



Ontario Association of Interval & Transition Houses

Standing Committee on Social Policy

Submission on Bill 210 An Act to amend the Child and Family Services Act

Ontario Association of Interval and Transition Houses (OAITH)

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Introduction

The Ontario Association of Interval and Transition Houses (OAITH) is a 75-member provincial association primarily of first stage emergency shelters for women and children escaping woman abuse. We want to thank the Standing Committee on Social Policy for the opportunity to comment on *Bill 210* and to make some suggestions that we hope will better protect women and children.

OAITH has had a long history of response to women and children in Ontario and extensive experience with the impact on children of witnessing violence. Since the first shelters opened in Ontario in the mid-70s, women's shelters have been working with mothers attempting to protect their children from further exposure to abuse. In 1982, for example, when the Province of Ontario held its first hearings into "wife battering", one of the common concerns raised by women's shelter representatives was the need for specific supports for children within shelters. Over the ensuing years, OAITH and its members have been successful in gaining many of the supports currently in place for children exposed to woman abuse.

The significant amendments made to the *Child and Family Services Act* in 2000 further increased our involvement in this area, in particular as a result of the introduction of new "risk assessment" measures within child welfare eligibility tools and changes to the "emotional harm" section of the *Act*. In short, these changes have resulted in child exposure to woman abuse becoming reportable to child welfare authorities.

The inclusion of exposure to 'domestic violence' within child protection reporting has resulted in a number of unintended negative consequences to mothers who are abused, to women's anti-violence services and to the child protection system itself.

While women's anti-violence agencies have had almost 30 years of experience working with children exposed to woman abuse, child abuse advocates have not. In addition, while child welfare budgets have risen dramatically after legislative changes were made in 2000, women's shelter and community-based women's counselling service budgets were cut in 1995 and then frozen until small increases were introduced in recent years by the current government. Women's shelter representatives have been struggling with the consequences of these imbalances to women and children, and to their services, ever since but still lag behind the needs of women and children for help.

It is from this depth of experience that we respond to the current amendments to the *Child and Family Services Act*.

Budgetary considerations

Incidence studies conducted on child maltreatment in Ontario clearly demonstrate that the reporting of exposure to 'domestic violence' has been a significant factor in skyrocketing reports to child welfare agencies. Indeed, the recent *Ontario Incidence Study of Reported Child Abuse and Neglect—2003*, which was released in 2005, states that "exposure to domestic violence was the most frequently substantiated category of maltreatment; nearly a third (32%) of all

substantiated investigations involved exposure to domestic violence.”¹ Neglect was the second most commonly substantiated form of maltreatment, an issue associated with poverty and lack of housing supports, the top two concerns about leaving an abusive relationship for women who use shelters in Ontario.

Because reports and interventions in cases of woman abuse have so dramatically altered the way in which child welfare is conducted, it is critical that any amendments to legislation and regulation in the area be considered in light of the specific needs of women and children in ‘domestic violence’ situations, as well as the continuing lack of supports for them within mainstream systems and the continuing lack of adequate support for women’s services. No system in which almost a third of its work is now focussed on ‘domestic violence’, if it is to work effectively, can afford to ignore the complex dynamics of woman abuse, or the social context of inequality in which it occurs.

The dramatic increase in substantiated reports of domestic violence to child welfare—an increase of 319% in the last 10 years, according to the study—has had a significant part to play in the considerable increases in child welfare budgets during the same period, despite the fiscally conservative attitude of the day. In tandem with a desire to provide better support to children, this continuing rise in child welfare budgets has also been a consideration in terms of current child welfare transformation in Ontario and so budgetary considerations must also form part of the consideration of *Bill 210*.

Overview of our comments

We were disappointed to discover that the review of the March 2000 amendments to the *Child and Family Services Act* conducted last year was restricted primarily to those sections dealing with permanency of placements, and much of *Bill 210* speaks to placement issues for children who may require this measure.

We would like to address this part of the legislation, but also speak to other major changes—the introduction of mediation as an alternative to court proceedings and the purposes of child welfare service on early assessment, planning and decision-making that takes into consideration the participation of the child’s relatives and members of the child’s community. We would also like to comment on issues of custody and access within the *Act*.

Placement issues

Research shows that children who are reported to child welfare as a result of exposure to ‘domestic violence’ are rarely the subjects of placement. The Ontario Incidence Study referred to above found that this type of child maltreatment in child protection practice had the lowest rate of placement. This is as it should be, as the role of child welfare in cases of child exposure to ‘domestic violence’ is new and it is far from certain that ongoing child welfare involvement is in the best interests of child witnesses in these cases. According to the incidence study of 2003 for Ontario, child welfare workers identified that no emotional harm had taken place in 88% of cases reported primarily for exposure to ‘domestic violence’. In the remaining 12%, workers identified

¹ Ontario Incidence Study of Reported Child Abuse and Neglect—2003 (OIS 2003). Major Findings—Executive Summary Report. Pg. 2. B. Fallon, N. Trocme, B. MacLarin, D Knoke, T Black, J Daciuk, C Felstiner. Toronto, Ontario, Centre of Excellence for Child Welfare. 2005. View at: <http://www.cecw-cepb.ca/DocsEng/OIS2003.pdf>

some form of harm, but identified that in only 8% of cases were children determined to need some form of treatment intervention.

Although placement is rare for children exposed to domestic violence as a primary concern of child welfare authorities, it does happen. In addition, many situations in which other forms of child maltreatment are present will also include woman abuse as a secondary concern.

We support the direction of *Bill 210* with regard to creating more flexible options for families to allow informal placements with relatives and community members, rather than placing children in formal foster care. For many women contemplating escape from an abusive partner, reality is making a choice between poverty and violence. It is far better to hold the abuser accountable for the violence and to provide better financial and housing supports for women and children that support the rebuilding of non-violent lives than to move children into foster placements.

If family and community are supportive to women and children, it would most beneficial to permit informal care in these cases. But we also know that many abusive partners come from home environments where they themselves were exposed to woman abuse. In such cases, it would not be wise to automatically assume extended family members will support the victim, protect the children or hold the abuser accountable for his violence. This is similarly true for any form of placement, given the high incidence of woman abuse generally.

We would support assessment of all community placements, whether formal or informal, for violence against women, and especially those cases where placement is being considered as a response to ‘domestic violence’.

We therefore recommend:

1. That the legislation be amended to include a clause stipulating that regulations governing placements by child welfare agencies include a requirement for ‘domestic violence’ screening as a prerequisite to approval of any placement, whether formal or informal.
2. That the legislation also require safety planning and assessment of placements where woman abuse is a primary or secondary concern of child welfare to ensure safety for children and their mothers where abusive partners may be provided access to the child, or where there is a reasonable possibility that the abuser can find the placement (eg. if a child is placed in a small community or with extended family members).

We believe that informal and extended family or community placements would be more supportive and appropriate for children, provided placement settings are assessed for ‘domestic violence’. At the same time, we want to stress that financial support for extended family or community members must equal that available in formal foster care and be sufficient to ensure that any services and supports beyond the basic needs, such as food, transportation and clothing, should also be eligible for child welfare financial support. This kind of support would mean children could receive counselling or other services to counteract the effects of abuse.

We therefore recommend:

3. The legislation include a clause to ensure that informal and extended family or community placements receive adequate financial support to provide for coverage of

services and supports needed by children, in addition to all of the basic needs and supports required for placement.

Purposes of the Act

Early assessment, decision-making and planning

Time delays within systems can put women and children in a state of uncertainty and apprehension and can lead to escalating power tactics and threats from abusive partners. We therefore support including early assessment, decision-making and planning within the additional purposes of the *Act* in Section 1(2) and hope that it will lead, in a timely way, to better support for both children and their mothers, as well as concrete and swift accountability for abusive partners, in cases of ‘domestic violence’.

The circumstances of woman abuse are complex and the barriers to escape multi-layered and often beyond the control of the women and children at risk. So while we support expeditious decision-making and planning, we want to emphasize that decisions and plans must be made within the context of a differential response to woman abuse, as recommended by the jury in the inquest into the death of Gillian Hadley.

Recommendation 40 of that inquest states: “We recommend that the Ontario Association of Interval and Transition Houses (OAITH) and Ontario Association of Children’s Aid Societies (OACAS), in collaboration with the Ministry of Community and Social Services develop a specific response within child protection services across the province to child welfare reports and cases in which child exposure to domestic violence has been identified; and further; That the Ministry of Community and Social Service ensure that appropriate and adequate funding is allocated to both the violence against women sector and the child welfare sector for training, implementation and ongoing operation of the specific response in cases of domestic violence.”

Although this partnership for development of a differential response to domestic violence within child welfare has not occurred, we are aware that child welfare agencies have been working on forms of response specific to woman abuse in various ways as caseloads have mushroomed. Any assessments, decisions and planning for cases in which violence against women has been identified must be made by knowledgeable child welfare workers and women’s advocates within the specific context of woman abuse and its impacts on children. This should hold true for any decisions made in the matters considered in this *Bill*.

Involvement of the child’s extended family and community, where appropriate

We support this direction provided that it is implemented within the framework described above. With regard to ‘domestic violence’ cases, extended family and community members must be carefully assessed before their participation is invited. For many women, the participation of supportive family, friends and community supports is vital to achieving their safety and well being, and the protection and well being of their children. It is similarly important to remember in woman abuse cases, that abusers may go to great lengths to separate women and children from all supports and to ensure that they have no close ties that could interfere with the abuser’s control.

Child welfare decision-making and planning will need to include consideration of these dynamics and to ensure, when considering the involvement of extended family and community, that women have community supports in place that are there on their behalf and not under the influence or control of their abusive partners.

Recognition of equality rights of historically disadvantaged groups

Assessment, decision-making and planning for children must take into account substantive equality rights of gender, race, culture, language, ability, sexuality, age and ethnic origin and ensure that decision-making and planning for children avoids systemic discrimination and cultural stereotyping based on inequalities within Canadian society. In our increasingly diverse communities and within our *Charter of Rights and Freedoms*, it is important to found legislation and regulations on these commitments.

Section 1(2)4 of the *Act* references consideration of respect for cultural, religious and regional differences. Section 1(2)5 of the *Act* recognizes the entitlement of Aboriginal peoples to their own child and family services and to the provision of services in a manner that recognizes their rights. The *Act* further recognizes in Section 2(1) the rights of children and their families to services, where appropriate, to have services provided in French. These considerations are an excellent foundation on which to build. We believe a statement of commitment to all forms of equality rights within the *Charter* would be appropriate to include within the purposes of the legislation at this time.

We therefore recommend:

4. That the Committee take this opportunity to suggest the inclusion of a clause within Section 1 (2) of the *Act* to support child welfare practice based on respect for the equality rights granted in the *Canadian Charter of Rights and Freedoms*.

Use of alternative dispute resolution processes

The introduction of alternative dispute resolution processes between child welfare authorities and parties who are subject to the *Act* has been proposed as a less adversarial, faster and less expensive way to decide the outcome of a case. Within this context, the *Act* also proposes that the Children's Lawyer may be included, when appropriate, to represent the child or children involved.

While alternate dispute resolution processes may have some benefits for parties involved with child welfare authorities, it must be carefully assessed in cases of exposure to woman abuse.

During recent hearings at the Standing Committee on General Government on *Bill 27* to amend the *Arbitration Act*, which outlines the conditions by which many alternative dispute resolution processes are conducted and/or modelled upon, our Association outlined some of the concerns we have with regard to this type of process for women experiencing violence from partners and for their children. Some of these that also pertain to *Bill 210* include:

- Alternative dispute resolution methods require relatively equal bargaining power between parties. There are numerous ways in which women in relationships are not in equal bargaining positions with their abusive partners. Sexist abuse and violence are obvious examples of extreme power imbalance, but there are others: language, race, disability, educational opportunity, sexual orientation, employability, poverty, primary childcare responsibilities and more. Women in abusive relationships are often not safe in these processes. How will bargaining positions be equalized in these ADR methods?
- Alternative dispute resolution engages in negotiation, a concept that is alien to abusive, manipulative and controlling male partners. How will alternative dispute resolution processes work in child welfare cases where children are exposed to woman abuse, but it is the woman who is the target of the violence? Will child welfare be engaging in ADR with both the woman and the abuser as the “caregivers” of the child? Will abused women be forced to ‘negotiate’ with both their abusers and the child protection system?
- Alternative dispute resolution promotes the creation of an agreement between the parties to the process. Because of the numerous power imbalances that may disadvantage women in these processes and the goal of reaching an agreement, women often feel that they must trade away their legal rights to protect their children and themselves. How will the legal rights and protections for both women and children be ensured in the process of deciding the disposition of a case involving child exposure to woman abuse? Will women who are the subject of ‘domestic violence’ be afforded the support of a lawyer in such cases? Will Children’s Lawyers assigned to these cases be knowledgeable with regard to the dynamics of woman abuse and the need to support mothers in their attempts to protect their children from abusive partners?
- Although the legislation states that alternative dispute resolution will be used both before and during proceedings under Part III of the *Act* “with the consent of the parties”, it is often the case that women in abusive situations are reluctant to oppose such recommendations for fear of appearing “uncooperative”, so that the voluntary nature of ADR becomes more form than substance.

All of these issues are serious for both children exposed to woman abuse and their mothers and we are troubled that women and children may be subjected to some of these issues that have arisen in a number of other venues where ADR is practiced. A one-size-fits-all solution of moving cases out of court and into alternative dispute resolution may not be in the best interests of children or their abused mothers in ‘domestic violence’ cases. If such ADR processes are to be included in this legislation, we would suggest that they be tempered with some safeguards to better protect women and children exposed to violence against women.

Proposed amendments to the *Arbitration Act* in *Bill 27* codify the practice of ADR in family law. While we do not support the codification of forms of ADR within family law, we also want to ensure that if it proceeds unchecked, that it at least includes screening to ensure that ‘domestic violence’ is identified and preferably screened out of such processes. We would therefore recommend that *Bill 210* also include clauses to screen out cases of ‘domestic violence’ from alternative dispute resolution and that, failing that, strong regulations are written to control its practice.

We therefore recommend:

5. That a regulation be created to include a requirement that any cases in which child exposure to ‘domestic violence’ is either the primary or secondary concern within child welfare be deemed inappropriate for alternative dispute resolution.
6. That, failing this practice, regulations include a requirement that anyone chosen to conduct such an alternative dispute resolution process, be required to have completed training in screening and assessment of power imbalances, including those created by violence against women and any power imbalances resulting from inequality as defined in the *Canadian Charter of Rights and Freedoms*, Section 15.
7. That regulations include a requirement that anyone chosen to conduct an alternative dispute resolution process within a child welfare case be able to demonstrate that they have been fully trained in the dynamics of violence against women and its impact on children who are exposed to woman abuse.

Proposed amendments to the *Arbitration Act* under *Bill 27*, in addition to making reference to the need for screening and training on issues of ‘domestic violence’, also recognized the need for parties to an agreement to receive independent legal advice before making an agreement, and that a party’s failure to object to any irregularity in the process will not be considered a waiver of the right to object later. It will be equally important to ensure that *Bill 210* is consistent with these amendments, when passed, in cases where alternative dispute resolution is used to decide the disposition of child welfare cases.

We therefore recommend:

8. That a clause be added in any sections of the *Act* referring to alternative dispute resolution to also provide for the right of parties to independent legal advice before making an agreement under the *Child and Family Services Act*. The *Act* should specifically state that without proof of independent legal advice, an arbitrated agreement is of no effect.
9. That legal aid is increased to ensure that parties to any agreement made in alternative dispute resolution under the *Child and Family Services Act* have the resources to seek legal advice before making an agreement.
10. That resources be provided to ensure that all parties to the alternative dispute resolution process have access to supports that would facilitate their equal access to justice, including cultural and language interpretation, accommodations for parties with disabilities, and advocacy support from community-based services, where appropriate.

Custody and Access

For women who are in an abusive relationship and for the children exposed to the abuse, the ability for child welfare court to make custody and access orders could be a significant support in terms of moving more quickly to settle custody and access matters and to stabilize situations for children.

There are some conditions, however, that would need to be in place in order for this to genuinely benefit women and children. First and foremost, child welfare authorities would need to show full understanding of the dynamics of woman abuse in cases where it has been identified either as the primary or secondary concern in a child welfare case. And they would need to be able to convey this to the court in a way that supports custody for abused women and safeguards children from abusive access visitation. In addition, they should be able to show that they have taken steps in their own system to hold the abuser accountable for the exposure of children to abuse against their mother.

Secondly, women who are the subject of the control and abuse, need to know that they will have independent legal advice in such situations, and competent legal advice that is knowledgeable in both family and child welfare law in order to provide appropriate representation in the case.

Finally, as noted above, legal aid funding and additional supports for women who require translation, interpretation, accommodations and community-based women and children's anti-violence supports must also be made available to ensure that both women and children subjected to abuse are fully supported in custody and access cases.

We therefore recommend:

11. That the legislation be amended to add a clause requiring that in any cases in which custody and access decisions may be made in child welfare court, parties are provided with the opportunity and financial supports from legal aid to be represented by counsel competent in both family and child welfare law.
12. That the *Child and Family Services Act* be amended to ensure that courts using this legislation to make custody and access decisions act in a way that is consistent with new proposed amendments to Section 24 (2) of the *CLRA*, the section which provides the court with guidelines for determining the best interests of the child. Specifically, we recommend the following clause, recently supported by the Standing Committee on General Government in its review of *Bill 27*, also be inserted into the *Child and Family Services Act*, that is:

“Violence and abuse
(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,
 - a. his or her spouse;
 - b. a parent of the child to whom the application relates;
 - c. a member of the person's household; or
 - d. any child.”
13. That further, the legislation be amended to also include the additional clause accepted by the Standing Committee on General Government in its clause by clause review of *Bill 27*; that is, a further addition proposed to amend Section 24 (2) of the *CLRA*:

“(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse.”

Concerns of Aboriginal groups

We have noted that within the deputations to the hearings on *Bill 210*, many Aboriginal speakers have expressed concerns with regard to Section 44 of the *Bill*, which amends Section 223 of the *CFSA* to state that the Lieutenant Governor in Council may make regulations regarding “procedures, practices and standards for customary care”. These speakers have expressed the desire for more consultation and more control of the child welfare processes that affect their communities and the well being of Aboriginal children in Ontario.

We would like to support the recommendations of these groups for the Province to engage in improved consultation with Aboriginal communities before this *Bill* is passed, and in particular, we would urge the Province to ensure that it consults with representatives of Aboriginal women, such as the Ontario Native Women’s Association, the women’s shelters in Ontario primarily serving Aboriginal women and children, and the Native Women’s Association of Canada with regard to the needs of Aboriginal women and children.

Ontario Incidence Study of Reported Child Abuse and Neglect—2003 states indicates that in 2003, 65% of child welfare cases of Aboriginal children remained open after the initial investigation compared to 38% of non-Aboriginal children. Court applications were made in 11% of cases involving Aboriginal children, compared to 6% of non-Aboriginal children. Informal kinship placements were made in 11% of Aboriginal child welfare cases compared to 3% of non-Aboriginal cases. Child welfare placements were made in 11% of cases involving Aboriginal children compared to 6% of non-Aboriginal children.²

Clearly it is important, given these comparative numbers, to create a further opportunity to hear from Aboriginal representatives on the solutions they see as supportive to children in their own communities.

We therefore recommend:

14. That before this *Bill* is passed, the Ministry of Children and Youth Services hold further consultations be held on issues of concerns to representatives of Aboriginal communities, and in particular, that these consultations include representatives of Aboriginal women’s groups.

Conclusion

Based on our knowledge of the dynamics and complexities of woman abuse and child exposure to ‘domestic violence’, we are confident that our suggested changes and recommendations for both child welfare legislation and practice will be in the best interests of children in Ontario.

Once again, we thank the Committee for considering this submission.

Respectfully submitted,

Ontario Association of Interval and Transition Houses (OAITH)

February 14, 2006

² Ibid. Page 92.

Summary of Recommendations

1. That the legislation be amended to include a clause stipulating that regulations governing placements by child welfare agencies include a requirement for 'domestic violence' screening as a prerequisite to approval of any placement, whether formal or informal.
2. That the legislation also require safety planning and assessment of placements where woman abuse is a primary or secondary concern of child welfare to ensure safety for children and their mothers where abusive partners may be provided access to the child, or where there is a reasonable possibility that the abuser can find the placement (eg. if a child is placed in a small community or with extended family members).
3. The legislation include a clause to ensure that informal and extended family or community placements receive adequate financial support to provide for coverage of services and supports needed by children, in addition to all of the basic needs and supports required for placement.
4. That the Committee take this opportunity to suggest the inclusion of a clause within Section 1 (2) of the Act to support child welfare practice based on respect for the equality rights granted in the *Canadian Charter of Rights and Freedoms*.
5. That a regulation be created to include a requirement that any cases in which child exposure to 'domestic violence' is either the primary or secondary concern within child welfare be deemed inappropriate for alternative dispute resolution.
6. That, failing this practice, regulations include a requirement that anyone chosen to conduct such an alternative dispute resolution process, be required to have completed training in screening and assessment of power imbalances, including those created by violence against women and any power imbalances resulting from inequality as defined in the *Canadian Charter of Rights and Freedoms*, Section 15.
7. That regulations include a requirement that anyone chosen to conduct an alternative dispute resolution process within a child welfare case be able to demonstrate that they have been fully trained in the dynamics of violence against women and its impact on children who are exposed to woman abuse.
8. That a clause be added in any sections of the *Act* referring to alternative dispute resolution to also provide for the right of parties to independent legal advice before making an agreement under the *Child and Family Services Act*. The *Act* should specifically state that without proof of independent legal advice, an arbitrated agreement is of no effect.
9. That legal aid is increased to ensure that parties to any agreement made in alternative dispute resolution under the *Child and Family Services Act* have the resources to seek legal advice before making an agreement.
10. That resources be provided to ensure that all parties to the alternative dispute resolution process have access to supports that would facilitate their equal access to justice, including

cultural and language interpretation, accommodations for parties with disabilities, and advocacy support from community-based services, where appropriate.

11. That the legislation be amended to add a clause requiring that in any cases in which custody and access decisions may be made in child welfare court, parties are provided with the opportunity and financial supports from legal aid to be represented by counsel competent in both family and child welfare law.
12. That the *Child and Family Services Act* be amended to ensure that courts using this legislation to make custody and access decisions act in a way that is consistent with new proposed amendments to Section 24 (2) of the *CLRA*, the section which provides the court with guidelines for determining the best interests of the child. Specifically, we recommend the following clause, recently supported by the Standing Committee on General Government in its review of *Bill 27*, also be inserted into the *Child and Family Services Act*, that is:

“Violence and abuse

(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,

- a. his or her spouse;
- b. a parent of the child to whom the application relates;
- c. a member of the person's household; or
- d. any child.”

13. That further, the legislation be amended to also include the additional clause accepted by the Standing Committee on General Government in its clause by clause review of *Bill 27*; that is, a further addition proposed to amend Section 24 (2) of the *CLRA*:

“(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse.”

14. That before this *Bill* is passed, the Ministry of Children and Youth Services hold further consultations be held on issues of concerns to representatives of Aboriginal communities, and in particular, that these consultations include representatives of Aboriginal women’s groups.