

# Child Maltreatment Investigations in Canada: Judicial Implications

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Introduction.....	3
Further differentiation between short-term protection and long-term well-being .....	3
Re-examining the role of child welfare courts in cases of sexual abuse .....	5
New laws and protocols needed to respond to domestic violence .....	5
Decreasing use of child welfare court.....	6
Out-of-home placements increasing or not? .....	6
Summary.....	7

## Introduction

The 1998 *Canadian Incidence Study of Reported Child Abuse and Neglect (CIS 1998)* is the first national study to examine the rate, characteristics and short-term outcomes of child maltreatment investigated by Canadian child welfare authorities. Comparisons with the 1993 *Ontario Incidence Study of Reported Child Abuse and Neglect (OIS 1993)*, document important changes that have occurred between 1993 and 1998 in the types of cases reported to child welfare agencies in Ontario. Together, these two studies (*CIS* and *OIS*) provide a critical backdrop for understanding child welfare policy and practice in Canada. The following notes prepared for the National Judicial Institute's Child Protection and the Law Seminar highlight several issues arising from the *CIS 1998*<sup>1</sup> and the *OIS 1993/1998*<sup>2</sup> reports.

## Further differentiation between short-term protection and long-term well-being

The central issue emerging from our analyses of the *CIS* and *OIS* data is the importance of differentiating between cases of maltreatment requiring an immediate investigatory protective response, and cases requiring in-depth assessments that can be conducted without the urgency typical of current child protection protocols. Five key findings point to the need for significant restructuring of our child welfare response:

1. Four percent of cases of substantiated maltreatment in Canada in 1998 involved physical harm severe enough to require medical attention<sup>3</sup>.
2. A comparison of the *OIS 1993* and *OIS 1998* shows a decreasing proportion of child welfare cases involving sexual abuse<sup>4</sup>. In 1998, only 10% of substantiated child welfare cases in Canada involved sexual abuse<sup>5</sup>.
3. Thirty-four percent of investigated cases and 53% of substantiated cases in Canada received on-going child welfare services in 1998<sup>6</sup>.

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<sup>1</sup> Trocmé, N., & Wolfe, D. (2001). *Child maltreatment in Canada: Results from the Canadian Incidence Study of Reported Child Abuse and Neglect*. Ottawa: Minister of Public Works and Government Services Canada.

<sup>2</sup> Trocmé, N., Fallon, B., MacLaurin, B., & Copp, B. (2002). *The changing face of child welfare investigations in Ontario: Ontario Incidence Studies of Reported Child Abuse and Neglect (OIS 1993/1998)*. Toronto: Centre of Excellence for Child Welfare, Faculty of Social Work, University of Toronto.

<sup>3</sup> Trocmé, N., & Wolfe, D. (2001), p. 18.

<sup>4</sup> Trocmé, N. et al. (2002).

<sup>5</sup> *Ibid*, p.11.

<sup>6</sup> Trocmé, N., MacLaurin, B., Fallon, B., Daciuk, J., Billingsley, D., Tourigny, M., Mayer, M., Wright, J., Barter, K., Burford, G., Hornick, J., Sullivan, R., & McKenzie, B. (2001). *Canadian Incidence Study of Reported Child Abuse and Neglect*. Ottawa: National Clearinghouse on Family Violence, Table 5-1.

4. Prior child welfare contact was noted in 62% of substantiated investigations in Canada<sup>7</sup>. In Ontario, there was an increase in prior child welfare contacts in cases investigated between 1993 and 1998<sup>8</sup>.
5. Psycho-social problems, rather than physical injuries, best characterize most families reported to child welfare authorities.

These findings raise questions about the investigative procedures that dominate the organization of child protective services. Many jurisdictions have been developing increasingly narrow investigation timelines and require the use of safety and risk assessment tools that are predicated on the concern that rapid intervention is required to ensure adequate protection of maltreated children. In cases of sexual abuse, where there may be concerns about further victimization and offenders pressuring victims to recant, these response protocols are justified. Similarly, in cases where forensic evidence requires an immediate response or where there is clear evidence of risk of severe harm (e.g. shaking and battery), an emergency response is justified. However, given that approximately 87%<sup>9</sup> of substantiated cases involve neither severe injury nor sexual abuse, intervention priorities and procedures may need to be revised.

Several jurisdictions in the United States have been experimenting with dual response systems designed to transfer non-urgent cases to intake teams focusing on assessing longer-term service needs. In Canada, Alberta is exploring the development of differential response strategies. Such a response may help to ensure that sexual abuse and severe physical abuse cases receive the rapid investigatory response that such cases require, while allowing for more comprehensive psycho-social assessments to be completed in cases where the long-term effects of chronic neglect and emotional maltreatment are the core concerns.

The courts can play a central role in supporting the development of a dual response system by requiring different types of evidence and interventions for child protection cases compared to chronic maltreatment cases. In protection cases, the question of evidence specific to the alleged incident and the short-term safety of the child are paramount. In chronic maltreatment cases, the courts should only become involved after thorough psycho-social and parenting capacity assessments have been completed, and after attempts have been made to involve community resources in a non-adversarial fashion. Once the courts are engaged with families facing chronic maltreatment problems, it is critical they remain engaged until there is evidence that the family's circumstances identified in the initial assessments have been addressed. In other words, serious mental health, parenting or family functioning problems, not soiled diapers and dirty kitchens, should be grounds for court-ordered intervention in chronic maltreatment cases. Consequently, the resolution of such concerns should be the only acceptable grounds for disengaging the courts.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, Table 5.

<sup>9</sup> See Trocmé, N. & Wolfe, D. (2002), Figure 2.2: sexual abuse was the primary form of maltreatment in 10% of child maltreatment investigations and Trocmé, N. et al. (2002), Table 4-1(a): severe harm was noted in 3% of maltreatment investigations.

### **Re-examining the role of child welfare courts in cases of sexual abuse**

Sexual abuse was the primary reason for investigation in 10% of child maltreatment investigations in Canada in 1998<sup>10</sup>. In Ontario, the estimated number of substantiated sexual abuse investigations decreased by 49%, from 3,400 investigations in 1993 to 1,900 investigations in 1998<sup>11</sup>. This decrease is consistent with decreases reported across the United States<sup>12</sup>. Such a dramatic decrease requires careful analysis. As of yet there is no conclusive evidence to determine whether this decrease can be attributed to a growing reluctance on the part of victims to disclose abuse, hesitancy on the part of parents to report, or to an actual decrease in abuse rates. An actual decrease in abuse rates would be an indication that heightened public awareness, prevention programs, joint police-child welfare investigation protocols and aggressive charging policies have had a positive effect. However, the decrease could also mean that victims and non-offending parents are becoming hesitant to involve authorities because the response may be perceived as overly intrusive. If the latter explanation proves to be an important factor, there may need to be re-consideration of the role of child welfare courts in sexual abuse cases. Criminal courts may not be flexible enough in dealing with some cases of intra-familial sexual abuse.

### **New laws and protocols needed to respond to domestic violence**

The most dramatic increase in the last five years has been with respect to emotional maltreatment investigations. Emotional maltreatment was the primary reason for investigation in 19% of child maltreatment investigations in Canada in 1998<sup>13</sup>. In Ontario, a nearly nine-fold increase brought the estimated number of substantiated investigations of emotional maltreatment from 1,000 investigations in 1993 to 8,700 investigations in 1998<sup>14</sup>. This increase has been largely driven by investigations involving exposure to domestic violence, a category not specifically included in the *OIS 1993*. Since 1993, six provinces have added exposure to domestic violence as a category of maltreatment requiring investigation. Specific reference to exposure to domestic violence was not included in the changes to Ontario's *Child and Family Services Act* (CFSA). Amendments broadening the scope of intervention in cases involving emotional maltreatment may have had some impact on the child welfare response to domestic violence.

The increase in domestic violence cases reflects growing awareness of the effects of exposure to domestic violence on children. The rapid increase in cases is very similar to the increase in sexual abuse cases in the 1980s. Unlike sexual abuse, however, there has not been the same

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<sup>10</sup> Trocmé, N., & Wolfe, D. (2001), Table 2-2.

<sup>11</sup> Trocmé, N., et al. (2002), Table 2b.

<sup>12</sup> Jones, A.M., Finkelhor, D., & Kopiec, K. (2001). Why is sexual abuse declining? A survey of state child protection administrators. *Child Abuse & Neglect*, 25, 1139-1158.

<sup>13</sup> Trocmé, N., & Wolfe, D. (2001), Figure 2-2.

<sup>14</sup> Trocmé, N., et al. (2002), Table 2d.

development of services, protocols and legislation to address the complexities specific to domestic violence cases. In response to the growing number of sexual abuse cases, jurisdictions across Canada developed programs to support victims, protocols to ensure a well-coordinated criminal and child welfare response, and explicit intervention policies designed to remove the perpetrator and keep the victim at home<sup>15</sup>. A similar response is needed to ensure that victims of domestic violence are not put at further risk because they fear losing their children to the child welfare system. While provincial legislation may incorporate children's exposure to domestic violence as a form of child maltreatment, the lack of a consistent and clear definition of what constitutes the grounds for intervention leaves many victims of domestic violence vulnerable to broad interpretation by individual workers or agencies. New Zealand's domestic violence legislation addresses this concern. In its definition of domestic violence, the Act holds the perpetrator of the violence responsible for child maltreatment and dissolves the parent victim of domestic violence from responsibility<sup>16</sup>. This type of legislation is more likely to help alleviate some of the fears that victims of domestic violence face when they become involved with child welfare authorities.

### **Decreasing use of child welfare court**

An application to child welfare court was made in 9% of substantiated cases of child maltreatment in Canada in 1998<sup>17</sup>. In Ontario, the number of substantiated investigations leading to a court application has not changed significantly since 1993 (2,300 in 1993, 2,000 in 1998)<sup>18</sup>. However, given the dramatic increase in substantiated investigations, this means that the proportion of substantiated investigations resulting in an application to child welfare court decreased in Ontario from 19% to 8%<sup>19</sup>. Some Ontario Children's Aid Societies (CASs) have responded to these findings with surprise, citing a significant increase in the time their social workers appear to spend in court and an increase in the number of legal staff they have had to hire. If indeed fewer cases are consuming increasing court-related resources, the efficiency of court proceedings may need to be more closely monitored.

### **Out-of-home placements increasing or not?**

The number of children in out-of-home care at year-end (the preferred reporting method) is reported to be increasing in many jurisdictions across Canada<sup>20</sup>. Provincial increases range from

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<sup>15</sup> See Trocmé, N., & Wolfe, D. (2001), Figure 4-3: police investigations in 90% of substantiated sexual abuse cases, charges laid in 70%.

<sup>16</sup> *Domestic Violence Act* 1995, 086, part 1, s. 3.b.

<sup>17</sup> Trocmé, N., & Wolfe, D. (2001), p. 40.

<sup>18</sup> Trocmé, N., et al. (2002), Table 6.

<sup>19</sup> *Ibid*, Figure 6.

<sup>20</sup> Foster care statistics compiled by Bruce MacLaurin, MSW, Assistant Professor, Faculty of Social Work, University of Calgary.

17% for Saskatchewan between 1996 and 1999<sup>21</sup>, 34% for Ontario between 1995 and 2000<sup>22</sup>, 50% for British Columbia between 1993 and 1997<sup>23</sup>, to 55% for Manitoba between 1986 and 1991<sup>24</sup>. In contrast, the number of substantiated child maltreatment investigations in Ontario that resulted in placement in care has not changed significantly between 1993 and 1998, rising from 1,800 to 2,200<sup>25</sup>. Relative to the dramatic increase in investigations of substantiated maltreatment, the proportion of substantiated investigations resulting in placement decreased from 15% to 9%<sup>26</sup>.

The difference between the *OIS 1993/1998* findings and the increase in children in out-of-home care may be attributed to the fact that the major increase in placements in Ontario occurred after 1998, or may reflect increases in placement post-investigation (*CIS* and *OIS* only tracked placements during the initial investigation). Nevertheless, the difference raises potentially significant questions about the nature of the increase noted across Canada. Year-end cross-sectional counts of children in care are notoriously difficult to interpret. An increase in the number of children in care on any one day can be attributed either to (1) more children being admitted to care, or (2) to children spending more time in care. Knowing which factor is driving the increase is critical. If length of time in care is increasing, is it because of (1.a) delays in returning children home, or because of (1.b) delays in permanency planning? If admissions are increasing, is it because (2.a) more children are coming to the attention of the child welfare system, or is it because (2.b) the threshold for removal has been lowered? Interestingly, the latter explanation (2.b) has attracted the most attention, with some raising concern that the child welfare pendulum is swinging in an increasingly intrusive direction. Unfortunately, most jurisdictions across Canada have limited information about the mechanisms underlying out-of-home placements. Without further information, caution is required in responding to these statistics.

## Summary

Comparison of the *CIS 1998* and the *OIS 1993/OIS 1998* provides the basis for understanding emerging issues in current child welfare policy and practice in Canada.

There has been a noticeable shift in the types of investigations the child welfare system is responding to. As investigations of sexual abuse are decreasing, the proportion of investigations

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<sup>21</sup> Saskatchewan Social Services. (1999). *Quarterly Statistical Reports*. Regina: Saskatchewan Social Services.

<sup>22</sup> Ontario Association of Children's Aid Societies (OACAS). (2000). *CAS Facts – 1999*. Toronto: OACAS.

<sup>23</sup> Armitage, A. (1998). Lost vision: Children and the Ministry for Children and Families. *B.C. Studies*, 118 (Summer 1998): 93-122.

<sup>24</sup> McKenzie, B. (1994). Development of a foster family care continuum in Manitoba: A policy critique. *Current perspectives on foster family care for children and youth*, B. McKenzie. Toronto: Wall and Emerson Publishing, Inc., pp. 59-73.

<sup>25</sup> Trocmé, N., et al. (2002), Table 6.

<sup>26</sup> *Ibid*, Figure 6.

involving emotional maltreatment and neglect is increasing. Also increasing is the number of investigations with prior child welfare agency contact, an indication of the need for a greater focus on on-going services. It is clear the current standard response to child maltreatment investigations is not adequately meeting the longer-term needs of children who are faced with more chronic maltreatment such as exposure to domestic violence or neglect. The constant demand on child welfare resources can only be met when there are effective policies and structures, including child welfare courts, in place to support the growing need for longer-term involvement with families.

The courts have the opportunity to contribute to the changing needs of the child welfare system by restructuring their own approach to cases of maltreatment. Supporting a differentiated response to child maltreatment would allow for the longer-term assessment of cases that do not necessarily require an immediate investigatory protective response.

The willingness and ability of the court to remain engaged with a family throughout their involvement with the child welfare system may contribute to a decrease in the number of families who have had previous CAS contact.

The question of whether or not the current organization of child welfare courts realistically meets the needs of changing caseloads is one that requires further analysis. With a shift in the type of investigations that child welfare agencies are responding to, the courts have the opportunity to shape the direction of future trends in the social response to child maltreatment. Child welfare courts are in a unique position of being able to effect positive change in the lives of maltreated children and their families whose changing needs require on-going resources not currently provided by the child welfare system.