufficient government attention in Ontario. Investments in the child welfare system will provide long term social, economic and human returns, but it will take time and money to effect change in the child welfare system. The Ontario government put resource questions outside the Hatton Committee's mandate, though the Report diplomatically observed: "Critical to the successful implementation of any legislative change is the provision of adequate resources."

One has to be concerned that Ontario's Conservative government will act quickly on legislative reform but may be unwilling to provide adequate services or funding, or even to restore the funding cuts it made in the child welfare field since coming into office. The Ontario government has announced that it will be introducing legislation based on the Hatton Report early in the Fall. Hopefully the present focus on the relatively inexpensive process of legislative reform is not a shortsighted or cynical effort to distract the public from issues that will require greater expenditures and more administrative skill.

Speedy legislative action to address some of the issues raised in the Hatton Report is needed, but the questions raised here should be considered before any legislation is enacted.

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by Katherine Covell and R. Brian Howe

A POLICY OF PARENT LICENSING

Selon les auteurs, il faut mettre en place au Canada un régime de licences à l'intention des parents. Outre le fait que les lois régissant actuellement la fonction de parent sont réactives et inadéquates, elles supposent que la fonction parentale est un droit plutôt qu'un privilège. Or, il arrive trop souvent que les enfants soient élevés par des parents incompetents, ce qui engendre des coûts trop élevés tant pour les personnes concernées que pour la société. En exigeant que les parents obtiennent une licence, on concrétiserait le principe des droits des enfants, enchâssé dans la Convention des Nations Unies relative aux droits de l'enfant, à laquelle le Canada a donné son adhésion. L'octroi de licences confirmerait en outre l'importance sociale du rôle parental, favoriserait le développement de compétences parentales et le sain épanouissement des enfants, et faciliterait, au besoin, les interventions en faveur de ces derniers.

The purpose of this article is to make the case for a new policy of parent licensing. We hold that such a policy is consistent with the principle of children's rights and with the United Nations Convention on the Rights of the Child, which Canada signed in 1990. Under the