Comments on the Children and Family Services Act and The Adoption Information Act

October 20, 2006

Comments to the Minister's Advisory Committee for the Children and Family Services Act and the Adoption Information Act October 20, 2006

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These comments respond to a request for input from the Department of Community Service's Advisory Committee on the Children and Family Services Act and the Adoption Information Act. The comments made are based on our contact and experience with women in communities throughout Nova Scotia. They are not presented as a detailed gender analysis of the impact of the current legislation, and the Council recommends that future amendments to the legislation and the corresponding regulations be analyzed from a gender and diversity perspective.

The Advisory Council on the Status of Women would be pleased to assist and review such initiatives in the future.

The Children and Family Services Act

Comments made are preceded by the section of the Act (in bold italics) to which the comments refer.

s.13 Services to promote integrity of family

The Act needs to be infused with a recognition of the diversity of families existing in our province. This would include**,** but not be limited to, traditional nuclear families including those where the parents are married and the parents are living common-law; adoptive families; single-parent families; blended families; extended families and those where the parents are a same-sex couple.

13 (1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

The intention of this section is applauded. However, the best interests of the child need to be balanced with the rights of the custodial parent or guardian when interpreting the phrase “least intrusive means”. Too often we are informed of situations that escalate, especially in abusive situations, where the least intrusive means was the lowest level of service delivered at a minimum cost. “Least intrusive means” needs to be affiliated with determining the level of intervention necessary to keep children and their mothers from risk with the necessary allocation of resources. “Least intrusive” is not equal to “cheapest”.

13 (2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counseling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(i) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations

The experience of the Advisory Council and current research demonstrates that **improving the education level of the parent(s)** would greatly improve the ‘integrity’ of the family and would also contribute to the financial and housing situation of the family. Therefore, education should be added to the list of resources to be made available.

Additionally, the Advisory Council is concerned with the actual availability of services in this section. The provision of the services is essentially discretionary, and the Act would no doubt be improved by making service-provision mandatory.

Service provision is particularly important when the mother in question is a woman with disabilities. Among the many fears and concerns expressed by women with certain degenerative

diseases, for example, is that they may be found “unfit” to continue to mother their children, especially if they are or become separated or divorced. The Act and Regulations should provide for adequate levels of support to mothers with disabilities, including household help, personal care and needed assistance with the practicalities of child care.

Finally, it is of great importance to ensure that the services provided are, in fact, effective and accomplish what they set out to do. Both quality assurance and evaluation activities should be mandated by the Act.

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

(2) A child is in need of protective services where

(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

The Advisory Council has had the opportunity to read the brief dated October 3, 2006 submitted to the Minister’s Advisory Committee by the Transition House Association of Nova Scotia (THANS) and endorses the position that THANS takes on s. 22 (2)(i). It is the abusive parent who should be required to take action for the benefit of the children.

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

The Advisory Council would like to see a more comprehensive approach taken to the issue of neglect in this section. The omission of psycho-social harm, in addition to physical harm, is troublesome. Research on children in their early years is clear on the devastating effects the lack of nurturing has on young children and their development. An improved system for dealing with neglect cases is needed so that the present protracted wait times for court times and home visits do not contribute to the ongoing damage caused by the neglect. The system needs to react quickly to minimize damage to these children and their families. The present wording of this section reflects an underestimation of the effect of neglect on children.

1. ***43 (1) Where the court makes a supervision order pursuant to clause (b), (c) or (e) of subsection (1) of Section 42, the court may impose reasonable terms and conditions relating to the child's care and supervision, including***

(d) that a parent or guardian or other person shall not reside with or contact or associate in any way with the child;

Our office often hears of situations where there is an altercation between the parents or the parent and a boyfriend and/or girlfriend and reconciliation occurs after an order is made. Therefore, without co-operation of both parties this section is rendered useless. The Committee should undertake reviews of how this matter is addressed in other jurisdictions in an effort to assist the children in this situation.

(e) access to the child by a parent or guardian or other person;

In our experience, extensive travel arrangements in access situations can be a problem. We recommend that where possible, access should be available in the place where the children reside and arrangements for supervisory access must include assistance for travel for parents. The safety of parents and children, especially in abusive situations, must be paramount.

67 (1) In this Section and Sections 68 to 87,

(d) "father" of a child means the biological father of the child except where the child is adopted and in such case means, subject to subsection (4) of Section 72, the father by adoption;

(f) "parent" of a child means

(ii) the father of the child where the child is a legitimate or legitimated child

The Advisory Council finds that the language in 67 (f) (ii) is outmoded and stigmatizing. Inaddition, it appears to be inconsistent with the language in section 67(d), above.

Foster care of Mi'kmaw children

The Advisory Council strongly supports the requirement that placement of children take into account the ethnicity, culture and religion of the children in question. We understand that, at times, this results in Mi'kmaw children being placed, for example, "off reserve" but still with a Mi'kmaw family. In those circumstances, it should be Mi'kmaw Family and Children's Services that continues to provide service to the child, rather than transferring jurisdiction to the agency in charge of the area where the child now resides. Overlap of jurisdiction increases workload unnecessarily, and it would be most appropriate for the Mi'kmaw agency to continue to provide service in these instances.

Cross-Cultural Competency

All workers should have the benefit of cultural competency training and certification specific to the child protection system. The protection of children from a variety of racialized and immigrant

backgrounds, with both parents and children having, for example, different language needs and capacities, requires cultural competency addressing family practices and values, and also makes highly desirable considerable diversity in the child protection work force. The Act and Regulations should clearly reflect these principles.

Conclusion

No change in the legislation can expect to foster more positive outcomes for children and families in the absence of adequate resources to do the work. One result of resource limitations is that interventions are too protracted, with children being left "between pillar and post" for far too long because of the length of time that the assessment and legal processes surrounding the issues take. This is an especially serious problem for children in their early years, where the impact of neglect is most devastating. Courts must be empowered and encouraged to take matters of neglect of children just as seriously as they do physical harm. And both the Act and its implementation must take the safety of women as well as children into account.

The Adoption Information Act

The Advisory Council's contacts related to this legislation have mainly dealt with the issue of release of identity of birth parents to adult adoptive children seeking such information and contact. While we appreciate the strong desire of some adoptive adults to know who their birth parents were, and of some birth parents to find out what happened to children they gave up for adoption, and to take up contact with them, we believe that the consent of all parties is necessary before such information is released. Changes in our beliefs and values about family life that make "open adoption" more widely used and accepted are positive. However, the original "contract" made, often many years ago, must also be respected and upheld in the event that all parties are not in agreement with information release, contact or both.

In those instances where birth parents and adoptive children are in agreement with disclosure and contact with one another, the Act should recognize that this is a challenging process, and that counseling of those undertaking it should be provided as needed.