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CHILD WELFARE REFORM: PROTECTING CHILDREN OR POLICING THE POOR?

KAREN J. SWIFT* AND HENRY PARADA**

RÉSUMÉ

Cet article analyse comment les familles pauvres et leurs enfants ont été affectés depuis la mise en oeuvre de la réforme de la législation sur la protection de l'enfance. La réforme, qui eut lieu dans le contexte néo-libéral des années 1990, paraissait contenir des changements qui s'imposaient à la façon dont les autorités protégeaient les enfants susceptibles d'être victimes d'abus et de négligence. Tous les partis politiques, y compris le PND, approuvèrent les modifications apportées à la *Loi sur les services à l'enfance et à la famille (LSEF)*, qui entrèrent en vigueur par proclamation en l'an 2000. Les modifications, connues comme le Projet de loi 6, furent adoptées avec un minimum de consultation et virtuellement sans opposition. Une grosse injection d'argent dans le système de protection de l'enfance donna l'impression de hisser les services à des niveaux raisonnables, tandis que des efforts massifs dans le domaine de la formation semblaient s'attaquer aux problèmes de pratiques de travail incompétentes ou bâclées qui avaient été révélées lors des enquêtes sur les décès d'enfants qui avaient eu lieu en Ontario quelques années plus tôt. Toute une panoplie d'outils d'évaluation de risques, ainsi qu'un mode de financement lié aux prestations de services, furent aussi introduits.

Dans cet article, qui est basé sur une étude examinant l'expérience des travailleurs et des mères affectés par la réforme, nous analyserons à la fois les nouvelles modifications à la législation et les politiques et pratiques annexes qui procurent du sens et donnent effet à la législation. Une attention toute particulière est portée aux outils d'évaluation de risques et au cadre de financement. Nous arguons que la réforme touche démesurément les familles pauvres et cela de façon destructive, et qu'elle aide à rassembler les conditions idéales pour produire encore plus de mal. L'extension des raisons inscrites dans la législation pouvant donner lieu à l'intervention dans les familles, ainsi que les pratiques de surveillance intensifiées, sont examinées. Est ensuite décrite l'augmentation spectaculaire à la fois du nombre d'enquêtes et du nombre d'enfants recueillis suivant l'introduction de la réforme. Dans nos conclusions, nous recommandons que l'orientation à long terme de la législation sur le bien-être de l'enfance devrait redonner aux familles une position souveraine et devrait donner une responsabilité accrue à la société pour le bien-être des enfants. Nous proposons aussi que les pratiques d'évaluation de risques abandonnent leur concentration presque exclusive sur les comportements individuels « à risque » pour se concentrer plus largement sur les politiques économiques et les programmes politiques qui mettent l'enfance à risque.

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INTRODUCTION

It was in the context of dramatic media coverage of tragic child welfare outcomes and a rapidly shrinking welfare state that Ontario's child welfare reform was introduced in 1997. The reform involves a series of changes to both law and policy that have transformed child welfare in this province within a very short time. The initiatives to support this new and much more focused direction, as we will show, have produced a high level of surveillance and intrusion into the lives of clients of the system.

On the face of it, the reform of Ontario's child welfare system contained some much needed changes to the way children at risk of abuse and neglect are protected by authorities. All political parties, including the NDP, signed on to the amendments to the *Child and Family Services Act (CFSA)*, which were proclaimed in 2000. The amendments, known as Bill 6, were passed with little consultation and virtually no opposition. A large cash influx into the child protection system appeared to be bringing services up to reasonable levels, while a massive training effort seemed to address the problem of uninformed or sloppy work practices revealed in the child death inquests that had been held in Ontario a few years before. Various risk-assessment tools and measures and a funding formula tied to services provided were also introduced. After reform, it appeared we could turn our attention to more pressing matters, and indeed most of the public did – no doubt to the relief of the sitting minister.

This article, based on a study exploring experiences of workers and mothers affected by the reform,¹ examines the new amendments to legislation as well as the surrounding policies and practices that bring meaning and effect to the legislation. We argue that the reform disproportionately affects poor families in destructive ways and is helping to reproduce the conditions for further harm. In our conclusions, we suggest how some of the harmful effects of this approach might be alleviated and how the long-term direction of child welfare legislation should be changed.

WHY REFORM?

Child Welfare Reform in Ontario resulted from several developments including deaths of children in the system, high-profile inquests investigating these deaths, widespread media coverage of child welfare issues, and the 1995 election of a Conservative government in Ontario with a clear neo-liberal² agenda of reducing benefits for low-income populations.

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1. Interviews with protection workers and investigated mothers carried out as part of the ongoing SSHRC-funded study, *Risk and Risk Assessment in Child Welfare*, also support our conclusions (K. Swift & M. Callahan.)
 2. The neo-liberal agenda privileges the role of the state as one of facilitating the market-based economy over that of taking responsibility for the welfare of its citizens. Neo-conservatism agrees with the focus on the state-market relationship and goes beyond that to morally regulate relations between state and family. Both elements are represented in the child welfare reform. However, we follow Ericson *et al.* and Clarke *et al.* in referring to risk regimes as neo-liberal.

In the 1990s, a number of high-profile Canadian reviews of deaths of children connected to the child welfare system were carried out. Perhaps the most prominent of these was a review dealing with the death of a four-year-old in British Columbia. This detailed investigation, published as the Gove Inquiry into Child Protection (1995),³ was widely publicized across the country and led to substantial reform of the child welfare system in that province. Child death reviews have since been carried out in a number of other provinces as well. Typically, reviews describe mistakes, misjudgments, oversights, and uninformed practices by social workers, point to lax, vague, or misguided legislation, and identify communications problems within organizations as contributing factors leading to tragic outcomes.⁴ These findings then lead to recommendations to tighten up the law, reorganize tasks and departments, and provide workers with training and tools to identify risky situations and act quickly to prevent tragedy.

In Ontario, as in other provinces, reviews of protection-related child deaths were conducted in the late 1990s. Eight cases of deaths of children associated with the child protection system were investigated by the Coroner's office. A report by the Ontario Association of Children's Aid Societies (1998) summarized the findings of the various Coroners' juries, noting 120 recommendations addressing "needed" changes to protection legislation, 50 involving training for workers, 29 calling for a comprehensive risk assessment system, and 29 also suggesting standards for handling cases of child neglect, for a total of 428 recommendations.⁵

These investigations and jury findings were closely followed by the media, with special and dramatic attention paid to errors and mistakes of social workers involved in these cases and to the laws and organizations governing their work. The *Toronto Star* and other print media published accounts of the inquests in some detail.⁶ For

These authors argue that the welfare state has been transformed into a managerial state with emphasis on downloading responsibilities for welfare- and risk-management onto individuals in order to focus energies on supporting corporate economic goals.

See J. Clarke, S. Gewirtz & E. McLaughlin, "Reinventing the Welfare State" in J. Clarke, S. Gewirtz & E. McLaughlin, eds., *New Managerialism, New Welfare* (London: Sage Publications, 2000) 1; R. Ericson, D. Barry & A. Doyle, "The Moral Hazards of Neo-Liberalism: Lessons Learned from the Private Insurance Industry" (2000) 29:4 *Economy and Society* 532.

3. British Columbia, *Report of the Gove Inquiry into Child Protection in British Columbia: A Commission of Inquiry into the Adequacy of Services, Policies and Practices of the Ministry of Social Services as They Relate to Apparent Neglect, Abuse and Death of Mathew John Vaudreuil* (Victoria: Ministry of Social Services, 1995).
4. K. Swift, "The Case for Opposition: Challenging Contemporary Child Welfare Policy" (2001) 47 *Canadian Review of Social Policy* 59.
5. Ontario, *Report on Inquests into the Death of Children Receiving Services from a Children's Aid Society* by B. Porter (Toronto: Queen's Printer, 1998).
6. J. Gadd, "Child Welfare Changes Urged: Advocate Needed, Coroner Says" *Globe and Mail* (1 May 1997), A1; J. Gadd, "Jury Makes Emotional Plea for Child Rights: Sweeping Changes Urged at Close of Abuse Inquest" *Globe and Mail* (10 May 1997) A1; M. Bourrie, "Do More To Protect

instance, two *Toronto Star* journalists following the story wrote, “The [Children’s Aid] Society was too committed to the return of the child ... the good intentions of keeping them with family now appears to have been misguided ... the final result in some cases [was] death”.⁷ The *Toronto Star* called for “stiffer laws” and recommended a “radical overhaul of the child protection system” in order to prevent the abuse and tragic deaths of children.⁸

In another high profile Ontario case, which occurred in 1997, a child protection worker was arrested and charged with criminal negligence in the starvation death of baby Jordan Heikamp.⁹ This event terrified protection workers across the country, suggesting as it did that they themselves could be held criminally responsible for errors or even for perceived errors in judgment in their handling of cases. Although the charges were subsequently dropped, calls for better workers, tougher laws, and a reorganized protection system were again made by the press.¹⁰

THE POLITICAL AGENDA

These recommendations for substantial changes in child welfare law and practice occurred, of course, in the social and economic context of neo-liberalism, which is more than an ideology, as Teeple (1995)¹¹ notes, but also involves both the expansion of transnational corporate interests and concomitant retrenchment of national and local welfare structures in the interests of facilitating corporate agendas. A Canadian example of this agenda was the federal government’s decision in 1995 to replace the Canada Assistance Plan with the Canada Health and Social Transfer (CHST). The new provisions resulted in a 15% decrease in federal transfers to provinces for health, education, and welfare. Naturally, provinces reacted by reducing funds for programs in these portfolios. In turn, benefits to recipients of Social Assistance were reduced, sometimes substantially. The CHST also erodes federal control over the expenditure of these funds, leaving provincial governments relatively free to allocate funds as they

Kids, Children’s Aid Told: Coroner’s Jury Probed How Agency Failed Pair Killed by Father” *Toronto Star* (25 June 1997) A5; M. Edelson, “Don’t Make Aid Society Scapegoat for Cutbacks” *Toronto Star* (15 May 1997) A31; D. Freed, “Mom Who Killed Tot Refused Offer of Help: Told Children’s Aid She Could Manage on Her Own, Inquest Told” *Toronto Star* (11 April 1997) A9; M. Welsh, “Children’s Aid Put Girl in Care of Schizophrenic: Report Suggested Tot Be Made Crown Ward, Inquest Told” *Toronto Star* (17 September 1997) B3.

7. M. Welsh & K. Donovan, “Cry for the Children. They Are Fragile, Desperately Needy. Yet Youngsters under the Protection of Ontario’s Child-Care System Are Likely To End Up Even More Damaged” *Toronto Star* (19 April 1997) A1.
8. D. Freed, “Stiffer Laws Urged as Shanay’s Legacy. Inquest Jury Calls for Radical Overhaul of Child Care system” *Toronto Star* (10 May 1997) A1.
9. J. Quinn, “Caseworker Charged in Baby’s Death: Infant Died of Starvation While Under Supervision of Catholic Children’s Aid” *Toronto Star* (9 August 1997) A1.
10. *Supra* note 8.
11. G. Teeple, *Globalization and the Decline of Social Reform* (Toronto: Garamond, 1995).

wish. As the Caledon Institute has pointed out, this legislation in effect removes the guarantee of a safety net for Canadians.¹² Of course, clients of the child welfare system are among those who most require the safety net.

In 1995 in Ontario, the newly elected Harris government did not wait long to implement both the neo-liberal agenda, on which it campaigned, and the provisions of the CHST. Beginning immediately after its election, the Ontario government began a relentless program of legislative and policy change designed to reduce funding and in some cases to dismantle elements of the welfare state under its jurisdiction. As is well known, social assistance rates were reduced by nearly 23%, and this reduction has remained in place ever since. As of 1999, Ontario single parents, who are mostly mothers, with one child received \$13,704 in assistance annually, some 60% under the established poverty line.¹³ As a report just released by the Canadian Association of Social Workers demonstrates, even single mothers employed outside the home have by far the lowest incomes among Canadian families.¹⁴ And not only was social assistance cut. Programs designed to assist parents, and especially women, found their budgets and grants decreased, as did those developed to assist recent immigrants. Shelter programs and social housing have been especially hard hit. Because most clients of the child welfare system are poor, and because they generally have other difficult life problems to contend with, these reductions in funds and services were especially problematic for them.¹⁵

The Child and Family Services Act (CFSA) 2000

Prior to 2000, the last major revisions to the *Ontario Child and Family Services Act* were made in 1984. The emphasis in that legislation was on the application of a high threshold for intervention, based on a standard of “substantial risk of harm” to the child. The legislation also emphasized a principle of “least intrusive” intervention consonant with both the safety of the child and the principle of working to keep the family together whenever possible. These policies were harshly criticized in a number of the child death reviews and inquests conducted in the 1990s.

In an effort to address these concerns and “toughen up” the legislation governing the protection of children in Ontario, several changes were introduced in the recent amendments to the existing Act. In the 2000 amendments, the principle of child safety took priority over both the “least intrusive” principle and the principle of supporting

12. S. Torjman & K. Battle, *Can We Have National Standards?* (Ottawa: Caledon Institute for Social Policy, 1995).

13. J. Graham, K. Swift, & R. Delaney, *Canadian Social Policy: An Introduction*, 2nd ed. (Toronto: Prentice Hall, 2003) at 59.

14. <<http://www.casw-acts.ca>>.

15. S. Chau *et al.*, *One in Five ... Housing as a Factor in the Admission of Children to Care: New Survey of Children's Aid Society of Toronto Updates 1992 Study*. Research Bulletin #5, Centre for Urban and Community Studies (Toronto: University of Toronto, 2001).

the “autonomy and integrity of the family unit”. Under the new amendments to the Act, the paramount purpose is “to promote the best interest, protection and well being of children” (*CFSA*, 2000 section 1 (1)).¹⁶ Although the revised legislation still recognizes the family unit as a preferred environment for the care and upbringing of children, the principle of supporting the family unit is now considered secondary to the safety and protection of the child.¹⁷

Following from this change, a wider scope of circumstances allowing intervention by child welfare authorities has been introduced into law. Prior to the addition of the new amendments, the *CFSA* set the threshold for child welfare intervention as “substantial risk” of harm. This standard has now been amended to read that intervention can occur when there is “a risk that a child is likely” to suffer harm (section 37(2)(b)). In addition, a new focus on “pattern of neglect” and on maltreatment by “omission” appears in the legislation (section 37(2)(a)). Along with the introduction of “pattern of neglect”, the Act also introduced a statement allowing intervention by authorities when harm caused to a child is the direct result of a caregiver’s failure to protect (section 37(2)(b)(i)(ii)). In other words, caregivers have been made more accountable for harm, including emotional harm, experienced by a child in their care. In addition, a section dealing with duty to report suspected abuse or neglect by members of the general public and professionals has been expanded. It now requires that professionals report every single incident affecting a particular family as an “ongoing obligation” (*CFSA* section 72(2)). Professionals are not allowed to delegate this responsibility (*CFSA* section 72(1)).

Under the previous legislation, cases were brought to court only after substantial efforts had been made to protect the child within the context of the family. Given the expansion of grounds for intervention and reduced emphasis on the “least intrusive” approach, it is no longer necessary to demonstrate efforts to work with the family before proceeding to court. When cases come to court, three kinds of dispositions can be made. These are Orders of Supervision, Society Wardship, which involves temporary and limited suspension of parental rights, and Crown Wardship, which means permanent removal of parental rights to the custody of the child. Under previous legislation, children could remain as Society Wards for long periods of time while services were provided to the parents. Ominously for many parents, the time allowed for a child to remain as a Society Ward before Crown Wardship proceedings must ensue has now been defined in the Act. Sections 29(6)(1)(2) and 70(1)(2) indicate that a final decision shall be made by the court for Crown Wardship for children who are in temporary care, according to strict timeframes. No temporary care agreement as described in section 29 (6)(a)(b), and Society Wardship (as described in section 70 (1)(a)(b)) shall be extended for “a period exceeding (a) 12 months, if the child is less

16. *Child and Family Services Act*, R.S.O. 1990, c. 90.

17. These changes were recommended by Judge Hatton in her report: M. J. Hatton, “Protecting Vulnerable Children: Report of the Panel of Experts on Child Protection” (1998) [unpublished].

than 6 years of age ... (b) 24 months if the child is 6 years of age or older". These periods of 12 or 24 months are cumulative.

Ontario Risk Assessment Model (ORAM)

An apparently strongly supported and agreed upon direction for child welfare in Ontario was the implementation of a risk assessment tool to guide workers in their investigations of potential abuse and neglect of children.¹⁸ The province elected to use the New York state model, which it introduced into practice virtually unchanged. In addition, the system includes a locally developed Eligibility Spectrum, which is used to determine whether a referral is eligible for service by child welfare authorities.¹⁹ Please see Figure 1.

Risk assessment tools have been widely introduced into child welfare practice not only across North America but in virtually all English-speaking countries. The logic of this approach is that knowledge gained from experience and past practice can be organized into coherent tools for predicting and preventing future harm to children. Models are generally of two types. One is "actuarial", which relies on numerical calculations based on large population samples, and the other is the clinical or consensual approach, which allows the user to employ professional judgment in rating elements of risk.²⁰ Ontario has chosen the second type.

According to an official statement, the goal of the Ontario Risk Assessment Model is

[t]o promote and support a structured and rational decision-making approach to case practice, without replacing professional judgment. [This model] supports decision-making by guiding the social worker through a process of information gathering and analysis that examines the relationship of risk influences and individual elements affecting family functioning.²¹

Workers are provided with training and documents designed to ensure that particular pieces of information about potentially risky situations are gathered, rated for severity, and analyzed in relation to one another to produce an overall assessment of risk. The model used in Ontario is computerized, and it requires intensive labour to pull together the required information within time frames established by Ministry guidelines.

18. Ontario Ministry of Community and Social Services, *Risk Assessment Model for Child Protection* (Toronto: Ministry of Community and Social Services, 1997) [CSS, *Risk*]; Ontario Ministry of Community and Social Services, "Developing a Common Risk Assessment Tool for Use in Child Welfare" (1997) 41:1 *Journal of the OACAS* 8; Ontario Ministry of Community and Social Services, "Implementation of Ontario's Risk Assessment System (1997) 41:3 *Journal of the OACAS*, 33.

19. Ontario Association of Children's Aid Societies, *Ontario Child Welfare Eligibility Spectrum* (Toronto: Ontario Association of Children's Aid, 1999).

20. P. Parsloe, ed., *Risk Assessment in Social Care and Social Work* (London: Jessica Kingsley Publishers, 1999) 13.

21. CSS, *Risk*, *supra* note 18.

Funding Framework

Along with the introduction of standardized risk assessment in Ontario came the announcement of a new funding formula. The formula is integrally connected to risk assessment and to accounting and audit procedures designed to both control spending and guide child welfare activities in particular directions. The new funding formula introduced the assignment of budgetary responsibilities to social workers, requiring them to calculate and translate their interventions into costs and benefits that can be given an actuarial value.²²

Accountability of Children's Aid Societies to the Ministry through the funding formula focuses not on client needs and traditional helping values shared by many workers but on financial goals established by governing authorities. The internal flexibility that agencies had to assign their funding to needs they considered important in their jurisdiction was drastically reduced. Consequently, the professional decisions of protection workers necessarily now include a substantial and direct connection to the provisions of the funding formula. For example, very specific timelines are established for each task expected of workers, and funding is provided only for the amount of time allowed in the formula. Substantial funding is provided in the model for investigations, while the tasks of working over the long term to support families are provided for less generously. Funding is provided for children in care, while support services for children living at home are meagre and generally contracted out.

The Ministry of Community and Social Services introduced a series of benchmarks, as part of the funding formula, that allow it to determine how a particular agency is performing in relation to the formula and in relation to other agencies in the region. Audit practices were introduced to monitor the new Funding Formula. Audit practices also extended to include the timeframe and decision-making process of social workers and supervisors.²³

EFFECTS OF THE REFORM ON LOW-INCOME PARENTS

Low-income families are more likely than other families to be affected by changes in child welfare practice and policies because they constitute a much greater proportion of clients of the system. Historical studies such as Gordon's examination of case records from the early part of the nineteenth century document the frequent and

22. H. Parada, *The Restructuring of the Child Welfare System in Ontario: A Study in the Social Organization of Knowledge* (Ph.D. Thesis, Ontario Institute in Studies of Education, University of Toronto, 2002) [unpublished].

23. Ontario Ministry of Community and Social Services, *Guide to Child Welfare Funding Framework* (Toronto: Ministry of Community and Social Services, 1998); Ontario Ministry of Community and Social Services, *The Risk Assessment Model*, rev. ed. (Toronto: Ministry of Community and Social Services, 1999); Ontario Association of Children's Aid Societies, "Funding Formula Must Link with Legislation, Regulations and Standards of Service" (1997) 41:1 *Journal of the OACAS*, 19; *supra* note 22.

invasive activities of child welfare authorities into Boston's poor population.²⁴ A study of the child welfare records in 1930s Toronto demonstrates a similar clientele,²⁵ while contemporary evidence suggests a continuation of the same pattern. The Canadian Incidence Study, carried out to establish a baseline of child welfare practice across the country, showed that 20% of clients were in receipt of welfare, which in all provinces is set below the official poverty line. While that study did not document income levels of clients, the evidence presented demonstrated that many clients are also young, single-parent families, often in rental housing and in low-wage types of employment. A recent U.S. study showed that less than 20% of the sample of families with prior child protection investigations had employment income.²⁶ These studies support the experience of many social workers that poverty is a primary issue for the majority of families with whom they work in protective services.

In the following section we explore some effects of the reform on these low income families. These are based on expansion of legal grounds to intervene, additional practices of surveillance and increasing likelihood that children will be apprehended and taken into care.

EXPANSION OF GROUNDS TO INTERVENE

Bill 6 was clearly intended to expand grounds for intervening in family life, ostensibly in the interests of children's safety. Two examples of how this expanded intervention disproportionately affects low-income families are explored. The first and most obvious example is the introduction of "pattern of neglect" into the legislation. Until the amendments of 2000, neglect was not specifically mentioned in Ontario's *Child and Family Services Act*. This amendment (section 37 (2)(b)(ii)) grew out of concerns raised in the child death reviews in the 1990s about the association of long-term neglect and deaths of particular children known to child protection authorities. The Gove report, which influenced thinking about child welfare across the country, dealt with the death of a young child whose neglect by his mother appears to have been "allowed" by the child welfare system itself.²⁷ In Ontario, the Hatton report, which was commissioned by the Ministry of Community and Social Services to review the *CFSA*, recommended that "pattern of neglect" should be included as a factor in finding a child in need of protection, and this recommendation was accepted.²⁸ The amendment included in Bill 6 defines a child as being in need of protection if the child is at risk of physical harm because the caregiver shows a "pattern of neglect in caring for, providing for, supervising or protecting the child" (section 37(2)(a)).

24. L. Gordon, *Heroes in Their Own Lives* (New York: Penguin, 1988).

25. K. Swift, "An Outrage to Common Decency: Historical Perspectives on Child Neglect" (1995) 74:1 *Child Welfare*, 71.

26. B. Rittner, "The Use of Risk Assessment Instruments in Child Protective Services Case Planning and Closures" (2002) 24:3 *Children Youth Service Review*, 189.

27. *Supra* note 4.

28. *Supra* note 17.

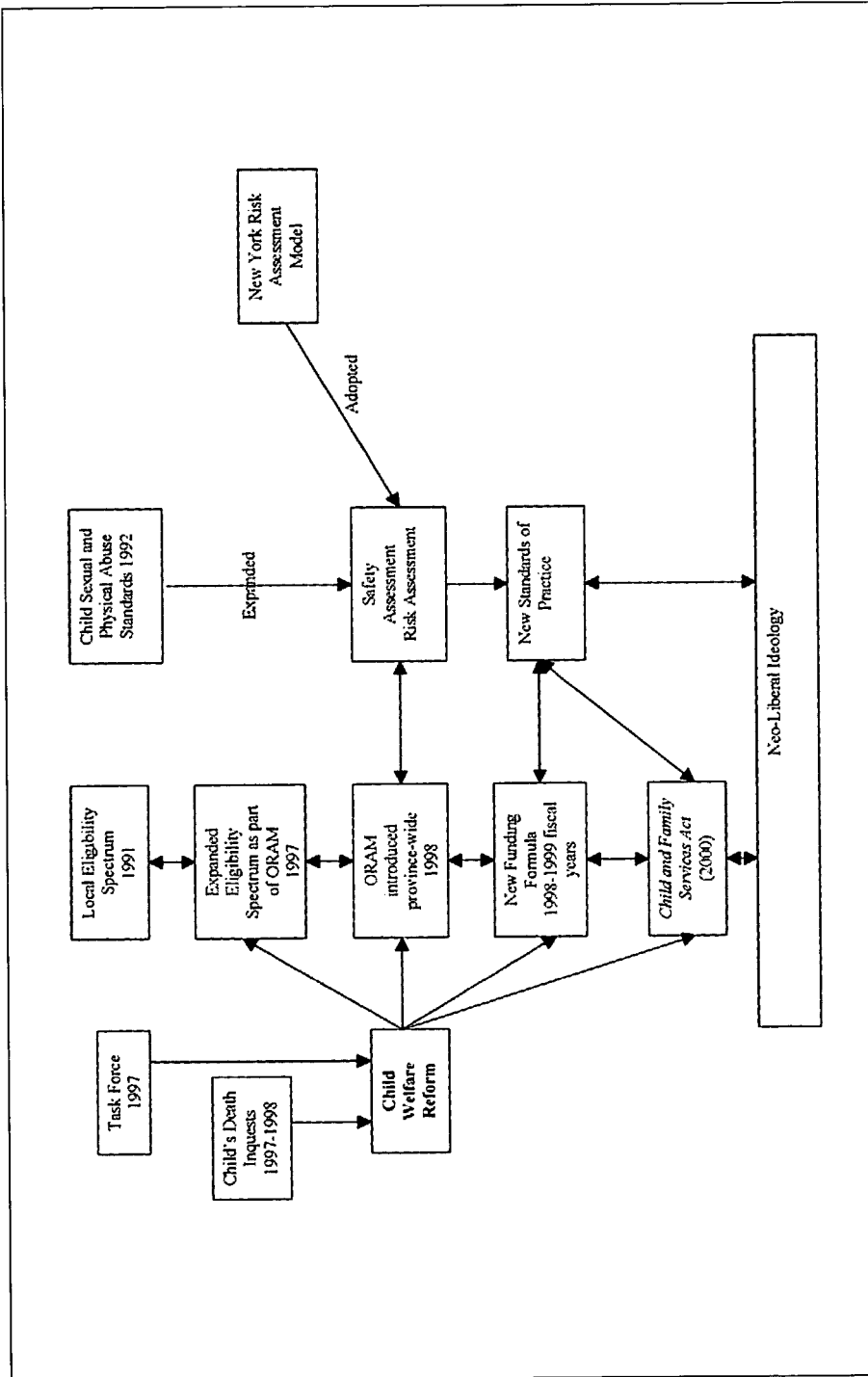


Figure 1: Mapping Child Welfare Reform

This definition is especially problematic for poor people because, as is well established in literature, neglect is notoriously difficult to distinguish from poverty.²⁹ This is because its indicators so closely match those of poor households.³⁰ The Eligibility Spectrum, which is the screening document used to determine if an investigation will be done, illustrates this point. Following from the amendment, protection workers are asked to evaluate the potential of caregivers to “meet immediate needs for food, clothing, shelter and/or medical care”. Instructions for filling out this item of the Eligibility Spectrum contain a long list of evidence that protection workers are supposed to look for to determine neglect (Section 2, Harm by Omission, at 28, 29).³¹ Items in this list include: “almost no food is available in the home”, “soiled diapers not changed for several hours”, “peeling lead-based paint”, and “child lacks many basic and essential items of clothes or apparel for the season”. It is obvious that these conditions are indeed dangerous for children and equally obvious that poverty rather than parental intentions can be the cause.

The Canadian National Incidence study demonstrated that in 40% of child protection cases neglect is the primary complaint.³² With the specified definition of neglect now included in the Act and with complex supporting documents instructing workers on how to identify a pattern of neglect, we can expect to see many more families identified as “neglectful.” The fact that a “pattern” of neglect must be established suggests that deprivation can go on a long time before child protection actions are taken. In addition, the legal mandate requires only that action be taken if the parent or caregiver is shown to be responsible for a child’s deprivation. If the problem is “merely” poverty, child protection authorities are under no obligation to intervene. Thus, while a substantial number of poor families will be investigated under this clause, it does not follow that children whose safety is compromised as a result of poverty will be helped.

A second and related example of expanding grounds for intervention is witnessing by children of violence that occurs in their own homes. Literature in the field of child care, social work, and related fields has lately taken up research on the harm done to children who witness “adult conflict”.³³ Until this issue became prominent, protection

29. *Supra* note 4.

30. K. Swift, *Manufacturing “Bad Mothers”: A Critical Perspective on Child Neglect* (Toronto: University of Toronto Press, 1995).

31. Ontario Association of Children’s Aid Societies. *Ontario Child Welfare Eligibility Spectrum* (Toronto: Ontario Association of Children’s Aid Societies, 1999).

32. *Supra* note 30.

33. C. Tower, *Child Abuse and Neglect*, 3rd ed. (Needham Heights, MA: Allyn and Bacon, 1996); B. M. Groves, “Mental Health Services for Children Who Witness Domestic Violence (1999) 9:3 *Future Children* 122; J. L. Edelson, “Children’s Witnessing of Adult Domestic Violence (1999) 14:8 *Journal of Interpersonal Violence* 839; G. Margolin, “Effects of Domestic Violence on Children” in P. Trickett & C. Schellenback, eds., *Violence against Children in the Family and the Community* (Washington: American Psychological Association, 1998) 57.

workers did not intervene in cases of “domestic violence” unless children were harmed or likely to be harmed when it occurred.

The 2000 amendments to the *CFSA* in Ontario, although not specifically referring to domestic violence, changed this scenario. Two sections that were added set the stage for this change. These were, first, strengthening of the section dealing with emotional harm to children (section 37(2)(f)), which now specifies that intervention may occur when there are “reasonable grounds to believe” a child has suffered emotion harm as a result of the parents’ actions, “failure to act or pattern of neglect”. Second, the section identifying parents as responsible for what happens to their children (37(2)(b)(i)(ii)) has been strengthened. While this section appears genderless, it is generally mothers who feel the effects of it, since it is much more often they who are themselves at risk of physical harm from a partner and they who generally remain in charge of children at the point of separation. This section certainly disadvantages poor families from the outset, since their limited resources render them less able than middle-class families to provide necessities for their children.

It is actually the ORAM documents that make it necessary to view domestic violence as violations of these sections of the Act. The Eligibility Spectrum, section 3, Scale 2: Adult Conflict, which is based on section 37(2)(a, b, f, f.1, g, and g.1) of the Act, specifically instructs workers to deal with family violence as potentially emotionally harmful to the child. This item ensures that workers consider domestic violence as a reason for opening cases. The risk assessment document itself, which is supposed to predict future harm, also contains an item (F1) that deals specifically with “family violence”, asking workers to give a high risk rating if an “imbalance of power and control” is present in the family.

A 2002 study demonstrated an increase in reports between 1993 and 1998, attributable even prior to the introduction of the reform to “the dramatic increase in domestic violence investigations” being conducted.³⁴ The use of ORAM documents has led to a further increase of case openings in Ontario based on children witnessing domestic violence. According to one study, “The incidence of violence and the consequent risk of emotional abuse are shown to be increasing ... from 22 to 38% of families”.³⁵ Concern about this increase is often expressed by workers in women’s shelters, who are now in the difficult position of deciding whether a mother arriving for reasons of violence should be reported to child protection authorities. Shelter workers were especially concerned to report because the *CFSA* had also strengthened clauses dealing with the “duty to report” of professionals.

34. N. Trocme *et al.*, “The Changing Face of Child Welfare Investigations in Ontario: Ontario Incidence Studies of Reported Child Abuse and Neglect” Centre of Excellence for Child Welfare, Faculty of Social Work, University of Toronto, 2002 at 10.

35. B. Leslie & B. O’Connor, “What Are the Products of the Ontario Risk Assessment Tool?” (2002) 46:4 *Journal of OACAS* 2.

It is certainly true that not only poor women are victims of violence at home. However, poverty is prominently cited in a report released by the Ontario Association of Interval and Transition Houses (OAITH) as the leading barrier to women leaving abusive situations.³⁶ The OAITH report also cites poverty associated with discrimination against “Aboriginal women, women of colour, disabled women, immigrant and refugee women and young women” as significant barriers to escaping violence. These barriers increase the likelihood of child protection system intervention. Because protection workers are now instructed to focus on child safety primarily, and often exclusively, this intervention may revictimize rather than assist the mother. One mother in our study who had been raped by her boyfriend said, “They took away my child and told me there’s a cab waiting outside to take me for a psychiatric assessment ... why don’t (CAS workers) take me and my daughter at the same time?”

PRACTICES OF SURVEILLANCE

As well as expanding grounds for protection authorities to investigate the care that poor families are providing their children, child welfare reform introduced an apparatus of ongoing surveillance of families who are reported to authorities. In part as a result of the expanded duty to report, substantially more complaints are now being received for investigation. In the 1998–99 fiscal years the total number of complaint calls received in Ontario’s 54 mandated child protection agencies was 192,869. By the 2002–03 fiscal year, 236,430 calls were received – an increase of approximately 22%.³⁷

Increased numbers of complaints result generally in an increased number of investigations. In 2002–03, Ontario CASs completed 82,534 investigations. In addition to this substantial number of investigations, the reform has increased the work involved in carrying out a protection investigation. There are now more steps, much more emphasis on the forensic aspect of the investigation, a series of intrusive questions repeatedly administered to parents and to children from a preset list of questions, and more invasive actions that follow. If grounds for concern are identified, family members will be asked questions from three or four different documents, each more detailed than the last. If new information comes to the attention of the agency during an ongoing investigation, the worker must initiate a new investigation. If a case is ongoing and new information appears, the worker must also readminister the entire set of ORAM procedures. This repeated investigation process is exacerbated by the “duty to report” provisions, which require that professionals report each time they perceive a risk of harm.³⁸

36. E. Morrow, “In the Best Interests of Children and Mothers: A Proposed Child Welfare Response to Violence against Women.” Ontario Association of Interval and Transition Houses (OAITH). March, 2003.

37. Ontario Association of Children’s Aid Societies, *CAS Facts April 1, 2002–March 31, 2003*, rev. ed. (2003), online: OACAS <http://www.oacas.org/resources/casstats.htm>

38. *Supra* note 22.

Once a family enters into contact with child protection authorities, they will be tracked throughout the province by means of the computerized provincial Fasttrack system. All the information obtained by workers is entered into a computer program that is designed to ensure that all recording is completed. All this information is available to intake protection workers in any part of the province. Information is never expunged and serves as basis for future investigation and intervention.

Not surprisingly, there has been an increase in the number of cases opened to Children's Aid Societies in Ontario over the past five years. As of 31 March 1998, Ontario Children's Aid Societies registered 18,244 ongoing open cases. By 31 March 2003, this number had increased to 24,329, representing a 33% increase since the reform was introduced.³⁹ This growth may be a result of not only the intensive nature of investigation introduced by the reform but also of an identified trend over the life of risk assessment to rate more and more cases as high risk. A study completed in 2002 showed that protection workers are increasingly rating cases at higher risk levels. By 2001, 84% of cases opened were rated as "moderately high or high risk." The authors of this study argue that the risk tool "is losing sensitivity to the overall risk."⁴⁰

However, this effect may also be linked to a preference in the funding formula to pay costs of higher risk cases.

The effects of high risk ratings for families are significant, since higher ratings increase the likelihood that their case will remain as an open file and surveillance of their lives will continue and may be more intense as long as the risk rating is high. These ongoing cases involve readministering the entire battery of risk assessment questions to each family member, including children, every six months. This means families remain under continuous surveillance for all issues included in the ORAM documents and not simply those issues for which the case was originally opened. As one key informant in our research noted, "[W]ith the new risk assessment they don't just ask about the conditions of the home and do you have enough food and stuff. They have to go through the full assessment, so that involved asking questions about sexual abuse and physical abuse." As in past times, surveillance is not conducted just by protection workers. Personnel of any support service offered to the family are expected to document and report to child welfare authorities detailed accounts of caregiver actions and behaviours and information about the apparent well-being of the child or children.

CHILDREN IN CARE

Of course the most intrusive measure that can be applied by child protective services is the removal of children from their parents. In Canada, British Columbia, Alberta, and Ontario are the provinces that have adopted the most complex risk assessment models. They are also the provinces with the highest increase in numbers of children

39. *Supra* note 37.

40. *Supra* note 35.

in care over the past few years.⁴¹ In Ontario, a dramatic increase in children apprehended and taken into care by authorities has occurred since 1998. On 31 March 1998, 11,609 children were in care in the province. By 31 March 2003, this figure had increased some 56% to a total of 18,126.⁴² This very steep increase is no doubt linked to the reform's focus on intensive investigations, but is facilitated by the funding formula guidelines for financing children in care more generously than for children offered support in their own homes.

Given that most families involved with child protection authorities are poor, it is a certainty that most children in care come from low-income families. Because the new amendments restrict the amount of time children can remain in care before they become permanent wards, these parents face strict time pressures to demonstrate the ability to provide adequate care. As our data show, parents may be asked to provide more spacious or safer housing that is simply not available or accessible to them. They may find that the treatment required to solve mental health or addiction problems cannot be accessed or cannot be effective in the time allowed. This pressure creates sometimes insurmountable challenges for low-income parents to reunite with their children, problems made much more difficult in the current era of cutbacks to services, low-wage employment, and restructuring of the welfare state.

CONCLUSION

Is child welfare reform really about making children safe? As has been argued elsewhere,⁴³ it is highly questionable whether merely providing increasingly intensive investigations of parents will produce safety for children. DeMontigny (2004)⁴⁴ affirms that child welfare reform was introduced just after the most draconian measures in decades were taken in Ontario to reduce the social safety net.⁴⁵ The 23% reduction in welfare rates alone has created an array of hazards and risks for children of parents on social assistance that child welfare reform does not in any way address.

Researchers and advocates for low-income groups have begun to produce a critique of risk assessment procedures and expanding grounds of intervention as measures more likely designed to protect the safety of government officials themselves.⁴⁶ The account-

41. K. Swift & M. Callahan. (In Press). "Problems and Potential of Canadian Child Welfare." In N. Freymond and G. Cameron (Eds.) *Towards positive systems of child and family welfare: International comparisons of child protection, family service, and community caring systems*. Toronto, ON: University of Toronto Press.

42. *Supra* note 35.

43. *Supra* note 4.

44. G. DeMontigny, "Textual Regulation of Child Welfare: A Critique of the Ontario Risk Assessment Model" (2003) 52 *Canadian Review of Social Policy* 33.

45. D. Ralph, A. Regimbald & N. St-Amand, *Open for Business, Closed to People* (Halifax: Fernwood, 1997).

46. C. R. Goddard, B. J. Saunders & J. R. Stanley, "Structured Risk Assessment Procedures: Instru-

ability, auditing, and reporting measures introduced by the reform operate to distance governing authorities from liability for harm and death of children, placing the onus directly on protection workers. These procedures also direct our attention away from the effects of social and economic reforms on the most vulnerable families in the province, firmly focusing instead on individual parents, their failures and problems. Several court cases have challenged child welfare practices “for reasons of poverty.” A study concluded that “child welfare agencies have removed children from their homes and have failed to reunite children from their families for reasons of poverty.”⁴⁷ Social workers themselves inadvertently collude in this process as they follow the repetitive investigative procedures assigned and attend to the complicated, repetitious “paperwork” now required of them within the short times required by the funding formula. Time for support and in-depth counselling for clients is increasingly unavailable, and time for social advocacy is certainly not covered in the funding formula.

This legislation and its supporting risk assessment processes are clearly consistent with neo-liberal objectives of reducing state responsibility for social welfare, and the poor are invariably at a disadvantage in this scenario. Making parents solely responsible for the care of children, while deconstructing, diminishing, and devaluing both social supports and social responsibility for children, is patently unjust. If social justice and equity are goals, then child protection and its supporting apparatus must go beyond parental responsibility and deal with social and economic inequities. This can happen in at least two ways.

First, advocates and child protection personnel themselves must connect and act with potential allies. Rather than being seen as an isolated, specialized, and legalized field, child protection work could be viewed as one of several related policy arenas dealing with the same or overlapping vulnerable populations. Active coalitions with such potential allies as antipoverty groups, social housing advocates, cultural communities, and women’s organizations would change both the public discourse and the nature of interaction within protection agencies. Research efforts that explore and demonstrate common underlying purposes and similarities with other legislation affecting low-income, vulnerable individuals and families should also be pursued. Included in this research might be the “squeegee” law⁴⁸ and welfare- and workfare-related legislation as well as child protection.

Second, the legislation itself should be changed. At the very least, language that restores parents and families to a paramount place in child protection is essential. More important, the Act should include a wider social responsibility.⁴⁹ Since the Act is to be reviewed

ments of Abuse?” (1999) 8 *Child Abuse Review* 251.

47. M. Eamon & S. Kopels, “‘For Reason of Poverty’: Court Challenges to Child Welfare Practices and Mandated Programs” (2004) 33 *Child Youth Services Review* 825

48. See J. Hermer & J. Mosher, eds., *Disorderly People* (Halifax: Fernwood, 2002) for a full discussion of the Safe Streets Act, also known as the “squeegee law.”

49. *Supra* note 45.

at the five-year point, there is an upcoming opportunity for input and active involvement by advocacy groups, including both social workers and lawyers concerned with poverty law. Governments that are going to require specific behaviours of their citizens have an obligation to ensure availability of the resources required to meet those parental expectations. This kind of proposal was debated in Ontario during the 1980s when the first version of the *CPSA* legislation was under consideration, but of course it was not included in the final version of the law. An alternative proposal is advocating for separate legislation such as Quebec's Law to Fight Poverty and Social Exclusion (Law 112),⁵⁰ which states that the fight against poverty is a "national imperative".

Finally, the Risk Assessment Model has been criticized on many fronts, including its focus on individual and disadvantaged parents. In the course of our research on risk assessment, however, we have been cautioned many times not to recommend the total elimination of the approach. In keeping with this caution we recommend instead a redirection of the risk assessment gaze to the social and economic context affecting the low-income population.

Definitions of risk are of course hotly contested, and those with the legitimacy to define risk are winners in a contemporary social struggle. They can call up experts, conduct research, and define the kinds of risks to which society and its members should be attuned. In Beck's conceptualization of the "risk society", the welfare state itself has become mainly a risk management system.⁵¹ In the dominant version of risk assessment, individuals are asked to become their own personal risk managers, to marshal the necessary resources for controlling their particular risks, and to spare society the expense of their mistakes. It is important to realize that this is only one version of risk and risk management, one promoted in this neo-liberal era. An alternate definition of risk could examine the risks inherent in our failure to provide adequate health care, housing, schooling, food distribution and jobs for our citizens. Rather than focusing on "risky decisions" of individuals, a revised risk assessment for child protection might focus on political and economic decisions of sitting governments and transnational corporations that put children at risk. There is a large literature that attempts to link poor child welfare outcomes to social deprivation.⁵² A valuable expenditure of our time might well be to explore this literature and put our imaginations to work in developing an approach to social, political and economic risk assessment.

50. C. Bouchard & M. Raynault, *The Fight against Poverty: A Model Law* (Ottawa: Canadian Council on Social Development, n.d.).

51. U. Beck, *Risk Society: Toward a New Modernity* (London: Sage Publications, 1992).

52. L. Caragata & B. Skau, "A Chip in the Canadian Veneer: Family and Child Poverty as Social Exclusion" (2001) 9:1 *Social Work and Social Sciences Review* 36.