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Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

His Honour
Judge H. Ward Allen

VOLUME 1



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1982

VOLUME 4

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Chapter XXXI

Conclusions

Before setting forth the recommendations which I feel flow properly from the events reviewed in this Report it may be helpful to readers of the Report for me to prepare a summary of what appear to me to be some of the more important conclusions, findings or opinions reached, made or expressed by me heretofore in the Report.

That summary will be in the same sequence as the Chapters of the Report.

Chapter I contains an expression of my view that the review of Kim's antecedents and of their lives prior to her birth was limited and not entirely satisfactory because of the unreliability of Jennifer Popen as a witness.

Chapter II mentions a comment by the Honourable Keith C. Norton on September 8, 1978 while he was the Minister of Community and Social Services. It was to the effect that this Report should be mandatory reading for all involved in the detection, management and treatment of cases of child abuse. There was further comment by Mrs. Farina that, in Kim's case, almost every mistake that could be made was made by those who were involved in it at its various stages. I share that view.

In Chapter III I state the obvious. Kim was a victim of abuse. Her mother, Jennifer Popen, inflicted physical injury upon her. Her father, Annals Popen, failed to protect her. In my view others, in varying degrees, bear responsibility for the eventual result.

Chapter III is an admittedly incomplete examination and assessment of some of Kim's antecedents. It demonstrates my inability to rely upon testimony by Jennifer Popen. It sets forth my

concern that Annals Popen's testimony, too, is not reliable.

Chapter IV is a summary of some of the major events in Kim's life which are examined in greater detail, along with other matters, in the following Chapters of the Report. Upon Kim's hospitalization in March, 1975, Dr. Singh recorded the first suspicion that she may have been abused. Mr. Khattab did not pursue the matter as Dr. Singh requested. No report was made to the Society or Crown Attorney. In June, 1975, Dr. Jumean reported, by telephone, to the Sarnia Police Force and The Lambton Health Unit, that there was an allegation or suspicion that Kim had been abused. He made those calls ten days after he had seen Kim and heard the allegation. The Society was informed by the police the next day and visited Kim immediately. Mrs. Harvey assumed responsibility for the case, but it did not receive any further attention. On August 31, 1975, Kim was again hospitalized with serious injuries and again the suspicion of abuse was recorded. The Society and police were informed. Kim was released from hospital into the care of the Society. That was later confirmed by an order of the Provincial Court (Family Division) of the County of Lambton in February, 1976. Her parents were charged under section 40 of The Child Welfare Act. Annals Popen pleaded guilty and the charge against Jennifer Popen was withdrawn. On May 27, 1976, Kim was returned to her parents' home. On August 11, 1976 she died as a result of injuries admittedly inflicted by Jennifer Popen.

Chapter V contains a review of the testimony relating to Kim's admission to hospital in March, 1975. I am prepared to accept Jennifer Popen's acknowledgement that she caused the injuries which led to that admission. I reject Jennifer Popen's testimony that those injuries were "an accident." I find that the discharge summary signed by Dr. Jumean is in error to ascribe the fracture of Kim's humerus to a fall. I reject Mr. Khattab's testimony that his assignment was "just to talk to the mother." His statement that he had no information about child abuse or the battered child syndrome is a startling admission of incompetence and ignorance and, when coupled with his admitted failure to inquire about such things, wilful blindness. I am

critical of others for not having pursued the matter with Mr. Khattab.

In my view the circumstances surrounding Kim's injuries and admission to hospital in March, 1975 were such as to require a report to have been made to a children's aid society or Crown attorney pursuant to section 41 of The Child Welfare Act. No such report was made. That may in part be attributable to the procedures in the hospital and to the understanding which some doctors and nurses expressed as to the relationship among and between them and as to the reliance of some upon Dr. Jumean, as the family doctor, to do what was required. In my view the failure to make the required report had minimal effect upon the tragic development of Kim's life.

I reject, as being of recent invention, Jennifer Popen's testimony which seemed to suggest that what she did was in an attempt to obtain help.

Chapter VI reviews events in Kim's life from April 3 to August 31, 1975. It was during this period that Mrs. Fay Popen expressed concern to Dr. Jumean who telephoned the Sarnia Police Force on June 16, 1975. On June 17, 1975 the police advised the Society who promptly visited Kim. Despite the opinion and decision of Mrs. Saul and Mrs. Harvey that the Society should be involved in Kim's life the matter was not dealt with. The Society did not open a file. It conducted no investigation of the most recent incident or of earlier incidents of alleged abuse to Kim, including that of March, 1975.

I reject the testimony of Mrs. Harvey and Mr. Carter that Kim's case was discussed by them on August 29, 1975. There is no factual basis for the item in the Society's records under that date.

I do not accept the testimony of some of the personnel of the Society to the effect that the failure of the police to advise the Society that Dr. Jumean had telephoned the police contributed to the Society's failure to fulfill its tasks. Simply put, the Society had a duty to investigate the allegations and it did not do so.

The events in this period of time demonstrated the Society's lack of appropriate procedures.

The recordings in the Society's files were shown to be unreliable.

On June 17, 1975, Mrs. Harvey assumed personal responsibility to ensure that Kim's case was opened in the Society and assigned to a long term worker. She did not do either. She had no explanation for her failure.

During this period of time others, such as Mrs. Hewitt, Dr. Thorp and Mrs. Fay Popen, had ample information to require them to make a report pursuant to section 41 of The Child Welfare Act. That they did not had minimal effect upon the tragedy, particularly in light of the Society's failure to investigate the case promptly after June 17, 1975.

Chapter VII reviews the events from August 31 to September 5, 1975. Many who were associated with Kim's admission to hospital in March, 1975 and the events of June, 1975 were again involved. Dr. Singh again suggested the possibility of abuse. Mr. Khattab again did little. The Society did little to investigate any or all of the allegations or information it had.

Chapter VIII is a review of events from September 5, 1975 to February 25, 1976. There were procedural problems and long delays in the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act and in the Society's application in respect of Kim. Kim was released from hospital to the care of the Society and was placed in an excellent foster home where she was well and lovingly cared for.

During this period the Society did virtually nothing more than provide physical care for Kim. Mr. Carter, with Mrs. Harvey's approval, did not conduct the necessary and usual investigations nor prepare and record any plan for Kim's care by the Society. He merely prepared the Society's application for presentation in court and that was not done fully or well.

It was during this period that Mrs. Harvey announced her intention to return Kim to her parents even over the strong objections of some of the staff of the Society and police officers. This was a

further demonstration of the absence of adequate procedures in the Society.

I find that the Society was aware of and did not oppose the arrangement between the Crown Attorney and Mr. Higgins for the disposition of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act.

The transcript of the court proceedings on February 25, 1976, coupled with the testimony upon the Inquiry, demonstrates further the dominant role of Mrs. Harvey in the Society and the absence of appropriate procedures. In my view the Society failed Kim and the court by failing to apprise Judge Nighswander of all of the information which might have been presented to indicate the true nature of Jennifer Popen's involvement in Kim's injuries.

Mrs. Harvey made no notes as Judge Nighswander delivered his reasons for judgement. The Society did not obtain a copy of those reasons.

The Society's personnel erroneously believed that the disposition of the charge under section 40 of The Child Welfare Act restricted them in the presentation of the Society's application.

Chapter IX deals with Kim's life from February 2, 1975 until her death. Mrs. Harvey removed Kim's case from Mr. Carter and assigned it to Mrs. Lo. Mrs. Harvey told Mr. Carter the transfer was made for ethnic reasons. She denied that upon the Inquiry and her real reasons are obscure.

Mrs. Lo did not have training or experience to enable her to manage Kim's case. Mrs. Harvey did not provide adequate supervision to Mrs. Lo. Mrs. Lo was not even aware that her task would include some effort to determine the identity of whomever had abused Kim.

Mrs. Lo and Mrs. Harvey were remiss in not arranging for Kim to be examined by a physician at appropriate intervals after her return to her parents' home in May, 1976.

The validity of the pre-sentence report prepared by Mr. Brouwer is suspect because of the

limited inquiries he made. However that pre-sentence report did contain Dr. Curtin's report and note which, had the Society's personnel taken the trouble to read them, should have alerted the Society to the possibility that Kim might be exposed to danger.

I was struck by the insular attitude of the Society. Its personnel seemed to expect others to communicate with it and to give it information, but they, with rare exception, did not initiate communications with other agencies in the community.

I also noted that both the Society and the Probation Services assigned major responsibilities in Kim's case to inexperienced persons, Mrs. Lo and Mrs. Maughan.

Again the reliability of the recordings in the Society's files is questioned. Mr. Carter's summary of the court proceedings of February 25, 1976 is incomplete and inaccurate as is Mrs. Lo's recording following the proceedings of March 29, 1975. Mrs. Kirby's and Mrs. Lo's recordings do not agree in some substantial aspects. The recordings are not accurate in relation to the making of the decision that Kim would be returned to her home, either as to when, why and by whom that decision was made.

Chapter X sets forth the results of the post-mortem examination and the opinions of Dr. Patodia and Dr. Bates based thereon.

Dr. Patodia found Kim's death to have been the result of injuries to her head suffered within hours of her death. He noted external marks of violence. Dr. Bates stated that the injuries suffered by Kim were consistent with her having been abused.

Chapter XI deals with events immediately following Kim's death. The actions and attitudes of Mrs. Harvey in relation to Kim's brother, Karie, after August 11, 1976, appear to me to be indicative of the weaknesses in the Society which contributed so greatly to Kim's tragedy. Even after seeing Kim's body and her terrible injuries, Mrs. Lo did not conclude that Kim had been abused by her parents or one of them. The Society's personnel did not vigorously pursue a request for a copy of the post-mortem

report. It was accepted, without confirmation, that Karie was being cared for by persons other than his parents. The Society did not initiate communication with other agencies, but, somewhat belatedly, acted in response to the urging of the Crown Attorney and The Lambton Health Unit. But for the intervention of others Karie might have been left in the care of Annals Popen and Jennifer Popen and exposed to the same risk as had Kim. Mrs. Harvey said she could not act with reference to Karie until a charge was laid in connection with Kim's death or until there was evidence he had been abused. She had not sought legal advice even though it was available by reason of the decision of the Board of Directors of the Society some months earlier. She continued her practice of making important decisions without adequate or any consultation.

Chapter XII sets forth my assessment of Jennifer Popen as a person whose testimony upon the Inquiry was not worthy of belief. I express criticism of the Society for its failure to make any investigation of Jennifer Popen's life history to ascertain what effect, if any, it might have had upon her in relation to her care of Kim.

I am satisfied that all of what Jennifer Popen told the doctors and others in relation to Kim's injuries was false insofar as it was a denial of her responsibility for Kim's injuries. Jennifer Popen caused the injuries. They were not the result of accidents. Those findings relate as well to the injuries set forth in the post-mortem report.

Chapter XIII contains my assessment of Annals Popen as a pathetic man, but one not deserving of pity. I am not satisfied that he caused any injury to Kim, but he was not prepared to recognize what was happening. He did not protect Kim. His testimony is not reliable.

Chapter XIV examines Mrs. Harvey's role. In June, 1975 she assumed personal responsibility for Kim's case, but she did nothing. In September, 1975, when Mrs. Harvey again learned of Kim's case because of another incident of abuse, she did not frankly acknowledge her earlier default. That lack of frankness continued even in some of her testimony upon the Inquiry.

In September, 1975 and thereafter Mrs. Harvey did not provide adequate supervision to Mr. Carter and to Mrs. Lo. She did not ensure compliance with the provisions of The Child Welfare Act and the Regulations made thereunder. She did not ensure an adequate investigation of all of the allegations of abuse to Kim. She made decisions without consultation with others. She did not ensure that the files of the Family Services Department of the Society in relation to Kim were satisfactorily maintained. She did not ensure that a plan for management of Kim's care was prepared and recorded.

In her testimony Mrs. Harvey emphasized the desire to have an early hearing of the Society's application for wardship of Kim. In fact it was not heard until about six months after it was initiated. Mrs. Harvey was responsible for some of that lengthy delay because of her failure to supervise Mr. Carter and to ensure that the Society was prepared for the hearing. Preparation would have included investigation and assurance that all necessary witnesses were present.

Mrs. Harvey's failure to give any assistance or advice to Mr. Carter to overcome Mr. Higgins' attempts to restrict Mr. Carter's contact with Annals Popen and Jennifer Popen was an element in the unsatisfactory preparation of the Society's application.

Mrs. Harvey's failure to have any adequate conference prior to the hearing was another element in that unsatisfactory preparation.

The lack of preparation was demonstrated by the inadequate or incomplete presentation of all of the material that should have been adduced upon the hearing. Mrs. Harvey's failure to cross-examine Jennifer Popen was an illustration of her inadequate representation of the Society.

Another illustration of the inadequacy of the preparation and presentation of the application was Mrs. Harvey's submission that wardship for a period of two months would be sufficient. Mr. Carter was not aware that she would make that submission. Until it was made he had understood the Society sought wardship for six months. Mrs. Harvey's

testimony purporting to explain that was entirely unconvincing.

Mrs. Harvey's deficiencies as the Society's court worker are all the more noticeable because of her refusal to attend a seminar for court workers and her failure to request the assistance of a solicitor even though, just weeks earlier, she had persuaded the Board of Directors of the Society to provide funds for that purpose.

By February, 1976 Mrs. Harvey had decided that Kim should be returned to her home. She made that decision without any adequate conference. She persisted in it over the combined objection of police officers and some of the personnel of the Society. The decision as to when the return should be effected was made during a charade of a conference. That total decision was defended by Mrs. Harvey even in the face of testimony of well-qualified social workers who said they could not find any basis to support it and who were adversely critical of it.

The transfer of Kim's case from Mr. Carter to Mrs. Lo was another example of Mrs. Harvey's abuse of her position to make and execute decisions without any appropriate conference.

Mrs. Harvey did not adequately instruct and supervise Mrs. Lo in her duties. Even in late July, 1976 when Mrs. Lo reported some unsettling changes of attitude in the Popen home, Mrs. Harvey gave her no particular advice or assistance to seek to ensure Kim's safety.

I am satisfied that Mrs. Harvey, despite her impressive credentials, lacked an adequate knowledge of The Child Welfare Act and of child care and protection practices and procedures currently acceptable in 1975 and 1976.

Chapter XV contains my comment upon the role of Mr. Lovatt. His virtual abdication of involvement in and responsibility for management of cases permitted Mrs. Harvey to have a position of dominance within the Society and a position of unchallenged authority in Kim's case. In my view Mr. Lovatt was derelict in performance of his duties.

In many areas the organization, administration and operation of the Society were inadequate and unsatisfactory, even deplorable. The practices and procedures of the Society in relation to Kim did not satisfy or meet the standards which well-qualified witnesses upon the Inquiry said were usual, normal and reasonable for such a case. Mr. Lovatt and others of the Society's personnel were similarly lacking in knowledge and expertise. Those deficiencies substantially contributed to the tragedy of Kim. Mr. Lovatt, as the Local Director of the Society, must bear responsibility therefor.

Mr. Lovatt was genuinely interested and concerned about the well-being of children. He wanted to succeed. He failed as set forth in this Report.

Mr. Lovatt was or should have been aware of the deficiencies described by Mr. Zwerver in his report to the Board of Directors and in his testimony. Mr. Lovatt should have acted to correct the situation even prior to Mr. Zwerver's appointment to the Society. He did not.

Mr. Lovatt was not able to succeed even in the limited area to which he largely confined himself. That was the area of financial affairs. He was unable to obtain the approval of the Minister of Community and Social Services for the estimated expenditures of the Society in 1978. Others subsequently did obtain such approval and attributed their success and his failure to the respective use each had made of information from the Society's records.

Mr. Lovatt's failure to advise the Board of Directors of the circumstances of Kim's death when it occurred in August, 1976 is an example of his inability or unwillingness to recognize and fulfill his responsibility to the Board of Directors. He maintained that silence until December, 1977 when the Society's involvement in Kim's care became a topic of public discussion. Even then his report to the Board of Directors was incomplete and inaccurate.

In this Report I have commented upon the insular attitude of the Society within the community. Mr. Zwerver in his testimony described one instance wherein an employee of the Society failed to respond

adequately to a call from another agency. Mr. Lovatt must bear responsibility for all of that.

I have written of Mrs. Harvey's failure to provide adequate supervision to Mr. Carter and Mrs. Lo. In her turn she received no supervision from Mr. Lovatt. He deferred to her and accepted her oral reports, virtually without question, suggestion or comment.

In my view Mr. Lovatt spoke ill of himself when he testified that the Society was unable to attract well-qualified workers to its staff during his service with the Society. If that was so, he was responsible for the state of the Society from the date of his appointment as Local Director. I am not aware that he expressed any such opinion before testifying upon the Inquiry or that he sought anyone's assistance to employ such workers.

Mr. Lovatt sought some solace or refuge by attributing to the Sarnia Police Force responsibility for inadequate investigation and actions in 1975. While I have expressed some criticism of the Sarnia Police Force, Mr. Lovatt can take no comfort from that. That effort by him is a further illustration of his own inadequacy.

Mr. Lovatt may evoke sympathy as one whose career was shattered by revelations in December, 1977. However, he must bear ultimate responsibility for the existence of conditions within the Society which were so significant in the development and the conclusion of Kim's tragedy.

Chapter XVI sets forth my views upon the role of Mr. Higgins. I am satisfied that, as a barrister and solicitor, he acted in the best interests of Annals Popen and Jennifer Popen who were his clients in late 1975 and early 1976 and of Jennifer Popen who was his client in later 1976 and in 1977. He felt no direct obligation or duty to Kim during her lifetime. In the court proceedings of particular importance to the Inquiry he obtained good results for his clients. He also was responsible for the Court's obtaining the pre-sentence report. In that way Dr. Curtin's views became available to the Society. It is no fault of Mr. Higgins that the Society did not exploit that opportunity. It is not

his fault that the Society misinterpreted or mis-applied what Dr. Curtin had written. It is not his fault that in representing his clients he was able to persuade the Society that it should not do certain things it should have done.

I am satisfied that Mr. Higgins became a member of the Board of Directors of the Society after the proceedings in the Court in February and March, 1976 had been completed other than the imposition of sentence upon Annals Popen. Mr. Higgins did so as a public spirited citizen and without ulterior motives.

At no time did Mr. Higgins take part in any consideration by the Society's personnel of the management of Kim's case. Specifically he did not influence the decision to return Kim to her home. He did not exert pressure upon anyone in that connection.

In my view Mr. Higgins was not in a position of conflict of interest in the spring of 1976. Nothing detrimental to Kim flowed from the fact he did not advise the Board of Directors of the Society that he had acted for Annals Popen and Jennifer Popen.

The situation was different in August, 1976 when he was retained by Jennifer Popen in relation to Kim's death. As a member of the Board of the Directors of the Society, he should have advised the Board that Kim was a ward of the Society when she died and that her parents had been charged with manslaughter. Mr. Higgins' silence had no effect upon Kim who had died.

Upon the Inquiry Jennifer Popen refused to waive the solicitor-client privilege which applied to communications between her and Annals Popen and their solicitor, Mr. Higgins. Thus I was unable to ascertain whether either Jennifer Popen or Annals Popen had given to Mr. Higgins any information as to physical ill-treatment of Kim. In my view, if Mr. Higgins received any such information from them or either of them he would have been required by section 41 of The Child Welfare Act to report that information to the Crown attorney or the Society even if the information was given to him as their solicitor for the purpose of defending and opposing the

proceedings against them and in respect of Kim under The Child Welfare Act.

Chapter XVII contains my comment upon the function of the Board of Directors of the Society. No member of that Board, save and except Mr. Higgins, had any knowledge of or involvement in Kim's case. While Mrs. Harvey advised Mr. Allen, as President, of Kim's death, he was left with the impression that Kim had died as the result of an accident. He was not even alerted that the circumstances of Kim's death might lead to adverse criticism of the Society.

The staff of the Society, particularly Mr. Lovatt and Mrs. Harvey, were responsible for the Board's lack of awareness of the matter. There was a complete lack of appropriate communication from the staff to the Board of Directors.

I am satisfied that men and women accepted election or appointment to the Board of Directors of the Society without full knowledge of the duties and obligations attending such membership. There was little effort to acquaint the members of the Board with their duties. The Board, as a whole, depended upon Mr. Lovatt for information and advice.

The members of the Board did not possess any means to assess Mr. Lovatt's abilities or his performance of his duties. Similarly the Board was unable to assess the overall performance by the Society. The Ministry of Community and Social Services gave the Board no advice or information in that regard. The Board did not request any such assistance from the Ministry. In my view the duty of the Board to govern the Society included a duty to ensure that the Society fulfilled its obligations in a satisfactory manner.

That dependence upon Mr. Lovatt and the absence of advice from the Ministry perhaps account for the Board's being unaware of the sorry state of affairs in the Society which was so easily and quickly exposed early in 1978.

In my view the Board of Directors of the Society must bear some responsibility for its own lack of awareness. Mr. Lovatt and others of the staff share in the responsibility.

In part all of that came about because of the absence of effective means of communication within the Society.

The Board did act quickly and effectively when it became aware of the Society's involvement in Kim's life and death. It went beyond its usual reliance upon Mr. Lovatt and sought assistance from other sources.

In Chapter XVIII I review the activities of some of the personnel of the Society and express some criticism of some of them. To some degree they were the victims of the poor organization and administration of the Society and the lack of adequate leadership.

It was the absence of adequate procedures which led to notes made by Mrs. Saul and Mrs. Dick on June 17, 1975 lying somewhere untranscribed until after August 31, 1975. That same absence of procedures led to important decisions, such as the transfer of Kim's case and her return to her parents' home, being made without adequate discussion and study. It led also to some of the problems with the Society's records which, in relation to Kim, were shown to be quite unreliable and inadequate.

In my view Mr. Carter's investigation of Kim's case in preparation for the hearing of the Society's application was inadequate. Similarly, Mr. Carter made a serious error, with Mrs. Harvey's knowledge and concurrence, when he failed to establish and pursue usual case work practices in Kim's case. He and she accepted Mr. Higgins' dictum. His preparation for the court hearing was not satisfactory. His recording in Kim's file for the whole of the period from September 2, 1975 to February 25, 1976 was placed in the file after that later date. He failed to meet the requirement of The Child Welfare Act as to recording his investigation and determination and the basis thereof. He did not prepare or record a plan for the management of Kim's care. For the most part his deficiencies flowed from his own errors or lack of knowledge as to the provisions of The Child Welfare Act and as to his own powers, duties and obligations. He compounded his errors by failing to seek advice.

Chapter XIX reviews the actions of the Sarnia Police Force from the time of Dr. Jumean's telephone call on June 16, 1975. In my view it was inappropriate for the police to wait until June 17, 1975 before advising the Society. While Police Constable Gander could properly rely upon the assessment of Kim's condition made by the Society's workers on June 17, 1975, the police should have investigated further, particularly in relation to the allegation of earlier injury or abuse to Kim.

In my view the police investigation of Kim's case after August 31, 1975 was not satisfactory. Thus the preparation for trial of the charge against Annals Popen and Jennifer Popen was not satisfactory.

I formed the opinion that the police did not fully appreciate the nature of the case. It was treated by them as a minor matter. The absence of notes was striking. The inadequacy of the brief prepared by the police for use by the Crown Attorney is apparent when it is reviewed in the light of the testimony upon the Inquiry. It is inadequate because of error and omission.

It would seem that the police were not fully aware of their powers under The Child Welfare Act. In February, 1976 Police Constable Wyville and Police Constable Charlton accepted Mrs. Harvey's statement that Kim would be returned to her home. I recognize the practical problems that would have arisen had the police done otherwise. If the police had sought the assistance of others, such as the Crown Attorney, The Lambton Health Unit and Dr. McKinlay whose efforts led to Karie's removal from the Popen home on August 13, 1976, they might have forestalled Mrs. Harvey and the Society. The police should not have permitted their valid concerns to be brushed aside so cavalierly.

In Chapter XX I record my opinion of the actions and opinions of various medical doctors who were involved in some way in Kim's life. Although as early as March, 1975, Dr. Singh had recorded his suspicion that Kim may have been abused, no medical doctor made any report as required by section 41 of The Child Welfare Act. I do not accept the view expressed that no such report should be made until

the doctor involved has investigated the matter, provided the doctor has reasonable and probable cause for making such a report and is not acting maliciously. In my view Drs. Singh, Thorp, Jumean and Lota failed to comply with the statutory provision. In my view Drs. Bennett, McCrudden and Woods had no obligation to make such a report because the limited information they had was not sufficient to impose that duty upon them.

I reject the opinion expressed by some doctors that, if a doctor were engaged as a consultant to the physician attending a child, a report to the attending physician would satisfy the provisions of section 41 of The Child Welfare Act and fulfill the consulting doctor's obligation thereunder.

In my view the expressed concern that a doctor might be successfully sued for making such a report is ill-founded provided the doctor was not acting maliciously and had reasonable and probable cause for making the report. Certainly in Kim's case there were such grounds and there was no suggestion that any doctor harboured malice against Annals Popen and Jennifer Popen or either of them.

I am particularly critical of Dr. Jumean, the family physician to Kim and her parents. Other doctors prepared reports for Kim's file and for him. They relied upon him to do whatever was necessary on the basis thereof. He did not examine Kim's file which included reports from Dr. Thorp and Dr. Singh prepared during his absence in March, 1975. It was particularly disheartening when, in the same area of his testimony, he stated that on his return he had reviewed the financial matters arising from his patients' files more carefully than he had reviewed the medical records therein. That lack of care in relation to medical records is demonstrated by the error in the form, signed by him, with reference to Kim's discharge from hospital on April 3, 1975.

Even in June, 1975, Dr. Jumean was remiss. I found that on June 6, 1975 he saw Kim with Mrs. Fay Popen who was concerned about Kim's safety. He did not comply with the provisions of section 41 of The Child Welfare Act at any time, but, ten days later, he did telephone the Sarnia Police Force. A delay of

ten days is significant in relation to the appearance of injuries such as bruises.

However, adequate performance by the Society of its functions after June 16, 1975 might very well have overcome whatever disadvantage may have flowed from the failure of any medical doctor to make a report to a children's aid society or Crown attorney.

Chapter XXI contains my criticism of St. Joseph's Hospital and its staff. In large measure that criticism is of Mr. Khattab. Some of it has been summarized earlier in this Chapter. Even with his admitted deficiency of knowledge of child abuse he did not seek any assistance and he did not inform anyone, including Dr. Singh, that he was not qualified to do what Dr. Singh expected.

Inherent in the testimony of personnel of the hospital was the suggestion of lines of communication whereby a nurse, for example, having information which raised the suspicion that a child had been abused would be expected to report the matter to the nursing supervisor or to the physician and would not be expected, or even permitted, to report the matter to a children's aid society or the Crown attorney. In my view that is an error. A report to a supervisor or physician does not constitute a report as required by section 41 of The Child Welfare Act.

In summary Mr. Khattab and other employees of the hospital should have made a report to the Society or Crown attorney in March, 1975.

In August and September, 1975 the hospital and its staff acted reasonably, properly and effectively in Kim's best interests. They ensured her safety. They advised the Sarnia Police Force and that led to the intervention by the Society.

The role of The Lambton Health Unit in Kim's life, reviewed in Chapter XXII, was brief and intermittent. It would seem that The Lambton Health Unit has no special legislative power or authority in cases of child abuse. On June 16, 1975 Dr. Jumean spoke by telephone with Dr. Duncan to advise her of the suggestion that Kim had been abused. Dr. Duncan

did not make any report to the Society or Crown Attorney, but, in the circumstances, that would appear to be of little significance.

While I have expressed some criticism of The Lambton Health Unit, it does not seem likely that The Lambton Health Unit could have averted Kim's tragedy. To the credit of The Lambton Health Unit, Dr. Duncan joined with others after August 11, 1976 to ensure that Karie was protected despite Mrs. Harvey's initial demurrer.

The involvement of the Office of the Crown Attorney of the County of Lambton in Kim's life is reviewed in Chapter XXIII. That involvement began in September and October, 1975 when the Crown Attorney soundly and reasonably advised the Sarnia Police Force that Annals Popen and Jennifer Popen be charged under section 40 of The Child Welfare Act rather than under the Criminal Code. The Office of the Crown Attorney bears some responsibility for the delays resulting from that charge being presented in provincial court (criminal division) rather than provincial court (family division) and from the non-attendance of at least one essential witness.

I am satisfied that the Crown Attorney acted reasonably and properly in relation to Mr. Higgins' letter containing a proposal for the disposition of the charge against Annals Popen and Jennifer Popen. However Mr. Lang seemed to have overlooked the basis of his original advice to the police. He had advised the police that, because of problems of proof, a charge under section 40 of The Child Welfare Act was more appropriate than a charge of assault under the Criminal Code. In any event both the Society and the police did not oppose the arrangement.

I am satisfied that the professional staff of the Office of the Crown Attorney was not sufficiently large to enable it to meet all of the requirements for attendance in various courts, including preparation for trials in provincial courts. That was a factor in the assignment of the case to Mr. Hibberd without adequate opportunity for him to prepare for the hearing and to apprise himself of all details of fact and of law. He approached the trial with some misconceptions.

After Kim's death Mr. Lang, with others, was able to persuade Mrs. Harvey to remove Karie from the Popen home. However it should be noted that the provisions of section 21 of The Child Welfare Act would have enabled the police to effect that removal even without the Society.

Chapter XXIV contains some comment upon the function of the Provincial Court (Family Division) of the County of Lambton. From time to time when matters relating to Kim were scheduled for hearing or trial, adjournments were necessary because one or both parties to the proceedings was or were not prepared or able to proceed. However it was clear that, because of the pressures upon the Court and the lone Judge sitting in both the County of Lambton and the County of Kent, such adjournments were for quite long times. Lengthy adjournments are not desirable in such matters.

By reason of the paucity of testimony, the Court was not given the benefit of all that was adduced upon the Inquiry. Attention was diverted from Jennifer Popen to Annals Popen. Despite that handicap and despite Mrs. Harvey's submission that wardship for two months was appropriate Judge Nighswander placed Kim in the care of the Society for six months and gave extensive reasons for judgement. His judgement was described as being strong. It was due to his own talents and experience rather than anything the Society had done.

Chapter XXV contains comment upon the slight role of the community in Kim's case. Few members of the community testified upon the Inquiry. It would seem that, as had been noted elsewhere, private citizens preferred not to become involved in cases of child abuse by reporting any observations which might tend to indicate that a child was or had been abused. Highly publicized cases, such as Kim's, may bring about some change.

Francis Kameka saw Jennifer Popen slap Kim and he saw some minor injuries suffered by Kim. He did not believe Jennifer Popen's explanation for those injuries, but he made no report to anyone. I do not think the information he had would necessitate any report.

Mrs. Fay Popen did bring Kim to Dr. Jumean and told him of her concern for Kim's safety. She acted responsibly, but not in compliance with The Child Welfare Act because she reported only to Dr. Jumean and not to the Society or Crown Attorney. Her actions led Dr. Jumean to telephone the Sarnia Police Force ten days later and that led to a report to the Society the following day. I reject Jennifer Popen's testimony that Fay Popen had ulterior selfish motives.

Douglas Vandenberghe and his wife, Judith, were friends and neighbours of Annals Popen and Jennifer Popen. Particularly in the last few weeks of Kim's life they were aware of injuries suffered by Kim and discussed them privately. They were aware of some of the incidents of abuse to Kim. They made no report to anyone. In my view while Mr. Vandenberghe would have been justified in reporting the matter to the Society or Crown Attorney in 1976, his information was not such as to require him to do so. Mrs. Vandenberghe's information was such that she should have made a report upon it to the Society or Crown Attorney. I do not think any report by Mr. or Mrs. Vandenberghe in July or August, 1976 would have affected the course of events.

Deborah Ginn, a baby-sitter, saw some injuries or marks on Kim, but she was not in possession of information such as would require her to report to a children's aid society or Crown attorney.

Chapter XXVI is a long chapter of comment upon the role of the Ministry of Community and Social Services. In my view the Ministry and its personnel failed to fulfill the various duties imposed upon the Ministry by The Child Welfare Act.

The Ministry maintained an intense interest in the financial affairs of the Society. Mr. Macdonald testified that the provision of funds to children's aid societies was the primary role of the Ministry under The Child Welfare Act.

The Director appointed under The Child Welfare Act was, at all material times, Mr. Macdonald, an officer and employee of the Ministry. He did not fulfill his statutory duty to advise, supervise and inspect the Society. In part at least

that failure was attributable to changes within the Ministry whereby qualified workers employed in such duties were not replaced when they left the particular Branch of the Ministry. The Ministry did not retain a sufficient number of employees qualified to advise, inspect and supervise the children's aid societies.

The Ministry maintained a Central Registry of Child Abuse. It was of no practical use, at least in Kim's case. Even Mr. Macdonald described it as having been "in limbo" since 1967. Others who reviewed its operation concluded that it was ineffective.

Reports from the Society to that Central Registry in September, 1975 and April, 1976 were such as would have led qualified social workers employed by the Ministry to intervene in the management of Kim's case if they read the reports. No such qualified employee of the Ministry read those reports during Kim's lifetime.

Even after Kim's death and the report thereof to the Central Registry the Ministry was not stirred to much action.

I am satisfied that if a children's aid society sought specific advice from the Ministry during the years of Kim's life, one of the two employees charged with assisting the fifty societies would have responded. That however would not satisfy the duty upon the Ministry, through the Director, to advise, supervise and inspect the societies. The Ministry should have been advising, supervising and inspecting the societies without any request from any society and, if necessary, over the protests of a society.

Much of the Ministry's communication with children's aid societies was directed to the local directors of the societies. While the Ministry had prepared an assessment of Mr. Lovatt's qualifications for the position of Local Director prior to his appointment it did not furnish a copy thereof to the Society. It did not at any later time advise the Society of any real or apparent or apprehended weaknesses or deficiencies in its organization, administration or personnel.

From several witnesses I heard of a pervasive concern within the Society relative to finances. The Ministry seemed to share that concern. Some of its procedures for submission of estimates of expenditures, especially in the years of Kim's life, would tend to enhance such concerns. The procedures were time consuming and burdensome. They created suspense and tension long into each year, especially in 1976 the last months of Kim's short life. In that year they were unreasonable, impractical and unattainable. Even the Ministry could not do what it asked the societies to do, that is, maintain levels of service, but spend proportionately less money doing so, bearing in mind the rate of inflation.

The failure of the Ministry to provide standards of service for use by the societies in various cases is an extension of the Ministry's default in its duty to advise the societies.

The Ministry of Correctional Services had relatively slight involvement in Kim's case. It is reviewed in Chapter XXVII. Mr. Brouwer prepared a pre-sentence report upon Annals Popen in February and March, 1976. He obtained information from only a few sources some of which were of dubious reliability. As a result the pre-sentence report is not as helpful as it might have been. To the credit of himself and the Ministry he did obtain a letter and memorandum from Dr. Curtin expressing opinion and comment upon both Annals Popen and Jennifer Popen. But no one acted upon Dr. Curtin's suggestion that further or other investigations might be helpful. No one specifically advised the Society of the contents of Dr. Curtin's report.

Understandably Mr. Brouwer confined his contact with the Popen family from March, 1976 so that he met only Annals Popen. He did not direct Annals Popen into any particular activity in relation to his problem with alcohol. He accepted what Annals Popen and the Society chose. In June, 1976, while retaining responsibility for the case, he assigned a volunteer, Mrs. Maughan, to provide day-to-day supervision to Annals Popen. Mr. Brouwer correctly regarded protection of Kim as being an adjunct of his own duties in relation to supervision of Annals Popen's term of probation.

Mrs. Maughan voiced some concern or doubt as to conditions in the Popen home. The Ministry gave her no real guidance. Her concerns were not expressed to the Society. I do not think that lack of communication was material to Kim's death.

Unfortunately it was not until August 8, 1976 that Mrs. Maughan decided to speak to Mrs. Lo. She did not have any such conversation before Kim died. Such a discussion might have been helpful. It should have been arranged. If nothing else it might have exposed Jennifer Popen's tactic of criticising the personnel of one agency when talking with a representative of another. It might have prevented Mrs. Maughan from unwittingly expressing understanding of Jennifer Popen's complaints.

In Chapter XXVIII I examine the reports of the Farina Committee and the testimony of its members. These were well-qualified, trained, experienced and practical persons. They quickly found and reported upon a multitude of weaknesses and deficiencies within the Society, its organization, administration, management, personnel, procedures, policies and recording. They criticised the Ministry of Community and Social Services. Their comments, written and oral, have assisted me. Many of the matters dealt with in their reports and testimony were mentioned in or demonstrated by other testimony upon the Inquiry. It was unfortunate that the Farina Committee had redrawn its report after receiving comment thereon from officials of the Ministry of Community and Social Services.

In summary the Farina Committee found that the Society made grievous errors in the management of Kim's case from June 17, 1975 to August 11, 1976. They regarded some decisions as indefensible upon the basis of normal and usual accepted standards of child care practices.

The Farina Committee felt that in large measure the problems within the Society were attributable to lack of leadership by Mr. Lovatt and misguided leadership by Mrs. Harvey.

Chapter XXX contains a review of the testimony of Dr. Turner and Dr. Bates. They appeared as witnesses at my invitation to give me the benefit

of their expertise, one as a social scientist, the other as a paediatrician experienced in matters of child abuse. Each expressed his opinion upon a variety of matters raised by counsel. Each suggested items for inclusion in any list of recommendations that might result from the Inquiry.

Chapter XXXII

Summary of Recommendations

Throughout this Chapter I refer to The Child Welfare Act, The Child Welfare, 1978 and the Child Welfare Act. In doing so unless the context indicates otherwise, I have used section numbers as they were in 1975 and 1976. I am aware of the legislation enacted in 1978, The Child Welfare Act, 1978 and the subsequent revision of the statutes in 1980 so that the present legislation is the Child Welfare Act. Regulations made under the legislation have been treated in similar fashion.

Counsel to the Inquiry has prepared a table of concordance of the legislation and regulations as they were in 1975 and 1976 and as they are in the Revised Statutes of Ontario, 1980 and Revised Regulations of Ontario, 1980. That table appears immediately after this note of explanation.

Any recommendation for amendment of the legislation or regulations, even though it is stated as if it were applicable to the former legislation or regulations, is intended by me to relate to the corresponding portion of the present legislation and regulations or to what I perceive to be missing therefrom.

TABLE OF CONCORDANCE

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980
c.66

s. 1(a)	amended by	s. 1(a)
s. 1(b)	amended by	s. 1(1)
		s. 1(b) new
		s. 1(c) new
s. 1(c)	amended by	s. 1(d)
		s. 1(e) new
s. 1(d)	amended by	s. 1(f)
s. 1(e)	amended by	s. 1(g)
		s. 1(h) new
s. 1(f)	amended by	s. 1(i)
s. 1(g)		s. 1(j)
s. 1(h)		s. 1(k)
s. 2(1) repealed		s. 2(1) new
s. 2(2)(a)	amended by	s. 2(2)(a)
s. 2(2)(b)	amended by	s. 2(2)(b)
s. 2(2)(c)	amended by	s. 2(2)(c)
s. 2(2)(d)	amended by	s. 2(2)(d)
s. 2(2)(e)	amended by	s. 2(2)(e)
s. 2(2)(f)	amended by	s. 2(2)(f)
		s. 2(2)(g) new
		s. 2(2)(h) new
s. 2(2)(g)	amended by	s. 2(2)(i)
s. 2(3)	amended by	s. 2(3)
s. 3(1)(a)		s. 3(1)(a)
s. 3(1)(b)		s. 3(1)(b)
s. 3(2)	amended by	s. 3(2)
s. 4(1)	amended by	s. 4(1)
s. 4(2)	amended by	s. 4(2)
s. 5	amended by	s. 5
s. 6(1)	amended by	s. 6(1)
s. 6(2)(a)	amended by	s. 6(2)(a)
s. 6(2)(b)	amended by	s. 6(2)(b)
s. 6(2)(c)	amended by	s. 6(2)(c)
s. 6(2)(d)	amended by	s. 6(2)(d)
s. 6(2)(e)	amended by	s. 6(2)(e)
s. 6(2)(f)	amended by	s. 6(2)(f)
s. 6(2)(g)	amended by	s. 6(2)(g)

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980,
c.66

s. 6(2)(h)	amended by	s. 6(2)(h)
s. 6(3)	amended by	s. 6(3)(a)(b)
s. 6(4)	amended by	s. 6(4)
s. 7(1)	amended by	s. 7(1)
s. 7(2)	amended by	s. 7(2)
s. 7(3)	amended by	s. 7(3)
s. 7(4)(a)(b)	amended by	s. 7(4)(a)(b)
s. 7(5)	amended by	s. 7(5)
s. 7(6)	amended by	s. 7(6)
s. 7(7)	amended by	s. 7(7)
s. 7(8)		s. 7(8)
s. 8(1)	amended by	s. 8(1) s. 8(2) new s. 8(3) new s. 8(4) new s. 8(5) new
s. 8(2)	amended by	s. 8(6)
s. 8(3)	amended by	s. 8(7)
s. 9(1)	amended by	s. 9(1)
s. 9(2)	amended by	s. 9(2)
s. 10(1)(a)		s. 10(1)(a)
s. 10(1)(b)		s. 10(1)(b)
s. 10(2)		s. 10(2)
s. 10(3)		s. 10(3)
s. 11(1)		s. 11(1)
s. 11(2)		s. 11(2)
s. 11(3)	amended by	s. 11(3) new s. 12(1)
s. 11(5)	amended by	s. 12(2) s. 12(3) new
s. 11(4)	amended by	s. 12(4)
s. 11(6)	amended by	s. 12(5)
s. 11(7)	amended by	s. 12(6)
s. 11(8)	amended by	s. 12(7) s. 12(8) new
s. 11(9)	amended by	s. 12(9)
s. 11(10)	amended by	s. 12(10)
s. 11(11)	amended by	s. 12(11)
s. 12(1)	amended by	s. 13(1)
s. 12(2)	amended by	s. 13(2)

s. 12(3) amended by s. 13(3)

s. 13 repealed

s. 14(1) amended by s. 14(1)

s. 14(2) amended by s. 14(2)

s. 15(1) amended by s. 15(1)

s. 15(2) amended by s. 15(2)

s. 16 repealed

s. 17 amended by s. 16

s. 18 amended by s. 17

s. 19 amended by s. 18

PART II

PART II

s. 20(1)(a)	amended by	s. 19(1)(a)
s. 20(1)(b)(i)	amended by	s. 19(1)(b)(i)
s. 20(1)(b)(ii)	amended by	s. 19(1)(b)(ii)
s. 20(1)(b)(iii)	amended by	s. 19(1)(b)(iii)
s. 20(1)(b)(iv)		s. 19(1)(b)(iv)
s. 20(1)(b)(v)		s. 19(1)(b)(v)
s. 20(1)(b)(vi)	amended by	s. 19(1)(b)(vi)
s. 20(1)(b)(vii)	repealed	
s. 20(1)(b)(viii)	amended by	s. 19(1)(b)(vii)
s. 20(1)(b)(ix)	amended by	s. 19(1)(b)(viii)
s. 20(1)(b)(x)	amended by	s. 19(1)(b)(ix)
s. 20(1)(b)(xi)	amended by	s. 19(1)(b)(x)
s. 20(1)(b)(xii)	amended by	s. 19(1)(b)(xi)
		s. 19(1)(c) new
s. 20(1)(c)	amended by	s. 19(1)(d)
s. 20(1)(d)	repealed	
s. 20(1)(e)	amended by	s. 19(1)(e)
s. 20(1)(f)	amended by	s. 19(1)(f)
s. 20(1)(g)	repealed	
s. 20(1)(h)	amended by	s. 19(1)(g)
s. 20(2)	amended by	s. 19(2)
		s. 19(3) new
s. 20(3)	repealed	
s. 20(4)		s. 19(4)
s. 20(5)	repealed	
		s. 20(1) new

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980,
c.66

		s. 20(2) new
		s. 20(3) new
s. 21(1)	amended by	s. 21(1)
s. 21(2)	amended by	s. 21(2) new
s. 21(3)	amended by	s. 21(3)
		s. 21(4)
s. 22(1)	amended by	s. 22(1)
		s. 22(2) new
s. 22(2)	amended by	s. 22(3)
s. 22(3)	amended by	s. 22(4)
s. 22a(1)	amended by	s. 23(1)
s. 22a(2)	amended by	s. 23(2)
s. 22a(3)		s. 23(3)
s. 22a(4)	amended by	s. 23(4)
s. 22a(5)	amended by	s. 23(5)
s. 22a(6)		s. 23(6)
s. 22a(7)	amended by	s. 23(7)
s. 22a(8)	amended by	s. 23(8)
s. 23	amended by	s. 24
s. 23a(1)	repealed	
s. 23a(2)	amended by)	s. 25(1)
	amended by)	s. 25(4)
s. 23a(3)	amended by	s. 25(2)
		s. 25(3) new
		s. 25(5) new
s. 23a(5)		s. 25(6)
		s. 25(7) new
		s. 25(8) new
		s. 25(9) new
		s. 25(10) new
		s. 25(11) new
s. 23a(6)	amended by	s. 25(12)
		s. 25(13) new
s. 23a(7)	amended by	s. 25(14)
		s. 26(a) new
		s. 26(b) new
		s. 26(c) new
		s. 26(d) new
		s. 26(e) new
		s. 26(f) new
s. 24(1)	amended by	s. 27(1)
s. 24(2)	repealed	

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980,
c.66

		s. 27(2) new
s. 25(1)	amended by	s. 28(1)
s. 25(2)	amended by	s. 28(2)
s. 25(3)	amended by	s. 28(3)
		s. 28(4) new
		s. 28(5) new
s. 25(4)	amended by	s. 28(6) repealed
s. 25(4a) repealed		s. 28(7)
s. 25(5) repealed		s. 28(8) new
		s. 28(9) new
s. 25(7)	amended by	s. 28(10) new
s. 25(8)	amended by	s. 28(11)
s. 25(9) repealed		s. 28(12)
s. 25(10)	amended by	s. 28(13)
		s. 28(14) new
		s. 28(15) new
		s. 28(16) new
s. 25(11)	amended by	s. 28(17)
		s. 29(1) new
		s. 29(2) new
		s. 29(3) new
		s. 29(4) new
		s. 29(5) new
s. 26(1)	amended by	s. 30(1)
s. 26(2)	amended by	s. 30(2)
s. 26(3)	amended by	s. 30(3)
		s. 30(4) new
		s. 30(5) new
s. 27(1)	amended by	s. 31(1)
		s. 31(2) new
s. 27(2)	amended by	s. 31(3)
s. 27(2a)	amended by	s. 31(4)
s. 27(3)	amended by	s. 31(5)
s. 27(4)	amended by	s. 31(6)
s. 27(5)	amended by	s. 32(1)
s. 27(6) repealed		s. 32(2) new
s. 27(8)	amended by	s. 32(3)
s. 27(7)	amended by	s. 32(4)
		s. 32(5) new

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980,
c.66

s. 27(a)	amended by	s. 32(6) s. 32(7) new s. 33 new
s. 28(1) repealed s. 28(2)		s. 34 s. 35(1) new s. 35(2) new s. 35(3) new
s. 29	amended by	s. 35(4) s. 35(5) new s. 35(6) new
s. 30	amended by	s. 36
s. 31(1) s. 31(2)	amended by amended by	s. 37(1) s. 37(2) s. 37(3) new s. 37(4) new s. 37(5) new s. 37(6) new s. 38(1) new
s. 32(1) s. 32(1a)	amended by amended by	s. 38(2) s. 38(3) s. 38(4) new s. 38(5) new s. 38(6) new
s. 32(2) s. 32(3)	amended by amended by	s. 38(7) s. 38(8) s. 38(9) new
s. 32(4)		s. 39 new
s. 33(1) s. 33(2)	amended by amended by	s. 40(1) s. 40(2)
s. 34	amended by	s. 41
s. 35	amended by	s. 42
s. 36(1) s. 36(2) repealed s. 36(3) repealed s. 36(4) repealed	amended by	s. 43(1)

s. 36(5)	repealed		
			s. 43(2) new
			s. 43(3) new
			s. 43(4) new
			s. 43(5) new
			s. 43(6) new
			s. 43(7) new
s. 36(6)	amended by		s. 43(8)
s. 37(1)	amended by		s. 44(1)
s. 37(2)	amended by		s. 44(2)
s. 37(3)	amended by		s. 44(3)
s. 37(4)	amended by		s. 44(4)
s. 37(5)	amended by		s. 44(5)
s. 37(6)	amended by		s. 44(6)
s. 37(7)	amended by		s. 44(7)
s. 38(1)	amended by		s. 45(1)
s. 38(2)	amended by		s. 45(2)
s. 38(3)	amended by		s. 45(3)
s. 39(1)	amended by		s. 46
s. 39(2)	repealed		
s. 40(1)	amended in)		s. 47(1) new
s. 40(3)	part by)		s. 47(2)
s. 40(1)	amended by		s. 47(3)
s. 40(2)&(3)	amended by		s. 48(1)
s. 40(2)	amended by		s. 48(2)
			s. 48(3) new
s. 41(1)	amended by		s. 49(1)
			s. 49(2) new
s. 41(2)	amended by		s. 49(3)
			s. 49(4) new
			s. 50(1) new
			s. 50(2) new
			s. 50(3) new
			s. 50(4) new
			s. 51 new
			ss. 52(1) to
			52(21) new
s. 42(1)	amended by		s. 53(1)
s. 42(2)	amended by		s. 53(2)
s. 42(3)	amended by		s. 53(3)

R.S.O. 1970, c.64 as
amended up to 1975

R.S.O. 1980,
c.66

s. 43(1) repealed
s. 43(2)
s. 43(3)
s. 43(4)
s. 43(5) repealed

amended by
amended by
amended by

s. 54(1)
s. 54(2)
s. 54(3)

s. 44

amended by

s. 55

s. 45(1)
s. 45(2)
s. 45(3)
s. 45(4) repealed

amended by
amended by
amended by

s. 56(1)
s. 56(2)
s. 56(3)

s. 46(1)
s. 46(2)

amended by
amended by

s. 57(1)
s. 57(2)
s. 57(3) new
s. 57(4) new
s. 57(5) new
s. 57(6) new

s. 46(3)

amended by

s. 57(7)

s. 47(1))
s. 47(2))

amended by

s. 58

PART IV

PART IV

s. 89(1)
s. 89(2)
s. 90 repealed

amended by
amended by

s. 89(1)
s. 89(2)

s. 90 new
s. 91 new
s. 92 new
s. 93 new
s. 94 new
s. 95 new

TABLE OF CONCORDANCE
FOR REGULATIONS

Regulation 83
as amended up to 1975

Regulation 96,
1980

		s. 1(1)(a) new
		s. 1(1)(b) new
s. 1(a)		s. 1(1)(c)
		s. 1(1)(d) new
s. 1(1)(c)		s. 1(1)(e)
s. 1(b)	amended by	s. 8(1)(a)
s. 1(d)	amended by	s. 16(1)(a)
s. 1(e)	amended by	s. 16(1)(b)
s. 2(1)	amended by	s. 6
s. 2(2)a		s. 8(4)
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s. 3	amended by	s. 7
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s. 4(3)	amended by	s. 8(3)
s. 4a(1)	amended by	s. 9(1)
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s. 4b(1)	amended by	s. 10(1)
s. 4b(2)	amended by	s. 10(2)
s. 4b(3)	amended by	s. 10(3)
		s. 10(4) new
		s. 10(5) new
s. 4b(4)	amended by	s. 10(6)
s. 4b(5)	amended by	s. 10(7)
s. 4b(6)	amended by	s. 10(8)
s. 4b(7)	amended by	s. 10(9)
s. 4b(8)	amended by	s. 10(10)
		s. 11(11) new
s. 11(a)		s. 16(2)
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s. 12(a)		s. 18(a)
s. 12(b)		s. 18(b)
s. 13(1)1		s. 19(1)
s. 13(1)2		s. 19(2)

Regulation 83
as amended up to 1975

Regulation 96,
1980

s. 13(1)3
s. 13(1)4
s. 13(1)5
s. 13(1)6
s. 13(2) revoked
See also Regulation 97 for 1980 particularly s.1 and s.2.

s. 19(3)
s. 19(4)
s. 19(5)
s. 19(6)

s. 14(1) amended by s. 20(1)
s. 14(2) amended by s. 20(2)

s. 15(1) amended by s. 21
s. 15(2) revoked

s. 16 (see below)

s. 17 (see below)

s. 18 (see below)

s. 23(a) s. 22(a)
s. 23(b) s. 22(b)
s. 23(c) amended by s. 22(c)

s. 24 amended by s. 23
s. 24 new
s. 25 new
s. 26 new
s. 27 new
s. 28 new

Regulation 97,
1980

s. 16 s. 3
s. 17 s. 4
s. 18(1) amended by s. 5(1)
s. 18(2) amended by s. 5(2)
s. 8 new

"...unless we provide better teams and better investigation, children are going to go on being abused and beaten and hurt and warped and that whole cycle of abuse is going to go on and on and on for decades because our present approach to child abuse is a stop-gap. It's a patch-type work."

- Dr. Robert Bates in testimony

October 18, 1978.

There was testimony that child abuse is not a new phenomenon. It has existed since ancient times. It is not a local or regional problem. It exists throughout the world although there may be many varying definitions of conduct which constitutes child abuse. Communities, societies, regions and nations may have varying tolerances in respect of the care and well-being of children. Treatment of a child which one may regard as being acceptable may be unacceptable in another.

Many of the witnesses who appeared upon the Inquiry were good enough to set forth recommendations which they felt might, if implemented, assist those working in the field of child welfare and, through them, the children and families whom they served. Some of those witnesses were well qualified by education, training and experience in particular fields, such as law, medicine and social work, which had directly affected Kim's life. Their recommendations were more broadly based than those of others who had less or other training, skills and experience and whose recommendations were based on their own personal experience in relation to cases of child abuse, which experience may have been limited to Kim's case alone.

The recommendations were many and varied. Some, from two or more witnesses, seemed to express much the same thought, but with differences of phrasing, sequence or emphasis. Some, from two or more witnesses, seemed to express conflicting opinions. It is not my intention to ascribe to any witness or source any recommendation set forth herein unless it can clearly be associated with that witness or source. If convenient, I will sometimes mention portions of testimony or documents which appear to me to be relevant to a recommendation I am about to write.

The recommendations I make have many bases. Some will reflect, in whole or in part, the view or opinion expressly stated by one witness. Some will reflect a composite of the views or opinions expressly stated by two or more witnesses, whether or not their views or opinions were entirely to the same effect. Some will reflect views or opinions which I felt were inherent, but not expressly stated, in the testimony of one or more of the witnesses. Some will

reflect my own views and opinions based upon all of the testimony presented upon the Inquiry.

Throughout these recommendations there will be many references to the Ministry of Community and Social Services and the Minister of Community and Social Services. In the interests of brevity I shall usually call that Ministry the "Ministry" and that Minister the "Minister."

I have attempted to arrange the recommendations in a number of rather loosely related groupings based on subject matter or the person, official, institution or organization to whom or to which the recommendation is most pertinent.

RECOMMENDATION #1

A consistent theme throughout the testimony emphasized the need for co-operation to achieve the desired goal to protect children by preventing abuse or by reducing the number of incidents of abuse and successfully managing and treating those incidents which do occur.

While a recommendation may suggest that one person, authority, official, institution or organization be responsible for some particular action, it should be read as being addressed to all who are concerned about the protection and care of children. It should be read as suggesting that everyone co-operate to achieve the intention of the recommendation. It should be read as suggesting that appropriate steps be taken to obtain any legislative or regulatory action or amendment which may be required to achieve the intention of the recommendation.

Mr. Charko was one witness who spoke of the need for co-operation. He said there was a need for increased co-operation between the boards of directors of the children's aid societies and the Ministry. He recognized the right of each board of directors to act independently, but he suggested it should be willing to co-operate with the Ministry if to do so would lead to the provision of better service to the community.

It would seem to me that any responsible board of directors of a children's aid society would accept that as a general principle.

I would think too that responsible officials of the Ministry, including the Minister, would accept the converse, namely that the Ministry should be willing to co-operate with the board of directors of the local children's aid society if to do so would lead to the provision of better service to the community.

I would also expect that everyone else interested in the protection, care and welfare of children would accept the same principle.

The need for such co-operation is so basic and self-evident that it would not ordinarily require expression as a recommendation of the Report. But Kim's case was unusual. Other equally obvious things were ignored or neglected; so I propose the next recommendation simply as an expression of reaffirmation of the obvious so that, hopefully, it will remain obvious to everyone working to protect children from abuse.

1. *I RECOMMEND THAT all concerned with the protection, care and welfare of children approach their respective tasks and duties in a spirit of voluntary co-operation with one another and others so as to ensure the best possible service to children and families in each community.*

RECOMMENDATION #2

Throughout the recommendations both the word "abuse" and the expression "child abuse" are intended by me to have the broadest of meanings, unless in the context of the particular comment some limitation is indicated.

Section 47 of the present Child Welfare Act contains a definition of "abuse" which, to my mind, is unduly restrictive. It is limited to physical harm, sexual molestation and malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death.

The testimony upon the Inquiry satisfied me that abuse of children can be in many forms and of many degrees of gravity and it can have many results of varying degrees of gravity. It has many subtleties.

Kim suffered sexual molestation and physical harm which killed her. Dr. Bates expressed the suggestion that, had Kim survived those injuries, other harm resulting from them, harm that was not physical, might have been more serious and long-lasting than the physical harm.

He spoke of the cycle of abuse and one of its features whereby victims of abuse often in later life required detention in mental health facilities. There was reference to the difficulties which persons who were abused as children have in later life, particularly as parents.

The present legislation makes it an offence to inflict abuse, as defined in the Act, upon a child or to abandon or desert the child. It does not make it an offence to inflict other types of abuse upon a child. Even extreme neglect is not an offence unless it causes physical harm, malnutrition or mental ill-health to the degree set forth in the statutory definition of abuse.

Section 29 of the new legislation provides for examination of a child who has been found to be a child in need of protection to determine whether the child has suffered any of a list of impairments,

namely, medical, emotional, developmental, psychological, educational or social. Psychiatric or mental ill-health would seem to be an appropriate addition thereto.

In my view to treat or neglect a child in such a way as to cause any such impairment or any other impairment should be stated to be abuse of the child.

Recognizing the great range of abuse in its many forms, its varying degrees of gravity and the variety of results that flow therefrom, it would seem to me that, once an instance of abuse has been established in a court, it will be for the court to determine what subsequent disposition of the case should follow. I would view the process to be similar to that of deciding upon the sentence or other disposition to follow a finding of guilt in a criminal matter. Each case will be unique and will require individual consideration of each of its elements and the sum of them.

2. *I THEREFORE RECOMMEND that the Ministry seek amendment of the Child Welfare Act so as to provide that "abuse" includes a condition of impairment of a child whether it be medical, emotional, developmental, psychological, psychiatric, educational, social or other.*

RECOMMENDATION #3

Only a supreme optimist might think that child abuse will be entirely eradicated in the foreseeable future. Certainly it can be diminished. For that reason I wish to give prominence to a group of recommendations which are directed towards the prevention of abuse. Other related recommendations are directed towards the detection of abuse when it has occurred and then the management of cases arising therefrom and the treatment of children and families involved therein.

Prevention of child abuse was a part of several of the recommendations or suggestions made by witnesses. Some stressed prevention as being the most important aspect of their proposals. They said prevention of abuse and efforts to prevent abuse presented the greatest hope for achieving the greatest benefit for the greatest number of people, children and families alike, with a smaller expenditure of money and human resources than would be required if other methods were employed to try to deal with the problem.

While witnesses used the word "prevention" I was and am satisfied that they felt that child abuse will not likely be entirely eliminated. When witnesses spoke of prevention their thoughts appeared to me to be directed towards the prevention of some incidents of abuse and the control or limitation of abuse in a general sense.

Abuse may not be prevented in the sense that no child will be abused. But the number of children who will be abused can be reduced and the severity of their abuse can be lessened. Those who think in terms of eradication should be encouraged. Even though their goal is not attained every step towards it improves the lot of children in our communities.

It must not escape notice that any recommendation seeking prevention or limitation of abuse of children is not novel. Recommendations to similar effect have been made in some of the general literature upon the subject. More importantly such recommendations have been made in reports resulting from studies commissioned by or on behalf of the

Ministry. It was the Minister then responsible for that Ministry who ordered that this Inquiry be conducted. It is the present Minister to whom this Report will be delivered. It is he who must then consider it and bear a large part of the burden of implementing the recommendations set forth herein.

A sense of frustration must have been engendered in the authors of such earlier reports when, years after making their reports, they read or heard news reports upon this Inquiry indicating that witnesses were still asking for the establishment and operation of such programmes and were suggesting that little, if anything, had been done to implement the recommendations of the earlier reports.

The tenor of the testimony upon the Inquiry leads me to believe that any response to or recognition of such earlier recommendations had, in the view of many of the witnesses, been insufficient and lacking in effectiveness, if indeed there had been any response or recognition at all. It would be unfortunate if my restatement of earlier and other recommendations, perhaps with some variation thereof in the light of Kim's case, should go unheeded.

I think it would be a very worthwhile exercise for the present Minister to take upon himself a study to ascertain what, if anything, has really been done, as opposed to talked about, by the Ministry to establish or encourage such programmes as a result of the testimony upon the Inquiry, including the many references to earlier reports and studies. The Minister might also care to review the testimony of officials of the Ministry as to what the Ministry was planning or even had implemented so as to satisfy himself as to whether anything so planned has been begun, if not, why not and, if begun, has been maintained and if not, why not.

As an extension of that it might be of interest, and perhaps of surprise, to the Minister were he to establish and maintain a programme to be operated by his personal staff as distinguished from the staff of the Ministry who ordinarily deal with the children's aid societies. That programme should invite frank comment from the children's aid societies, through the board of directors and local directors, upon the performance or delivery of child

welfare services by the Ministry. It should invite suggestions for improvement, extension, reduction or other changes.

I am not approaching this as a means to assess one employee's work, but rather the over-all function and philosophy of the Ministry as they are perceived by the societies.

I make that suggestion to the Minister because of testimony in relation to correspondence written by one of his predecessors in office. It was said that the particular correspondence was not prepared as part of the Ministry's correspondence and thus it was not open to explanation or interpretation by staff of the Ministry. That would suggest that, at least in the term of that predecessor in office, there was some lack of communication or even of understanding within the Ministry and between the Minister and the staff of the Ministry.

I write that in the full knowledge that the Ministry was represented by counsel throughout the Inquiry and that other professional staff of the Ministry testified upon the Inquiry and were interested in its proceedings and were observers thereof from time to time. They must have been impressed by the need for attention to many of the matters mentioned in earlier reports and in the testimony upon this Inquiry. The testimony as to the Ministry's response to the Garber Report would tend to establish that.

When I write of the Minister's inquiring as to what has really been done, I am ever drawn to the words of Petronius and their application to what had occurred in the Ministry on earlier occasions. I would hope that the present Minister will be able to differentiate between concrete or real action or development and actions or words which demonstrate the application of Petronius' comment.

Petronius' comment is set out in the main portion of this Report, but, for the benefit of those who may read only this Chapter of the Report, it is appropriate that it be repeated here. That comment was:

"We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization."

I accept and endorse Dr. Bates' statement that our children are our most precious commodity. Some, such as Kim, have not received the care and protection that they should have. In the spring of 1978, Mr. Zwerver could not assure the Board of Directors of the Society that there were not other instances where children had not been or were not being well served by the Society.

Dr. Bates is so clearly a person who, not only because of his professional knowledge, skill and experience as a physician and paediatrician, is concerned about the welfare of persons in our society and particularly the children. His sincerity in his beliefs and opinions made his testimony an effective plea on behalf of children.

Like other witnesses Dr. Bates spoke of various aspects of the problem of child abuse including some of the matters to which workers in the field should be alert. He spoke of the continuum of child abuse, a progression in some instances from a beginning of failure to thrive to an incident of bruising or a broken arm to, perhaps, death.

Dr. Bates expressed doubt that "child abuse is a one shot thing." He felt that, apart from a situation of acute crisis in the home, abuse arose from a problem of some long standing and occurred when a crisis existed. In some instances the abused child was the crisis.

What Dr. Bates spoke of was inherent in what Dr. Singh wrote about Kim in March, 1975 when she was first in hospital as a result of the fracture of her left arm. After describing that injury as "extremely unusual" in the circumstances described by Jennifer Popen and after stating his suspicion of the presence of the battered child syndrome, Dr. Singh wrote,

"...if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

Dr. Bates also spoke of the cycle of child abuse. Others did not use that expression, but clearly all had observed or learned of what Dr. Bates described. He spoke of instances where persons who had been abused in childhood became abusing parents. He said that not every abused child becomes an abusing parent. Other factors are involved. He did say

"...every parent who batters has been abused as a child and I'm sure that a lot of the inmates in Penetang [Mental Health Centre, Penetanguishene], perhaps the majority of them have been abused as a child. This is what Dr. Elliot Barker feels from that centre."

Dr. Bates testified that it was necessary to break that cycle. He felt it could be achieved by prevention programmes. He envisioned a broad range of programmes which might be so categorized. In many instances as he suggested such a programme he related some incident in Kim's life to illustrate the need for the particular programme.

Dr. Bates made it clear that he recognized that the rate of success of any such programmes may be small in the sense of curing those who abuse children. But he felt the programmes could reduce child abuse in its several forms.

Dr. Bates, like others, emphasized the need for such preventive programmes to be devised and operated by teams of workers representing various disciplines, professions, institutions and agencies within the various communities. Some whom he mentioned as being able to contribute to the success of any such programmes were children's aid societies, police forces, hospitals, medical personnel, school teachers, day care workers, public health nurses, churches, those who instruct courses in preparation for marriage and groups such as Parents Anonymous. I am sure there are many others whom he could have mentioned.

Dr. Bates spoke of various factors which, if present in a child's home, might enable a trained and skilled observer to determine that that child might be what Dr. Bates called a high-risk child. He felt that from such a determination it might be predicted that that child is likely to be abused unless appropriate action is taken to prevent that happening.

Dr. Bates testified that the presence of such factors could be determined only by careful and thorough investigation of the parents and the child, their history, their health, their marriage and their background. Some investigation would require professional assessment of the parents and the child by psychiatrists and psychologists.

Mrs. Harvey, Mr. Lovatt and Mr. Carter testified as to the need for such preventive programmes.

Mrs. Harvey expressed her recommendation that preventive services be given priority. She spoke of the co-ordination of such services in the community. She felt that the Ministry should give leadership.

At the beginning of this Chapter I set forth an excerpt from Dr. Bates' testimony on October 18, 1978. Earlier, on August 17, 1978, Mrs. Harvey, speaking of the need for leadership by the Ministry, used words not unlike those of Dr. Bates, when she said that children's aid societies have to give too much of a band-aid type of service.

Mr. Lovatt in his testimony expressed agreement with a statement in the Report on Selected Issues and Relationships prepared by The Task Force on Community and Social Services, the Hanson Report of January, 1974. That statement was to the effect that The Child Welfare Act gave to children's aid societies a mandate to develop preventive services and that the mandate had been fulfilled in varying degrees. He agreed with the further statement that the trend to that fulfilment should be strongly reinforced.

Mr. Carter in his testimony expressed the hope that "the government", by which, I presume he

meant the Ministry, "would acknowledge and provide for prevention services." He said that little was spent on prevention, including improvement of resources within the communities, such as development of multi-disciplinary teams.

The rationale of such testimony and recommendations seems to me to be at least similar to that of the twentieth and twenty-first recommendations set forth in the Garber Report. Those recommendations were to the effect that the curricula for the training of persons for careers in various professions include appropriate training in child abuse to enable the practitioners to be aware of child abuse indicators, assessment methods and referral strategies. The recommendations also were to the effect that the Ministry provide training for child abuse personnel.

The concept of the importance of prevention as a tool to combat the incidence of child abuse is not unique to knowledgeable persons in Ontario. In the fourth edition of their work entitled *The Maltreated Child*, published in 1979, Doctors Fontana and Besharov wrote of many of the matters described by Dr. Bates.

They wrote of delivery of appropriate child care "especially in dealing with the prenatal and postnatal care of 'high risk' matters." That observation would appear to be applicable to Kim's case and particularly the days of her lifetime after the birth of Karie. No one who should have been aware of the possibility of postnatal problems recorded any concern for the effect that Karie's birth might have had upon Kim's care, apart from some minor consideration of the time when she should be returned to her parents. Only after her death did anyone write of the possibility of post-partum depression as possibly being a factor in Kim's case. That was not written by anyone within the Society or in any way involved in Kim's care during her lifetime.

Doctors Fontana and Besharov wrote of inadequate medical preventive services. It would seem that expression would apply to Kim's case if indeed there were any, let alone adequate, medical preventive services in relation to Kim.

Doctors Fontana and Besharov wrote of the need to develop child abuse preventive programmes for the high risk population. That would appear to be the same group whom Dr. Bates described as high risk children. As Dr. Bates testified, they wrote of encouraging parents to participate in preventive programmes and of providing support to parents. As Dr. Bates testified, they wrote of means of identifying high risk categories of children.

In summary they wrote:

"Prevention is a community responsibility and one of the most effective means of alleviating child abuse in this country. Education, particularly for parents, will reduce the massive alienation of parents and children which causes family crisis, breakdown, intrafamilial violence and subsequent child abuse."

Upon the testimony it was apparent to me that, as in Kim's case, because of its very nature, child abuse is usually committed in private, without witnesses, upon victims who, because of age or relationships to their abusers, are unable or unwilling to complain.

It was equally apparent to me that the complete eradication of child abuse was Utopian, but not practically attainable. Nonetheless those who strive for Utopia should be encouraged. We should be able at least to approach that goal.

With full recognition of any such limitation which may exist, my next recommendation reflects the testimony and literature above mentioned. I believe it to be the most important of all of the recommendations in this Report. Some of the subsequent recommendations are intended to expand upon the basis of this recommendation and to supplement it.

3. *I RECOMMEND THAT the Ministry and children's aid societies devise, establish, maintain and operate continuing programmes and services to prevent or reduce the incidence of child abuse in*

Ontario. The Ministry should maintain an ongoing assessment of such programmes and services to ensure that they reflect the best of current professional opinion and practice. The Ministry should not act in isolation, but should secure the co-operation, assistance and advice of other Ministries of Government and of children's aid societies, professional associations, institutions and agencies such as police, hospitals, physicians, public health nurses, schools and social workers, and of knowledgeable and interested persons such as Dr. Bates and others who offered to serve the Ministry in the best interests of children. Local children's aid societies should build upon the Ministry's programmes to operate local programmes to the same end adapted to accommodate local conditions.

RECOMMENDATION #4

There was some testimony to suggest that some people associated with children's aid societies felt that the Ministry's criteria for approval of estimates of expenditures did not adequately recognize the value of preventive programmes. The suggestion seemed to be that expenditures in respect of children in care were more likely to be regarded as a basis for assessing the need of the children's aid society.

I am aware of the provisions of subsection 2 of section 8 of The Child Welfare Act as it was and subsection 2 of section 4 of Regulation 86 made thereunder. They provided that where a children's aid society had jurisdiction in more than one municipality the amount each municipality was required to provide to the society to meet its estimated expenditures was determined on the basis of the "proportion that the number of children taken into protective care in the municipality bears to the total number of children in care of the society."

The present legislation and regulations contain quite similar provisions in respect of the cost of services for children in care. Other costs are borne on the basis of total population.

Even apart from the change of the legislation I am not satisfied that there was any basis for the suggestion mentioned in the first paragraph of this comment. I am not satisfied that the belief on which the suggestion was based was widely held. However, lest there be any basis for the suggestion or lest the belief be widely held, I believe the Ministry should allay the concern.

I have expressed my belief that preventive programmes are valuable and should be encouraged. That will require funds. Funds so spent will, hopefully, reduce the sums spent upon children in the care of the children's aid societies.

4. *I RECOMMEND THAT the Ministry, clearly in writing and by its actions in considering the estimated expenditures of children's aid societies, affirm*

its support of programmes by children's aid societies intended to seek to prevent or reduce the number of incidents of child abuse or the risk thereof. It should be made clear that during consideration of any proposed expenditures submitted to the Ministry by a children's aid society for approval pursuant to the Child Welfare Act proposed expenditures upon preventive programmes will be regarded as being of great importance.

RECOMMENDATION #5

From several witnesses and from literature referred to upon the Inquiry I heard or read of the great need for awareness of the real presence of child abuse in Canadian society and communities. It was clear to me that it is a world-wide phenomenon recognized and identified to varying degrees everywhere. Canada is by no means unique.

Canada may very well be ahead of many other countries in its acknowledgement of the existence of abuse, in its efforts to identify and recognize it when it occurs and in efforts to limit or reduce its incidence. For example, Canadian communities may very well have a tolerance for disciplinary treatment of children which establishes as an incident of abuse treatment less harsh than would be required to be viewed as an incident of abuse in some other countries. That level of tolerance may very well vary from community to community within Canada, even within Ontario or even within municipalities.

We can take no smug satisfaction in all of that. Any smugness we may feel will be removed by seeing the photographs of Kim's dead body and her horrible injuries and by recalling that, even when she saw that body and those injuries, Mrs. Lo, classified as a Social Worker Class I with the Society, was able, two years after Kim's death, to testify that Jennifer Popen's story about Kim's fall from a high chair might have been true.

From the testimony upon the Inquiry I am satisfied that, even among persons who are employed in positions which bring them into contact with incidents of abuse, there is less than a satisfactory awareness of abuse, its manifestations and its subtleties. Mrs. Lo and Mr. Khattab come quickly to mind as the extreme examples. Others, even some of those as apparently well trained and experienced as Mrs. Harvey appeared to be, are not exempt from the same sort of comment.

It became apparent to me that steps must be taken to inform the public generally of the insidious presence of child abuse in our communities. Members of particular groups whose professional careers or callings may impose upon them particular responsibilities require special training and knowledge to

meet their obligations. Physicians, teachers, public health nurses, hospital personnel, police officers and social workers come readily to my mind as examples of such special groups. No doubt there are others.

We all must be aware that some adults do abuse children. We must be aware that the range of abuse is great. It may be a form of discipline not far beyond limits which we regard as being acceptable. It may be the infliction of the most horrible and fiendish of injuries which may lead to permanent disability or death.

Kim's injuries killed her. No one can venture to say what might have become of her had she survived. Even if she did not bear any physical scars, she may have suffered irreparable emotional damage. In any event the result might have been the continuation by her of the cycle of abuse. No one can say where or when the cycle would end.

Dr. Turner spoke and others have written of the "madonna syndrome." I understand that to mean that many of us cannot contemplate that any woman who has borne a child can ever abuse that child. I understand it to mean that we picture every mother of a child as an ideal parent to that child, full of love and compassion for her child, calm, long-suffering, slow to anger, understanding of childish behaviour and forgiving of wrongdoing or error by her child.

The testimony of Dr. Turner and others upon the Inquiry has satisfied me that, whether or not any mother fully meets those high standards, there are mothers who do not meet them. One cannot assume, without some examination or consideration of the family, that any mother is so saintly. Mr. Khattab made that sort of erroneous assumption about Jennifer Popen in March, 1975.

Dr. Turner did not use any corresponding term to speak of fatherly love for children. I would assume that if there were any corresponding syndrome leading to an assumption that a father cannot abuse his children it would be subject to similar limitations and provisos.

Having heard the testimony and having seen the picture slides and photographs of Kim and other children presented upon the Inquiry, I am satisfied that some parents are capable of inflicting terrible injuries upon their children.

By reasons of the circumstances which led to this Inquiry, its main thrust was toward abuse of a child by the child's parents or one of them. There was no credible testimony that anyone other than Kim's parents or one of them abused Kim. Nonetheless, from the general testimony of qualified persons and from reading literature referred to upon the Inquiry, I am satisfied that abuse of children is not inflicted only by their parents. A child may be abused by another member of the family, by a friend of the family, by a neighbour, by an older child, by an acquaintance, by a stranger, and, indeed, by anyone whether adult or child.

We as responsible citizens and members of our own communities cannot assume that every infant, apparently so loved and so lovable, will forever be loved and lovable and free of abuse.

Dr. Bates' testimony described the myriad of circumstances that might lead to any child becoming a victim of abuse. While the testimony set forth a wide variety of such circumstances I am sure there would be at least as many more combinations of circumstances had Dr. Bates sought to set forth all possible causes of abuse.

We must recognize that children may be abused by parents who profess or appear to be loving parents. We must recognize that not every child is wanted by his or her parents. We must recognize that not every child who is wanted is wanted by his or her parents for the right reasons. We must recognize that some children, for a variety of reasons, are more likely than others to be victims of abuse.

The result of this is that there must be great effort expended to create the necessary awareness. That will require programmes to make members of the public generally aware that abuse of children does occur in our communities.

It must be shown that abuse can result in a wide range of injuries even death.

It must be shown that physical injury is not the sole result of abuse and that emotional or other damage may have greater effect upon the lives of abused children and their progeny.

It must be shown that abuse is a self-perpetuating phenomenon in that abused children are prone to become abusive parents or inmates of institutions for the criminally insane.

It must be shown that abuse imposes tremendous burdens upon the human and financial resources of our communities.

Upon the testimony it would seem that we tend to believe that abuse cannot or does not happen in our own communities and neighbourhoods. It seems that only cases which receive extensive public attention because of their particular circumstances arouse public concern. Kim's was one such case. Others were mentioned during the Inquiry.

5. *I RECOMMEND THAT the Ministry and the children's aid societies devise, establish, maintain and operate continuing programmes to inform the public generally of the presence of child abuse in Ontario and in our communities and to seek the assistance of members of the public in efforts to reduce or eliminate the incidence of abuse. Such programmes should emphasize that, even apart from statutory duty, we, as members of the public, owe it to our children and to ourselves to report our cares and concerns for the safety and well-being of our children and thus of our whole community.*

RECOMMENDATION #6

There was testimony which suggested that members of the public generally did not evince great interest in the day-to-day affairs of the Society. I would hope that, with a programme such as I recommend to inform the public about child abuse generally and in the community in particular, more members of the public will become actively interested in the affairs of children's aid societies. That interest can then be developed so as to obtain the services of more persons as members of the societies, as members of boards of directors and committees of the societies, as volunteer workers with the societies and generally as supporters of the objects, purposes and efforts of the societies.

The lack of public concern or interest in or knowledge of the affairs of the Society was perhaps illustrated by the attendance of few members of the public at the hearings conducted by the Inquiry and by the attendance of Mr. Sharen as the only member of the public who came forward to testify as to the good work done by the Society. Even he was not a typical member of the public because he was the head of a local municipal council.

Mrs. Maughan supported the concept of preventive programmes in preference to programmes to deal with abuse after it has occurred. She spoke of the need for and benefit derived from the existence of organizations in each community to which parents might turn for support or advice. She seemed to envisage organizations in addition to children's aid societies. She mentioned in particular one with the name Parents Anonymous.

From the testimony upon the Inquiry I am satisfied that child abuse occurs in some form and to some extent everywhere. It is not peculiar to any group whether that group be based on race, creed, education, wealth, poverty, profession, trade or calling, position in the community or any other single factor or groups of factors. Thus I am receptive to any suggested improvement of the community's facilities to deal with the problem.

I view a supportive group in a community as being such an improvement. The form which any such

group might take will depend upon the nature of the community and the residents.

Dr. Bates had had some personal involvement with Parents Anonymous. He felt it could be a helpful force, but he recognized its limitations. He said that it was a resource which should be strengthened and developed so as to be available to persons who were abusive parents. He recognized that it might be helpful to only a small percentage of such parents because the programme of Parents Anonymous would require a substantial motivation on the part of those participating in it. Its programme includes group discussions about what has happened to participants. Dr. Bates felt that only those who truly sought help would become involved. He felt that the programme appealed only to particular strata of the community and was not as widely based as the counterpart in the United States of America, but that it could be enlarged.

In summary Dr. Bates' view was that Parents Anonymous, while useful, was not the answer to the problem of abuse. He expressed the belief that strengthened and improved children's aid societies were the primary community resource to combat abuse.

I accept Dr. Bates' view as correct. I would enlarge upon it to note that the children's aid societies have local responsibilities with reference to child abuse because of the duties cast upon them by The Child Welfare Act. In practice the local children's aid societies are extensions of the Ministry which has province-wide duties and obligations and powers to oversee the operations of the children's aid societies as well as the power of the purse inherent in the budgetary controls imposed by the Ministry upon the children's aid societies and its very significant participation in their financial affairs.

Elsewhere I write of the opinion that calls for the creation of multi-disciplinary teams in each community to deal with instances of abuse. A desirable extension of that would be that the formation and operation of other supportive groups in the community be encouraged by the local children's aid society and by the Ministry. Any such supportive group should be just that, supportive of parents and families and of

the children's aid society and the Ministry. It should not be viewed as a substitute for the strong involvement of the children's aid society and of the Ministry in child abuse programmes as part of their general roles to protect children.

One type of supportive activity mentioned in the literature is the establishment of so-called telephone "hot-lines" or "lifelines." These are intended to enable a parent, in a state of crisis or distress which might lead to an incident of abuse, to have an opportunity to talk to someone immediately and thus, hopefully, to forestall the abuse.

Dr. Fontana and Dr. Besharov in their work, *The Maltreated Child*, suggest that use of such a telephone line might enable a parent with a particular concern or problem to obtain referral to other resources available in the community. They suggest that while volunteers without professional qualifications or training might answer such telephones, administration thereof should be by professionally qualified persons able to provide information of immediate help.

Upon the Inquiry there was testimony as to the value of the contribution of volunteers to the function of the Society. Mrs. Mitchell expressed some concern as to the care which was required to ensure the proper utilization of volunteers. Mrs. Hoad was one such volunteer who performed one specific service in relation to Kim. I have written of my high opinion of the activity of Mrs. Maughan, a volunteer with the Probation Services of The Ministry of Correctional Services, in relation to Kim's case.

In my opinion the establishment of such telephone lines under the aegis of the local children's aid society, manned primarily by volunteers, but with the advice of the local children's aid society's professional staff immediately available if required, should be encouraged and supported by the children's aid societies and the Ministry.

In expressing that opinion it is my assumption and intention that any volunteer will receive training and instruction which, in addition to informing him or her of how to perform the duties, will enable him or her to recognize the limitations

of the service and the need to call upon the professional personnel immediately available.

I am satisfied that volunteers can serve a useful function in the day-to-day operations of children aid societies. The value of volunteers was mentioned in testimony upon the Inquiry. It is mentioned in literature upon the subject.

It was stated by witnesses upon the Inquiry that care was required in the use of volunteers to achieve the greatest benefit and to ensure that their activities are suitably integrated with those of the regular employees of the children's aid societies.

Witnesses spoke of the need for care in the selection and training of social workers whose duties would relate to child abuse. They spoke too of the demanding nature of such employment and the desirability that social workers be relieved of those duties from time to time. The same remarks would appear to be applicable to the selection, training and employment of volunteers who might be expected to be involved in child abuse matters.

Dr. Turner in commenting upon Mrs. Lo's involvement in Kim's case expressed concern that Mrs. Lo, untrained and inexperienced, had such a heavy responsibility for Kim. Even in saying that he spoke of there being a use for persons such as Mrs. Lo in the function of children's aid societies. I presume he meant even in the most difficult of cases. He spoke, for example, of the friendly visitor and the possible benefit to be provided therefrom.

I envisage the use of volunteers to include duties such as those of a friendly visitor, or older brother or sister, or parent or grandparent, someone to whom a harried parent can turn frequently and informally for support, encouragement, assurance, advice, comfort or whatever.

I envisage members of such teams of volunteers attending meetings of the intra-society team of professional social workers at which cases in which volunteers are involved are discussed. Only if a volunteer is aware of the details of a case in which he or she is assisting will that volunteer be able to be most helpful. To that end volunteers

should be required to accept provisions relating to the confidentiality of information disclosed to or acquired by them. Those provisions should correspond to the provisions of confidentiality now accepted by or applicable to social workers employed by children's aid societies.

The training of the members of such teams of volunteers should contain elements relating generally to the prevention, detection, investigation and management and treatment of cases of abuse, but with emphasis upon what is expected of the volunteers. The volunteers should be trained to write reports upon their activities with perhaps greater detail than might be expected in a report written by a trained social worker who may be better able to assess what has been observed and thus to omit inconsequential details.

Mrs. Mitchell spoke of the role of volunteers with the Society. Her experience led her to say that volunteers should not be used only for trivial chores or to assist in short-term difficulties. She said the use of volunteers should follow a plan and should make optimum use of the volunteers' skills acquired in their own professional, business, academic or social careers. She recognized the limitations of what volunteers can do and she recognized their need for advice and direction, encouragement and support in what they did. Her comments were reasonable and practical. Volunteers must derive some sense of satisfaction from what they do. In that way too they will be of more use and benefit to the children's aid society and to the community.

Drs. Fontana and Besharov in their work, *The Maltreated Child*, write of the important contribution of volunteers in the field of child welfare. They state that more recently volunteers have assisted in child abuse prevention and treatment efforts, including inter-disciplinary approaches. They set forth some of the basic qualities or attributes which should be possessed by volunteers.

As I have noted elsewhere in the Report I was concerned that there appeared to be no legislative authority in 1975 and 1976 for the employment of Mrs. Maughan as a volunteer with the Probation

Services. Lest there be concern as to the duties, rights, powers and liabilities of volunteers with the children's aid societies, at least in relation to some functions, the Child Welfare Act should contain specific authorization for the societies' appointment and use of volunteers. It may prevent litigation questioning the authority of a volunteer or seeking damages, as for trespass, against a volunteer accompanying an employee of a society.

The Child Welfare Act in force during Kim's lifetime did not deal specifically with the appointment and use of volunteers by children's aid societies. Section 4 of that statute did empower the board of directors of a society to designate persons who, when so designated, would have the powers of a constable and school attendance officer and would be deemed to be an officer within the meaning of section 10 of The Public Authorities Protection Act. Section 21 provided that a constable or "a person authorized by the Director or by a local director," having reasonable and proper grounds to believe a child was apparently in need of protection, might apprehend the child and might enter premises for that purpose. Section 22a permitted the local director or Director to appoint homemakers.

Those provisions would appear to have permitted the designation or appointment of volunteers, but at the same time they did not, to my mind, address the problems which will surround the use of volunteers in a wide variety of roles in addition to those of constable and homemaker and in relation to the apprehension of any child apparently in need of protection.

The present Child Welfare Act contains similar provisions in sections 4, 21 and 23.

In my view the statute or regulations thereunder should specifically provide for the appointment and use of volunteers and for the protection from liability of any volunteer acting in good faith under the instruction of a social worker of a children's aid society. Conversely the statute or regulations should require volunteers to comply with standards of conduct and ethics, including respect for confidentiality of information to which the volunteers may become privy in the course of their service.

I note that Part III of Ontario Regulation 96 made under the present Child Welfare Act sets qualifications only for those who, if social work is treated as a profession, will be the professional staff of the children's aid societies. In my view the Regulation should set forth the requirement that one who is to serve as a volunteer in certain facets of social work in relation to child welfare must have certain qualifications of aptitude and training. As in the present Regulation there may be several categories, but those who are to work in some areas, such as abuse, must be the elite of the volunteer corps.

6. *I RECOMMEND THAT children's aid societies be encouraged to devise, develop, maintain and use programmes for the productive and fulfilling engagement of volunteers and supportive groups in the community in the various functions of the societies, including functions in relation to child abuse generally and in relation to specific instances of abuse. Teams of volunteers especially selected and trained may assist in child abuse matters. In the same way that social workers should not be required to work in the area of child abuse for lengthy periods of time, volunteers should serve on child abuse cases for relatively short periods of time although I recognize that in some instances the exigencies of a case may make it necessary or desirable for a volunteer to be involved in it for an unusual length of time. The Ministry should be prominent in such encouragement and should seek whatever amendment of legislation or regulations may be necessary to authorize and regulate the use of volunteers in any way, including those I have mentioned in the preamble to this recommendation.*

RECOMMENDATION #7

One means of participation by the public generally in the affairs of a children's aid society is membership in the society, perhaps leading to service upon the board of directors and committees of the society or as a volunteer or otherwise.

Any programme to inform the public of the function of a children's aid society should contain information about the corporate organization of the society and the opportunities for service to the community through membership in the society and service upon its board of directors and committees and otherwise.

There was testimony as to the composition of the Board of Directors of the Society. Some of it was critical. No one suggested that the criticism expressed would apply only to the Society and not to other children's aid societies.

Mrs. Wood was perhaps one of the witnesses voicing most concern in that area, but she was not alone.

As I understood one thrust of the criticism it was that the Board of Directors tended to be "self-perpetuating" and was not sufficiently representative of the community. But there was other criticism that the members of municipal councils appointed by and from those municipal councils were changed too frequently to enable or permit them to gain a firm grasp of their new responsibilities. It was said they tended to be concerned primarily with expenditure of money as distinct from the quality or extent of the services provided. The municipal council members were not entirely alone in that. Mr. Higgins too said he felt a responsibility to be a "watch-dog" of the public purse.

One suggestion for improvement of the composition of the board of directors of any children's aid society was that social workers, even those so employed by the society, should be elected or appointed to the boards.

I have severe reservations about that suggestion, particularly the portion relating to

social workers employed by the society. I am satisfied that a person trained and experienced as a social worker, particularly in the area of child welfare and family services, could be a valuable and contributing member of the board of directors of a society. But, if employed by the society, he or she can make the same contribution to the society, particularly if there are good means of communication within the society, and still leave room for another person, perhaps one equally trained and experienced, but no longer practicing, to join the board. In that latter way the society benefits. I would think too that the presence of employees upon the board of directors of a society would lead to problems or possibilities of conflict of interest, particularly in personnel matters.

In my view the present legislation regulating the composition of the boards of directors of children's aid societies is quite adequate, subject to a reservation as to who may be appointed by municipal councils. Any deficiencies or weaknesses in the board of directors of a particular children's aid society must result from local conditions. Correction or removal of any deficiency or weakness is a local responsibility. The Ministry in its supervisory and inspectorial role should recognize any such problem and assist the society in relation to it. Such correction may be a natural result of the public's greater awareness of and interest in the affairs of the society after a programme of public information about the society has been under way for some time.

Based on Mr. Higgins' response to Mrs. Harvey's inquiry as to his willingness to serve on the Board of Directors of the Society and upon his testimony upon the Inquiry, together with the testimony of other members of that Board of Directors and the testimony as to the volunteers who serve the Society and other bodies, I am satisfied that there are public spirited citizens in the City of Sarnia, the County of Lambton and, by my own extension, elsewhere in the Province of Ontario who would be willing to become and be active members of the boards of directors and committees of children's aid societies. They are citizens who are interested in serving to improve their communities and who have the ability to be effective.

It may very well be that such citizens have not made a decision as to the direction they will take in such efforts or service. Mr. Higgins had served in other organizations. Mr. Lovatt was involved in a number of activities beyond his duties as Local Director of the Society. Mr. McPhedran had served on the board of directors of another children's aid society. Mrs. Wood had involvement with another community-service organization. Mr. Wryzykowski had wide involvement in the community. Mrs. Maughan was a volunteer with the Probation Service of The Ministry of Correctional Services. Mrs. Hoad was a volunteer with the Society.

There are numerous interests toward which the willingness of public spirited citizens to serve can be directed. The specific interests of each children's aid society is one such interest. It is the responsibility of each children's aid society to let the community it serves know what those interests are and how members of the community can assist. The Ministry should assist the societies in these efforts.

In my view the Board of Directors of the Society was not self-perpetuating. In one sense it was almost self-destructive in that in many instances persons who served as President did not remain as members of the Board of Directors after their terms as President. There was certainly a frequent change of most of the members appointed by the municipal councils.

The Society provided many benefits to the community it served. I would doubt that any significant number of people in the community were aware of what the Society did or sought to do and of what problems and difficulties the Society encountered in its efforts. I have already mentioned Mr. Sharen's solitary attendance to testify as to good service by the Society to the community.

The very nature of some of the services provided by children's aid societies and the need for confidentiality militate against some forms of public relations or information programmes being undertaken by the societies. But there are many opportunities remaining. Mr. Lovatt apparently used his association with other organizations as a means of

informing them generally about the Society and its activities. Mrs. Mitchell certainly did much the same as she recruited volunteers to assist the Society.

If some of the other recommendations of this Report are implemented other avenues of approach to the public will be opened. A programme to prevent child abuse requires, in part at least, that the public be aware of the problem in general and of its presence in the community in particular. The public must be made aware of how they may help in the aims and purposes of such a programme.

There are probably many other areas of service by the children's aid societies which would benefit from programmes being undertaken by the local societies to inform the public of such areas of service and, if appropriate, of ways in which members of the public can assist in the delivery of that service.

It may very well be that some of the societies are unable to establish and maintain information services on their own. They should be assisted by the Ministry and the Ontario Association of Children's Aid Societies who should be able to provide to each children's aid society material which, if necessary, can be adapted to local use.

In my comments upon the need for a programme to prevent child abuse I make some suggestion as to how the public might be informed and kept informed. Those suggestions would apply equally to any programme to publicize generally the services and needs of each children's aid society. There are countless other means available.

Members of local clubs, associations and institutions might be sought out as members of the board of directors and committees of the society because of some similarity of the interests of the society and those of the other clubs, associations or institutions. Municipal councils have representation on the board of directors of each society. That is by legislation. There is no reason why boards of education should not be represented. The same can be said of church oriented groups, such as ministerial or inter-church associations, and of service clubs,

philanthropic or benevolent societies and organizations especially interested in children.

In my comments upon the desirability of aspirants for election or appointment to the board of directors of a children's aid society, which appear elsewhere in this Chapter, I do not exempt those to be appointed by municipal councils. They too should know what is involved in service upon the board.

There was no testimony directly upon the point, but I see no particular reason for the statutory provision that those to be appointed as members of the board of directors of a children's aid society by a municipal council must be members of that municipal council. That appears to me to be unduly restrictive and perhaps not in the best interests of either the children's aid society or the municipal council.

If no member of a municipal council is particularly interested in the affairs of the children's aid society it seems to me to be counter-productive to appoint some one of them simply because the legislation requires it. There was an abundance of testimony as to the difficulties in maintaining the attendance and active interest of persons who voluntarily or willingly accepted membership upon the Board of Directors of the Society. I would imagine that if anyone were virtually dragooned or conscripted to be on a board of directors his or her attendance at and active interest in meetings and activities of the board, would be less than acceptable. The interests of the municipal council would probably be better served if each of its appointees was interested in contributing to the betterment of the children's aid society and its services to its clients and was prepared to take an active part in the function of the board of directors of the society to that end. Such an appointee would probably be more diligent in attendance at meetings of the board of directors and committees and thus in expressing the views, if any, of the municipal council and more thorough in reporting thereon to the municipal council.

In the same way the interests of the children's aid society would be better served. A person interested in and willing to work to further

those interests would be upon its board of directors. In the other scenario it might have as one of its board of directors a member of the municipal council, but one not really concerned about the children's aid society and its interests and problems and perhaps even one of the less ineffectual members of the municipal council not able to obtain the support of enough of the other members of the council to secure appointment to a more prestigious or politically beneficial position.

All in all such an appointee would be a better member of the board of directors and a better representative of the municipal council.

Hopefully a programme by each children's aid society to inform members of the public of the organization, function and duties of the society will create greater public interest in the affairs of the society. From that greater interest a willingness of more people to participate in those affairs should evolve.

Mrs. Wood suggested that it was not in the best interests of the Society for there to be a nominating committee which put forward in nomination at each annual meeting only the number of names required to constitute the full complement of the Board of Directors. Mrs. Wood appeared to use that as a basis for her belief that the Board of Directors tended to be self-perpetuating and to control the entry of new members.

If that be so it was solely because no one saw fit to challenge the procedure. That would be an indication of the public's lack of interest in the affairs of the Society. There was no testimony as to the procedure and attendance at the annual meetings of the Society. Even without such testimony I am prepared to assume that whoever convened those meetings or conducted elections at them would make it clear that nominations from the floor or in some other manner apart from the nominating committee would be received.

In my view a nominating committee is useful. It will be even more useful if aspirants for election or appointment to membership upon the board of directors of a children's aid society are required

to receive instruction as to the duties and obligations they will assume if elected or appointed. Any such benefit could be negated if, with or without a nominating committee, persons were nominated and elected or appointed without such instruction. They would be doing no favour to themselves or to the society.

7. *I RECOMMEND THAT each children's aid society establish and maintain an ongoing programme to inform the public of the organization, function and activities of the society and of its need for continuing support from the community. That programme should seek to encourage members of the public to become members of the society and to participate in its affairs, perhaps as members of the board of directors, or as members of standing or special committees. The goal should be a broad base of community membership and support.*

RECOMMENDATION #8

In my comments leading to the preceding recommendation I expressed my reservation about the statutory provision whereby municipal councils were restricted in their selection of those members of the board of directors of the local children's aid society who are to be appointed by the municipal councils. They are restricted to choosing from among themselves even if none of them want to be appointed and even if they know of persons in the community who are willing to be appointed and who would be acceptable to the municipal council.

8. *I THEREFORE RECOMMEND THAT the Ministry seek an amendment of the Child Welfare Act so as to remove therefrom the requirement that any municipal representative appointed to the board of directors of a children's aid society by a municipal council must be a member of that municipal council.*

RECOMMENDATION #9

My next recommendation flows from or expands upon my third recommendation which was that there be continuing programmes to prevent or reduce abuse. Witnesses upon the Inquiry, however each may have spoken, expressed the need for members of various professions and callings to have received training directly addressed to the problem of child abuse. Knowledge and skills derived from such training would assist in achieving the goal of prevention or reduction of abuse.

I can do no better than to express as a basis of this recommendation a recommendation in the Garber Report of June, 1978 which was:

"20. That the Ministry of Community and Social Services request, through the inter-ministerial committee on Children's Services, that the Ministries of Correctional Services, Health, Education, Attorney General, Solicitor General, and Colleges and Universities include appropriate child abuse training content in the curricula for their respective professions. Such enriched training programs will enable social workers, physicians, nurses, lawyers, policemen, judges and teachers to become aware of child abuse indicators, assessment methods and referral strategies, as part of their professional training."

In my view such content of curricula must also be subject to continuing assessment to ensure that the curricula continue to reflect the best of current professional opinion, practice and procedure. Those responsible for the preparation of any such curriculum must recognize the need for the practitioners of that particular profession or calling to co-operate with practitioners of other professions and callings. Thus, any such curriculum should include recognition of the roles of such other practitioners and the need for integration of effort and exchange of information and opinions. That is one aspect of co-operation mentioned in my first recommendation.

Mrs. Farina's testimony in relation to the above-mentioned recommendation in the Garber Report was to the effect that the Ministry was favourably disposed thereto and was asking the Inter-Ministerial Committee of the Provincial Government to comment upon it. She said some tentative or experimental steps had been taken to pursue the recommendation.

The Minister may care to inquire as to just what has been done to that end. Lest little or nothing has been done I will repeat the recommendation of the Garber Report with the modification I have mentioned.

In a sense implementation of that recommendation is an extension of the recommendation that members of the public be made aware of the phenomenon of abuse.

The recommendation simply recognizes that some members of the public, by reason of their professions, callings or employment are more likely than others to encounter incidents of abuse or conditions of unusual risk for children and thus to have an opportunity to assist directly in efforts to prevent or reduce abuse.

Examples come quickly to mind. The physician who sees a child in the emergency department of a hospital, the family physician who sees the child in the child's home or the physician's office, the physician who sees one or both of the parents of the child and the nurse who is assisting the physician in any of the above circumstances all have an opportunity to identify circumstances which may indicate that the child has been abused or is in circumstances which may indicate that there is an unusually high risk that the child may be abused. The physician or nurse may be in such a position even before or shortly after the child's birth. Teachers have similar opportunities after the child is enrolled in school. Public health nurses have similar opportunities arising in the course of performance of their duties. So too do other social workers, police officers and lawyers.

The task then is to ensure that, so far as possible, all who, by reason of profession, calling

or employment, may have special opportunities to recognize an incident of child abuse or the unusual danger thereof be able to identify what they observe and to assess what they identify and then to act appropriately.

Witnesses upon the Inquiry spoke of the subtleties of abuse and the need for special skills, training and experience to enable one to identify, assess and treat or manage cases of abuse. They spoke of indications which might be recognized and assessed only if one has particular expertise. They spoke of the need for persons about to enter various professions or callings to receive special training during their academic courses, including periods such as internship, service under articles, apprenticeship or probationary employment.

Again the testimony upon the Inquiry was not the first expression of the need for such special training. The authors of the Garber Report wrote of the identification of multiple and complex factors involved in child abuse in its various form. They wrote:

"No single profession or discipline has knowledge of all these factors nor the expertise to deal with the phenomenon of abuse."

That sentence formed part of the introduction to the twentieth recommendation in the Garber Report which I have set forth above.

I note particularly the reference in that recommendation to the role of judges. Witnesses upon the Inquiry made comments to like effect that cases of child abuse required especial skill on the part of judges. At the same time it was recognized that the outcome of any proceedings in a court depended upon the care and skill with which those charged with the duty to investigate, prepare and present the case had performed their various tasks.

Dr. Bates spoke of some who suggested that it was enough to leave it to the judge to decide. He disagreed. He said that if a case were not properly investigated, prepared and presented in court the

decision was really made by the worker whose lack of skill or care resulted in inadequate investigation, preparation and presentation.

He spoke of one judge in a jurisdiction outside of Canada who told him that the majority of applications to court lost by the local equivalent of children's aid societies were lost because of the failure of the persons responsible for the applications to investigate and obtain sufficient evidence to support the applications, or to prepare for the hearings or to make adequate presentations in court.

There was no such testimony with reference to the situation in Canada or Ontario. I gather Dr. Bates felt the comment might equally apply here. I would think it probably would. It certainly did apply to Kim's case.

In my view Kim's case amply demonstrated that comment. I cannot imagine that any judge would have been better qualified than Judge Nighswander to sit in judgement upon Kim's case. His *curriculum vitae* shows his vast experience as a social worker prior to his elevation to the bench. As I have written in the main body of the Report he was misled by what was presented before him.

There was virtually no investigation of the case beyond the physical description of some of the injuries Kim suffered. Opinions with reference to the identity of Kim's abuser were expressed in testimony upon the Inquiry, but the records of the Society do not particularly confirm such testimony and certainly the opinions, if they had been formed, were not expressed before Judge Nighswander who was led to believe, wrongly, that Kim was abused by Annals Popen and not by Jennifer Popen.

There was no investigation of the background of Kim's parents. The Society knew nothing of importance about them. Preparation for hearing of the charge under section 40 of The Child Welfare Act and of the Society's application was sketchy and inadequate, particularly in relation to the Society's application. The absence of witnesses on occasion and the absence of consultation between Mrs. Harvey and Mr. Carter illustrate that.

Presentation of the Society's application was inadequate. In part that arose from lack of necessary investigation and preparation, but it also arose out of Mrs. Harvey's almost casual presentation of the application. She did not even cross-examine Jennifer Popen when Judge Nighswander, on his own motion, chose to call her to testify and she gave testimony that was incredible and misleading and which was contrary even to Mrs. Harvey's own opinion as stated by her upon the Inquiry, but which remained unexpressed before Judge Nighswander. It would seem she was "leaving it to the judge."

It is my opinion that, to that extent at least, judges and courts are limited in the decisions which may properly be made. They are, to large measure, dependent upon the knowledge and skills of others. I mention again the importance of skills of advocacy in the adversary system and knowledge of law, including The Child Welfare Act, and knowledge of procedure, including rules of evidence.

I accept that judges should have an awareness of the determinations that might be reached and of the facilities in the community to assist in the care and protection of children. But it is necessary for the parties to the proceedings to assist the courts and judges in that regard by presenting material to assist in deciding what determination and what facilities, if any, may be most appropriate in the particular case.

Subject only to that disclaimer, I accept the thrust of that recommendation in the Garber Report and acknowledge it as the basis of my next recommendation. If all who have professions or callings which give them particular opportunities to detect abuse or its possibility and to assist in the treatment or management of any such matter are adequately trained in relation to and aware of abuse, they will more fully and satisfactorily fulfill the duties which fall upon them because of their professions or callings.

Bearing in mind the testimony upon the Inquiry it would seem to me that it should be clearly shown in the training for each profession or calling that the members of that profession or calling are not the repositories of all knowledge and skills with

reference to child abuse. There is a need for the members of each profession or calling to recognize that successful detection, assessment, treatment and management of cases of abuse will require them to co-operate one with the other and others and to share knowledge, information and skills with and to assist or be assisted by others.

Clearly The Child Welfare Act places the primary responsibility for the care and protection of children upon the Ministry and upon children's aid societies in Ontario. Training in child abuse should not be simply a peripheral part of the training and experience of social workers employed by the children's aid societies and by the Ministry to serve in the field of child welfare. In their case, such training should be central to their education.

The testimony upon the Inquiry and relevant literature emphasized the demanding nature of the employment of those engaged upon child abuse cases. Great care must be taken in their selection and in their training. In part Kim's case is the tragic result of a lack of such care.

Training in matters relating to child abuse may be a relatively small part of the training of candidates for some professions and callings or for some branches thereof.

I think for example of police officers. A probationary constable probably will not be expected or required to have more than a very general acquaintance with the problem of child abuse and its manifestations. Probably all he or she would need to know would be such as to alert him or her that others in the police force should be informed. On the other hand if a larger police force should establish a squad or team to investigate and to assist other agencies, such as a children's aid society, in cases of abuse, real or suspected, the members of that squad or team, and particularly its leader, would require much greater knowledge of and training in the phenomenon.

I think also of physicians. All physicians as a part of their basic training should acquire some knowledge of and experience with the phenomenon. Those who choose to emphasize or concentrate upon

paediatrics or to confine their practices to paediatrics should acquire far greater knowledge and experience in the matter.

The same sort of reasoning should apply to all other professions and callings.

9. *I RECOMMEND THAT the Ministry, through the appropriate processes and procedures of the Government of Ontario, seek to ensure that the curricula for the education and training of persons who wish to enter various professions and callings in the Province of Ontario which are governed or regulated in any way by any Ministry or branch of the Government of Ontario contain material upon child abuse sufficient to enable the candidates, when graduated or certified, to have degrees of knowledge, training and skill in relation to child abuse commensurate with their relative positions within their own professions and callings and in relation to other professions and callings. The training and education of candidates in each profession or calling should emphasize the need for the members of that profession or calling to co-operate with the members of other professions and callings in the entire range of activities in relation to child abuse. Those activities include the initial detection of the existence of abuse or the risk of its possible occurrence in the future, the subsequent investigation and then the management and treatment of the case in all of its aspects. The appropriate Judicial Council should be requested to include discussion of child abuse in the continuing*

programmes of seminars for judges, particularly those who sit in the provincial court (family division) and thus are most often most directly confronted with problems relating to child abuse. Such curricula should be the subject of on-going review to ensure that they remain current and reflect all developments in professional opinions, practices and procedure whether caused by legislation, regulation or judicial decision or resulting from experience with earlier opinions, practices and procedures.

RECOMMENDATION #10

In approaching the next recommendation I bear in mind the testimony upon the Inquiry, particularly that of Dr. Turner. This recommendation is, in effect, an addendum to the preceding recommendation, Recommendation #9.

I am satisfied that child abuse has been with us since time immemorial and has been recognized and treated and managed to some degree. However it would seem that it is in only relatively recent times, perhaps even as recent as 1978, that the full significance of the phenomenon has become a concern of the public and even of those who are responsible for the care and protection of children.

Dr. Turner spoke of the need for social workers to keep themselves informed of the recent developments in law, practice and procedure relating to their field, including child abuse. He spoke of the need for social workers to maintain personal libraries which, even if small, should be current. The tone of his testimony suggested to me that such as children's aid societies, other social agencies and teaching institutions.

Dr. Turner spoke of Mrs. Harvey's credentials as a social worker. They were impressive, but he wondered if she had kept herself current. There was not much to suggest that she really had. Her reply to Mrs. Farina that the Ontario Association of Children's Aid Societies could not tell the Society anything that would help the Society's court worker, indicates to me an undeservedly smug reliance upon the past. Mrs. Harvey was the Society's court worker, but she felt none of those attending the seminar from virtually every other children's aid society in Ontario, supplemented presumably by persons from other types of organizations and professions, could help her. Kim's case showed how wrong she was.

10. *I RECOMMEND THAT each person employed or practicing as a social worker or holding himself or herself out as a specialist in child abuse in any other profession or calling in the course*

of training for which there is a component related to child abuse, even though such component may have been added to the course of training since the graduation or certification of any such person, be required to maintain, by continuing courses and examinations upon the subject, an appropriate level of knowledge and skill in the light of current law, practice and procedure related to child abuse.

RECOMMENDATION #11

One of the most striking aspects of the testimony upon the Inquiry was the failure, for whatever reason, of various persons to comply with the provisions of The Child Welfare Act requiring them to report to a children's aid society or Crown attorney information of Kim's having been physically ill-treated.

Having heard the testimony upon the Inquiry as to the overall nature of abuse of children and that physical ill-treatment may be only a part of the phenomenon and less damaging than other parts of it, that failure by some is even more striking.

Until August 31, 1975 no one made any report directly to a children's aid society or Crown attorney in respect of Kim. By that time she had suffered severe and easily noted injuries and had been in hospital on a number of occasions. Doctors, at least one nurse and one relative were concerned for her safety. One doctor had telephoned to the Sarnia Police Force who had informed the Society.

In essence no one fulfilled the requirements of the statute. Some, such as Mrs. Fay Popen in June, 1975, presumably unaware of the statutory requirements, tried to protect Kim when she reported her fears to Dr. Jumean.

From the testimony upon the Inquiry I doubt that many citizens were aware of the provisions of the statute requiring anyone to report information about abuse. I have no reason to believe that, apart from whatever information might flow from the "highly publicized" cases of abuse, such as Kim's in 1978, the situation is any different since the revision of the statute in 1978.

The foregoing comments relate to members of various professions and callings as well as to members of the public in general. Some of the witnesses, like Mr. Higgins and Mr. Wryzykowski, by reason of their profession, expressed views as to the need to amend The Child Welfare Act as it was in 1975 and 1976 so as to exempt solicitors from the requirement in situations in which they were involved in their professional capacity. In Mr. Higgins' case

at least that view arose after the fact and he acknowledged that he was not fully aware of the requirement prior to the Inquiry. The 1978 legislation specifically recognized and protected the privilege existing between a solicitor and client.

I am satisfied that it is important that reports as required by the legislation be made promptly. They must then be fully and properly investigated at once, but that latter is not directly a part of the concern to which the recommendation I am now discussing is directed.

From the testimony I am satisfied that many, who should have made such reports about Kim, did not make any report because of ignorance of the statutory provisions. Some had no awareness of the requirement. Some, like some doctors, relied on a professional colleague to do whatever was required. Some, like Mrs. Hewitt, by her training and experience as a nurse, felt that their positions prevented them from making any such report except to professional superiors not mentioned in the statute. Some, like Mr. Higgins and Mr. Wryzykowski, who were solicitors, felt that the solicitor-client privilege would not permit them to report information received from their clients.

All of that made it clear to me that there was need to inform everyone of the provisions of the statute requiring reports to be made to a children's aid society or Crown attorney. Reports are now required to be made only to a children's aid society.

The public cannot be adequately informed by one announcement or statement by the Ministry or children's aid societies. The announcement or statement must be repeated frequently. Such information should be part of the various courses of education, general and specialized in the schools, colleges and universities relative to child abuse. It should be part of the programmes to keep persons practicing or working in various professions and callings current and up-to-date in their knowledge. Members of the public should be made aware of the requirement of the legislation by continuing programmes reminding them of their responsibility under the statute.

I envisage such programmes as being particularly suited to development and delivery by the Ministry, but it would be helpful for the local children's aid societies to adapt such programmes to local conditions. Public service announcements in and by the media would seem to be an accepted way of informing the public of such a responsibility. Cable television channels devoted to local community activities and interests and public service would seem to be another means of presenting the information.

It would seem to me that dissemination of information to the public as part of a programme to prevent child abuse might use to advantage means similar to those used by various health-related associations or organizations to inform the public of various diseases, or used by police forces to seek to prevent crime, or used by health departments to inform the public of the dangers associated with drugs and narcotics or used by charitable organizations to seek public support. Many models are available.

Some of the witnesses upon the Inquiry who, at least by the time they testified, had some awareness of the requirement upon them to report information about abuse, expressed concern that they might have incurred civil liability or professional censure had they made such reports. It is necessary that any programmes of education in this area inform the public and anyone to whom the particular programme is directed that the Child Welfare Act now in force, like its predecessor did, provides protection from civil liability and professional censure.

If the programme of education is directed towards a particular segment of the population it should deal with any of the special concerns members of that group may have which may militate against reporting. If for example they have concern about their own professional conduct they should be advised of any appropriate statutory or regulatory provisions governing their profession and of any relevant rulings by the body governing the conduct of their profession.

The testimony upon the Inquiry satisfied me that several persons would have been justified or required to make a report in respect of Kim pursuant

to section 41 of The Child Welfare Act. Earlier portions of the Report reflect my opinion of the results flowing from the failure of those people to make such reports. There was, in my view, a wide range of culpability.

In the event any person found guilty of an offence for failing to report information were a member of some profession or calling it would then be the responsibility of those, if any, responsible for the regulation or administration of that profession or calling to determine whether such finding of guilt would affect the person's status in that profession or calling.

Inherent in the testimony of Mr. and Mrs. Vandenberg was an expression of an unwillingness by lay persons to become involved in what they regard as another family's or person's personal matter. That phenomenon occurs in many areas of life and not only in child care and welfare.

I felt that no lay person who testified upon the Inquiry was aware of the provisions of section 41 of The Child Welfare Act. That same observation might be made in respect of many of the witnesses whose attendance upon the Inquiry resulted from their involvement in Kim's life by reason of the nature of their professions or employment. Some had some awareness of the statutory provisions, but did not fully appreciate the obligation those provisions placed upon them.

Some, such as Mrs. Faye Popen, apparently unaware of the legislation, turned to others. She reported to Dr. Jumean. He in turn reported later to the Sarnia Police Force and The Lambton Health Unit rather than as required by the statute. Others, doctors and Mrs. Hewitt, felt constrained by their professional and employment relationships and for some months made no report as required.

In my view a programme to inform everyone of their obligations under the statute to report incidents or suspicion of abuse will overcome at least some of the reserve or misapprehension which led to the absence of reports to the Society or Crown attorney upon Kim's injuries. I appreciate that even then some in our communities will choose not to

become involved and their failure may not be known to anyone except themselves.

Such a programme should emphasize the obligation imposed by the Child Welfare Act to make such reports and the penalty for failure. Anyone who fails to make a report as required should be subject to a penalty to be determined by the court within a limit to be prescribed by legislation.

Such a programme should emphasize the protection against civil liability provided by the legislation.

In developing and presenting such a programme the Ministry should, through the appropriate other ministries or departments of government, enlist the support and assistance of the bodies responsible for the regulation and administration of professions, trades and callings the practitioners of which may assist in the prevention, detection, treatment or management of child abuse.

11. *I THEREFORE RECOMMEND THAT the Ministry develop and operate an ongoing programme to inform members of the public generally and members of appropriate professions and practitioners of appropriate callings in particular of the statutory duty to report information of any incident or suspicion of abuse and of the importance of such reports to the children's aid societies*

RECOMMENDATION #12

During Kim's lifetime The Child Welfare Act, in section 41, required persons having information about a child's abandonment, desertion, physical ill-treatment or need for protection to report that information to a children's aid society or Crown attorney. That report was required even if the information were confidential or privileged. The informant was not liable to civil liability unless the report was made maliciously or without reasonable and probable cause. Failure to make such a report was not an offence and no penalty was provided.

The current legislation enacted in 1978, contains a requirement, in section 49, that anyone having such information report it to a children's aid society. There is a sub-section beside which is the marginal note "Duty of professional to report." That sub-section requires anyone to report to a children's aid society if he or she has reasonable grounds to suspect in the course of his or her professional or official duties that a child has been abused and that the abuse was caused or permitted by a person having charge of the child.

A subsequent section, section 94, makes it an offence, punishable on summary conviction, for any such professional or official to fail to make such a report. Anyone guilty of that offence is liable to a fine of \$1,000.00.

From my reading of available literature, I gather that Ontario was somewhat behind some other jurisdictions in imposing sanctions upon persons who fail to comply with statutory requirements to report cases of abuse or suspected abuse of children.

I quote now again from the writing of Dr. Fontana and Dr. Besharov, in The Maltreated Child, Fourth Edition, 1979:

"Although the early recognition and reporting of suspected child abuse and neglect are the first essential steps in preventing further maltreatment, many physicians, nurses, social workers, teachers and others do not report the abuse or neglect that they see. The reluctance

of many professionals to take action to protect children resulted in the development and passage of laws in all states which require, under penalty, certain professionals to report known and suspected child abuse and neglect.

The medical professional was the first, and remains the foremost, target of reporting statutes. But the early focus on physicians (who were considered the professionals most likely to see injured children) quickly expanded to include all professionals in the healing arts, and has since broadened to include teachers, social workers, police, clergymen and coroners, among others. In addition, an increasing number of states (over twenty at this writing) require "any person" to report known and suspected child abuse and neglect."

It would seem to me that the combined provisions of section 49 and section 94 of the Child Welfare Act are unduly limited. The definition of "abuse" in section 47 of the 1978 legislation includes, specifically, "physical harm" and "sexual molestation." The testimony upon the Inquiry indicated that it is not only those who have "charge" of a child who may physically harm or sexually molest the child. Such harm or molestation may result from or be the act of a person, neighbour or relative trusted by the child even though the child is never in his or her charge.

I note too that section 47 of the present legislation provides that no one "having the care, custody, control or charge of a child" shall abuse the child or permit the child to suffer abuse. The absence of the words "care, custody [and] control" from section 49, although mentioned in section 47, would seem almost to invite the suggestion that the professional person or official is required to report suspicion of abuse by a person having "charge" of a child, such as a baby-sitter, but is not required to report suspicion of abuse by a person having custody of a child, such as a parent of the child pursuant to a court order.

Aside from that possible difficulty, it is my opinion that section 49(2) does not impose upon the professional person or official the duty, and thus liability to the penalty set forth in section 94, to report any suspicion of abuse, including physical harm or sexual molestation, by a relative, neighbour or family friend who cannot, in any sense, be regarded as having "charge" of the child.

The rationale of section 49, coupled with section 94 of the new legislation, escapes me. It would seem to me to be incongruous that, if a professional person or official in the course of his or her practice or office has reason to suspect that a child has been physically harmed or sexually molested, that professional person or official should be liable to a penalty for failing to report such suspicion if it relates to one having "charge" of the child but not so liable if the suspicion relates to someone else, such as a close and trusted relative, who may have opportunity to cause much more harm than the sometime baby-sitter. Why should the possible imposition of a penalty for failure to report depend upon the child being in the "charge" of the person suspected of causing the abuse?

It would seem reasonable that persons practicing various professions or callings reasonably requiring knowledge of or skills relating to child abuse, its detection, treatment and management might be subject to penalty for not reporting to children's aid societies reasonable suspicion that a child has been abused. By entering upon those professions or callings they accept the benefits, rights and privileges thereof and hold themselves out as having special knowledge and skill.

It seems odd that they should be liable to a penalty only if they suspect the abuse was inflicted by someone in a particular class.

I have difficulty in determining the full meaning of the words "professional or official duties" as they are used in section 49 of the 1978 legislation. I think for example of Mr. Khattab. I am not satisfied that in its present state social work is a profession. I am not satisfied that a social worker is an official. It is not clear to me that Mr. Khattab, who was called a social worker, was

a social worker within the meaning of The Child Welfare Act during Kim's lifetime or would be a social worker within the meaning of the 1978 legislation.

The Regulations made under The Child Welfare Act required each children's aid society to classify its social workers. The first classification stated was that of "Social Work Assistant." To achieve that classification of social worker one needed only to have completed Grade XIII in Ontario or its equivalent as determined by the Minister or to have been actively engaged as a social worker in a children's aid society for at least one year immediately prior to June 1, 1966. It seems to me rather farfetched to suggest that one, perhaps eighteen years of age and a graduate of a Grade XIII course and thus possessing those minimum qualifications, would be regarded as being a member of a profession or an official.

Then followed five classifications of social workers numbered I through V, with increasing requirements for education or experience to enable classification in each category. There was no other definition of "social worker" in The Child Welfare Act or the Regulations thereunder.

The 1978 legislation, more particularly the Regulations made thereunder, does contain a definition of "social worker" for the limited purpose of those Regulations. Part III of Regulation 388/79 is entitled "staff qualifications." The first section in Part III is numbered 16 and provides that in Part III the term "social worker" means one whose duties consist of investigating or supervising the care of children, whether or not the children are in the care of a children's aid society, providing guidance and counselling and having qualifications set out in section 19 of the Regulation.

Section 2 of Regulation 389/79 requires every children's aid society to classify its social workers according to classifications bearing titles similar to those in the Regulations under The Child Welfare Act in force during Kim's lifetime. Regulation 388/79 refers to those classifications and proceeds, in section 19, to set forth the qualifi-

cations required to enable persons to be granted the various classifications.

Again the first classification is that of "social work assistant." The qualifications for that classification are identical with those for that classification under The Child Welfare Act prior to 1978. Therefore I repeat my earlier comments upon the suggestion that one possessing such minimum qualifications would be a member of a profession or an official.

All of that seems to me to demonstrate Dr. Turner's testimony as to the rather loose and indefinite use of the term "social worker." I gather that other statutes may, again for their own purposes, contain definitions of the term which may be quite different from those under the Child Welfare Act.

Apart from questions as to what duties are "professional or official," it seems to me that there may very well be difficulties in seeking to prosecute anyone for a contravention of section 49(2) of the 1978 legislation. That difficulty, to my mind, would be in establishing that the person's suspicion of child abuse arose "in the course of the person's professional or official duties."

I think for example of a mother or father suffering some minor ailment or injury, such as a cold or a cut finger, attending at a doctor's office for examination or treatment of such ailment or injury. One of that parent's children accompanies the parent, but merely sits in the waiting room where the doctor, in escorting the parent to the examining room, notices some bruising about the child's face. The doctor had not treated or examined the child at any time nor had any treatment or examination of the child by the doctor been requested at any time. I think it unlikely that whatever might pass through the doctor's mind as to that bruising would arise "in the course of [his or her] professional or official duties."

But I wonder if the result would be different if the parent, rather than suffering a cold or cut finger, was suffering from some of the matters mentioned by Dr. Bates, such as undue use of

alcoholic beverages, drugs or narcotics or perhaps an emotional illness, as being indicia that a child in such a person's home might be in some unusual risk of being abused.

I can imagine that real life could write scenarios incorporating infinite variations upon that theme. I am confident that skilled defence counsel, if they have not already done so, will soon show the difficulty of prosecution under section 94 of the Child Welfare Act, as enacted in 1978.

It would seem to me that it would be preferable to provide that failure to report information or suspicion of abuse is an offence, and then to provide a maximum penalty. That then would leave the ultimate determination of penalty, in the event of a finding of guilt, to the court. In that determination all factors, including the "professional or official duties" of the accused, would be considered.

12. *I THEREFORE RECOMMEND THAT the Ministry seek the appropriate amendment of the Child Welfare Act so as to make it an offence for anyone having information about any incident of child abuse or suspected child abuse to fail to report such information to a children's aid society as required by the statute. Anyone found guilty of that offence should be liable to a fine not exceeding an amount to be prescribed in the legislation and which will be large enough to be a true deterrent to anyone who is considering remaining silent when in possession of information which, by reason of the legislation, he or she is required to report to a children's aid society. There was no testimony to enable me to suggest what such a penalty might be, but the present penalty of \$1,000.00 for persons having professional and official duties appears to me to be rather modest.*

RECOMMENDATION #13

I have already mentioned the testimony of Mr. Higgins and Mr. Wryzykowski with reference to the provisions of The Child Welfare Act in effect during Kim's lifetime requiring everyone to report information about abuse. The provision was broad enough to apply to solicitors who received the particular information from a client as part of the instructions to or retainer of the solicitor to act for or on behalf of the client.

I share their concern as to the unique role of a solicitor in such a circumstance. It would seem that the Legislative Assembly recognized the validity of that concern. The legislation enacted in 1978 requires anyone to report such information even though it be confidential or privileged, but it contains another sub-section which states that that statutory requirement does not abrogate any privilege that may exist between a solicitor and the solicitor's client.

In my view the preservation of the solicitor and client privilege is essential. If that privilege is not preserved men and women may be deprived of adequate defences of proceedings against them or adequate presentation of their positions in other proceedings.

Perhaps because of the testimony upon the Inquiry I may be more aware than many that abuse of children is a serious problem and an horrendous offence. Persons who are parties to proceedings involving the care of children and allegations of offences against children are entitled to legal services and to the privilege of communications between them and their solicitors with reference to such proceedings, allegations and offences. In my view a person involved in a case in which child abuse is alleged is entitled to legal services and the protection of the solicitor-client privilege just as much as a person charged with murder, rape, manslaughter, treason or any other serious crime.

Persons charged with other criminal offences are entitled to remain silent unless they choose to testify upon their trials. I think the same principle should apply to persons charged with

offences involved with cases of child abuse. It could not apply if their solicitors were required to divulge information, no matter how damaging it might be to their case, which would otherwise be within the ambit of the privilege of solicitor and client.

I have earlier written that children's aid societies should have legal counsel and advice in child abuse matters. In a sense the preservation of the privilege of the solicitor-client privilege is the other side of that same coin. Each party to judicial proceedings is entitled to counsel and advice because he or she, fearing forced disclosure of information which he or she, rightly or wrongly, regards as unfavourable, may not fully and candidly inform counsel of all relevant matters.

It should be recognized that not all communications between a person and a solicitor are subject to the solicitor-client privilege. The privilege exists only if there is a relationship of client and solicitor in relation to the subject matter of the communication.

I recognize that preservation of that privilege may prevent or hinder the presentation of all information relevant to a particular proceeding. Indeed the assertion of that privilege by Jennifer Popen resulted in some restriction of certain testimony which counsel sought to elicit. However that restriction did not have any great effect upon the overall testimony upon the Inquiry because Detective Inspector Hill and others engaged with him to investigate matters on my behalf and to assemble material for presentation upon the Inquiry had completed a painstaking and thorough investigation and examination of all of the events of and relating to Kim's short life.

In a portion of this Chapter of the Report, I deal with the need for proper investigation of reports or cases of abuse. In my view thorough investigation will, in most, if not all cases, remove the need to have anything in the nature of inculpatory statements or disclosures by a person to his or her solicitor.

The presence of counsel for both parties can be helpful to everyone concerned. I have noted

that it was perhaps a comment by Mr. Higgins when requesting a pre-sentence report upon Annals Popen which led to Dr. Curtin's report which, if read and properly used by Mr. Higgins' adversary, the Society and Mrs. Harvey, might have proven very beneficial to Kim. I think too the presence of counsel can be very helpful to everyone by reason of his or her ability to be a bridge, as it were, to transmit information and understanding to the client who may more readily accept it from a trusted counsel whose advice is respected.

I regard that latter as being akin to the testimony as to the desirability of public health nurses and social workers establishing a rapport with their clients, including, for my present purposes, the families of abused children. Such good rapport was viewed as being helpful or even essential to successful intervention by the social or health agencies. Responsible counsel can assist in the development of such rapport without in any way being derelict in their duties as solicitors.

The Legislative Assembly recognized the importance of preservation of solicitor and client privilege by providing, in subsection 4 of section 49 of The Child Welfare Act, 1978 that nothing in subsection 49 would abrogate any such privilege.

13. *I THEREFORE ENDORSE AND RECOMMEND the retention of the privilege of communications between solicitor and client so that a solicitor is not required to report any information about abuse given by a client who is party to any proceeding in which the particular incident of abuse is or may be a factor.*

RECOMMENDATION #14

It is apparent to me that we can succeed in breaking the cycle of abuse which Dr. Bates mentioned only if all persons in our community are better informed about the phenomenon of child abuse. Education would seem to be an important element of any programme to prevent abuse. I have already written of the education and training of persons entering or practicing professions and callings. I want now to direct attention to the need for programmes of education with reference to child abuse to be delivered or available to the public generally.

Mr. Charko in his testimony spoke of the need to train people to be good parents, that is to care for children properly and without abuse. He expressed himself in an intriguing style. I do not wish to attempt to paraphrase or examine his testimony without setting forth a portion of it so that if I err in interpreting his testimony my error will be apparent to those who read the Report. He said:

"...besides learning there is something more than just learning, there is a lot in the saying *non schola, sed vita discimus*, which in a sense means not for school, but for life we are learning and it seems to me that that whole area if we can teach a child two and two is four then maybe we can help this child to become a parent and become individual and this seems to me it could be done maybe right from grade one as a subject that would prepare every child for living, that would teach him how to relate to other human beings, how to relate to family setting, how to assume responsibility, but we are saying in a sense, you have freedom, we're going to teach you what you want to be taught, if you don't want it that's the end and then we are saying, you are not able to function in the community, out you go to fail or this type of thing. The whole area to me if we don't do, sit down also with the educators, we won't resolve the problem and we will be discussing these issues of abuse twenty-five years later..."

Mr. Charko may be somewhat in error in his translation of his quotation from Seneca. I am informed its more accurate translation is "we learn not at school, but in life" or "we learn not by lecture, but by life."

My understanding of the thrust of Mr. Charko's comments is that he believes the training of persons to be good parents should begin even while they are children, perhaps not yet enrolled in school. Such training would involve instruction to improve skills in various settings and relationships, family and personal, and in assumption of responsibilities. He urged those engaged in education to include curricula courses to provide that instruction.

It seems to me that Mr. Charko was voicing the need for preventive programmes, beginning at an early age and continuing even beyond school, as a necessary element of any successful plan to solve the problem of abuse. In the same area of his testimony he said that the solution to the problem did not lie only upon children's aid societies, even much enlarged societies, but lay upon a number of public and private agencies. He said that child abuse could not be solved at the local level, but would require intervention and assistance by provincial government agencies.

I view Mr. Charko's approach as being similar to Dr. Bates' opinion that preventive programmes are necessary if we are to break the cycle of abuse.

Dr. Fontana and Dr. Besharov express a corresponding opinion that parenting should be taught in our school systems. They deplore the great lack of formal adult training courses for parenting. That lack in the City of Sarnia and the County of Lambton was demonstrated by Mrs. Harvey's testimony as to her search for some course of training for Jennifer Popen and Annals Popen. She said the Parent Effectiveness Training Course was all she could find. It was not especially designed or intended to deal with the particular problem.

It is interesting to note that Dr. Fontana and Dr. Besharov comment favourably upon parent

effectiveness training programmes as a means of providing adult education in the skills of parenting. I presume that such programmes are generally similar to that in which Jennifer Popen and Annals Popen were enrolled.

It is my view upon all of this that training or preparation for parenting should begin at an early age. As Mr. Charko suggests, it is part of preparation for life and inter-personal relationships. Such training should form part of the curricula of our school systems. It should include appropriate portions relating to abuse in its many forms, neglect, physical injury, emotional abuse or deprivation and sexual abuse or molestation.

The opportunity to obtain such training or information should not cease with the child's graduation from school or leaving school. Corresponding courses should be available in the community as part of the adult continuing education programmes.

I envisage inter-disciplinary teams in each community being responsible for the preparation of the materials to be used in the community and participating, in co-operation with educational authorities to an appropriate extent, in the delivery of the courses. I realize that again the function of the local inter-disciplinary teams will be guided or directed by materials emanating from or approved by the various ministries or departments of government regulating the affairs of the participating disciplines. In that latter area the Ministry should assume a role of importance and responsibility to ensure that the needs of the local children's aid societies are fully appreciated and, in turn, that those societies are kept informed of developments in educational procedures.

It is to be hoped that education or information about the duties and responsibilities of parents and about the problems which may arise in families will be of benefit to all who receive such education and information.

It will strengthen the resolve of those who were raised in families where love and tenderness flourished. That cycle will remain unbroken.

It will show those who have been abused by their parents, guardians, relatives or others that they have truly been victims and that, unless something is done, there is great likelihood that they in turn might abuse their children. With that education and information and with encouragement and support flowing from it, those who have been abused may more likely recognize that, because of their own history of having been abused in childhood, they may encounter particular problems in relation to their own children. Hopefully they will be encouraged to break that cycle.

14. *I THEREFORE RECOMMEND THAT the Ministry co-operate with the Ministry of Education, the Ministry of Colleges and Universities and any other appropriate agency, governmental or otherwise, responsible for the preparation of curricula in schools and other educational facilities, to ensure that such curricula include adequate provisions for instruction in the responsibilities of parenthood. Such instruction should be part of the general curricula and should be part of every pupil's personal course of study in elementary and secondary schools. Appropriately advanced instruction should be available to all students in post-secondary schools, colleges and universities. Such instruction should be available in adult education programmes. Such instruction should include elements relating to child abuse. With education and knowledge and with the confidence resulting therefrom the cycle of abuse may be broken. Children's aid societies and multi-disciplinary abuse teams in local communities should be encouraged to participate in the preparation and delivery of such programmes.*

RECOMMENDATION #15

My next recommendation is an extension of earlier ones. A portion of its base is found in a recommendation in the Garber Report as follows:

"21. That the Ministry continue the next phase of the child abuse demonstration program and maintain its initial and subsequent phases of ongoing training for child abuse personnel in the province."

Mr. Charko in his testimony expressed his opinion that the Ministry should provide more training for personnel working in the area of child abuse. He spoke of the need for care and in the selection of such personnel.

Mr. Lovatt testified as to his opinion that "in-service training is a must, not a frill."

In my view the Ministry must assume a primary responsibility for the preparation and distribution of materials to be used to effect such specialized training in child abuse. Witnesses upon the Inquiry spoke of the inability of the personnel of the Society to arrange sufficient time to prepare manuals of practices and procedures. I am not encouraged to believe that they could find sufficient time to prepare materials for specialized training in child abuse. I do not believe the Society was or would be unique in that.

Mr. Charko, an official of the Ministry, testified as to his belief that the Ministry should be more active in the provision of courses to train personnel in the field of child abuse and in the selection of such personnel. He suggested that the Ministry was then, in September, 1978, engaged in some special projects to learn more about child abuse and the investigation and management of such cases.

What was technically cross-examination of Mr. Charko by counsel for the Ministry really amounted to Mr. Charko's agreeing with counsel's statements phrased in much the way I came to expect from personnel of the Ministry who testified. In that style of statement by counsel and acceptance by Mr. Charko it was said that, among other things,

training programmes were being embarked upon. In response to that statement, Mr. Charko did expand his response beyond simple acceptance and that response and subsequent statements by counsel and responses by Mr. Charko are transcribed as follows:

"A. Certain areas, also children's aid societies individually they are taking some sort of in service training program that have developed, particularly larger societies, but even smaller ones, they meet together and also Dr. Herb Sohn has been going out to some societies to the staff to deal on child abuse committee and sort of reviewing that whole area, how the training could be provided and special training kits have been sort of, are available to the child abuse committee.

Q. So that the child abuse program has been significantly developed?

A. That's correct.

Q. And it is continuing?

A. Continuing to improve the whole system, the registry, the training, the procedures and so on. Some more documents will be released in the near future with regard to the whole child abuse program, plus several child abuse special projects have been introduced to learn more about child abuse and then sort of to see how we can treat such cases."

This may be another area where the Minister may care to inquire as to what really has come about since that testimony was given.

In that response Mr. Charko seemed to recognize what I regard as significant differences in the abilities of children's aid societies to devise, prepare and present training programmes. Larger societies may have sufficient personnel and other resources to do so. Smaller societies may not have such personnel and resources. Therefore it is, in my view, incumbent upon the Ministry to prepare adequate training materials in relation to all aspects of

child abuse and to make such materials available to children's aid societies and other agencies or institutions which may be involved in any way with child welfare and care, particularly protection from abuse.

The Ministry, through its programme of seminars and workshops, should ensure that persons responsible for the in-service instruction and training of the personnel of the children's aid societies are themselves qualified to provide such instruction and training.

It was apparent during the Inquiry that medical practitioners and hospital personnel, among others, had some difficulty in Kim's case in interpreting or applying the provisions of section 41 of The Child Welfare Act.

Physicians relied upon fellow practitioners to make any necessary reports.

St. Joseph's Hospital had no formalized procedure to ensure that nurses or others of its personnel would report any instance of abuse.

Mrs. Hewitt's testimony was to the effect that nurses, by training and practice, would report only to physicians or nursing supervisors and would not feel free or obliged to report to any outside institution or authority such as a children's aid society or Crown attorney.

Mr. Khattab had not made any report to a children's aid society or Crown attorney in March, 1975 or until after Kim was in the *de facto* care of the Society in September, 1975.

I am satisfied on the testimony that medical and hospital personnel, even apart from their own professional relationships and training and practices, are not free of the basic problem faced by others. That basic problem is to determine what circumstances justify or require a report to be made in compliance with The Child Welfare Act.

Each children's aid society should ensure that such training programmes and materials are presented to the members of the community's

multi-disciplinary team dealing with abuse. Efforts should be made by the children's aid society, through such teams, to ensure that all local members of each discipline or calling represented upon such a team receive the information from the programmes either by special presentations of the programmes or through one of the programmes to disseminate information.

I would regard implementation of the following recommendation as being partial compliance with the requirements of paragraph (b) of sub-section 2 of section 2 of the Child Welfare Act enacted in 1978. That paragraph imposes upon the Director appointed by the Minister for the purposes of that Act a duty to ensure that the children's aid societies do provide the standard of service and follow the procedures and practices prescribed by the Minister.

There was no such provision in The Child Welfare Act in force during Kim's life. I would have thought that the duty set forth in the new legislation was inherent in the former legislation. The testimony upon the Inquiry showed that the Director, an employee of the Ministry, did not ensure that the Society, at least in Kim's case, was providing services to a satisfactory standard and following acceptable practices and procedures. During Kim's life there were no "prescribed" standards, procedures and practices. The legislation enacted in 1978, in sub-section 3 of section 6, requires every children's aid society to provide services and to follow procedures and practices all to the standard prescribed by the Minister. That too was not expressly stated in the former legislation, and, in the absence of any such standards, practices and procedures having been prescribed, would have been meaningless.

This portion of the new legislation perhaps demonstrates my view expressed elsewhere that the personnel of the Ministry followed the hearings of the Inquiry and learned from those hearings, even in advance of the completion of the hearings, that there were serious deficiencies in the legislation and in the performance of the Ministry.

It now rests with the Ministry to prescribe standards, practices and procedures with reference to every aspect of the purposes of operation of

children's aid societies and then to ensure that they are met.

Upon the Inquiry there was some testimony to suggest that in the Ministry's view the word "shall," as it appeared in The Child Welfare Act was not always to be treated as a mandatory expression. I would hope that as the Ministry interprets that word in relation to paragraph h of subsection 2 of section 2 and subsection 3 of section 6 it shall be treated as mandatory. That will mean the Minister must prescribe standards of service and procedures and practices to be provided or followed by the children's aid societies and then the Ministry, in the person of the Director, must ensure that services are provided to those standards and practices and procedures are followed.

The new legislation in a sense states the obvious as I have done in some recommendations. Kim's case demonstrated the need.

In another instance of restatement of the obvious, it is my view that the Ministry will not fulfill its statutory duties without ongoing study, review and revision of its published standards of services and procedures and practices.

15. *I RECOMMEND THAT the Ministry devise, prepare and distribute to children's aid societies and similar organizations serving families and children materials for training of personnel engaged or to be engaged in the detection, reporting, investigation and management of cases of child abuse and in the protection of children from abuse. Those materials should be subject to ongoing review and revision to ensure that they reflect current policies and procedures and any developments resulting from amendments of legislation or regulations or from judicial decisions. Those materials should be made available by the Ministry to other ministries or*

levels of government or agencies and institutions for the training of personnel who may be called upon by children's aid societies and similar organizations to assist in efforts to prevent and minimize child abuse and the results thereof. The local children's aid society should ensure that community child abuse teams and the professions, callings, institutions or organizations represented thereon have an opportunity to receive such training and information or the portions thereof relevant to their activities.

RECOMMENDATION #16

Elsewhere in this Chapter I recommend that all persons working in the field of child welfare keep themselves informed of current opinion, theory, practice and procedure. That will involve some effort by the individuals and perhaps some modest expense to maintain personal libraries.

In my view each children's aid society, as a corporate body, has a similar obligation. It too must remain current. That will involve the acquisition and maintenance of an adequate library of books and audio-visual material, with equipment to use the latter.

I recall no evidence upon the Inquiry to the effect that the Society maintained any library for the assistance of its social workers either in specific problems or in efforts to broaden their knowledge generally. In my view that is a deficiency.

16. *I THEREFORE RECOMMEND THAT the Ministry should encourage each children's aid society to establish an adequate and current library of books and audio-visual materials, with appropriate equipment, for the use of the social workers employed by the society. The Ministry should make it clear that reasonable sums of such purposes will be approved as part of the annual budget process.*

RECOMMENDATION #17

The overwhelming weight of the testimony of highly trained and experienced persons who were witnesses upon the Inquiry demonstrated the need for a "team" approach to the problem of child abuse. The concept of teams included teams of various compositions and for different purposes or different stages in any case of abuse or reported or suspected abuse.

There should be teams comprised solely of children's aid society personnel.

There should be teams comprising a variety of combinations of personnel depending upon the circumstances of the community and the particular case.

The local children's aid society, having the primary responsibility for the protection of children in the community, should be well represented upon any such team. Other members of such a team might be drawn from other community resources such as police, schools and boards of education, medical and hospital personnel, public health doctors or nurses and other social agencies or special purpose groups which may have expertise or knowledge which may be helpful to the team in the particular instance.

I am satisfied that the creation and maintenance of local teams, composed of persons possessing a multitude of aptitudes, skills, experience and training, is at least helpful and is probably vital to the success of any effort to prevent, limit or reduce incidents of abuse.

Kim's case was an example of what can happen when, in effect, one person, with little if any consultation with others, even within the children's aid society let alone beyond it in the community, makes decisions affecting the life of one child. Such decisions are much too important to be left to one person or even to a small limited group, particularly if that small group may be subject to domination by one person, whether that domination comes about by reason of that person's position in relation to the others or by reason of personality or otherwise.

It was said that in discussing any case involving the welfare of a child each member of the group will reflect the knowledge, training, skills and expertise acquired in his or her own practice of one profession or calling. There was no suggestion that any one profession or calling invariably had all of the right answers to every problem that might arise at any time in the case. The views of each member of the team must be expressed and then reviewed in the light of the views of all other members of the team. In the event of disparate views there must be reconciliation or one must be selected in preference to the other or others after full discussion and evaluation of all of the factors involved in the case.

In the same way that it was generally accepted by those who testified in relation to this area that no one discipline always had all of the right answers to every problem in every case, it was clear that no one person, regardless of profession, calling, knowledge, training and experience, could claim to be the infallible source of correct decisions at every stage of every case.

17. *I RECOMMEND THAT every report or instance of child abuse be investigated and managed and treated by a team or teams of qualified persons. The local children's aid society shall have the primary responsibility for the creation of the team or teams to deal with the various aspects of each case. In some aspects of the case the team may be comprised solely of employees of the children's aid society, but preferably it should have representation from such other organizations, professions, callings, agencies, institutions and authorities as may be necessary to provide protection and care to any child involved in the particular case.*

RECOMMENDATION #18

Kim's case raised a particular problem touched on in part by Mr. Carter when he said Mrs. Harvey told him he had been removed from the case for "ethnic" reasons.

It must be recognized that in Canada and Ontario the population is composed of people from many backgrounds, from various geographic areas in Canada and the world, from various races and cultures, with a variety of social, economic, educational and other differences. Dr. Bates touched upon some of these differences and he had some suggestions as to what might be done to overcome some of the difficulties arising from such differences.

Dr. Bates, in uncontradicted testimony, spoke of the various levels, as it were, of conduct toward or treatment of children which might be tolerated by communities or areas. I understood him to say, and I would accept, that there are differences in those levels even between communities in one country and certainly between various countries and between various larger regions of the world. What one country might accept as being acceptable conduct by a parent to discipline a naughty child might be regarded as unacceptable conduct and, therefore, abuse of the child if it were to occur elsewhere.

Accordingly Dr. Bates and others, such as Mr. Charko, suggested that some social workers dealing with incidents or reports of child abuse should receive some special training to enable them to treat or deal with the special problem of abuse allegedly inflicted by parents who have been raised elsewhere. This is over and above any problems of language which, in some cases, may also contribute to the difficulties faced by the social workers.

I am fully aware that any such suggestion must be viewed in practical terms. I would think that the demographic features of the community served by a children's aid society would indicate the extent or range of any need for social workers with such special training and skill. Thus, if a substantial percentage of the population of the community was composed of families headed by adults who, as

children, were raised in one foreign country, it would seem that the children's aid society serving that community in Ontario should strive to have social workers with some knowledge or awareness of the language and customs of that foreign country. Conversely, if only one family in the community was headed by a parent raised abroad as a child, it would be unreasonable to urge the local children's aid society to employ a social worker with knowledge and awareness of the language and customs of that one parent's country of childhood. In that latter instance the society might properly draw upon outside forces, perhaps those of the Ministry or another society, made available in keeping with another recommendation of this Report.

Of course the overall resources of the local children's aid society must be considered in the light of the demands of the community thereon. It may be that, regardless of the number of parents in a community who were raised in a particular foreign country, the incidence of abuse by such parents does not merit the full-time employment of workers with special skills, knowledge and understanding of the language and customs of that foreign country.

Thus, I am prepared to accept the thesis of Dr. Bates' observations subject to the practical considerations or limitations.

18. *THEREFORE I RECOMMEND that each local children's aid society seek to employ social workers who, by reason of their special skills and knowledge of the languages and customs of the countries of origin of persons or families resident in the community but who were not raised in Canada, are especially qualified to assist in or manage cases or reports of abuse involving such persons and families.*

RECOMMENDATION #19

I have written of the need for the "team" approach to cases of abuse. I have suggested that each children's aid society should be responsible for the creation of a team of its workers as its own child abuse team to fulfill its mandate under The Child Welfare Act. I have suggested too that each children's aid society should seek the formation of more broadly based teams in the community.

The testimony upon the Inquiry overwhelmingly satisfied me that no one profession or calling is the sole and the infallible custodian of all current wisdom and expertise in the field of child abuse. The witnesses, I think without exception among those whose testimony addressed the matter, spoke of the need for the establishment and maintenance of teams to deal with the problem of abuse. Such teams, they said, should be composed of representatives of all professions, callings, disciplines and agencies which in any way might assist in cases of abuse. They said each case of child abuse, actual or reported, should be discussed and considered by the multi-disciplinary team functioning in the community.

Since The Child Welfare Act imposes upon the Ministry and children's aid societies the statutory duty to care for and to protect children it is my view that it is the local children's aid society, assisted and encouraged by the Ministry, which should assume the prime responsibility for the establishment and function of such multi-disciplinary teams. The co-operation of others will be necessary to achieve success in that endeavour.

There was testimony upon the Inquiry that in 1976 such a team was organized in the City of Sarnia and the County of Lambton. It seems that the Society assisted in the formation of that team and participated in its activities. However, at least until the spring of 1978, the Society did not assume any position of appropriate importance among or recognition or acceptance by other bodies represented upon that team. The functioning of the team may have been unduly affected by the rules and regulations of the administration of the hospital about which it seemed to be organized. Its functioning may also

have been affected by some incidents which led to the Society being held in rather low esteem by others who participated in the team's activities.

In my view it would be desirable for the formation, maintenance and function of such multi-disciplinary teams to reflect local conditions and resources of personnel, facilities and services. Nonetheless, the purposes of such a team are too important to permit what may be the petty idiosyncracies of perhaps only one unusually influential member thereof to govern the direction and thrust of the team.

There must be recognition that the representatives of the local children's aid society have the primary or dominant local responsibility for the care of the child, but at the same time there should be provision whereby other members of the team might ask for a review of any decision made by the representative of the children's aid society upon the team. Perhaps the review might be initially by the local director of the children's aid society with an avenue for further review by the appropriate field consultant or specialist of the Ministry assigned by the Ministry to advise, superintend and inspect the children's aid society. Such a procedure would avoid the unfortunate effect of an autocratic representative of the children's aid society upon the team and an ineffective local director of the children's aid society unable or unwilling to disagree with that representative even for good cause.

In this day of modern technology there could be almost immediate referral to the Ministry even during any period of local review of any decision. So I would suggest that, if a review of any decision be sought, the decision should not be implemented until completion of the review unless the Ministry's field consultant otherwise directs, even by telephone, because of the particular circumstances of the matter.

The participation of other persons or organizations in such multi-disciplinary teams may come about only by reason of direction from other ministries or branches of government. Therefore the Ministry should request such other ministries or branches of government to include in such direction

provisions requiring other participants to accept the contrary opinion of the representative of the children's aid society or to follow the review procedure and to be bound by the result thereof.

The authors of the Garber Report recognized the need for such multi-disciplinary teams.

Mr. McCabe, interim local director of the Society from May to August, 1978, was a witness upon the Inquiry. He spoke generally of his observations to say:

"I think - I have got the feeling from the comments made by those who have preceded me in the interim people who were directly sent from the Ministry that the relationship with the probationary services, the police and the health services were not as good as they might have been. I think that's a judgement that could be made about other children's aid societies too; I don't just select this one.

I would say that steps have been taken already here to improve those relationships and I've personally been involved with meeting some of the police and with the probationary services and others on staff are continuing to meet with health services.

Now, I would really emphasize the importance of close working relationships on teams or committees or whatever in terms of the prevention of this kind of thing in any community."

Dr. Turner also spoke of the need for inter-disciplinary teams.

Both Mr. McCabe and Dr. Turner spoke as well of the need for communication within a children's aid society and the establishment of a child abuse team within the individual society.

The establishment of multi-disciplinary teams with recognized standards for their operation should ensure a full, free and frank exchange of information. That exchange should be prompt and should not be long after the event. Disclosure of

information by a member of such a team to other members of the team should not be nor be treated as being a breach of any confidence under which the information was obtained, but disclosure beyond the team should be prohibited or restricted to the same degree as the initial disclosure other than to members of the team might have been prohibited or restricted.

19. *I RECOMMEND THAT the Ministry seek the active co-operation of other ministries of government responsible for the regulation of professions, callings, institutions and authorities the practice or function of which may in any way relate to child abuse so as to ensure the establishment and function of multi-disciplinary teams. Each children's aid society shall be responsible for the institution of proceedings necessary for the formation of such team or teams as may be required to serve its community or communities. Each such team shall develop its own practices and procedures recognizing the dominant responsibility of the children's aid society and the Ministry to protect and care for children. It should be made clear that, provided it is made for the purpose of the team's consideration of a particular case, disclosure of information by and among persons serving on such a team shall not be nor be deemed to be a breach of any confidence that might otherwise attach to such information.*

RECOMMENDATION #20

It is convenient for me here to comment upon the formation and operation of the child abuse team within the children's aid society, the team composed of its own workers.

In concluding her testimony and responding to counsel's request that she express any recommendation she felt should be made in this Report, Mrs. Lo said it would be helpful if a group of workers were involved in any case of abuse, even from the earliest stages, to determine plans and goals for the case.

Mr. Zwerver in his response to the same type of question said:

"...Investigating and carrying child abuse cases is a very stressful and onerous responsibility. The very lives of children are a worker's responsibility. Workers need and are entitled to all the support possible to carry out those responsibilities. I believe that that means that only workers who are seasoned and specially trained should have the responsibility of investigating complaints of physical assault or injury to a child and that wherever humanly possible, and I stress possible, although I think it's extremely important, two workers should go out on the initial call and this will provide support to the workers who go out and also minimize the role confusion for one worker to be supportive to the family as well as authoritative in an investigative fashion. We heard reference made, I think by Mrs. Farina and Mr. Heath, to the problem of role confusion. Workers carrying validated child abuse cases need to provide the primary service to the child and his family and that means that someone has to coordinate the child abuse case at all times. One worker must be designated that responsibility. When this happens a great deal of time and energy is required to coordinate the activity of support personnel, not only within the Agency, but also

support personnel in the broader communities whose energies and expertise are brought to bear to work with the family and the children of that family. What this then means is that only a very small case load can be carried by one worker at one time, probably no more than seven or eight cases. Flowing from that there must also be built into the Agency a support structure for that worker to get input quickly when necessary and consistently all the time. This means that when a worker has a particular need or is dealing with a crisis situation like a child abuse case, and there tend to be many crises in child abuse cases, there must be someone designated within the Agency with whom that person can communicate and from whom the worker can expect support and whatever assistance is required, whether this be the worker's supervisor or a designated senior staff person within the Agency. Without that kind of support that responsibility cannot be carried out adequately."

In my view those two responses, from two persons at or near opposite ends of training and experience and expertise in child abuse, represent a distillation of a common opinion. I assume that Mrs. Lo's comment was based largely, if not entirely, upon her experience in Kim's case. In that case there was no "team" approach and there were no recorded or defined plans or goals. Mr. Zwerver's comment was much more broadly based and comprehensive.

Mr. Zwerver's comment set forth in a few sentences the gist of much of the testimony of others. Work upon child abuse cases is stressful and onerous. Workers on such cases require support from others, both inside and outside the children's aid society. They themselves require special aptitudes, knowledge and experience. If possible two workers should be assigned to the initial investigation of any case so as to separate as much as possible the investigative and later management phases of the case.

There was an abundance of testimony upon the Inquiry as to the desirability of children's aid

societies assigning specially qualified workers to abuse cases. The bulk of the testimony suggested that only such highly qualified workers should be assigned to such cases.

However, Dr. Turner, while adopting the thrust of that testimony, relaxed it somewhat. He was asked to comment upon Mrs. Lo's being assigned to Kim's case. His response was:

"A. I presume in this situation Your Honour, that assign means giving considerable responsibility for the case and in that instance, I have of course very grave concerns. I'm not concerned that Mrs. ... a person such as Mrs. Lo might be a part of a case because certainly there are agencies who make use of this type of person as a resource, as an added input into a case but I am increasingly convinced and the evidence is overwhelming that we need our... absolutely most qualified people on these cases and that in no way is going to ensure that we won't make mistakes but it certainly is going to result in cutting down on mistakes being made.

I would want to know and hope that Mrs. Lo received at least some basic orientation to the nature of child abuse cases and one thing that is very much on our side in these days is that because of the very high interest in this type of case, there is just an abundance of excellent literature around that would be useful for someone - even if they did no more than two or three weekends of reading on it would be at least a minimum orientation to it..."

. . .

"...And I'm not saying that the Mrs. Los of this world cannot be helpful in this type of case but it's even more serious if we have assigned them to take on these responsibilities without preparing them for them."

In my view Mr. Zwerver was correct in his testimony to recognize the importance of the task of

social workers assigned to child abuse cases. He said the very lives of children are the responsibility of those workers. He said such workers should be "seasoned and specially trained."

Dr. Bates spoke of the subtleties of child abuse that might be "easily missed by someone who is not conversant in a problem." That too is a valid concern.

In my view the general concept that cases of child abuse are serious, difficult, complex, stressful and demanding is correct. I accept the ensuing proposition that therefore they should be assigned only to fully knowledgeable and experienced and well qualified workers. I use the verb "assign" in the sense suggested by Dr. Turner, namely that assignment connotes the assumption of responsibility for the direction or management of the case or for the performance of important functions or the making of important decisions in the case.

I do share Dr. Turner's view that in appropriate cases, after acquiring some knowledge of the phenomenon of child abuse, qualified social workers, inexperienced in field work upon child abuse, might be assigned to specific tasks or roles in a case under the supervision of the senior worker who shall remain responsible for the entire case. By way of analogy, I envision a relationship not unlike that of master and apprentice or barrister and student-at-law. Without such a means of introduction to the practical application of knowledge gained in an academic setting or from literature no one could become an experienced worker qualified to assume responsibility for cases at some time in the future.

It would seem to me that service as a junior member of the society's abuse team could form a useful part of the society's in-service training of workers who, in the opinion of the supervisory personnel of the society, possess other attributes to enable them to become qualified to work upon cases of abuse.

In my view every children's aid society should have a group of its workers who constitute its own child abuse team and who participate in the function of the community's child abuse team. The

society's child abuse team should be an elite group, men and women specially selected on the basis of aptitude, knowledge and experience to qualify them to provide the society's services to children and families affected by child abuse.

There should be provision for in-service training to ensure that the members of such a team are kept aware of developments in relation to child abuse cases and that they remain properly qualified. There should be provision for in-service training of other social workers selected by the Society's supervisory personnel so as to enable such workers to progress to membership in the child abuse team.

Upon the testimony as to the incidence of abuse it may very well be that the number of abuse cases will not require the full attention of any or all of the members of the child abuse team. If so that is advantageous in two ways.

Firstly it ensures that workers will have some respite from the stresses and tensions of child abuse. Testimony and other material discussed upon the Inquiry indicated that the demands of child abuse cases upon workers were such that workers should be relieved therefrom by assignment of other duties in whole or in part.

Secondly the highly qualified workers will have an opportunity to further the society's programmes to prevent abuse, which are of paramount importance to the ultimate solution of the problem, and to provide to other personnel certain parts of in-service training in abuse. In the same vein the members of the abuse team will be able to expand and refresh their own knowledge, by reading, study or attendance at seminars and the like.

The matter of personnel to be assigned to cases of abuse is a part of the subject matter discussed in the Garber Report with reference to Recommendation #19 therein. That recommendation calls for the provision, province-wide, of a protective service intervention "by persons who are classifiable as social workers, under the regulations of The Child Welfare Act and who have had specific training and experience in child protection, investigation, intervention, and apprehension." That statement as to the

qualification of personnel is in accord with the tenor of the testimony upon the Inquiry.

20. I THEREFORE RECOMMEND THAT each children's aid society select from amongst its social workers an appropriate number of persons to form the society's child abuse team. The social workers so selected shall be qualified for such assignment by reason of personal aptitudes, knowledge, skill and experience especially required to deal with all phases of child abuse cases. One or more members of that team shall be readily available at all times to provide service to existing or new cases as required. That team shall be assigned to provide service to all cases of abuse for which the society is responsible. Primary responsibility for an individual case will be assigned to an individual member of the team after discussion of the case by the team. One member of the children's aid society's management or supervisory staff shall be assigned as the resource person to whom the worker primarily responsible and the associated team of the society's workers may look for support or advice in case an emergency arises when normally desirable conferences cannot be convened, and who also will attend such regular conferences in relation to the case. Active service upon the team shall be rotated among the society's properly qualified social workers. Members of the team should be assigned to other duties as well. Less qualified social workers shall receive in-service training with the team so as to attain proper qualification and appointment to the team in due course.

RECOMMENDATION #21

Testimony upon the Inquiry demonstrated the necessity for prompt and thorough investigation of all reports or cases of abuse. Kim's was a case where the investigation was neither prompt nor thorough. That deficiency contributed to the final sad result.

Dr. Singh asked Mr. Khattab to conduct an investigation in March, 1975. Mr. Khattab confined himself to conversation with Jennifer Popen. He made no investigation in any real sense. He did not even make a report upon his conversation with Jennifer Popen.

In June, 1975 the Sarnia Police Force was not prompt in its responses to Dr. Jumean's telephone call. Almost a day went by before the police contacted the Society. The Sarnia Police Force had done nothing to inquire about or to ensure Kim's safety in the meantime. The police left the matter in the hands of the Society and conducted no independent investigation of any of the contents of Dr. Jumean's conversation with Staff Sergeant Allan.

In June, 1975 the Society responded promptly to information from the Sarnia Police Force. However the response was limited to only the most initial phases of a proper investigation. Further investigation was needed. That need was recognized. Nothing was done.

From September, 1975 to February, 1976, after another injury brought Kim to their attention on August 31, 1975, the Sarnia Police Force and the Society were again involved. The police investigation appears to have been sketchy. The Society, represented by Mrs. Harvey and Mr. Carter, conducted virtually no independent investigation because of their acceptance of Mr. Higgins' statements purporting to limit the Society's contact with Jennifer Popen and Annals Popen.

All in all the court proceedings arising from Kim's suffering and injuries proceeded without adequate investigation by anyone. The prime responsibility lay upon the Society which, by section

6 (2) of The Child Welfare Act, was bound to perform certain duties, including:

- "(a) investigating allegations or evidence that children may be in need of protection;
- (b) protecting children where necessary;
- (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;"

Both Dr. Turner and Dr. Bates in their testimony stressed the importance of investigation of all incidents or reports of abuse. The purpose of such investigation is not necessarily to support proceedings against parents, as by a prosecution under section 40 of The Child Welfare Act as was undertaken against Jennifer Popen and Annals Popen. Nor is the purpose necessarily to support an application by a children's aid society to obtain custody of a child, as the Society sought to do in respect of Kim.

The investigation should be broad enough to enable its results to be available for use upon any such prosecution or application if it were thought necessary to institute any such proceedings. But the prime purpose of the investigation should be to obtain information which will be helpful in preventing further instances of abuse to the same or other children in the family and in enabling the children's aid society and other social or community agencies to assist the family and protect the child.

Dr. Singh's request to Mr. Khattab in March, 1975 embodied that concept. He asked that there be an investigation of "the environmental and social status the [Popen] family lives in."

Dr. Turner in his testimony spoke of the need for investigation to enable those responsible for the treatment or management of each case to be in possession of accurate information. That information is needed to provide a proper basis for the necessary assessments and decisions to be made from time to time during the case. Such assessments and decisions might relate to such matters as the gravity of the

situation, the probability of the occurrence of any particular outcome of the case and the steps or procedures to be taken or instituted to achieve a desirable result. Dr. Turner spoke of a social history or psycho-social history of the family as being an essential part of any such investigation.

Dr. Turner spoke of the need for the responsible agency in each case to determine the full nature of that case. He said that agency should be able to assess the strengths and limitations of the case. To do so it would have to consider what information it already had, what further information was necessary or desirable and what information might be available upon investigation.

He said that in many instances information is obtained too late to be useful in the particular case. Kim's was an example of that. Information about Jennifer Popen was not obtained until after Kim's death. He said that the agency should know that one of the problems in cases of abuse is that information is often, but not always, available and sometimes, though available, is not obtained.

As Dr. Turner testified to that effect I could not help but think of how appropriate his words were to Kim's case. A comparison of the testimony upon the Inquiry with the testimony upon the trial of Annals Popen upon the charge under section 40 of The Child Welfare Act and with the testimony upon the hearing of the Society's application for custody of Kim demonstrates Dr. Turner's testimony.

The paucity of the information acquired by the Society in relation to what was available had there been an adequate investigation by the Society was demonstrated by Mr. Lovatt's statement in testimony upon the Inquiry that:

"...at that time [February, 1976 after Annals Popen was found guilty upon the charge under section 40 of The Child Welfare Act] we did not know too much about the background of this girl [Jennifer Popen]."

His use of the word "too" before the word "much" was gratuitous. He might better have acknowledged that

the Society knew little, if anything, about Jennifer Popen. He continued to say he had been shocked that Annals Popen rather than Jennifer Popen had been found guilty. He said Mrs. Harvey and he decided that the Society would place its emphasis upon Jennifer Popen despite the result of the trial. One reading Mrs. Lo's recordings would not know that she was privy to any such decision. Nothing in the files of the Society reflect such a decision.

Detective Inspector Hill was able to make available to the Inquiry an abundance of material which, without undue effort, would have been available to the Society in 1975 and early 1976. That material related to Jennifer Popen's background.

The only apparent excuse for its not being known to the Society in 1975 and 1976 was that the Society had been prevented from seeking it out because of Mr. Higgins' restriction upon Mr. Carter's work. Mrs. Harvey at one point in her testimony was involved in the following exchange of questions by counsel and her responses thereto:

"Q. Yes, you see I'm trying to get a handle on the priorities for the case as you saw it in the Fall of 1975, and the suggestion in your testimony so far has been that it was a big priority to get the Judge to make an order so that the child would be officially under your care. Do I understand that correctly?

A. Yes, after we had the child in our care then the second priority would be to ensure that she stayed in our care.

Q. And up until the time that you got that order the need to actually get it predominated over any need to do further investigation or further groundwork, is that what you're telling us?

A. If we could have done the investigation and groundwork that would have been as important as getting the case to the court because the two things go together.

Q. Yes.

A. You cannot separate them.

Q. That's right.

A. They would have gone together, but we were somewhat handicapped.

Q. You weren't able to do that and so the only thing that you were striving to do was actually get an order.

A. I wanted to get an order so that we could get the lawyers out and the C.A.S. in.

Q. And what I am attempting to do is understand it from an experienced supervisor's point of view. I think you just put it in a nutshell there in your last statement that you wanted to get control of the case as opposed to other parties that were interfering.

A. Yes, we wanted to be able to get in there and get some work done for this family.

Q. You had missed basically six months from the beginning of August to the end of February?

A. Yes, it was a dreadful waste.

Q. When you could have done a lot of work for the family.

A. Yes."

At another point in her testimony, when asked about the climate surrounding the court proceedings up to and including February, 1976, Mrs. Harvey had said:

"A. Well, for one thing, you have had testimony from Mr. Carter that he was experiencing difficulty in interviewing the Popens. We were not able to get in there and do the work that we were supposed to be doing.

Q. Investigation of the Popen house?

A. Yes, and working with the parents and finding out more about them, which is what one does."

Kim's was a case which, in my view, demonstrated the unfortunate results which might flow from inadequate investigation. Even apart from the entirely inexcusable lapse from June 17, 1975 to September, 1975, during which time there was no investigation in respect of Kim, the Society did nothing of a substantial nature to investigate the circumstances of Kim's family after September, 1975. That lack of investigation continued after February, 1976, when the Order supposedly so desired by Mrs. Harvey was issued. To use Mrs. Harvey's words, Mr. Higgins was "out" and the Society was "in." Even then the Society did not avail itself of the opportunity to obtain information which was quite easily and readily available, but was not, so far as I am aware, known to the Society until the Inquiry was undertaken. Such information certainly was not a demonstrated factor in any decision relating to Kim made by the Society during her lifetime.

I am satisfied beyond any doubt that the absence of prompt and thorough investigation by the Society in 1975 and 1976 was one of the most serious factors contributing to Kim's death. In that regard it was exceeded only by Mrs. Harvey's decision that Kim was to be returned to her parents even in the absence of an adequate investigation.

Mrs. Harvey said that it was not until later, I presume she meant after Kim's death, or at least after February, 1976, that she learned that the Society might have applied to the Provincial Court (Family Division) of the County of Lambton to avoid any impediment which Mr. Higgins sought to place in the way of investigation by the Society's personnel.

I am not clear as to what she felt might be accomplished by such an application or as to her belief that the Court had jurisdiction to entertain it. I would have serious concern about the efficacy or propriety of any order appearing to require a parent in the position of Jennifer Popen and Annals Popen from September, 1975 to March, 1976 to submit

to "quizzing," to use the verb attributed to Mr. Higgins, by investigators on behalf of an adversary such as a children's aid society or police force.

It may very well be that skilled counsel for the children's aid society might gain an advantage from that sort of attempt by opposing counsel to limit investigation. The only advantage would seem to be to obtain access to the home to inspect the physical conditions therein.

The deficiencies in the investigation of Kim's case by the Society and the absence of practices and procedures to be followed supply another demonstration of the need for the enactment in 1978 of paragraph h of subsection 2 of section 2 and subsection 3 of section 6 of the present Child Welfare Act. I have dealt with that at greater length in my comment leading to Recommendation #15.

With ongoing review and amendment of the standards of services and the practices and procedures by the Ministry and the fulfilment of the Ministry's duties to enforce compliance therewith by the children's aid societies, we should be able to minimize the chances of another case like Kim's.

21. *I RECOMMEND THAT upon receipt by a children's aid society of any report or information relating to abuse or suspected abuse of a child the children's aid society must forthwith commence and diligently complete a thorough and orderly investigation. Procedures for the conduct of any such investigation should be devised by each children's aid society in a manner to satisfy or exceed standards therefor prepared or to be prepared and maintained by the Ministry. Those procedures should entail a prompt recording, in permanent form, of*
- (1) the source, if known, and the contents of the report leading to the investigation;*

- (2) the preliminary results of the initial investigation;
- (3) the assessment of those preliminary reports including such matters as the gravity of the case and the need for further investigation or other action;
- (4) if further investigation or other action is required, the nature and purpose thereof and
- (5) the assessment of the complete investigation and its results.

Like all standards those standards must be the subject of on-going review and revision, if indicated.

RECOMMENDATION #22

Having stated the obvious need for prompt, orderly, organized and thorough investigation of reports of abuse or suspicion of abuse there remains the question of the personnel who should be employed to conduct such investigations.

The testimony upon the Inquiry overwhelmingly supported the concept that child abuse in all of its facets was such a complex matter with so many subtleties and variations that only highly trained and experienced personnel should be involved in cases of abuse.

There was no suggestion that the investigative phase of any case should be handled by other than such highly trained or experienced personnel. There was testimony to suggest that the initial investigation and the assessment of its results could be among the most important phases of any case of child abuse.

In his comment upon the events of June 17, 1975 in relation to Mrs. Saul's call to see Kim, Dr. Turner expressed the hope that Mrs. Saul, even at that time, with the information then given to the Society, would have recognized that it was a critical case. He said virtually all of the indicators of a situation of high risk to Kim were present. There were reports of prior injuries and admissions to hospital which should have been verified immediately. There was the factor of repetition of incidents.

Dr. Turner spoke of the serious alarm that all of that should have caused to a social worker functioning adequately in the field. His testimony suggested that then, or very shortly thereafter, after investigation of the reports of prior incidents, consideration should have been given to the apprehension of Kim by the Society. Dr. Turner said it was a matter of judgement of the initial worker as to whether or not the child should be apprehended at once.

Dr. Turner emphasized the need for evaluation of the situation by the social workers initially assigned to a case. He said mere reporting, without evaluation and assessment, is not

sufficient. Evaluation and assessment entail judgement.

I am satisfied that, from the very beginning of any child abuse case, specially trained and experienced social workers should be assigned to it. Less well trained or less experienced workers may be assigned as assistants in the case so that they too may obtain the field training and experience necessary to complement their academic training and education. That is one aspect of in-service training.

There may be instances in any children's aid society when such trained and experienced personnel are not immediately available to enter upon the initial investigation. That should not be cause to delay the commencement of the investigation which should then be undertaken by the most highly qualified workers available. In such an instance the initial workers should be relieved as soon as possible by fully qualified social workers.

Dr. Bates in his testimony suggested that children's aid societies should more often seek the assistance of police officers in the investigative stage of serious or difficult cases of child abuse. He based that suggestion upon his opinion that, by the very nature of their employment, police officers were among the most highly trained and experienced investigators in the community.

There was other testimony to the effect that responsibility for investigation of a report of abuse and thus possibly direct responsibility for the prosecution of criminal or quasi-criminal charges against a member of the child's family or the presentation of an application to declare the child to be a child in need of protection could create difficulties for the social workers of a children's aid society in the future management and treatment of the case. The suggestion was that the family might regard the personnel of the children's aid society as being responsible for the family's problems in such proceedings and thus might be less amenable to the efforts of those same social workers to assist and counsel the family after the conclusion of such proceedings. The result might be that the social

workers would be less effective in the management and treatment stage of the case.

It is a natural extension of that to suggest that social workers of a children's aid society responsible for the investigation of any case and the prosecution of any charge against a family member or an application to court in respect of the child should be a separate group apart from the social workers who ultimately will treat and manage the case. Those latter workers require a rapport with the family which they may not be able to develop if they have been in the position of testifying in court seemingly against the family.

In my view that latter position of apparent conflict in the two roles of the workers, that of investigator and possible adversary and that of supportive, helpful and understanding advisor, is not confined only to cases of abuse.

22. *I RECOMMEND THAT each children's aid society shall ensure that an appropriate number of its social workers, specially selected on the basis of aptitude, knowledge and skills, are specially trained to investigate reports and cases of child abuse and to report thereon promptly. Any such report shall contain the author's assessment or evaluation of each facet of the investigation together with recommendations as to what, if anything, might flow from the investigation and what further, if anything, might be necessary or desirable. Investigation of any report or case of child abuse should be entrusted only to such specially chosen and trained investigative social workers who may be assisted by other social workers who may be receiving in-service training in investigation of child abuse. The temporary absence of such specially trained investigative social workers should not delay*

the commencement of the investigation. It must begin at once with the most qualified social workers who are available and who should be relieved as quickly as possible. If its complement of social workers justifies or enables it to do so, each children's aid society should seek to ensure that the investigative social workers are not in direct contact with the family during the management and treatment of the case after finalization of any court proceedings arising from the investigation.

RECOMMENDATION #23

I recognize the validity of Dr. Bates' testimony as to the investigative expertise of police officers. There will be reports or cases of child abuse which may be beyond the investigative capability of social workers. If the social workers feel they lack the necessary skills the children's aid society should not hesitate to request assistance from the police. That should help to ensure an adequate investigation. That should help to protect the child and the community. The police must respond promptly and adequately to any such request.

Apart from difficulties of investigation there may be other circumstances which should lead to the involvement of police officers.

The nature of the abuse would be one such factor. Police should be informed of instances of certain types of abuse, but the classification of those types will depend upon the judgement of the social workers. Criteria for the exercise of such judgement should be developed by discussion among the children's aid society, the Crown attorney and the police.

It is my view that physical injuries as serious as Kim suffered in 1975 were such as would merit referral to and action by the police, but a report of abuse which related only to a failure of the child to thrive slightly less well than expected might not merit such a referral or action. Other abuse, such as sexual molestation, may, by its very nature, require such a referral as a means of protecting other children in the home or in the neighbourhood.

A children's aid society may also find that referral to the police is helpful in the establishment of the rapport necessary for its successful long-term management of the case. In establishing that rapport with the family the children's aid society must be careful not to denigrate the police in the eyes of the family.

In the event of any referral of a matter to the police the children's aid society should ensure that it is kept fully apprised of the investigation

by the police and its results. The children's aid society still remains responsible for ensuring that all information needed for its purposes is obtained.

23. *I RECOMMEND THAT in any instance of abuse or alleged abuse which, in the opinion of the child abuse team of the children's aid society, should be investigated by police officers the children's aid society should promptly inform the police force responsible for the provision of police services to the community and request its co-operation to conduct the investigation and, if deemed necessary, to gather particular information for the assistance of the children's aid society in its investigation, management and treatment of the case. The police must promptly assume conduct of the investigation and collection of information and must keep the children's aid society fully informed thereof. There should be a confidence between police officer and social worker to ensure a full exchange of information. This may require the Ministry to obtain the co-operation and support of the Ministry of the Solicitor General.*

RECOMMENDATION #24

As written in relation to the preceding recommendation, the testimony upon the Inquiry contained reference to the special skills of police officers as investigators of allegations or incidents of abuse. It was suggested that local children's aid societies should avail themselves of those skills.

There was however some concern that police officers would be interested only from the point of view of gathering evidence to establish guilt and, thus, might not be prepared to investigate other facets of the case which would be of interest to social workers responsible for the long term management and treatment of the case.

I do not recall that this was expressed in so many words, but I gathered that the concern was that police officers, by reason of their training and experience, would seek to gather evidence to show the nature of the abuse upon the child and to identify the person or persons who inflicted it and the time, place and method of its infliction. It seemed to be suggested that other aspects of the aetiology of the abuse would be of no concern to police officers and thus would not be investigated by them. Such aspects might include the background of the parents, their psycho-social history as it were. They might also include other possible causative factors which indicated crisis in the home or that the child was, for some reason, a high-risk child.

I am not prepared to say that such concerns about the limitations of the interest of police officers are valid. For my own part I would hope that they are not. I am encouraged in that by the testimony that members of the Sarnia Police Force have been valuable participants in the function of a community-based child abuse committee in the City of Sarnia. There was other testimony that generally participation of police forces in such committees was desirable and important. I regard that as recognition that one of the functions of a modern police force is to prevent crime and breaches of the law. There was no testimony upon that latter point, but I take it to be common knowledge that crime prevention is a modern police function.

I mention that latter concern only to strengthen the basis of the second part of my next recommendation. If that concern is valid, that part of the recommendation will overcome it.

Local police officers can assist the staff of the local children's aid society in various ways, not only in investigations of cases of abuse. There was testimony upon the Inquiry to show that police officers having contact with families in performance of other police functions often acquire information which may be helpful to the children's aid society in dealing with those families in a variety of ways. That was one of the reasons given for the need for the participation of police officers in community-based operations such as child abuse committees.

It would seem to me that police participation in the operation of a child abuse team could, without too much difficulty, be expanded to make police investigative skills available to children's aid societies. I would think that police officers assigned to assist a children's aid society in a particular investigation, as well as their superior officers to whom they report and, if need be the Crown attorney, would be entitled to exercise discretion and refrain from laying criminal or quasi-criminal charges if it appeared that the best results, having regard for the child, the family and the community, would be achieved without such charges being laid.

If I be correct in that belief the police participation in such a local child abuse team could include that investigative element.

If I be in error in that belief or if the local police administration or Crown attorney feel obliged to prosecute every instance of abuse regardless of the effect of mere prosecution of the charge apart from any finding of guilt resulting from such prosecution, then I move to the second part of the next recommendation.

This recommendation assumes that the only inadequacy within the local children's aid society's ability to deal with abuse is in the area of investigative skills. An alternative to a request for investigative assistance from the Ministry would

be a request for such assistance from the local police force. Such a request would be made upon the understanding that the investigation is only a part of the overall management and handling of the case and that the laying or prosecution of criminal or quasi-criminal charges should not inevitably in every instance follow if the investigation reveals abuse and identifies the perpetrator thereof.

If, for any reason, an understanding between the children's aid society and the police force such as I mention in the recommendation cannot be reached, the local society should employ its own investigative personnel. Those persons could very well be men and women who have retired or resigned from police forces. They need not be permanent employees of the children's aid society.

Bearing in mind that incidents or reports of abuse may occur at any time, the children's aid society should arrive at such an understanding with the local police force or arrange the employment of its own personnel so that properly skilled investigators will be immediately and always available to assist other employees of the children's aid society in the overall handling of the case.

While I have written of the possible involvement of police officers in the investigative phases of abuse cases it must be realized that investigation of cases of abuse cannot be limited to ascertainment of the fact of abuse and of the identity of the perpetrator of the abuse. Thus even persons who have had extensive investigative experience in criminal matters will require instruction with reference to information desired or needed for the further goals or purposes of investigation of cases of abuse including subsequent planning, management and treatment of the case by the children's aid society.

Dr. Bates in his testimony spoke of the need for the investigation to provide information which will be useful to those who are obliged to prepare and implement the plan for the management of the case and the protection of the child. He spoke of the need for information upon which to base assessments of the family and of the child. He said the investigation should seek information about the

childhood and past history of each parent, about the relationship of the parents in their marriage or otherwise one to the other, their functioning in the community and their extended families and their relationships with the child and between themselves.

Dr. Turner had similar expectations of what might come from an adequate investigation. He spoke of the need for a psycho-social history of the family.

It was stressed in testimony upon the Inquiry that at no time during Kim's life did the Society, responsible for her care and protection, have sufficient information about the background of her parents. Upon the Inquiry such expression of opinion was largely, and I think deservedly, directed to an absence of information about Jennifer Popen. It might just as deservedly be directed to the lack of information about Annals Popen. The Society had made no adequate investigation such as Dr. Singh envisaged in March, 1975.

24. *I THEREFORE RECOMMEND THAT if a local children's aid society lacks personnel qualified and skilled in the techniques of investigation of child abuse, or if the assignment of its personnel to investigation of an incident or report of abuse may diminish the society's ability to deal with other facets of the case, or if the nature of the case is such that it is necessary or desirable that the police be informed of it, the society should enlist the assistance of the local police force to conduct the investigative phase of the case. In such an instance the assistance should be given upon the pre-arranged understanding that, despite what may be revealed upon the investigation, criminal or quasi-criminal charges will not be laid if they might prevent or hinder the successful attainment of an overall satisfactory*

*conclusion to the case in the
best interests of the child, the
family and the community.*

RECOMMENDATIONS #25 and #26

Throughout this area, perhaps by reason of the very nature of Kim's case, the testimony and opinions of witnesses were directed towards incidents of abuse of children by parents or other members of the family. My remarks have been similarly limited although, subject to my remarks upon the adequacy of that particular portion of the 1978 legislation, I am prepared to have them apply to situations in which parents or persons having charge of children permit them to be abused by others.

An incident of abuse of a child by a member of the child's family or permitted by a member of that family would seem to me to be of the sort requiring the extensive and thorough investigation mentioned in the testimony. If the child were abused by a comparative stranger, such as a baby-sitter or teacher, or by an utter stranger, assuming the act was not permitted by a member of the child's family, there would not appear to be a similar need for an investigation into the family of the child, but rather it should be into the background of the stranger.

The following recommendations relating to investigative procedures assume that the investigation relates to an incident where abuse of a child was perpetrated or permitted by a member of that child's family.

There was testimony as to Jennifer Popen's feeling of isolation even amongst other members of the extended family of Annals Popen in and around the City of Sarnia.

I accept the view inherent in the testimony that an investigation of an incident of abuse is incomplete until and unless it provides information which will enable those responsible for the management of the case to make accurate assessments of or decisions upon the myriad of situations and problems in the case and the facilities and solutions available to deal with them.

The investigation must enable those responsible for the overall management of the case to know more than that the child was abused and that the

abuse was inflicted by a particular person. Those matters in themselves are important, but more information is needed. Among that additional information would be such things as:

- (a) What is the relationship between the child and the abuser?
- (b) Why was the child abused?
- (c) What will prevent a recurrence of such an incident?

Determination of the relationship between the child and the abuser would not usually require a great deal of investigation.

Determination of why the child was abused and of what may prevent a recurrence of abuse may require a great deal of information. Those who are conducting the investigation will not necessarily be required to make such a determination, but they will require knowledge of the information which is required to enable others to make the determination. That information will involve the psycho-social history of the family supplemented by some information about the child and his or her position or status in the family.

In the second of the two recommendations which follow these comments I call for a probing investigation of the child's family to enable the best decision for the care of the child to be made.

It is in this area where I find a deficiency in the provisions of section 29 of the legislation enacted in 1978. Section 29 empowers the court to require persons having charge of the child to attend for certain assessments. But the court may make such an order only after the child has been found to be a child in need of protection.

Elsewhere I express the view that it should be possible for the court to make such an order at any time during the proceedings and in respect of anyone residing in or frequenting the home in which the child lived or would live if returned by the children's aid society. The results of such an assessment may assist the court in determining the issue of the child's need for protection.

25.

I RECOMMEND THAT those assigned to investigate instances or reports of abuse be aware of the use to which the results of that investigation might be put. To that end those who conduct such investigations will require special training to make them aware of the various matters in respect of which they must seek information. In brief they should be trained to prepare a psycho-social history of the family.

RECOMMENDATION #26

26.

I FURTHER RECOMMEND THAT in every incident in which abuse of a child has been caused or permitted by a member of that child's family the investigation into the abuse must be probing, broad and comprehensive. It must seek to obtain information to enable those who must make decisions as to the future care and well-being of that child to make correct and valid assessments or diagnoses of the various factors in the case and thus to make appropriate decisions.

RECOMMENDATION #27

In detailed elaboration upon those basic recommendations I want now to consider briefly some of the specific areas that witnesses suggested might be the subject of such an investigation. In each instance it is my opinion that, if the factual circumstances of the particular instance under investigation support such avenues of investigation or inquiry, the investigators should make appropriate inquiries.

In many instances the testimony now mentioned was given as a means of illustrating the views of the deponent that the presence of certain factors in or about a child's life and family might support a conclusion, even before any incident of actual abuse of the child, that the child might be a high-risk child, a child who was more likely than others to be abused.

One such factor allegedly present in Kim's life and family was the isolation of one or both parents in the community generally or in the setting of the extended family. There was testimony particularly as to Jennifer Popen's feeling of isolation within Annals Popen's family.

It was suggested that such isolation would interfere with or prevent the full use of community or family resources by the parent or parents affected. In short the presence of a sense of isolation was a factor that might cause a person skilled in the matter of child abuse to have concern for the safety of a child in such a family.

Dr. Bates gave several examples of situations affecting a particular child which might be factors to be considered in assessing whether or not that child might have been or might still be exposed to a higher than usual risk of abuse. He said it was possible to predict what types of children might be abused.

He spoke of the child whose parent or parents have unreal expectations of the child. The child is expected to be well, happy and well-behaved at all times, perhaps to demonstrate to the world how fine is the home in which he or she lives. He said

that such a parent might regard any normal childhood behaviour, such as crying on occasion, rejecting food, soiling diapers or clothing or even having usual childhood illnesses, as being a reflection upon the ability of the parent to be a good parent. A child of that parent would be a high-risk child.

He spoke of the child who was unwanted by one or both of the parents. That child would be a high-risk child.

He spoke of the child who was wanted, but who was wanted for the wrong reasons. One such wrong reason would be to fulfill some need of a parent, such as to have a child who will be abnormal and perhaps achieve the parent's unreal expectation of the child, thereby giving the parent a sense of elation that he or she is a fantastic parent. He said that if, by chance, the child does so achieve those expectations, the parent probably will not abuse the child. If the child does not achieve the expectations, there is an increased risk that the parent will abuse the child.

He spoke of the difficult child, one who was difficult for perhaps one or more of several reasons. Such a child might be hyperkinetic, or have behavioural or learning problems, or suffer some illness or be mentally retarded. Such children are prone to suffer abuse.

He spoke of the premature baby who is taken from the delivery room to a high-risk nursery and thereby separated from the parents. Bonding does not occur between parent and child. Such a child is a high-risk child.

He spoke of the children who are different, perhaps because they are mongols, perhaps because they have some physical abnormality. Such a child is a high-risk child because the parent may view the child as testimony to his or her inadequacy to be a parent.

He spoke of children who remind the parent of something or someone the parent wants to forget, such as a former spouse or common-law partner. The child may have physical or other characteristics of that former spouse or partner. When the parent is

angry with the child, the parent may strike out more because of the child's resemblance to the former spouse or partner. Such a child is a high-risk child.

I am confident that Dr. Bates recited only some of the types of children who, predictably, are more likely than others to suffer abuse. From the examples he gave it would seem to me that determination of whether or not a child is a high-risk child depends upon many factors. Some may be readily apparent and almost objective in nature. Others may be found only by careful and thorough investigation. These latter are subjective in nature.

Determination of that question can be made only by persons who have been well-trained with reference to abuse. Those who conduct the investigations will require special training so that they too are aware of what they should be looking for.

This is another recommendation which, if implemented, would provide greater benefit to the child if section 29 of the present legislation were amended to extend the range of persons who may be required to attend for assessment and to enable the court to make such an order at any time during the proceedings.

27. *I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not the child involved is, for any reason, one of any class or classes of children who may be high-risk children, children more likely than others to be abused. The investigators will require special training in this area, particularly in relation to the factors which are subjective in nature.*

RECOMMENDATION #28

Dr. Bates also spoke of other matters, not centred on the child, which might indicate a greater likelihood that the child has been or may be abused. These were related to the parents or one of them.

Some of his comments appeared to relate directly to Kim's case when he said:

"...Do the parents appear inappropriate? Do the parents appear to be inadequate in parenting abilities? And how can a person who is married at age 13 or 14 really fulfill a role as a parent? It is very difficult when you have had a poor childhood before that, entered a marriage in early adolescence, not had time to mature, when one is going through puberty and then you are thrown into motherhood and you have missed so many stages of your life already. It all paints a picture of crisis and problems to come later.

Now the majority of parents who abuse are not psychotic - perhaps one to two percent. A lot of them have severe personality disorders but the major problem rests on what I have talked about here."

As Dr. Bates spoke I thought of Jennifer Popen and her testimony as to her age, childhood and marriage.

This is another recommendation which will provide optimum benefit to the child only if section 29 of the present Child Welfare Act is amended as I suggest elsewhere to expand the group of persons in respect of whom an order as contemplated thereby might be made and to enable the court to make such an order at any time during the proceedings.

28. *I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not one or both of the parents is or are inappropriate*

or inadequate in any way, whether physically, mentally, developmentally, emotionally or otherwise. This too is an area in which the investigators will require special training and instruction.

RECOMMENDATION #29

The testimony upon the Inquiry was that in many instances of abuse the parents who bring the child to a hospital or doctor for treatment do not have an adequate explanation for the injury suffered by the child. This was so in Kim's case in March, 1975, in August, 1975 and, finally and fatally, in August, 1976.

The testimony of medical doctors was that in many instances the particular injuries could be caused only, or at least most likely, by abuse.

It was suggested that an investigation of a report or instance of abuse would be incomplete without a thorough medical examination of the child.

In light of the forms of abuse which may cause impairment of the child's development, but which might not be revealed by a medical examination without further tests, it would seem reasonable that the medical examination be accompanied by such other tests as the medical personnel or other professional consultants retained by the children's aid society or the police investigators may recommend.

The very presence of conditions discovered by such examinations and assessments may assist in determining whether or not the child is in need of protection.

29. *I THEREFORE RECOMMEND THAT in every instance of abuse or suspected abuse those who conduct the investigation, whether they be personnel of a children's aid society or police officers, should ensure that the child is examined by a medical doctor, preferably one with special training in paediatrics and abuse and preferably in a proper facility for such examination, such as the doctor's own examining room or in a hospital. The examination should not be limited to a physical examination, but should include such other tests*

or examinations as the examining doctor may deem necessary to ascertain the development of the child and any impairment which may have been suffered. The medical doctor should be requested to express an opinion as to the likelihood that any injury or condition discovered upon such examination resulted from abuse of the child. If possible the parent or parents of the child should be present or available to give, if he, she or they wish, any explanation or supposed explanation for the injury or condition. Failing attendance of the parent or parents the investigators should inform the doctor or other person conducting the examination of any explanation given for the presence of the injury or condition. The medical doctor or other consultant should be requested to express an opinion as to the validity of any explanation in relation to the injury or condition discovered upon the examination.

RECOMMENDATION #30

Examination of the child is needed to enable the development and implementation of any plan for the care of the child.

Upon the Inquiry much emphasis was placed upon the need for the physical examination of any child who had been abused. It was said that the Society was derelict in not arranging for the medical examination of Kim soon after her return to her parents in May, 1976 and at intervals thereafter.

That testimony seemed primarily to be addressed to physical examinations. However, there was testimony that some forms of abuse which might not be revealed by a physical examination can cause more severe damage to a child. It was suggested that in addition to physical examinations of an abused child there should be other examinations and tests to determine whether there has been any impairment of the development of the child in other ways.

Regulations made under The Child Welfare Act recognize the need for examination of children in care. Section 16 of Regulation 86 in force during Kim's lifetime required each child in care to be medically and dentally examined as soon as practicable after the admission of the child to care and thereafter at intervals of not more than one year. Psychological and psychiatric assessments and treatments of the child were to be provided "where necessary and available."

Section 1 of that Regulation defined a "child in care" as being "a person under the age of eighteen who is in the care of a society in a place other than the home of his parent pursuant to an order made under clause b or c of subsection 1 of section 26 of the [Child Welfare] Act or pursuant to an agreement under section 23a of the Act..."

Provisions quite similar to those of section 16 of Regulation 86 as it was in 1975 and 1976 are now set forth in Section 3 of Regulation 97 under the Child Welfare Act. However I am unable to find in the Child Welfare Act or Regulation 96 or Regulation 97 made thereunder any definition of "child in care."

In my view in Kim's case she was not, from the date of her return in May, 1976, a "child in care" for the purposes of Regulation 86 because she was no longer "in a place other than the home of [her] parent" pursuant to court order or agreement under the statute. Thus, neither the Act nor the Regulation cast any duty upon the Society to arrange any examinations of her. In any event the permitted interval of one year had not expired since Kim was medically, if not dentally, examined just prior to her return in May, 1976.

I have concern as to the sufficiency of the present Regulation in the context of a case such as Kim's. She had been seriously abused on a number of occasions and had been ill on others. There was testimony that an abused child or even one not earlier abused who has been absent from the home for a lengthy period is at unusual risk upon his or her return home and the risk is greatest during the first three months following that return.

Clearly examinations in any such cases after the child's return should be at intervals considerably less than one year. During the period of highest risk the child might be best protected by weekly or bi-weekly examinations.

Apart from the exercise of judgement as to the frequency of medical examinations to comply with the Regulation there remains the basic question as to the meaning of the words "child in care of a society." Without some definition in the Act or Regulations there may be questions as to when a child is in care of a society and thus when the society must arrange examinations to satisfy the requirement of the Regulation.

I appreciate that the latter may appear to be somewhat academic in nature and persons in the field may feel the term has a particular and accepted meaning. But Kim is dead. In part that came about because people assumed certain things would be done by others, but they were not and because they assumed that certain results would flow from certain events, but they did not. I prefer to be certain and to be precise. In my view the Regulation, if not the Act, should contain a definition of the term "child in care." It was felt necessary to have such a

definition prior to 1978; I think it should be restored, but amended so as to provide that a child placed in the care and custody of a children's aid society by court order remains "in the care" of the society until expiration of the order and any extension or variation thereof even if the child is returned to live in the family's home at some earlier time.

Subject only to the foregoing the Regulation requires the society to arrange for medical and dental examinations of children "in its care." Testimony upon the Inquiry was that other examinations might be necessary to detect some injury or impairment not detectable by medical examination. I sensed that the witnesses were addressing themselves to emotional, psychological and psychiatric problems. The Regulation provides that "where necessary and available" psychological and psychiatric assessment and treatment will be provided for such children. The adjectives "psychological" and "psychiatric" may be sufficiently broad to encompass what the witnesses had in mind, but I would prefer to see an amendment to broaden the scope of assessment and treatment to include any assessment or examination of whatever nature may be indicated or recommended by the professional persons retained by the society.

Section 29 of the present legislation contains reference to a wide variety of assessments which may be obtained. That section provides for "medical, emotional, developmental, psychological, educational or social assessments."

In my view the expression "where necessary and available" is too restrictive. The word "available" immediately offends the principle of equality of service throughout Ontario which is discussed elsewhere in this Chapter. If the provision of psychological and psychiatric assessment and treatment were to be required only when such assessment and treatment were "available" children in communities in which a psychiatrist or a psychologist did not reside or practice or remain available would be at a disadvantage, less well served than children in other communities. That should not be. Witnesses spoke against it. I share their views.

Apart from clear-cut cases of larger communities in which services of psychiatrists and psychologists are readily available because of the presence of large general hospitals, when do the services cease to be "available." Is the criteria measured in distance? or in travel time? or in terms of the cost of travel? or in terms of the staff of the society to travel with the child?

All in all, in my view, the Regulation should not contain any reference to the service being "available" with the possible exception that it must be available somewhere in Ontario before the Society is obliged to arrange for such assessment and treatment of a child who has been abused. This should not restrict a society, if it deems it desirable, in arranging for assessment and treatment of a child at a location out of Ontario if such assessment and treatment cannot be provided in Ontario.

I am bothered by the word "necessary." There is no statement as to who is to determine when in the case of an abused child a particular assessment or treatment is "necessary" as opposed to being "desirable" or "recommended." In my view the psychological and psychiatric and other assessment and treatment should be provided if recommended by the physician or paediatrician examining the child as being in keeping with good practice in child care. Witnesses spoke of emotional problems for the child as being an almost certain result of physical abuse. They spoke too of such problems requiring long term treatment.

In my view children's aid societies should at least be encouraged, if not required, to provide thorough medical, dental, psychological and psychiatric assessment and treatment as well as any other assessment and treatment, including, but not limited to, those mentioned in section 29 of the present legislation, which its qualified and experienced medical and professional staff and consultants recommend.

30. *I THEREFORE RECOMMEND THAT the Regulations made under the Child Welfare Act be amended as follows:*

1. to define the meaning of the expression "child in care" so as to make it clear that the expression includes a child from the moment of apprehension of the child by the society or from the moment of any voluntary delivery up of the child to the society or from the moment of any order or agreement committing or placing the child to or in the care and custody of the society, whichever comes first, until the expiration of any such apprehension, delivery, order or agreement and any extension thereof. It should be clear that the child remains in the care of the society if the child is residing physically or visiting the family home prior to such expiration;

2. to require the children's aid society to provide medical and dental examinations and treatment of an abused child as soon as practicable after the child comes into the society's care and thereafter not less frequently than annually while the child remains in the care of the society with the provision that if, while in care, the child is returned to the family home the society shall provide such examinations not less frequently than bi-weekly for at least three months after the child's return home and thereafter shall provide such examinations as often as the child abuse team and the medical and professional advisors of the society may advise in keeping with good practice of child welfare; and

3. to require the children's aid society to provide for such medical, emotional, developmental, psychological, educational, psychiatric and other assessment and

treatment of an abused child in the care of the society and after the child's return home as the child abuse team and the medical and professional advisors of the society deem desirable or advisable in keeping with good practice of child welfare.

RECOMMENDATION #31

There was considerable testimony as to the need for the physical examination of any child who has been abused. I have enlarged upon that to recommend other examinations to enable complete assessment of the child's development.

There was some testimony as to the benefit that might be gained if it were possible to require members of the family of an abused child themselves to be examined in various ways.

From the testimony upon the Inquiry I am satisfied that in Kim's case considerable benefit might have resulted if the Society had sought and been able to obtain examination and assessment of Jennifer Popen and Annals Popen to determine their adequacy as parents and whether or not there was in either or both of them some condition which might have indicated that Kim would be exposed to unusual risk in their home. Some indication of potential problems was available to the Society in March, 1976, had they seen fit to obtain, read and properly assess Dr. Curtin's report upon Jennifer Popen and Annals Popen. Unfortunately, that was not done by the Society.

In my view, if a child has been abused and has been found to be a child in need of protection, the child should not be left with or returned to the family unless and until satisfactory completion of all appropriate examinations of the child and of the members of the family or household who may be the cause of the existence of unusual risk to the child.

From Dr. Bates' testimony, I am satisfied that modern knowledge and skill, supported by information derived from examinations and tests, can detect the presence of conditions which constitute unusual risk for the child. Children's aid societies should take advantage of modern knowledge, techniques and skill.

Section 29 of the present Child Welfare Act does enable the court to "order the child and any parent of the child or other person...in whose charge the child has been or may be, to attend" for a variety of assessments.

In my view that provision should be widened. It should not be restricted to those "in whose charge the child has been or may be." I have expressed a similar concern in my comments preceding Recommendation #25. There may be other persons residing in the family home, such as older siblings, aunts, uncles, grandparents and friends, who, while not in charge of the child, constitute a real risk to the child. One such person may have been the direct cause of the child's earlier injuries.

31. *I RECOMMEND THAT the Ministry, through appropriate procedures, seek amendment of the Child Welfare Act so as to give a judge, hearing a matter thereunder in relation to a child who has been abused or found to be a child in need of protection, the specific authority to require the parents of that child or any person in loco parentis to that child or any person residing in the same home as such parents or person in loco parentis to the child to be examined physically and otherwise as the judge may direct for the purpose of determining whether the child might be at some unusual risk if left or returned to live in that home.*

RECOMMENDATION #32

Section 29 of the present legislation empowers the court to order certain persons to attend for certain assessments.

I have already recommended an enlargement of that provision.

Section 29 empowers the court to make such an order only after the child has been found to be a child in need of protection.

That then would seem to be sufficient from that time forward, but it may not be early enough.

In my view it should be possible for the court to make such an order at any stage of an application to determine whether or not the child is a child in need of protection. The results of any such assessment may be important in that determination.

It may be said that this is forcing a person to testify against his or her will. That is not unusual in civil proceedings where parties to litigation may be required to attend for physical or other examinations by doctors retained by parties in opposite interest. The application in respect of the child is in the nature of a civil proceeding.

In any event the life and safety of the child is more important. If examinations or assessments such as are contemplated in section 29 are of help in protecting the child, compulsion of a parent, or perhaps even one who may not technically be a party to the proceedings but who may, by reason of circumstances, be a threat to the child's safety, to attend for such examination or assessment is a small enough price to pay for the safety of the child.

There was further testimony that plans for a child's care should be developed and implemented as quickly as possible. In Kim's case, if section 29 had been in force in 1975, the Court could not have made the order contemplated in section 29 until the end of February, 1976, six months after she was apprehended.

Delays of that sort may be vital to the treatment and care of the child.

I do not suggest that the results of any such assessment should necessarily be admissible in evidence in any criminal or quasi-criminal proceeding resulting from any abuse of the child. I am concerned here with the well-being of the child now and in the future. I am not in this area concerned with any question of guilt or innocence or punishment or rehabilitation of anyone else.

32. *I THEREFORE RECOMMEND THAT the Ministry seek further amendment of section 20 of the Child Welfare Act so as to empower the court to make an order thereunder at any stage of an application to the court to determine whether the child is a child in need of protection.*

RECOMMENDATION #33

The testimony upon the Inquiry overwhelmingly supported the need for conferences of everyone involved in a case of child abuse to enable a children's aid society to achieve good results in that case. Thus, it is not enough that there be a team approach, but there must be conferences of those team members and, sometimes, others. Those others may be personnel of the children's aid society or they may be persons from other agencies or institutions in the community or beyond. Thus the decisions and resulting actions by the children's aid society upon any case will truly reflect the corporate decision of the children's aid society and not be really the result of one person's opinion. I recognize that, as in other walks of life, competing views and opinions may be expressed in any such conference and that the ultimate decision may have to be taken by a supervisor or even the local director of the children's aid society.

Kim's case was notable for the absence of conferences at its various important stages. Witnesses commented adversely upon that absence. Indeed there were virtually no conferences in relation to Kim.

Upon the basis of the testimony there are several points at which conferences should be convened. Each conference should be attended by persons appropriate to the particular topic to be considered.

The first such conference might be in relation to the initial assignment of members of the children's aid society's child abuse team to the case. In many instances initial assignment might be made by the senior staff member upon the team without any conference simply in the interests of expediency and prompt response to the report to the children's aid society. Thereafter, save and except in cases of emergency or crisis, decisions should be made in conference.

One such decision might relate to the selection of the member of the society's child abuse team to have primary responsibility for the case. That decision might be affected by factors relating

to the case itself or relating to other conditions and other cases within the society. The report upon the first contact of the children's aid society with the case will have to be assessed. That assessment might indicate that the case will require particular skills and that might suggest the assignment be given to one social worker. However that worker may already be overtaxed. So alternatives must be considered.

Consideration of those alternatives might involve consideration of transfer of one or more cases so as to permit assignment of the new case to a desired worker. The whole team, everyone involved with all cases affected by any proposed transfer, should participate in the decision upon any proposed transfer so that the interests of all families and children involved in the cases are best served by the children's aid society.

Apart from questions as to assignment or transfer of duties to personnel there will be points in every case at which decisions will have to be made. Except in case of emergency where it is not practicable to do so, a conference of appropriate personnel, primarily the child abuse team and its direct support staff, should be convened in respect of each decision.

33. *I RECOMMEND THAT each children's aid society develop a procedure and practice whereby appropriate conferences of its personnel and others will be convened to consider all relevant factors and then to make decisions in respect of each case of child abuse. Decisions may relate to the assignment or transfer of responsibility for performance of duties or may relate to any stage or phase of the investigation, planning, management or treatment of the case. The requirement for such conferences should be clearly expressed in the society's manuals of practices and procedures. The Ministry should assist each children's aid society in this effort.*

RECOMMENDATION #34

The bulk of my most recent comment has related to various aspects of the investigative phase of any report or instance of abuse. In the preceding recommendation I have written of the need for conferences at various points in any case, including consideration of transfer of responsibility for the case within the children's aid society.

One point at which responsibility may likely be transferred would be the completion of the investigative phase of the case and judicial determination of any proceedings arising therefrom. However I do not wish to suggest that a transfer of responsibility should necessarily occur at that point or that it might not occur at any other time. I do want to comment upon the need for clear policies and procedures in reference to any transfer of responsibility of a case whenever it occurs or for whatever reason it occurs.

There was a considerable amount of testimony upon the Inquiry which was adverse comment upon the transfer of Kim's case from Mr. Carter to Mrs. Lo. One basis of the criticism was the absence of any conference to consider and then decide the matter. A second basis of criticism went beyond that. It related to the manner in which the transfer, decided upon by Mrs. Harvey, was then effected.

Dr. Turner in a portion of his testimony described some of the benefits accruing from a conference to discuss the proposed transfer of a case within a children's aid society.

It enables the worker presently upon the case to attend to some unfinished matters such as, perhaps, recording his or her activities and observations in respect of the case, the plan devised, the goals set out, the degree to which goals have been achieved, along with assessments, evaluations, opinions and recommendations.

It enables the worker to whom the case is to be transferred to be fully briefed. That avoids duplication of work and perhaps confusion in the minds of the family involved.

It enables review and possibly revision of plans and goals. It enables clarification of areas of uncertainty or possible misunderstanding. It enables an orderly transition and introduction of the new worker to the family. It enables discussion of what further information may be needed or desired for proper management of the case.

In Kim's case, even apart from the absence of discussion as to the advisability of any transfer from Mr. Carter or of any transfer to Mrs. Lo, which amounted to two decisions or at least two parts of one decision, there was no discussion between Mr. Carter and Mrs. Lo. Neither sought out the other to give or receive information or comment. So far as the testimony upon the Inquiry revealed, Mr. Carter did not even say farewell to Annals Popen and Jennifer Popen and Mrs. Lo was required to introduce herself to them.

Dr. Turner spoke of the benefits to be obtained "administratively and professionally and therapeutically" by a planned, orderly and recorded transfer of a case. It would seem everyone would benefit, including the family and the child. None of that was obtained in Kim's case.

The following is a corollary to the preceding recommendation.

34. *I RECOMMEND THAT each children's aid society in its manual of practices and procedures set forth the need for planning and completing the transfer of responsibilities for a case within the society. The manual should be clear and precise and set forth what is required and expected of each supervisor and worker involved in the transfer. It should stress the concern that service to and relationship with the particular family and every other family which might be affected by the transfer should be disrupted to the least extent possible. It should stress the need for the permanent records of*

the case to contain a resume of the reason for the transfer and what was done to effect it and how it was accomplished together with appropriate comment and assessment.

RECOMMENDATION #35

One of the incidents in the handling of Kim's case which attracts perhaps the most severe criticism is that, from June 17, 1975 until August 31, 1975, the case lay dormant and unattended despite the professed concern of Mrs. Saul and Mrs. Harvey, known to Mrs. Dick, as to its serious nature and the need for prolonged service by the Society.

No one offered any reasonable explanation for that lengthy lapse. There was testimony as to the absence of written codes or manuals of practices and procedures within the Society. Mrs. Harvey suggested that in the circumstances of the Society there were well-known and established practices and procedures. The testimony satisfied me that there was no merit to that suggestion. In too many instances employees of the Society had to assume or guess as to what might have happened at various times or points in Kim's case. That was so even in relation to the simple question as to the whereabouts and handling of notes made by Mrs. Saul and Mrs. Dick on June 17, 1975.

The failure of the Society to render any services to Kim and her family from June 17, 1975 was not explained, but it demonstrated the absolute absence or the inadequacy of any system to regulate the orderly management of any case. Two workers wrote reports to their Supervisor. The Supervisor acknowledged the serious nature of the matter and its need for long-term service by the Society. But nothing was done to place or record those notes in the permanent records of the Society, to record the concerns expressed by Mrs. Saul and accepted by Mrs. Harvey or to provide any service to Kim or her family. No one knew or apparently cared about that lack of attention. No one did anything from June 17, 1975 until August 31, 1975 when Kim was again admitted to hospital.

Mr. McCabe in his testimony said that there was a need in the Society for an improvement of internal information systems to enable the administrative or management personnel to monitor what was happening in the Society. He felt the Society was not unique in that need.

Mr. McCabe suggested that depending upon the nature of each children's aid society the internal information system might be sophisticated or crude. He said that in any such system the purpose would be to indicate to everyone in the society that a particular file, marked in some special way, is one which, by reason of the nature of the case, is not to be dealt with, filed away or closed except after a conference including senior staff persons.

Mr. McCabe seemed to presuppose that a file would be opened. In Kim's case, not even that was done until September, 1975.

The testimony upon the Inquiry was overwhelmingly to the effect that, in addition to being difficult and complex, cases of abuse were among the most serious and important matters dealt with by children's aid societies and should be treated as such.

35. *I RECOMMEND THAT each children's aid society develop and maintain an internal information system capable of enabling the administrative, supervisory and management personnel of the society to know at all times the status of every current case in the society. This is especially so in relation to serious matters requiring service by the society over an extended period of time.*

RECOMMENDATION #36

It would seem to me that the successful application of an information system such as I mention in the preceding recommendation is dependent upon the preparation and retention of complete and accurate records upon which supervisors and others can rely.

The Society's records in Kim's case did not meet that test. They were not complete. They were not accurate.

Any worker who prepares notes upon observations made during involvement with a case and upon opinions, assessments or valuations of the case is entitled to be able to rely upon those notes being promptly, accurately and completely transcribed and entered and retained in the file maintained by the children's aid society in respect of that case. Similarly any other worker concurrently or subsequently involved with the case is entitled to be able to rely upon the transcription as being accurate and complete.

Much of the testimony referred to the interdependence of workers with children's aid societies and other community organizations and institutions.

Reference was made to a worker's network of contacts in the community and the development of mutual trust and confidence based on knowledge of each other's skill and experience. The same sort of trust would develop between or among workers for the same children's aid society. A worker may be prepared to accept unhesitatingly an opinion or statement expressed by one co-worker, but may not be so willing to accept an opinion or statement expressed by another.

If the transcriptions are inaccurate no one can rely upon them for any purpose.

To my mind one of the most disturbing elements of the conduct of the Society's affairs, apart of course from the real tragedy of Kim's abuse and death, was the absolute lack of reliability which could be given to the written material in and from

the files of the Society. That lack of reliability took many forms.

One example was the absence, until September, 1975, of any available record of the events of June 17, 1975.

Another example was the recording made in September, 1975 which gave a false impression of what had happened between June 17, 1975 and August 31, 1975.

Another example related to disclaimer by witnesses as to some parts of recordings or as to the accuracy of recordings attributed to him or to her and to acknowledgement by one witness that she had caused some entries to be made apparently by another member of the staff of the Society.

Another example was the inconsistency of the recordings in the Family Services Department with those in Children's Services Department. That inconsistency was illustrated in the testimony of Mrs. Lo and Mrs. Kirby as to their meeting in early May, 1976 to discuss the important event of Kim's return to her home. Nothing in Kim's case was more important than her return. Nothing merited greater attention to care and accuracy. The records did not agree one with the other.

Another example was a combination of the written and oral reports to the Board of Directors of the Society and to the Ministry in December, 1977 and early in 1978 and a comparison of each of them with the others and each of the others.

Another example was the change in a document even after a photo-copy of it had been prepared for the purposes of this Inquiry. The original had been returned to the Society and later, upon the hearings, was introduced as an exhibit. It had been tampered with in the meantime.

All of those, together with others mentioned in the main portion of the Report, left with me, at worst, a concern about honesty or integrity, and, at best, a concern about care in the matter of recordings and, thus, by extension, in the very handling of Kim's case.

The unsatisfactory state of the Society's records had roots in several basic areas.

Dr. Turner spoke of what he felt should have been, but was not set forth in some specific areas of the recording. The root for that deficiency was the inadequate training and supervision of personnel.

As the testimony revealed, the history of the management of Kim's case by the Society was one of unsatisfactory performance or completion of routine tasks from June 17, 1975 until Kim's death about sixteen months later.

On June 17, 1975 Mrs. Saul correctly detected and was alarmed by the presence of indications of the possibility that Kim was a child in a high risk situation. She reported to Mrs. Harvey orally and in writing. But then she did no more. She did not make any inquiry to ascertain what was happening.

Dr. Turner expressed his belief that someone in Mrs. Saul's position should have done more than she did to establish the full nature of the situation in the Popen home and to record her evaluation or assessment of what that situation was. Dr. Turner stressed the importance of the first worker to have contact with a case. He felt that it was incumbent upon that worker to do more than merely report what he or she observed without evaluative comment.

I share Dr. Turner's view.

Dr. Turner expressed similar views with reference to other portions of the records prepared by Mr. Carter and Mrs. Lo. He said they lacked expression of opinion, judgement, assessment and valuation upon or in respect of the events or incidents observed or mentioned.

Notes made by Mrs. Saul and Mrs. Dick on June 17, 1975 lay unattended and unrecorded until September, 1975, their whereabouts unknown.

The root for all of that that was the absence of an appropriate system to ensure the prompt

recording of material and the preparation of adequate reports.

Witnesses disclaimed the accuracy of some recordings attributed to them or were unable to attest that recordings attributed to them were correct transcriptions of their original notes. That too had its root in the absence of a proper system of preparing and recording reports.

In an organization such as a children's aid society where a number of persons may have access to one file because of involvement with particular facets of one case it should be relatively simple with modern technology to maintain a permanent master copy of transcriptions approved and accepted, as accurate and complete, by the author of the original notes on which the transcription is based.

In my view it is imperative that the Society develop a system to ensure the fidelity of the recordings of its personnel. That system may be complex or it may be simple, but it must be effective. It must ensure that the social workers are fully instructed and supervised in the art of preparing and recording not only a report of what they saw or heard, but also evaluating, assessing and commenting upon what they saw or heard and what, in their view, was missing or should be sought out or explained and why.

There was some suggestion by Mrs. Harvey that the Society had been criticized in the past, presumably by officials of the Ministry, because recordings were unduly lengthy. On the basis of the testimony I heard it would seem to me to be preferable that the notes contain too much, rather than not enough. It will be the responsibility of the supervisor, with the specific social worker, to excise any unnecessary material in the original copy.

The testimony upon the Inquiry showed clearly that while a social worker prepared notes intended to form part of the permanent record he or she did not check the accuracy of the transcription of those notes against the original notes written or prepared by him or her. The dangers in that are obvious. The absence or presence of one small word, such as "not," changes the meaning of a sentence.

That problem can be removed by the simple expedient of requiring the typist to return the original notes to the social worker who wrote them. That social worker would then be required to compare the transcription against the original notes, to make any necessary corrections or revisions and to sign or initial, in ink, the entire transcription and any correction or revision.

That may appear to be another statement of the obvious. Again, Kim's case was such as to show the need for the statement of the most elementary and obvious.

It was clear that some recordings were prepared long after the events or observations referred to therein. Mr. Carter's recording for the period from August 31, 1975 to February 29, 1976 was perhaps an extreme example. The entire recording for a period of virtually six months was prepared at one time at or about the end of that period. Mr. Carter in his testimony denied that the recording attributed to him and set forth in the file upon Kim's case in the Family Services Department of the Society was an accurate transcription of what he had prepared. He said the recording was inaccurate in form or style, but, to my mind more importantly, he said it was also inaccurate in content or substance.

That problem can be removed by simply requiring each worker to state in the particular notes the date on which they were prepared, then by requiring the typist to state in the transcription the date on which the notes were transcribed and, finally, by requiring the original worker to write in ink, and sign or initial the date on which the transcription was checked against the original notes and found to be in order or corrected or revised as the case may be.

That should ensure accuracy of transcription. But the supervisor should be aware of the recording and, to ensure such awareness, should be required to sign or initial the recording and to write the date of such signing or initialling, all in ink.

If a supervisor wishes to make some comment in or upon the recording it should be done in a

similar fashion and acknowledged by signature or initial of the supervisor, in ink with the date thereof. The social worker or workers involved should similarly in writing acknowledge having read such comment by the supervisor.

A prominent weakness in the handling of Kim's case was the absence of any satisfactory record of the decisions which should have been made from time to time. There was no real recording of what the personnel of the Society perceived as the goal to be achieved in the case or as the means of achieving that goal. There was no real recording of any achievement of or approach to any goal or of any impediment to such achievement or approach. There was no real recording of what the Society perceived as additional information or material which should have been obtained or sought so as to enable proper management of the case.

In many ways that problem was rooted in the absence of conferences of concerned personnel at appropriate times in the management or treatment of the case when it was necessary that decisions be made. That in turn was rooted in the absence of an appropriate code of practices and procedures. Little was written. I doubt that much more was tacitly accepted as forming the Society's code of practices and procedures.

Each children's aid society, with the assistance and guidance of the Ministry and the Ontario Association of Children's Aid Societies, can produce and maintain a currently acceptable code or manual of practices and procedures. One such manual in respect of child abuse was produced in 1976. It was too late to be of any use in Kim's case. Others have since been in the process of production or have been produced.

I appreciate that each children's aid society functions in circumstances probably unlike those of all other societies. I appreciate that practices and procedures acceptable or required in one jurisdiction or organization are not necessarily acceptable or required in another. But each can learn from the others and from the Ministry and from the Ontario Association of Children's Aid Societies

and adapt to its local conditions practices and procedures employed or tested elsewhere.

I am confident that children's aid societies are no more different one from another than are the communities in which they function. I am confident too that the municipal governments of those communities informally exchange information as to problems they have faced and what they have done in relation thereto together with copies of by-laws and other relevant documents. The appropriate ministries of government are available for advice and comment. Thus I am confident that any children's aid society, probably like most, unable for a variety of reasons to prepare an original manual of practices and procedures can obtain copies of other societies' manuals and, relatively easily, adapt one or more of them to its own local conditions.

36. *THUS I RECOMMEND THAT each children's aid society ensure that its social workers are instructed in the art of preparing and recording reports for the files of the society and that those workers receive in-service training and instruction therein. Such instruction should emphasize that the recording should be more than mere administrative reporting of what was observed without any expression of opinion, judgement, assessment or evaluation thereof and expression of the perceived significance thereof to the overall plan for management of the case. The recording should contain reference not only to what has been observed, but also to what appears to be missing and what is desired or needed to enable the overall plan to be developed and implemented to successful conclusion. The policies and procedures developed or adopted by children's aid societies for the management and treatment of cases of abuse should require each worker having*

any contact or involvement with the case to record promptly the time and nature of such contact or involvement and his or her observations, if any, upon each such contact or involvement and to express an opinion as to the nature of the case upon the basis of those observations. Each children's aid society should develop and insist upon adherence to a system to ensure that a social worker's notes are prepared promptly, transcribed promptly and correctly, and then, in effect, confirmed, as corrected or revised if need be, promptly by the social worker and then acknowledged by the appropriate supervisor. The system for the preparation of recordings should form part of the manual of the practices and procedures of the society. The procedures of each children's aid society should ensure the original accuracy of all recordings and that they are not later altered or tampered with. The Ministry's supervision and inspection procedures should contain elements to that effect.

RECOMMENDATION #37

Witnesses commented upon the absence of a recorded plan for the management and treatment of Kim's case. In my view there was no such plan to record.

One of the most striking admissions of the Society's failure to protect Kim was that no arrangements were made for her to be examined medically or otherwise after her return home in May, 1976. That was the subject of adverse comment by several witnesses.

I have written of the benefit that may flow from medical and other examinations of the child as part of the investigation of any report or incident of abuse.

Dr. Duncan recommended that the Society retain a medical practitioner to examine a child regularly after the child's return home. Mrs. Kirby said that the child should be medically examined within a week or two of his or her return home and thereafter should be examined frequently. Dr. Singh spoke of the need for such a child to have frequent physical examinations by the family physician. He suggested the programme might begin during the time when the child's return home was being considered. Dr. Turner was surprised that the Society had not made any such arrangement and suggested a variety of ways that it might have been done.

The general trend of the testimony as to medical examinations was that, while nurses or others may have some training and knowledge in such matters, medical examinations intended to detect instances or suspicions of abuse should be conducted by qualified physicians with knowledge of and experience with the phenomenon of abuse.

Examinations by nurses and others would be helpful in a variety of ways, including deterrence of anyone tending to abuse the child, but ultimate and definite opinions as to the presence or absence of indicia of abuse should be formed only after complete medical examination of the child by a qualified physician and after any other examination of the child by persons qualified to perform such examination.

There was further testimony that any examination of the child might be hampered unless it were conducted in or with adequate facilities.

Medical examinations should be by a medical practitioner retained by the children's aid society. That practitioner should be expressly authorized by the society to discuss any of the results of any such examination with the child's family physician. Any such discussion should be for the purpose of exchanging medical information for the benefit of the child.

Having the medical examinations conducted by a physician retained by the children's aid society should avoid the problems mentioned by Dr. Bates as general observation and which were self-evident in the testimony of others. Those problems relate to difficulties encountered by some physicians in determining their duties and responsibilities, which may be or appear to be in conflict, when they treat children of families all of the members of which are their patients. The problems may be rooted in crass financial concerns, as were expressed upon the Inquiry, or they may result from a base of more ethical or philosophical dimensions, as was also expressed.

To illustrate the latter I analogize to the problem faced by a social worker investigating a report of abuse, then proceeding in court against the parents as a result of the investigation and all the while and later seeking to serve as trusted counselor and advisor to the family and to establish a good rapport to achieve a good result in the management and treatment of the case.

37. *I THEREFORE RECOMMEND THAT, as part of any plan to return a child to his or her home after an incident of real or suspected abuse, the children's aid society should arrange for the complete medical examination of the child immediately prior to the date of the return and for frequent complete medical examinations of the child after such return. The medical examinations should be*

conducted by a physician retained by the children's aid society. The first such examination after the return should be within two weeks of the return and subsequent examinations should be at intervals of not more than two weeks unless the child abuse team of the society, in conference with the examining physician, determines otherwise. All such examinations should be conducted in a hospital or in the office of the examining physician, in that physician's discretion having regard to the facilities required. The examining physician should be expressly authorized in his or her discretion to release information about the child's health to the physician who is the family doctor. Any such medical examination should include such tests as the examining physician may deem necessary to determine the child's development and any impairment thereof.

RECOMMENDATION #38

There was some testimony upon the Inquiry as to the contribution to the management of a case of abuse that might be made by the physician attending to the family's medical needs, the family doctor.

Ironically, the first such testimony came from Dr. Jumean of whom I have been quite critical. Apart from his telephone calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1975 he contributed nothing to Kim's case. In the vernacular, Dr. Jumean did not practise what he preached.

Nonetheless I find some merit in Dr. Jumean's suggestion that the family physician should continue to be involved with the child's case even while the child is in the care of a children's aid society who may engage the services of another physician or paediatrician to provide medical services to the child. The gist of Dr. Jumean's suggestion was that there should be an exchange of information between the family doctor and the doctor or doctors engaged by the children's aid society. That would seem to me to be beneficial to the child and family in a variety of ways.

The family doctor may be able to give information not shown upon hospital charts or material otherwise available to the physician appointed by the children's aid society. That information might go beyond matters relating to the health of the child and family. It might relate to other observations by or opinions of the family doctor.

Looking forward to the possible return of the child to the family, the doctor appointed by the children's aid society can similarly expand upon whatever health records may have been prepared in respect of the child while in the care of the children's aid society so that the family doctor will be aware of any problem and how it was perceived and treated.

Perhaps reflecting upon his own absences during Kim's lifetime and what occurred during those absences, Dr. Jumean suggested that in the event of an incident of abuse or suspected abuse during the family doctor's absence, the children's aid society

should write to the family doctor to give particulars of the incident. He suggested that possession of that information would better enable the family doctor to assist in the case. In light of his own actions I do not think that suggestion merits much attention. Dr. Jumean did not read reports from those who "covered" for him or from consultants retained on his behalf. It is another bit of irony that one of those consultants was Dr. Singh who was also retained by the Society and who, conceivably, if Dr. Jumean's suggestion were adopted, would be the author of any letter to him as Kim's family doctor.

To some degree Dr. Singh's testimony supported the concept of a continuing involvement of the family doctor after intervention by a children's aid society. Dr. Singh's mind at the time appeared to be directed towards the need for frequent medical examinations of children in the care of the children's aid society and for an exchange of information before any child is returned to the parents. He said:

"...once the child is taken up at Children's Aid they should have frequent physical examination by the family physician of that particular child, more follow-ups and report to the physician back and forth before the child is given back to the parents. The Children's Aid Society should probably get the physician involved to have a complete physical examination;.."

38. *I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, establish and maintain an ongoing relationship with the physician who provides medical services to the child's family as the family's doctor. If the children's aid society engages another physician to provide medical services to the child it should instruct and authorize that physician to obtain the child's prior medical records from the family physician*

and other sources and, if the child is to be returned to the family home, to supply to the family physician the child's medical records for the period during which the child was in the care of the society. That exchange of information may lead to the family doctor's more easily recognizing situations of risk for or abuse to the child and thus to earlier and more beneficial report thereof to the children's aid society.

RECOMMENDATION #39

Mrs. Hewitt voiced a similar or complementary opinion as to the benefit to be derived from the maintenance of a relationship between the children's aid society and persons in the community who had been involved in a child's welfare. I gathered she felt that, as in Kim's case, doctors, nurses, police officers, neighbours and others who were involved in a variety of ways, perhaps as witnesses available to be called by the children's aid society upon its application for custody of a child, in the process whereby a child came into the care of a children's aid society, the children's aid society should consult with or inform those same persons in relation to any intention to return the child to the parents.

In many ways the following recommendation, based on that line of testimony, is an extension of the concept of involvement of children's aid societies in community based child abuse teams and with the child's family doctor.

39. *I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, maintain an ongoing relationship with those who, in any way, have assisted or may assist the children's aid society in relation to the case. Among such persons I would include anyone who had reported the case or the suspicion of abuse to the children's aid society or who willingly co-operated with the society in the provision of assistance or information. If for no reason other than common courtesy, they should be aware of the result of their reports or actions. More importantly they may be a means of preventing any recurrence of abuse, perhaps by keeping the society aware of any unusual circumstances or observation or perhaps merely as*

a result of the parents' knowing from testimony or otherwise that persons in the community are concerned about the welfare of the child. They are more eyes and ears of the society in the community.

RECOMMENDATION #40

The circumstance of Kim's return to her parents' home in May, 1976 is of concern to me in that it appears to have been an instance of virtual defiance of the Order made by Judge Nighswander in March, 1976.

When the Society's application for custody of Kim was heard in February, 1976 Mrs. Harvey requested that the Order be to place Kim in the care of the Society for only two months. Until then any statement in Court on behalf of the Society and the understanding of Mr. Carter, the social worker directly in charge of the case, was that the Society would seek custody for six months.

However, Judge Nighswander decided to decline Mrs. Harvey's request. He placed Kim in the care and custody of the Society for six months. The uncontradicted testimony of skilled and experienced social workers was that Judge Nighswander's reasons for his judgement were strong.

In early May, 1976, barely two months after Judge Nighswander's judgement, the Society, by procedures I have criticized elsewhere, decided to return Kim to her parents. That return was effected in late May, just three months after the Order was made.

Thus, in effect, the Society reverted to the position requested by Mrs. Harvey in February, 1976 and refused by Judge Nighswander in strong terms.

Admittedly Judge Nighswander, in his testimony, said he was not offended by that action and that he felt it was within the power of the Society to make such a decision and to take such action. He felt that it was within the power of a children's aid society under The Child Welfare Act to place a child physically in any place so long as the child remained in its custody. That would include the home from which the child had been removed and the return might be effected even on the day on which the order of the court placing the child in the custody of the children's aid society was made.

To my mind that is wrong in principle particularly in an instance such as Kim's where the judge hearing the application specifically declined to accept the suggestion by the society that the order be for a shorter term than was eventually ordered. Judge Nighswander had also stated what I regard as being virtually conditions to be met to his satisfaction before Kim was to be returned. They were not met.

Mr. Higgins' testimony included his recommendation that, when a child has been removed from the family home because of abuse and has been found to be a child in need of protection because of abuse, an abused child should not be returned home except upon the express order of a judge.

I endorse Mr. Higgins' views.

Implementation of the following recommendation would require the judge's approval even of visits intended as a means of introducing the child to the home before any return. A child may be injured or killed by abuse even during such a visit.

40. *I RECOMMEND THAT the Ministry, through appropriate channels of government, seek to obtain an amendment of the Child Welfare Act so as to provide that, in any instance where a child removed from the family home has been found to be a child in need of protection because of abuse or because of conditions in and about the family home which may constitute an unusual risk for the child and has been placed in the care and custody of a children's aid society, the child may not be returned to the family home prior to the expiration of the order placing the child in care of the children's aid society except by an order of a judge made on application and upon notice to such persons as the judge may direct. The judge should be empowered by the Child*

Welfare Act to impose such terms upon the return of the child as the judge deems necessary to protect the child.

RECOMMENDATION #41

Dr. Bates in his testimony spoke of a study he had conducted in Australia. He said that he had found that the crucial period with regard to death from abuse was within one to three months of the return of a child to his or her home after a period of hospitalization or foster care. He said that was the critical period of readjustment. He felt that the majority of such deaths could be prevented.

It was perhaps only coincidence, or it may have been some innate intelligence, but a remark attributed to Police Constable Wyville was a statement to like effect. He was said to have commented to Mrs. Harvey, in the presence of others in February, 1976, that if Kim were returned to her home she would be dead within three months.

Kim's death did occur within three months of her return to her home. That return was on May 27, 1976. She died on August 11, 1976, about two and one half months later.

I am well aware that other factors, including Karie's birth in July, 1976 and any difficulties or complications arising therefrom, may have had substantial bearing upon Kim's case. However the testimony upon the Inquiry did not disclose that any particular or special effort was taken to ensure Kim's safety from May 27, 1976 or from Karie's birth in July, 1976. Kim's safety and protection were entrusted to Mrs. Lo who lacked the necessary training and experience and skills. Mrs. Harvey provided inadequate instruction to and supervision of Mrs. Lo in this task.

41. *I THEREFORE RECOMMEND THAT when a child who has been removed from the family home as a child in need of protection is returned to the family home the children's aid society should be especially vigilant and alert in its supervision of the child's care in the family home during the period immediately following the child's return. The children's aid society should be alert to the*

possible effect upon the child's care resulting from other events occurring at or about the time of the child's return. That period of especially close supervision should be not less than three months.

RECOMMENDATION #42

Somewhat similar considerations may apply in other instances where a child returns home after a lengthy absence, even if the absence was for a reason not related to abuse. The children's aid society may learn of the situation through its participation in a community child abuse team or it may be specifically advised of it by some other agency or person.

42. *I RECOMMEND THAT if a children's aid society learns of the return or proposed return home of a child after lengthy absence from the home even for reasons not related to abuse, the society should ensure that every possible effort is made to assist and support the child's parents in the re-introduction of the child to the home. This would be a part of the society's programme of prevention of abuse.*

RECOMMENDATIONS #43 and #44

Dr. Bates in his testimony described some types of circumstances surrounding families and children which might provide a basis for concern that a child in such circumstances may be a "high risk" child, a child more likely than others to be the subject of abuse. From that background he suggested that the role of public health nurses might be expanded to enable them to have greater authority and responsibility in the field of child abuse.

The testimony upon the Inquiry was to the effect that Mrs. Kuly was not empowered to insist that she see Kim. She had no authority to examine Kim in any way to determine whether or not the child had been abused.

The thrust of Dr. Bates' suggestion, as I understood it, was that public health nurses be required to be alert to notice circumstances which might indicate that a child is exposed to a high risk of abuse. He felt that the duties of public health nurses gave them an unusual opportunity to be able to recognize and assess such circumstances. Those circumstances might relate to abuse suffered by a parent as a child. They might relate to the physical or emotional health of a parent, including improper use of or addiction to drugs or narcotics or alcohol. They might relate to the child. They might relate to events such as the birth of another child and the difficulties surrounding it, including pre-natal and post-partum periods. They might relate to the family's position in the community. They might relate to the state of the marriage of the child's parents.

Public health nurses were in contact with Kim's family, particularly Jennifer Popen, even before Kim's birth. They were again in touch with Jennifer Popen in relation to Karie's birth. They made "new-baby" visits to Kim's home and tried to assist and advise Jennifer Popen in her duties as a mother. They performed their own specific duties and, informally, co-operated somewhat with the Society.

It is that latter area that requires improvement. I gathered from Dr. Duncan's testimony

that steps have been taken to that end. There also was some concern expressed that the public health nurses must establish a good rapport with the families they visit. If they do not they are not as effective in performance of their own major role.

It would seem that public health nurses can be useful members of the local inter-disciplinary teams dealing with abuse. They should be entitled to discuss with those teams children or families in respect of which they have concerns about abuse. They should be empowered to examine any child in respect of whom they have such concern. Such examinations, admittedly not definitive, might help to detect or prevent abuse. They can provide a useful service as another friendly visitor to the families they serve. They are another human resource in the community to support children's aid societies and to support and assist and encourage parents in dealing with problems. They are persons who, by reason of the nature of their primary duties, are among those who may have early opportunities to observe and assess circumstances which indicate possible dangers for children and thus to ensure that steps are taken to try to prevent the dangers from materializing into abuse to the children. If abuse does occur they may have an early opportunity to observe its effects upon a child.

In Kim's case Dr. Duncan testified that, in retrospect, Jennifer Popen's request for a letter from The Lambton Health Unit should have been made known to the Society. She said that the Society would now be informed of any such request. I regard that as merely an extension of the co-operative exchange of information that should exist among the various agencies and organizations whose aims and objectives encompass the welfare of children. I gather Dr. Duncan felt that such a request was a circumstance to be considered by the Society which had the basic responsibility for Kim's care and safety.

In that sense the public health nurses can complement the children's aid society workers both in efforts to prevent abuse and in some phases of investigation if abuse does occur.

Dr. Duncan in her testimony spoke of a means developed in the City of Sarnia and the County of Lambton to overcome the problem arising from the absence of legislative authority for public health nurses to examine children such as Kim. That occurred after Kim's death. It involved an application to the Provincial Court (Family Division) of the County of Lambton for inclusion of a special provision in the order upon any application for a declaration that a child was a child in need of protection. The special provision would authorize the public health nurse to undress and examine the child to determine whether or not there were any signs or marks of abuse. Dr. Duncan said several orders made by the Court have included such a provision.

That sort of arrangement is probably very effective, but it would seem to me that it would be advisable to ensure that there is adequate authority for any such order.

I am presupposing that in any instance where such an order is sought the agency or local health unit by which the public health nurses are employed will have been made aware of the particular case through participation in the local community's child abuse team. I also presuppose that the local health unit will have agreed to conduct the examination and to report thereon as required by the court.

Dr. Duncan's testimony was not clear as to the stage of court proceedings at which such an order might be made by the Court. Mr. Carter, who had expressed concerns in this area similar to those of Dr. Duncan, spoke of the order being part of the order for supervision of a child. If that be so, it would seem that the main purpose of the order would be to serve as an instrument to prevent further abuse of a child who has been found to be a child in need of protection.

Bearing in mind the testimony as to the benefits to be derived from an integration of the efforts and services of community agencies and from the provision of such services even prior to any final determination of the child's need for protection, it would seem desirable that there be a

means for such an order to be made at any time, whether prior to or as part of such final determination.

43. I RECOMMEND THAT co-operation between public health nurses and social workers employed by local children's aid societies should be regulated by formal documents setting forth the need for and the basis of such co-operation. Children's aid societies should seek the active assistance of public health nurses as a means of observing conditions in any home in which a child, about which a children's aid society is concerned in any way, resides. Public health nurses must inform local children's aid societies of any circumstance which causes them to have any fear that a child might be in some danger of abuse even though there be no physical evidence of abuse. Public health nurses must assist local children's aid societies when requested and, by appropriate legislation, should be specifically authorized in the performance of their general duties in or about the home or family of any child to physically examine the child if the children's aid society has expressed any suspicion or concern that the child may be in any danger of abuse.

RECOMMENDATION #44

44.

I THEREFORE RECOMMEND THAT the Ministry seek appropriate amendment of the Child Welfare Act to authorize or empower a judge, upon an application under that statute, to order and direct that public health nurses be given free access to any child named in such application for the purpose of examining such child as one means of ascertaining whether or not the child has been abused and/or as a means of preventing abuse to the child and supervising the care of the child.

RECOMMENDATION #45

Witnesses expressed concern about the admissibility of evidence and the courts' use of it when it was admitted. That concern may arise as a result of inadequate presentation of cases by or on behalf of children's aid societies. The adversary system exists. Skills of advocacy are important. Knowledge of the law is important.

That was demonstrated in Kim's case. Witnesses upon the Inquiry testified that the staff of the Society lacked knowledge of The Child Welfare Act. I have expressed the opinion that a more knowledgeable staff would have brought about a more thorough investigation, preparation and presentation of the Society's application. They would not have made certain wrong assumptions as to the effect of the result of the proceedings against Jennifer Popen and Annals Popen under section 40 of The Child Welfare Act. They would not have so meekly abided by Mr. Higgins' attempt, successful as it turned out, to limit the Society's work.

Others before me, including witnesses upon the Inquiry and the authors of the Garber Report, have expressed the need for children's aid societies to be able to obtain legal services in relation to their duty to protect children.

As an introduction to my next recommendation, I can do no better than to repeat and endorse another of the recommendations set forth in the Garber Report. It is the twelfth recommendation in that report. It is as follows:

"12. That in all child abuse court proceedings the CAS must be represented by counsel; in all uncontested cases the CAS should have access to legal opinion, in order to fulfill its protection mandate."

I would note that in Kim's case the Board of Directors of the Society had made monies available for legal services if Mr. Lovatt felt such services were required. That action was taken in direct response to Mrs. Harvey's request for such assistance in cases of abuse. So far as I am aware Kim's was the only such case at the time. Unfortunately it was

the same Mrs. Harvey who had earlier declined to attend or send anyone in her stead to attend a seminar for court workers employed by children's aid societies. Without adequate reason she felt confident of her own abilities. Unfortunately too Mr. Lovatt had not concerned himself sufficiently with Kim's case and he relied upon Mrs. Harvey's management of it. Thus funds which, if used, might have protected Kim, lay unused.

In my view therefor the recommendation in the Garber Report must be strengthened. The first portion which, if implemented, would require that counsel represent the children's aid society in any court proceedings arising out of any incident of abuse would appear to be adequate if it were extended to ensure that counsel were retained and consulted during the investigative and preparatory stages of any such incident. Even the most highly skilled counsel cannot have much effect if the investigation has been mishandled and if all available evidence has not been obtained and considered prior to the trial or hearing. Similarly counsel cannot succeed if the attendance of witnesses has not been ensured.

I cannot envisage any situation of abuse or suspected abuse where court proceedings of some sort would not at least be considered as one possible result of adequate investigative and other actions by the children's aid society involved.

In my view it is imperative that the staff of the children's aid society have ready access to legal advice at all stages of any case of abuse or any report of suspected abuse.

I would liken the desirable availability of legal advice to children's aid society personnel to that which is provided to police officers by the Crown Attorney. Mr. Lang advised the Sarnia Police Force with reference to Kim's case. Witnesses upon the Inquiry spoke of the investigative skills of police officers developed by training and experience. If police officers, so skilled, enjoy and use access to legal advice during their investigations and before any decision is made upon any consideration of charges which might be laid, it seems to me only logical and reasonable that the personnel of a children's aid society should have a similar benefit

of legal advice before any decision is made in respect of courses of action open to the society in any case or report of abuse.

Having said that, there remains the problem of ensuring that the personnel of the children's aid societies exercise their access to legal advice.

In Kim's case the opportunity for legal advice was present, but unused. So far as the testimony upon the Inquiry disclosed, no one of the Society, including Mr. Lovatt, Mrs. Harvey and Mr. Carter, even considered, let alone discussed in any meeting, consulting a solicitor to represent the Society or to give any advice to the personnel of the Society in relation to any aspect of Kim's case. That was so despite Mrs. Harvey's successful request to the Board of Directors of the Society that funds be made available for legal services in abuse cases.

It would seem to me therefore that any procedures to be developed for the handling of cases or reports of incidents of abuse must contain some provision whereby the decision to consult or not to consult a solicitor will be the decision of the appropriate team of workers, whether composed only of personnel of the children's aid society or supplemented by others from outside the children's aid society, who are involved in the matter at its various stages, whether investigative or later.

It is not too much to expect that something akin to minutes of the meetings of such teams be prepared and retained as a part of the permanent record of the matter. Like other records they should be prepared promptly after the meeting and their accuracy should be confirmed, as by requiring each person participating in the decision to initial the original.

In the case of the Society, minutes of meetings of teams of workers were prepared, but some could not be found when sought by Detective Inspector Hill for use on the Inquiry. This disappearance was not explained.

The particular circumstances of each community and each children's aid society will probably determine the basis upon which legal advice

will be available to the personnel of the children's aid society. Whatever the basis may be it must be such as to enable legal advice to be available at all times. Testimony upon the Inquiry showed that incidents of abuse often occur as a result of crisis. Crisis can occur at any time. The discovery of injury to a child can occur at any time.

Kim's case demonstrated at least the last of those statements. Her admission to hospital on August 31, 1975 occurred at about one o'clock in the morning of Sunday in the middle of a long holiday weekend. Mrs. Dick was able to resolve or avoid problems, but the testimony upon the Inquiry was such as to suggest that there could have been then a situation in which any worker for a children's aid society would have appreciated ready access to legal advice.

Kim's case also demonstrated the need for legal advice and representation in cases of abuse even if the matters are unopposed. In the end, in February, 1976, Kim's parents were not vigorously opposing the Society's application, but, in the many ways I have mentioned elsewhere in the Report and in this Chapter, the absence of legal advice to and representation of the Society contributed to an unfortunate result.

45. *I RECOMMEND THAT each children's aid society make arrangements to have legal services available to its personnel engaged in child abuse matters. If reasonably possible those services should be available at all times to meet emergency situations in such cases. The social workers of each children's aid society must be made aware of those arrangements and encouraged to avail themselves thereof in every instance. Procedures governing the handling of cases or reports of abuse should provide that, except in cases of emergency where full conferences are not practical, decisions to use or not to use such services should*

be made at conferences of the appropriate team or teams of workers and duly recorded as part of the permanent record of each case. If any court proceedings arise as a result of any instance of abuse the children's aid society must be represented by a solicitor even if the proceedings are unopposed.

RECOMMENDATIONS #46 and #47

Upon the Inquiry there was some limited testimony as to the size of the Society in relation to other children's aid societies in Ontario. From that testimony I am prepared to assume that many of the other societies are not greatly unlike the Society in the matter of area and population served. There was little testimony as to the incidence of abuse in any particular jurisdiction and there was testimony as to the doubtful validity or accuracy of whatever statistics might be available.

I am prepared to assume that the incidence of child abuse in the City of Sarnia and the County of Lambton was not greatly different from that in other cities and counties in Ontario. The testimony was that Kim's was certainly the only serious case of abuse and perhaps was the only case of abuse being serviced by the Society during her lifetime.

On that basis I think it is clear that the Society was not during Kim's lifetime in a position to develop and maintain a team of workers whose duties, at least for specific periods of time, would be limited to abuse cases, let alone the single facet of such cases related to the investigative phase thereof.

Probably few if any of the children's aid societies in Ontario would be able to afford such teams.

There was testimony as to the need for workers with special aptitudes, training, skills and experience to be used in all phases of cases of abuse. It was said however that service upon such cases was very demanding and that workers should be relieved from such duties and assigned to other less demanding duties from time to time.

From all of that, however desirable it might be in theory, it is not practical to suppose that many of the children's aid societies in Ontario would have sufficient need or demand to justify the establishment of a team of workers assigned solely to abuse matters in some form of rotation, some being specifically assigned responsibility for investigation of reports and some assigned responsibility for

other phases of prevention, treatment and management of cases.

It may very well be that only some of the reported cases of abuse will be such as possibly to create difficulties in the sense of social workers employed by a children's aid society having to perform two roles which, to the families involved, might appear to be conflicting. This would perhaps be one of the areas requiring immediate evaluation or assessment by the workers first assigned to the case. That evaluation or assessment would require prompt review and consideration by the appropriate conference of workers and supervisory staff, including, if needed for resolution of differences of opinion, the local director of the children's aid society.

Bearing in mind the practical problem of maintaining a special team of workers to work on reports or cases of abuse in the territory or constituency served by each children's aid society it would seem to be incumbent upon the Ministry to provide to the children's aid societies some specific support and assistance in the area of child abuse. The Ministry should have personnel, with all of the necessary aptitudes, training, skills and experience, who might be assigned to respond immediately, by physical attendance in the local community if need be, to any request by a children's aid society for assistance in any phase of a child abuse matter.

I want to make it clear that I have not discussed my following comment with Detective Inspector Hill, who served with me upon the Inquiry, nor have I discussed it with any other member of any police force to learn any of the details of function of the Criminal Investigation Branch of the Ontario Provincial Police. Subject to that limitation, it is my view that that Branch's ability to quickly deploy highly skilled police officers to all areas of Ontario to direct or conduct the investigation of serious crimes or allegations of serious crimes provides a useful model for what I visualize might be done by the Ministry.

This must all be viewed in the context of the present statutory, and previously informal, requirement that children's aid societies report all incidents or reports of abuse to the Central Registry

of Child Abuse. It must also be viewed in the context of the Ministry's avowed intention to conduct full operational reviews of each children's aid society not less frequently than quinquennially.

Thus, cases of abuse being among the most serious matters dealt with by children's aid societies, it is likely that every report or case of abuse to or in each children's aid society will come to the attention of the Ministry's personnel and, if necessary, the personnel of the local children's aid society will be required to support or explain assessments, evaluations, decisions and actions upon each case and to bear responsibility therefor.

My concept of the overall organization of the forces to deal with abuse involves local and provincial personnel.

Locally each society should have a sufficient number of its personnel with qualifications of aptitude, training, skills and experience in the field of child abuse to enable the local society to deal at least with the immediate emergency of a report or incident of abuse. That facility should be always available locally.

Mrs. Dick's presence and actions on August 31, 1975 are such as I envision as the basic responsibility of the local children's aid society. In relatively calm and serene reflection hours, days or months later, one may question whether what she did was entirely correct and complete. But she was effective in securing Kim's immediate and continuing safety, physically in the hospital and, *de facto*, in the care of the Society.

Each local society should have among its personnel social workers with the necessary qualifications, again of aptitude, training, skills and experience in the field of abuse, to enable them to conduct at least the preliminary investigation of each report or case of abuse and then to evaluate or assess the results of such preliminary investigation. It would then be incumbent upon those social workers, in conference with supervisory staff of the society, including perhaps the local director, to determine whether or not the personnel of the local society possessed sufficient qualifications to deal

successfully with all of the difficulties which might reasonably be expected in the particular case.

A permanent written record of the preliminary investigation and of the subsequent conference, complete with evaluation and assessment of the results of the investigation and the proceedings of and decisions made at the conference, shall be prepared at once and placed in the files of the children's aid society.

If it is the decision of the local children's aid society that its personnel are sufficiently qualified to deal successfully with the case they shall proceed to do whatever they deem to be necessary to investigate, manage and treat the case. In addition an immediate written report shall be made to the Central Registry.

If it is the decision of the local children's aid society that its personnel are not sufficiently qualified to deal successfully with the case the senior member of the staff of the children's aid society responsible for the case shall forthwith, by telephone and thereafter promptly in writing, advise the Ministry of the situation with as much detailed information as is then available and request the assistance of the Ministry's personnel to investigate, manage and deal with the case.

That then leads to consideration of the facility to be available in the Ministry to respond to such requests from local children's aid societies. In the light of unreliable statistics and the lack of knowledge as to the real frequency of abuse there is not much point in even trying to estimate the volume of such requests.

In my view that service from the Ministry should be available to children's aid societies twenty-four hours of every day. This is simply an extension of the recommendation that each children's aid society have staff available to deal with emergencies at any and all times, twenty-four hours a day.

I do not contemplate that fully organized teams of the Ministry's workers will be on duty around the clock. I do contemplate however that the

Ministry will maintain an emergency telephone number through which a children's aid society, believing it needs assistance in an emergency situation, may quickly discuss the matter with a qualified member of the Ministry's staff who, on regular duty or on a stand-by basis as the case may be, will be able to give assistance and advice by telephone or even by personal attendance if the situation seems to require it and it is reasonably feasible.

I would think that in most such cases advice or assistance by telephone would suffice. Personal attendance of the Ministry's staff would not often be required, but it should be available if required.

Any such request to the Ministry for assistance or advice should be followed as soon as possible by an exchange of written messages between the local children's aid society and the Ministry confirming the basis of the request and the Ministry's response to the request.

While personal attendance of the Ministry's staff at a local children's aid society may not often be required in immediate response to telephoned messages to the Ministry, such personal attendance might often be required during various phases of any case, whether in the investigative or management and treatment phases, including preparation for various court proceedings and the subsequent hearing or trial.

In my view once the local children's aid society has acknowledged its inadequacy to deal with a particular case or report and has sought the assistance of the Ministry it should be required to follow the advice or direction given by the Ministry's personnel unless and until such advice or direction is withdrawn by the same or more senior personnel of the Ministry.

That is the major reason for my belief that, as soon as practicable, any such advice or direction, however given, should be reduced to written form. Such a procedure should reduce the possibility of misunderstanding.

The children's aid society should have a means to obtain review of any item of advice or direction. The review should be by the superior of the Ministry's employee who issued the advice or direction which is questioned.

I envisage that the Ministry's personnel can be of especial assistance to smaller children's aid societies in relation to the investigation and to the planning, management and treatment phases of any case of abuse. The conflict of the two aspects of the duty of the workers for the children's aid society is apparent.

As an investigator he or she seeks to learn the truth and thus, possibly or probably, is in an adversarial position in relation to one or more of the child's family, an adversarial position which is maintained at least until the conclusion of any court proceedings.

As the social worker responsible for the long term management and treatment of the case he or she seeks to achieve the best result for the child as an individual and as a member of the family.

From the testimony upon the Inquiry I am satisfied that adequate performance of the investigative role by one social worker may interfere with the proper performance by that worker of duties in relation to the long term management and treatment of the case. This is not necessarily because of any inadequacy on the part of the worker. It is more likely because of the way in which the child's family perceive the worker. Until the conclusion of the court proceedings the worker has sought to learn such things as when, how, why and by whom was the child abused and what is the relationship of the child in the family. Some of that may be, or at least be perceived to be, an attempt to place responsibility or guilt upon one or more of the family. In such circumstances it is at least difficult and perhaps impossible for the development of a rapport or relationship between that worker and the child's family to enable the preparation, development and implementation of a plan or programme for the care of the child.

I accept the thesis that abuse requires a special type of person to handle its various phases and facets. I accept the further thesis that cases of abuse are very demanding and draining of workers and that workers should be relieved of such duties from time to time. It seems therefore that not many of the fifty or so children's aid societies in Ontario will be able to obtain the services of enough social workers, suited for and skilled in all phases of abuse cases, so as to enable the ideal separation of duties, so that one worker or team of workers is not seen by the child's family to be adversarial to them and thus burdened to try to establish an ongoing rapport of trust, confidence and understanding necessary for the long term success of the case.

It seems to me therefore that it will be particularly helpful to the smaller children's aid societies for the Ministry to have personnel available to complete the investigative phase of any case in which the local children's aid society feels it requires assistance. The investigative phase would include all court proceedings seeking to show the child to be a child in need of protection or seeking to show anyone to be guilty of having abused the child.

While the Ministry's personnel attend to the investigative phase of the case, the local society's personnel will seek to devise a plan or programme for the management or treatment of the case. Such a plan or programme cannot be developed in isolation or ignorance of the information gathered by the Ministry's personnel in investigating the case. There should be a free exchange of information and opinion between the Ministry's personnel and that of the local society. The Ministry's personnel should not be entirely unmindful of the hopes or wishes of the society's personnel for the eventual outcome of the case. Their investigation should seek to obtain information to assist the local society in developing a plan for the management and treatment of the case. The society's personnel should not be entirely unmindful of the negative factors disclosed by the investigation. The workers from the Ministry and from the local society must develop a process to achieve the most desirable result for the child, primarily, and for the family and the community generally.

I THEREFORE RECOMMEND THAT the Ministry establish and maintain a system whereby local children's aid societies shall have immediate access at all times, twenty-four hours a day, to advice and assistance from social workers skilled and qualified in all aspects of child abuse cases. In addition to such a system the Ministry should establish and maintain a group of social workers, especially highly trained in the investigative phases of abuse cases, so as to enable one or more of such workers to attend in a local community, promptly upon the request of the local children's aid society, to investigate any incident or allegation of abuse and to pursue any court proceedings which might ensue. Depending upon the nature of such court proceedings the local Crown attorney or the solicitor for the local children's aid society shall be instructed to present the material in court.

RECOMMENDATION #47

47.

I FURTHER RECOMMEND THAT the Ministry's personnel conducting any such investigation, while having authority and responsibility for the conduct thereof, shall generally recognize the valid concerns of the local children's aid society for the eventual and long-term success of the management and treatment of the case. To that end the Ministry's personnel shall keep the local children's aid society fully and promptly advised of what has been revealed by the investigation. They shall seek to obtain information required or desired by the society for its purposes in managing and treating the case. In similar vein the local children's aid society shall keep the Ministry's personnel advised of the society's plan or programme for the management and treatment of the case and the rationale therefor. In the event of any difference of opinion between the Ministry's personnel assigned to the case and the personnel of the local children's aid society, the matter should be resolved by more senior personnel of the Ministry whose decision should be the determination of the issue as between the Ministry and the local children's aid society, provided however that, if either party feels it necessary or advisable so to do, the question may be raised before the judge sitting in the court hearing the matter who may take the difference of opinion into consideration in determination of the main issue or issues in the proceedings.

RECOMMENDATION #48

In other areas of the Report I have expressed criticism of the failure of the Ministry to fulfill its obligations to children's aid societies in general and to the Society in particular during Kim's lifetime. Insofar as the Society was concerned there was a tremendous change in the involvement of the Ministry in the affairs of the Society in 1978. There was a clear relationship between that change and the public revelation in late 1977 and early 1978 that the Society's management of Kim's case was so suspect and so open to criticism. The Ministry made arrangements for specially selected and highly skilled management personnel to be assigned to assist the Society.

My next recommendation arises from that special effort by the Ministry.

Mr. McPhedran was one witness who commented upon it. In the course of discussing his recommendations to me he said:

"Just some things that have come up in the course of receiving a great deal of help from the Ministry, from particularly Mr. Peter McCabe and Harry Zwerver and many, many others who have been down here and assisting the Society in this difficult time. One of the ideas that came up was a mobile team of experts who would be ready to assist any agency that gets into any kind of difficulties, whether they be administrative or on the level of social practice and I think that's something that perhaps the Ministry might be interested in as well as the OACAS and they may combine on joint bases or independently provide or identify people within the system who are prepared in a given time to go somewhere as we have had in the Sarnia, Lambton to help out the local management with any particular case they may come up with..."

That really was what occurred in the spring of 1978 when the Ontario Association of Children's Aid Societies responded to the Society's request and organized the committee I have chosen to call the

Farina Committee. That really was what happened when the Ministry arranged for Mr. Zwerver, Mr. McCabe and others to be available in the City of Sarnia to assist the Society over a lengthy period of time.

My recommendation is merely to express my belief that assistance from the Ministry and from the Ontario Association of Children's Aid Societies should be promptly available to any children's aid society which feels the need for assistance. Not every request for assistance will require a response as massive and long-lasting as the Society needed and apparently received. But the facility should be there to provide it quickly if needed either in relation to an individual case of abuse or to a more general situation within the society.

The personnel to comprise that facility may be found in various positions. Some may be employees of the Ministry. Some may be employees of the Ontario Association of Children's Aid Societies. Others may be employed by other children's aid societies or other social agencies who will have indicated a willingness to permit them to be a part of such a facility. Others may be, like Dr. Bates and at least some of the others who served with him on the committee to organize a seminar for the Ministry in 1976, in private practice or in other employment.

I liken the organization and maintenance of that facility to the Criminal Investigation Branch of the Ontario Provincial Police who, I believe, are capable of assigning qualified personnel even to remote areas of the province on short notice.

48. *I RECOMMEND THAT the Ministry establish and maintain a cadre or roster of experts in the field of child care, and particularly the detection, investigation, assessment, management and treatment of child abuse, thus including representatives from a number of professions, disciplines and callings, sufficient to enable it to provide prompt assistance by qualified persons to any children's aid society needing*

assistance. Such cadre should be composed of a sufficient number of such qualified persons as may be necessary to ensure that the person or persons with the skills and experience required in the particular circumstance will be quickly available to provide the necessary assistance, including physical attendance. A senior member of that cadre should always be available for consultation with the local children's aid societies and to assign responsibilities to appropriate members thereof, including authority to travel.

RECOMMENDATION #49

The practical limitations upon the employment by children's aid societies of persons with special training or skills which may not often be required in the one community might be overcome apart from direct assistance from staff of the Ministry. For example, the Ministry, as a likely custodian of such information, might maintain something in the nature of a register of employees of children's aid societies and similar organizations or persons in private practice, who possess certain specialized skills and knowledge which might be made available to assist a children's aid society with a particular case which requires the application of such skills and knowledge. The basis on which such services might be provided should be negotiated by the parties to the arrangement, perhaps with the assistance of personnel from the Ministry. I regard this as a logical extension of the child abuse team of workers employed by the children's aid society and the more comprehensive community child abuse team of workers representing various disciplines.

49. *I RECOMMEND THAT the Ministry establish and maintain a list of persons employed or practicing in Ontario who possess special skills or knowledge and whose advice or assistance might be made available on some basis to assist a local children's aid society or multi-disciplinary team in a particular case requiring the application of special skill or knowledge.*

RECOMMENDATION #50

Upon the Inquiry it was stated by qualified persons that in the local communities the children's aid societies have the prime responsibility for the welfare and protection of children. It was said that while the local children's aid society might enlist the assistance of others it nonetheless retained the prime responsibility. I regard that view as having validity. It is the basis for some of my recommendations as to the onus lying upon children's aid societies to be at the forefront of local organizations and efforts to deal with child abuse.

It is my opinion that the principle of that view can and must be extended beyond the borders of the local communities to embrace the entire Province. I regard implementation of Recommendations numbered 46 and 47 as being a partial implementation of the recommendation I am about to make. In that extension of the principle the Ministry should have the prime responsibility for the welfare and protection of all children in Ontario. It may look to other ministries or levels of government or even beyond government for assistance and co-operation, but nonetheless the prime responsibility must lie upon the Ministry.

I have written of my concern that some of the high sounding proposals of the Ministry suggested as being imminent in 1978 or even some of the programmes then begun might wither and die because of some unilateral, perhaps unannounced or unpublicized, action or even some inaction by someone in the Ministry. That is what happened earlier when the "readers" disappeared.

One response by Mr. Charko to a statement by the Ministry's counsel in cross-examination is an example of what causes me to have that concern and to suggest in these Recommendations that the present Minister satisfy himself that proposals or actions made in the furor of activity in 1978 following disclosure of the circumstances of Kim's life and death have been fulfilled and continue to be fulfilled or, if not, why not and what, if anything, has been and is being done in replacement. In my view it will be a challenge for the Minister and his personal staff to get behind the fine words and learn what really has been and is being accomplished.

The statement of counsel and Mr. Charko's response thereto to which I have referred were transcribed as follows:

"Q. And I think that you mentioned earlier in your evidence that three persons had been hired by the Ministry to deal with all the child abuse cases in the province and to review them in all the Societies?

A. They were seconded to us for certain period of time."

That may have arisen out of Mr. Charko's earlier testimony when he responded to questions as to the organization and personnel of the Ministry in September, 1978. He began with the Minister and proceeded downward through various levels to his position and then the following questions and answers are recorded:

"Q. And other people working under you?

A. Right.

Q. And could we follow their levels down?

A. There are field consultants.

Q. All right, how many of those are there?

A. At present time three full time and two part time, because part time, half of their time is in Child Welfare and half of their time is with the Children's and Youth Institution.

Q. So there really, if you want to put it in time spent, four field consultants?

A. Plus myself.

Q. Right. Now, are there any people below the field consultants?

A. No.

Q. All right.

A. Just the clerical staff."

In addition there was a child abuse unit headed by Dr. Sohn.

Or that statement may have arisen out of another response by Mr. Charko when he said:

"A. The Ministry considered [doing a complete audit of agencies across Ontario], there is a greater need for manpower and as of May 1977, more staff was hired. We, three consultants were hired in May of 1977 and one at the beginning of June in 1977."

Or it may have arisen from yet another response by Mr. Charko when he was asked if the Ministry had begun audits of children's aid societies. He said:

"A. What we did, not the audit, but the child abuse cases as I briefly mentioned yesterday, three people were seconded from other Branches to go out to the Children's Aid Societies and read the files and this being done, this review started at the beginning of July [1978] and it's going to be finished in a week or so [September, 1978]."

All of that gives the impression that personnel were engaged by or assigned to the Ministry to perform certain tasks for or in specific periods of time. I did not form any impression of any permanence of engagement or assignment.

It is on that basis that I found my next recommendation.

50. *I RECOMMEND THAT, while the local children's aid societies have primary responsibility for the care and protection of children residing within the geographical areas served by the societies, the Ministry must assert and acknowledge that it has an overriding and superior responsibility for the care and*

protection of all children in Ontario. To that end the Ministry should ensure that it always has sufficient resources of personnel, equipment and funds to enable it to perform its duties and obligations to children.

RECOMMENDATION #51

Heretofore in these recommendations I have directed attention particularly to prevention of abuse and to the matter of detection of the possible existence of an instance of abuse and the investigation required to determine whether or not abuse has in fact occurred or has likely occurred. Questions of judgement arise in all of these areas, but perhaps even more questions of judgement arise in relation to the management or treatment of an abuse situation once its existence is proven or shown to be likely. There are principles, practices and procedures generally found to be acceptable in such cases, but each case will require close examination and study to determine which principles, practices and procedures, if any, in whole or in part, might most profitably be employed in the particular case.

Abuse is not a simple matter. It may have many bases. It may arise in an explosive reaction to crisis. It may arise and develop in a slow progression from incident to incident. Its roots may be hidden in one or both of the parents, or in the family or even in the child. Aptitude, training and expertise are needed to establish its existence and its causes. Similarly aptitude, training and expertise are needed to manage or treat abuse and, hopefully, to prevent its progression or recurrence.

I was much impressed by Dr. Turner's testimony as to the absence of any effective system to control the use of the designation "social worker" in various fields including child welfare and child care. I will limit my comments thereon to the application of that term to persons employed in child welfare or child care by children's aid societies and similar organizations as well as by various levels or branches of governments.

Several of the witnesses who testified upon the Inquiry were or were said to be social workers. There was a vast difference in their academic training and their work experiences. There was Mrs. Lo. There was Mr. Khattab. They seem to me to be at the low end of any scale by which to grade social workers. There were Mr. Lovatt, Mrs. Harvey, Mr. Carter, Mrs. Archer, Mrs. Kirby, Mrs. Dick and Mrs. Saul. They had a wide variety of educational or

academic backgrounds and work experience. There were Mrs. Farina, Mr. Heath, Mr. Petersen, Mr. McCabe, Mr. Zwerver, Mr. Macdonald, Mr. Charko, Mr. Mainville, Dr. Sohn and Dr. Turner. They had impressive widely divergent qualifications.

In my view Dr. Turner was on solid ground when in his testimony he deplored the absence of adequate means to regulate the use of the appellation or designation "social worker" and the practice of social work.

I have reviewed the provisions of The Child Welfare Act in force during Kim's lifetime and The Child Welfare Act, 1978. The newer legislation did nothing to approach the problem mentioned by Dr. Turner. I understand from the testimony that similar concern has been expressed as to the use of the designation "social worker" in fields other than child welfare. Mr. Khattab, I suppose, might be one whose duties went beyond the general field of child welfare.

While both The Child Welfare Act and The Child Welfare Act, 1978 purport to require children's aid societies to employ as social workers persons with special qualifications of education or experience it would seem that the requirements are not sufficient to ensure that persons so employed are in fact, as opposed to appearance, qualified when employed or remain qualified after employment.

Mrs. Lo's qualifications appeared to be sufficient to enable her to be classified by the Society as a Social Worker I. No one who testified upon the Inquiry suggested that her qualifications were insufficient to justify that classification under The Child Welfare Act and the Regulations made thereunder.

The true worth of Mrs. Lo's qualifications as a social worker in the field of child welfare was sadly illustrated by the testimony.

Mr. Khattab was another who might very well have been entitled to ask to be classified as a Social Worker I or even higher if he had been employed by the Society. But clearly his qualification in the area of child welfare was terribly lacking.

He was not aware of rather elementary facets of child abuse. He was not aware of the expression "battered baby syndrome."

But each of Mrs. Lo and Mr. Khattab was equally entitled with any of the highly educated, trained and experienced other witnesses to be classified as a Social Worker if employed by a children's aid society. Only the numeric suffix and possibility of promotion to supervisory positions might vary.

Nowhere in the legislation or regulations is there any requirement that matters of difficulty and complexity, such as child abuse was shown to be, must be assigned by children's aid societies to workers of particular qualifications. But every witness who addressed the subject spoke of the need for specially trained and experienced workers in all phases of child abuse cases.

Kim's case was assigned to Mrs. Lo. The assignment was criticized as inappropriate or unwise, but no one suggested that it in any way was a breach of The Child Welfare Act or the Regulations thereunder. Conceivably Kim's case might just as easily have been assigned to someone with even less qualification than Mrs. Lo. That someone could be a social worker classified by the Society as a Social Work Assistant. The only qualifications for that classification was successful completion of Grade 13 in Ontario or its equivalent as determined by the Minister or employment as a social worker in a children's aid society for at least one year immediately before January 1, 1966.

The situation under The Child Welfare Act, 1978 is not much changed.

I appreciate that the recommendation I am about to make may very well have implications beyond the field of child abuse and indeed even beyond child welfare. However I see no reason why the recommendation cannot be implemented at least in relation to child welfare and the application of the Child Welfare Act as it now stands.

It is appropriate for me to set forth some extracts from Dr. Turner's testimony. No testimony was led to challenge the validity of Dr. Turner's

view. In my opinion Mrs. Lo's involvement in Kim's case provided a demonstration of what concerned Dr. Turner. That demonstration related specifically to The Child Welfare Act. I think Mr. Khattab's involvement provided a further demonstration of that concern beyond the scope of The Child Welfare Act.

Dr. Turner expressed his concern very early in his testimony. That expression began when he was asked, in effect, what might have been expected of "a reasonably intelligent, diligent social worker" confronted by the situation as Mrs. Saul was on June 17, 1975. I now set forth his response to that and the following series of questions:

"A. Well Your Honour, one of the difficulties I have in responding to Mr. McRae's question is this whole question of what do we mean by a social worker and I don't know whether it is appropriate for me to comment on that or not. It is one of the difficulties we have in a case like this because we have the public use of the term, social worker, which tends to get used...with anyone who is carrying out a function like this and my own perception of who or what is a social worker is a little more restricted and I don't - I think I should be clear on which context you would want me to respond to that.

Q. Well that was...

A. The other adjectives you added, I could put myself in that framework if it is someone who happens to be employed by a Children's Aid Society, it may or may not fit my concept of...

Q. I understand your problem because there is no such thing as a professional qualification for a social worker. Is that what you're saying?

A. Well there are professional qualifications - very stringent ones Mr. McRae, but in the province, there is no legislation restricting use of the term or the title and because of this, it

certainly, with the press we've had that difficulty before because people have been used and it's certainly of great concern to our profession that there isn't more restricted use of the term. I think it would help us in some of these situations.

Q. Yes. You think that there should be professional qualifications laid down and there should be some method of controlling who gets into the social work field so that people have a certain minimum qualification before...

A. Oh yes, very much so, I think it has long been an aspiration.

Q. Sir, would you like..is this an opportune time for you to sort of elaborate on what you think should be done in that regard or would you rather do that later?

A. As you wish, I can do it now.

Q. All right. We can start with that then.

A. Well because of this very problem that we're facing in this case and indeed in similar cases are the Professional Association of Ontario as has taken place in virtually every other province in Canada has aspired to at least some type of registration act although many of us now consider that even that might be insufficient and that we should really seek licensing of the profession. There was, Your Honour, within the profession some struggle as to whether we should only seek registration or whether to ask for licensing and...

Q. Registration for some people.

A. The control of title at least. At least there would be some restraints put on the use of the title. I think in view of the demands on the profession over the last decade, that most of us would now pursue

the licensing which indeed I think some eight or ten States in the United States now have licensing boards and licensed Acts that provide for licenses.

Q. So that you have to have a certain educational background and pass qualifying examinations?

A. That's right.

Q. The same as for other professionals such as medicine, law...

A. Yes and we do have a strong professional body within the province but it has no status within the...except the status as a private corporation I would presume it to be. So that we are very firm on these minimum requirements for membership into professional associations but this of course does not exclude people from using the title.

Q. Right. And that would be some control and certainly prevent lessly qualified people getting into positions of responsibility.

A. Yes and I think I'm not saying that there are not positions in our field. It's a very broad field and there are people with lesser qualifications shouldn't be used but I think we would be clear then in the responsibilities we lay on some of these people. So someone in and I'm not sure of the qualifications of this person right now and perhaps you could help me but I think we wouldn't then be asking them to make some of the decisions that are necessary in a field such as child protection.

Q. Well, I take it then that there is a sort of a trend or a movement in that direction already. Ten American States and

A. Yes.

Q. ...a movement here in Canada towards that.

A. Yes.

Q. Do you foresee that coming to fruition here in Ontario? At least registration?

A. I think so. I think that we're...if I'm correct, we're at least in the drafting stage of legislation with inevitable background work that's required in that. It's further complicated though and I believe that there are formal definitions of Social Worker 1, 2 and 3 in different Ontario government ministries. I believe the Community Social & Family...the Community.. I'm sorry it's a name that escapes me.

HIS HONOUR: Community and Social Services.

A. Yes that's it. We changed it to Community and Social Services. Thank you.

Q. Stick with the ministry, it's easier.

A. COMSOC is what we call it.

Q. Ministry of Community and Social Services.

A. Yes, Ministry of Community and Social Services had identified Social Worker 1, 2 and 3 of the Children's Aid Society have done this. I know in the Probation Services, there are job classifications that use the term social worker, which again further complicates this matter. Many agencies, private agencies do have job classifications which usually stated some type of minimum criteria by which people are assigned to these positions but they are really assignments of tasks rather than positions that are based on a set of training or examiantion.

Q. Right well there are minimum qualifications not set out in the regulations of

the Child Welfare Act and that's what you're referring to.

A. Yes.

Q. All right so...

A. I'm sorry. I didn't mean to divert.

Q. No but your basic point is that there should be further professionalization of social worker and certainly registration at the very least...

A. Yes.

Q. ...of the names so there is no confusion and that that would be a safeguard preventing inexperienced or people without proper qualifications getting into situations of responsibility which they weren't able to handle.

A. Yes and then it gives us I think, us, by that I mean the professional body some internal sanctions that I think are so necessary where a thing may not be necessarily been without...outside the bonds of the law but one would not accept it as approved professional practice and at least one could take the necessary internal discipline that any professional body has to deal with these I don't think I'm in no way suggesting that that would result in...that situations like this would not happen but I think at least it means there could be some preventative work to try and see that they don't happen so frequently."

At a later time he suggested that legislation of the sort he contemplated might helpfully contain provisions to overcome situations such as Mr. Carter encountered when Mr. Higgins issued his direction to Mr. Carter. Dr. Turner suggested the legislation might specifically empower a social worker, truly engaged in that profession, to obtain information from persons with whom he or she is working in the practice of the profession, that is his or her clients, and grant to those clients privilege in

relation to that information not unlike solicitor-client privilege. Dr. Turner felt that would enable the social worker to obtain information necessary or useful in managing the case without in any way exposing the clients to the risk of such information being used against them in other proceedings, such as under section 40 of The Child Welfare Act. Dr. Turner recognized that the Legislative Assembly would not lightly create that sort of privilege and likely would do so only if social work was truly a profession practiced by qualified persons acting with professional responsibility and control.

And again, as Dr. Turner responded to counsel's request that he set forth his views as to any recommendations I might make in this Report, he expressed himself as follows:

"Certainly the constant thing for me is the question of competence...the question of what is it society expects of the people that are put in charge of these situations in view of the necessary knowledge and skills to carry out these things and this is certainly a resource question and obviously Children's Aid Societies are faced with this all the time. We know how much we don't know about this new phenomenon, at least this phenomenon of these very violent child abuse cases.

We don't really know whether in fact it's the frequency of these cases has changed a great deal. There does seem to be some indication though that the dramatic violence that we have seen in many of these cases is on the upswing. Although I know there are people who would challenge it but nevertheless we cannot take risks in society and we must make sure that people who carry these responsibilities have the full availability of the knowledge and skill and the research that's available to them.

Now, I'm sure it could only appear to be some kind of vested interest that I would think that every person carrying a social work function in Ontario should have a Masters or a Doctorate degree in social work but I think we can indeed do better

than we have done in setting out some basic requirements and making sure that people meet them. At the same time, I think we must not only hold agencies and societies responsible, I think there are times when we must hold individuals responsible and that's why I spoke so strongly about the need for control of social workers so that when they are good, they will be recognized as good but when they are bad, that sanctions can be taken that will ensure that it not happen again.

I don't know to what extent Children's Aid Societies have made use of the knowledge that is available. There is a rich literature now developing in the whole field of child abuse. I don't know for example in this case, for example, did the Agency Library have the basic texts on child abuse? Did it make use of these? There are training programs available through some of the American agencies but I know our own province has the use of them and in fact is using them that help agencies with less than fully trained people to upgrade themselves.

Neither do fully trained people always have the...but fully qualified I should say... people with graduate degrees in professional training, always have the knowledge that is necessary and I think from time to time, we who are in the educational part of training professionals should be reminded that it's important that everyone who graduates from a Faculty of Social Work for example should be at least minimally acquainted with this field and not that when they are in positions, then that they can follow up on the knowledge that's available. The theme that we've just addressed is probably the most critical one and that is this question of how can this very complex yet very exciting network of helping agencies learn to work together in a way that maximizes that with all the knowledge and skill we have available, that it will be made use of for the good of the client."

Later Dr. Turner spoke of the need for continuing education and in-service training to build on the basic professional competence achieved earlier. He spoke of the need for each children's aid society to maintain an adequate working library for its personnel who too have an obligation to keep themselves current in practice and procedure and to maintain personal libraries.

I am entirely sympathetic to and supportive of Dr. Turner's views. Because of the nature of the Inquiry the following recommendation is limited in its application to child care and child welfare within the field of social work. The recommendation however might very well be found to be capable of application to other distinct areas of social work regulated or controlled by or under other legislation.

51. *I RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations thereunder to provide that, for the purposes thereof, social work is a profession to be practiced only by persons possessing suitable academic qualifications and membership in a professional association to be created under the statute and to possess powers to regulate the practice of the profession including appropriate powers to establish standards of qualification for membership, competence and ethics and to impose penalties for failure to maintain qualification, for incompetence or for breach of ethics. Only members of the profession shall be entitled to be classified as social workers for the purposes of the Child Welfare Act.*

RECOMMENDATION #52 and #53

I see no reason why persons newly entering the field of child welfare should not be required to have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of Universities and Colleges of Canada.

The testimony as to varying tolerances of conduct in various parts even of Canada and of the world and Mr. Khattab's testimony as to his impressive academic qualifications and yet as to his lack of knowledge of child abuse satisfy me that, in instances of child abuse at least, if not in all areas of child welfare, education related to circumstances in Canada is essential.

Provision should be made in the legislation to furnish some security to persons who have served children's aid societies in the past and have been classified as social workers by reason of lesser educational qualifications accompanied by years of experience in social work.

However mere years of experience provide no measure of a person's knowledge and skill in social work. Conceivably a person employed by a society for years and given the title "social worker" may really have been doing purely clerical functions not unlike the so-called "review unit", which received reports to the Central Registry, was doing for the Ministry. That should not entitle that person automatically to the right and privilege of membership in the profession.

Therefore, any such provision should be subject to anyone benefitting therefrom being required to attend and successfully complete in-service training courses to be provided under the direction and guidance of the professional association and subject to the approval of the Minister.

In the same vein anyone who is a member of the professional association should be required to maintain his or her qualification for such membership by attending and successfully completing in-service training courses similarly provided under the

direction and guidance of the professional association and subject to the approval of the Minister.

In the light of the testimony as to the serious view that is taken of child abuse and of the difficulties, complexities and subtleties thereof provision should be made to the effect that only social workers who have successfully completed special courses upon child abuse similarly provided and approved by the professional association and the Ministry shall be assigned responsibility for the management of cases of child abuse.

It may very well be that some societies do not have any social worker so qualified to manage cases of child abuse. If so, the Ministry should have an overriding duty and authority to provide such assistance, advice and supervision as may be necessary to ensure the proper management of cases of child abuse arising in the areas served by such societies. To maintain a degree of equity among the societies and to prevent any abuse of this provision the Ministry should be empowered, in the Minister's discretion, to impose fair charges for any such assistance, advice or supervision.

In my view the establishment of social work as a profession, at least in the area of child care and child welfare, will help to ensure that the safety and protection of children is not entrusted to unqualified persons. Our children are too valuable in every sense to have their welfare and care entrusted to anyone who is not qualified.

52. *I THEREFORE RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations made thereunder to provide;*
- 1. that all persons entering the profession of social work for the purposes of child welfare after a date to be fixed by the Minister shall have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of*

*Universities and Colleges of
Canada;*

*2. that persons who have served
children's aid societies as
social workers since a date to be
fixed by the Minister shall be
entitled to continue to do so
provided they successfully
complete courses as required or
prescribed by the governing body
of the profession and approved by
the Minister;*

*3. that members of the profession
maintain satisfactory standards
by successfully completing
courses or examinations
prescribed from time to time by
the governing body of the
profession and approved by the
Minister.*

RECOMMENDATION #53

53.

I FURTHER RECOMMEND THAT the practices and procedures of each children's aid society provide that cases of abuse shall be assigned only to a worker or workers who have successfully completed special courses upon abuse prescribed by the governing body of the profession and approved by the Minister. If no such worker is on the staff of the society it shall seek and receive appropriate assistance from the Ministry.

RECOMMENDATIONS #54 and #55

There was testimony upon the Inquiry that in some situations decisions in child welfare cases might be affected by financial considerations.

It was apparent that financial matters were important to the Society and to Mr. Lovatt. There was no solid evidence that any decision in the management of Kim's case was affected by financial considerations. But there were so many bits or pieces of testimony that there was an intangible web suggestive of a relationship between the availability of funds and decisions and actions in Kim's case.

There was the insistence that Kim's case be opened as of August 31, 1975 "for statistical purposes," to use Mrs. Harvey's words.

There was the reference to the preparation of records by some children's aid societies whereby they benefitted more than other societies, including the Society.

There was the reference to calculation of provincial funding being more generous to children's aid societies for some types of service than for other types, such as programmes to prevent abuse.

There were the memoranda from the Ministry to all children's aid societies suggesting they review their criteria for taking children into care and keeping them in care to enable compliance with the fiscal restraint programme imposed on and by the Ministry.

There was the reference to the Society being unable to employ sufficient workers because of financial limitations.

There was the reference to the Society not being allowed funds to obtain legal services.

There was the testimony that the Society was without basic office supplies or materials for its workers in the spring of 1978 and that lack was attributed to the absence of money.

It is unthinkable that any children's aid society or social worker worthy of that designation, even in the very loose sense deplored by Dr. Turner, would deliberately permit or make any decision adverse to the best interests of a child solely because money was apparently not available. Any employee of the Society who was asked a question about such a possibility in Kim's case, denied that any decision in her case was made on the basis of the absence or availability of funds.

I have accepted those denials, but there remains the nagging concern that, perhaps only subliminally, there may have been decisions unduly influenced by financial considerations.

It is self-evident that in child welfare, particularly in cases of children who are in need of protection by reason of abuse, decisions that are or have a high risk of being contrary to the best interests of the children should not be made for any reason. Kim's was a case where some such indefensible decisions were made. They would be reprehensible and dishonourable if matters of finances had influenced the consideration of any issue and the decision resulting therefrom.

Full and proper observance of the requirement that each decision upon a case of abuse be preceded by a conference of the child abuse team and the appropriate support personnel and that a proper permanent record of the proceedings at such conference be maintained should serve to minimize the possibility of errors of judgement and certainly errors based on improper grounds, such as scarcity of funds.

Because of the financial concerns of the Society and its personnel expressed or discussed during the Inquiry I deem it advisable to state the obvious in the next two recommendations.

54. *I RECOMMEND THAT the Ministry, in clear and unequivocal written language understandable to everyone, even those who have no experience in writing, reading or understanding official documents, affirm to children's aid*

societies and their boards of directors, local directors and social workers that, in the planning for and the management and treatment of any case of abuse, no major decision is to be made on the basis of the society's financial position. The decision to apprehend the child or to leave him or her in the family home and the decision to retain the child in the physical control of the society or to return him or her to the family, with or without supervision, would certainly be major decisions. The child's very life depends upon each of those decisions. The Ministry should equally clearly state its willingness to give favourable consideration to requests for additional funds to support correct decisions which might otherwise over-tax a society's financial resources.

RECOMMENDATION #55

55. *By way of extension to the immediately preceding recommendation I RECOMMEND THAT each children's aid society, again in similarly clear and unequivocal written language, inform all of its social workers of the Ministry's affirmation of that position and the society's intention to adhere thereto.*

RECOMMENDATION #56

I regard the next recommendation as an example of how the Ministry must assert and acknowledge its overriding responsibility for the protection and care of all children in Ontario pursuant to the legislation.

Throughout the Inquiry witnesses in oral testimony or by reference to literature emphasized the right and the need of every child in Ontario to an equal standard of facilities for care and protection regardless of the location of his or her home in Ontario. However it was generally recognized that many factors combined to make it difficult, if not impossible to achieve such equality.

Some of the factors mentioned in testimony have, in my view, greater validity or impact than others. Mr. Lovatt spoke of the problem the Society had experienced in trying to employ highly qualified social workers. He related that difficulty to the absence of a university in the City of Sarnia or County of Lambton. Subject only to changes brought about by developments of wider economic effect since Mr. Lovatt left the Society, that claim would appear to have had little validity.

Others spoke of the ability of children's aid societies in larger centres to employ and develop social workers with specialist skills. That ability was related to the correspondingly greater size of such societies and thus the greater demand for the services of specialists. In the light of the testimony as to the few cases of abuse dealt with by the Society during the years of and about Kim's lifetime, that testimony would appear to have considerable validity.

Apart from conduct of prevention programmes one who was or hoped to be a social worker specializing in cases of abuse would not likely find in a children's aid society such as the Society enough instances of abuse to enable full development or use of specialist skills.

However, even as I write that, I hark back to Mr. Zwerver's testimony to the effect that, in the spring of 1978, he could not assure the Board of

Directors of the Society that there was no other case such as Kim's somewhere in the Society's system. I also hark back to the testimony of others as to the general frailty of the statistical base for any study as to the incidence of abuse in Ontario and elsewhere. Thus the validity of the testimony as to problems of hiring specialists in the handling of cases of child abuse may be subject to question.

However, be that as it may, I am satisfied that in fact there are disparities in the standards of protective service immediately available to children in various parts of Ontario. That is not unexpected. Disparities in service are not confined to protective service. One need only read newspapers, watch television or listen to radio to recognize that. I think of the instances in which children from all parts of Ontario, near to or far from Toronto, are brought by helicopter or other ambulance to receive treatment and care at the Hospital for Sick Children in Toronto. Presumably such treatment and attention are not available in their own communities. We all realize that a hospital such as the Hospital for Sick Children cannot be established and maintained in every part of Ontario. The same applies to persons who are similarly transported considerable distances to larger centres for treatment or attention not available in their local communities.

But disparities are not confined only to protection of children or health. They exist in every phase of life. People often must make personal decisions based on a consideration and evaluation of those disparities. One may decide to establish his home in a small town because he feels the advantages of such a location outweigh, for him and his family, the advantage of the large city. Another may make a different decision.

Disparity in service should not mean disadvantage.

In my view the full and proper performance by the Ministry of its duties under the Child Welfare Act will prevent any disadvantage and will ensure that any child in Ontario in need of protection will receive protection and that it will be in keeping

with standards then currently provided across Ontario.

While the larger children's aid societies may require their own specialist workers and facilities to meet the needs and demands of their own communities, the Ministry must have, on its own staff or readily available, specialist workers and facilities to advise, supplement, support and generally assist those societies in communities which do not have service demands or needs sufficient to justify the employment, or perhaps even the availability of specialists and facilities locally. In this regard I liken the Ministry's employment or retainer of such personnel and facilities to its employment of specialists to assist local children's aid societies in investigation and other phases of cases of child abuse, a matter I have discussed elsewhere in this Chapter.

The sixteenth recommendation in the Garber Report was:

"16. That all abused children have equal access to places of safety for acute care, and equal access to regional places of safety for chronic or specialized care."

I endorse that recommendation and believe it to be entirely within the capabilities of every children's aid society in Ontario with the proper support, advice and assistance of the Ministry.

56. *I RECOMMEND THAT the Ministry ensure that no child who has been abused or is in danger of abuse be at a disadvantage in relation to protection and care by reason of the location of that child anywhere in Ontario. The Ministry should ensure that each children's aid society have or have readily available to it the personnel and facilities to ensure that the child is not at any such disadvantage. If local conditions make it unreasonable for a children's aid society to have such personnel and facilities or*

to have them readily available, the Ministry must provide such personnel and facilities or make them available for the child, but they need not be in the same community as the child's home.

RECOMMENDATION #57

The testimony upon the Inquiry illustrated the inadequacy of the leadership provided to the staff of the Society by Mr. Lovatt and Mrs. Harvey. Whatever qualifications Mr. Lovatt might have been felt to possess to merit his appointment as Local Director of the Society in 1968 were acquired primarily during his service as a social worker and supervisor with the Society. It was during that period in his career that he was granted the degree of Bachelor of Social Work by the University of Toronto in 1963. He also took courses in basic child welfare, provided by the Ontario Provincial Government, as well as a supervisory course and an administrative course, provided by the Child Welfare Branch and the Ontario Association of Children's Aid Societies. As I understood his testimony all of his practical experience in social work and child welfare was as an employee of the Society.

Mrs. Harvey's training and experience appear to have been more varied. She was granted a degree of Bachelor of Arts by McMaster University in 1945 and worked with a children's aid society elsewhere in Ontario in 1945 and 1946. She worked for the Society in 1951 and 1952. In 1953 she received the degree of Master of Social Work from Smith College, in Massachusetts. That degree resulted from a ten week course in social work with a nine month field placement supervised by the agency and the college followed by a thesis and a further ten weeks of training. After that her experience was varied, but until 1961 most of it was with private agencies in the United States of America. From 1961 to 1968 Mrs. Harvey was not in the work force. In 1968 she was employed by Mr. Lovatt to be Supervisor of the Family Services Department of the Society.

Thus, in a sense, all of Mrs. Harvey's current experience in child care was as an employee of the Society. There was no testimony that anyone other than Mr. Lovatt expressed any opinion as to her qualifications to be a Supervisor. There was no testimony that the Ministry had in any way commented upon her entitlement to that designation under the Regulations made under The Child Welfare Act.

I gathered however that even senior officials of the Ministry, including Mr. Macdonald and Mr. Charcko, were not satisfied with the Ministry's contribution toward the education and training of persons for senior positions of management of children's aid societies as local directors and supervisors.

Mr. Charcko expressed concern about the training of local directors of children's aid societies in general and in relation to child abuse in particular.

He said:

"...The area of training and I think maybe this is something that the Ministry should do, more courses both on management and then the whole area of child abuse which we are trying to do this and there will be, we are doing special projects right now that we want to learn something more about child abuse, but there is a need I think for selection of the type of staff to deal with the child abuse situations..."

Mr. Macdonald, in his own way, expressed a similar concern about the education and training of local directors. He enlarged the scope of his comment to include a corresponding concern in respect of the boards of directors of children's aid societies. In beginning his response to counsel's request that he give me the benefit of his recommendations arising from his observations of Kim's case and the Inquiry he said:

"If I could concentrate on perhaps one area rather than trying to get into a variety of areas. My general recommendations related to that whole system perhaps are as much indications of what we have to do and what we are doing, and I think it's important knowing what we know now I think we have to do a great deal of work on the function and operation of boards of directors, on the relationship between local directors who take on program responsibility and boards of directors who take on the overall management and legal responsibility. I

think we have to extend that to the professional responsibility of the front line supervisors, the middle management staff as well as the field worker, but I would think that it's important for us if we are going to keep on top, and that's very much what it is, keep on top of individual cases through the mechanisms that we have available; that we have to elaborate our training, education and supporting systems to the key people in describing the Act and that is the boards of directors and the local directors. I think much of the very technical and very specific legislation requirements, standards requirements, procedural requirements we're tackling right now in great detail and we're working with the societies, with the Legislature, with the supporting groups to move ahead in that area, and I think we must not forget the involvement and engagement of lay people, boards of directors and their direct employees in the process. I think that's really --

Q. What you're saying is better communication between the local boards and the staff?

A. I think it's more than better communication, it's training in how to be a board member and training in what that responsibility is.

Q. That would be part of it though?

A. That would be very much a part of it. It's training a local director in how to work with his board and his responsibilities in response to that board, and it's more than simply communication, it's real skills that are required of the lay person and the director in the management of the enterprise."

I accept the tenor of such testimony that persons who are to assume positions of responsibility in children's aid societies require specialized

training to enable them to fulfill their obligations. I think it is reasonable to assume that not every person who is capable, by reason of education, training and experience, to be a social worker functioning under or with the assistance of supervisors or a local director of a children's aid society, possesses corresponding aptitudes and skills and experience to enable him or her to perform the supervisory and administrative duties of a supervisor or local director.

57. *I RECOMMEND THAT the Ministry establish and maintain, possibly in co-operation with the Ontario Association of Children's Aid Societies, an ongoing programme to select and train social workers who may aspire to positions of responsibility as supervisors or local directors of children's aid societies. Successful completion of any course developed and presented as part of such a programme should be required of anyone seeking appointment to or employment in such a position. As mentioned elsewhere among these recommendations in other areas the programme should contain provision for facilities to enable persons who have achieved such positions to keep themselves aware of new or current developments and trends in relation thereto. The local children's aid societies should be assisted and encouraged by the Ministry in making it possible for appropriate members of their personnel to attend such courses.*

RECOMMENDATION #58

There was extensive testimony upon the Inquiry as to the need for the Ministry to set standards to be the minimum standards of the services to be provided by children's aid societies in the various areas of child welfare and child care.

It seemed that each witness who in any way discussed the matter of delivery of services by children's aid societies to children and families deplored the absence of standards against which the performance of individual societies and workers might be measured.

That absence of standards or the deficiencies of such standards as were in existence was not a phenomenon unnoticed before this Inquiry. Others in a variety of studies and reports had commented thereon and urged the Ministry to establish and publish standards for use by children's aid societies in their various fields of service.

Personnel of the Ministry were well aware of those earlier recommendations, some of which were made years before Kim's birth.

Witnesses upon the Inquiry who were in the employ of the Ministry appeared to bristle at any suggestion that the Ministry had done nothing in response to such recommendations. Some went into some detail to explain what the Ministry had accomplished, but, when one sifted through all the words and sought a document produced prior to Kim's death to set forth any such standards in respect of child abuse cases, nothing of any substance was forthcoming other than the 1976 publication by the Ontario Association of Children's Aid Societies.

To be sure in 1978 work in that direction was getting underway. The Garber Report had raised the issue again in 1978. In 1977 a Standards and Information Branch had been formed in the Ministry.

I understand from the testimony upon the Inquiry that the Ministry hoped to publish standards of service in respect of child abuse and I have since been made aware that publication of a manual containing such standards was in fact achieved in February

or March, 1980. It is to be hoped that the Ministry will perform its announced intention to keep the manual current and in conformity with legislative and regulatory amendments and developments of practices and procedures in the field.

That may be another area in respect of which the Minister may wish to make inquiries from time to time to ascertain if that declared intention is being fulfilled by the Ministry.

Preparation of standards cannot be viewed as a task which is fully performed with the first issue thereof. It was clear that practices and procedures change and develop over time. That comes as much or more from field experience as from amendment or judicial interpretation of legislation and regulations. Thus it is imperative that standards when published be reviewed in the light of developments and that appropriate amendments be made and published.

However the preparation of standards of service and explanatory or other material is not in itself sufficient. There must be adequate publication and distribution of that material to every children's aid society and to every social worker employed by the children's aid societies. Insofar as those materials may require the involvement of persons or organizations other than children's aid societies and their employees, the regulatory bodies of other professions or disciplines and the associations of other organizations should be made aware of the materials, particularly the portions thereof applicable to such other professions or organizations.

Then too there must be assurance that those in the children's aid societies to whom the materials are made available have read them and understood them. That latter should be the responsibility of each children's aid society in respect of all of its social workers. That may involve organized periods of in-service instruction. It will involve on-going review, particularly in relation to revisions of the material and changing circumstances.

There must also be assurance that each children's aid society achieves a standard of service

meeting or exceeding the requirements of the published standards. Only in that way will there be an approach to the uniformity of service across the Province of Ontario which is the goal desired by everyone working upon cases of child abuse.

That latter assurance can be gained only by adequate supervision, firstly of the individual social workers or teams of social workers by the supervisory personnel of each children's aid society and secondly of each children's aid society by the personnel of the Ministry.

There was some testimony as to a need or desire for a means of accreditation of children's aid societies. It seems to me that appropriate supervision and inspection of the societies by the Ministry to ensure that the societies are delivering services which meet or exceed the standards of service prescribed by the Ministry and are following procedures and practices which meet or exceed the requirements of the Ministry, is the equal of any system of accreditation by another body.

In a sense I regard the societies and the Ontario Association of Children's Aid Societies as a vehicle of ensuring that the Ministry fulfills its duties and, conversely, I regard the Ministry as the vehicle to ensure that the societies fulfill their duties.

Surely the well-managed societies will not stand quietly by and permit poorly managed societies to tarnish the image of all societies. Nor should the Ministry permit that to happen because it is the Ministry's duty to ensure that all of the societies fulfill their duties to an appropriate standard.

In other areas of this Chapter, I have written of a system of accreditation of the societies. In so doing I was not contemplating the introduction of any system of accreditation other than assurance by the Ministry, by appropriate supervision and inspection of the societies, that the societies met or exceeded the standards of service, practice and procedure prescribed by the Ministry.

I would trust that if the Ministry should fail to provide the necessary supervision and

inspection the Ontario Association of Children's Aid Societies and persons such as the Farina Committee, Mr. Zwerver, Dr. Bates, Dr. Turner, Mr. McCabe and others would speak out loudly and clearly and would be heard by the Legislative Assembly of Ontario which would take the appropriate action.

Mr. Mainville expressed his opinion, particularly in respect of cases of child abuse, when he said:

"...Certainly I agree that it's very important that we should have some very clearly defined standards of services, not only in the area of child abuse but in other services as well, guidelines and procedures and in addition certainly there should be a much more effective monitoring system --

Q. --

A. Internally within the Children's Aid Society and externally --

Q. A more effective monitoring of child abuse cases?

A. More effective monitoring of child abuse cases, specifically in terms of bringing together people from the Society with the Police Department, the medical authorities, before a decision is made on a child abuse case.

Q. And externally as well?

A. Well, when I mention externally I mean that the Society should consult with other bodies of authority within the Community.

Q. The Police, Probation Services and County Health Unit?

A. Yes.

Q. What about further assistance from the Ministry specifically in child abuse cases?

A. Well, I think it's the Ministry's responsibility to develop standards of services in consultation with the children's aid societies to ensure that effective guidelines and procedures are adopted by individual societies and to set in place some mechanism whereby they could effectively monitor the service that is being provided in child abuse cases.

Q. Have you any suggestions how they could do that?

A. No, I think those are the kinds of issues that people are concerned about and need to address very specifically...."

When Mr. Zwerver was asked for any recommendations he might care to make in respect of cases of child abuse or in respect of the operation of children's aid societies he said, with acknowledgment that he might duplicate those of other witnesses and those in the Garber Report:

"...My first recommendation would be that the Ministry along with the Ontario Association of Children's Aid Societies, develop clear standards of service for all children's aid societies in order that there can be greater consistency of service to families and children across the province. These standards and their accompanying guidelines must also clearly spell out the coordinating and audit functions of the Ministry, the role of the local community in the operation of the children's aid society in order to eliminate any role confusion that might presently exist. In this way service can be more effectively evaluated and the many issues around funding can be more readily resolved. Decisions about funding can then be based on identified needs and the local agency's ability or lack of ability to meet those needs..."

Mr. Allen in his testimony, part of which is set forth in an earlier part of these recommendations, had expressed the need for monitoring of the

children's aid societies by the Ministry to ensure compliance with the Ministry's requirements as to procedures and practices.

I am aware that the legislation enacted in 1978 by paragraph h of subsection 2 of section 2 imposed on the Director appointed by the Minister a duty to ensure that children's aid societies provide the standard of services and follow procedures and practices prescribed under subsection 3 of section 6. That latter provision requires the societies to provide the standard of services and follow procedures and practices "that shall be prescribed by the Minister."

As I have written elsewhere I would hope the Ministry shall treat that as a statutory requirement that the Minister prescribe standards of service and procedures and practices.

If the Ministry does not do so subsection 3 of section 29 should be amended to force it to do so.

58. *I RECOMMEND THAT the Ministry continue its programme of establishing standards to be met by children's aid societies in all areas of service to children and families, particularly in relation to the protection of children from abuse. Those standards should be subject to ongoing study and revision by the Ministry's personnel in the light of the experience of the Ministry and children's aid societies with those standards. The Ministry should affirm its desire and willingness to receive and consider comment upon its previously published standards and recommendations with a view to revision thereof if necessary or desirable. The Ministry should ensure that copies of these standards are made available to every children's aid society and, through each children's aid society, to each social worker in*

the employ of that children's aid society. The Ministry should maintain a service to ensure that every children's aid society and every social worker in the employ of the children's aid societies is advised of any revision of the standards. The standards should be accompanied by explanatory and supporting material and, particularly for the supervisory employees of the children's aid societies, materials to be used by supervisory personnel during instruction or training of subordinate personnel in relation to the standards. Each children's aid society shall ensure, by adequate instruction and training of its personnel in relation to the standards and by adequate supervision of the work of each of its social workers, that the standards of service established by the Ministry are met or exceeded. The Ministry in its turn shall ensure, by adequate supervision and inspection of each children's aid society, that such standards are met or exceeded. The Ministry shall furnish to the president and local director of each children's aid society a written report upon any such supervision and inspection.

RECOMMENDATION #59

There was an abundance of testimony to indicate that there were great differences among children's aid societies in the bases or criteria used to establish that a case or report of child abuse was one to be recorded in the files of the particular children's aid society as being a case of child abuse or in respect of which any report was required to be made to the Ministry for any purpose, including the Central Registry. It was that lack of uniformity in recording and reporting which formed one basis for testimony as to the uncertain value of statistics as to the incidence of child abuse in all jurisdictions, including Ontario.

This problem relates particularly to the effective function of the Central Registry both as a means of monitoring cases of child abuse and assisting local children's aid societies with any problems therein and as a means of obtaining information from which accurate statistical material can be prepared.

The testimony and the literature referred to upon the Inquiry suggest or state that there are no statistics which can be shown to be entirely reliable to indicate the full measure of child abuse in Ontario and elsewhere.

One of the difficulties in seeking to determine the accuracy of particular statistical material is the absence of uniformity of terms and of standards of reporting. In this Inquiry that was stated to be one of the major difficulties of obtaining useful material from the Central Registry of Child Abuse informally established and maintained by the Ministry from 1966.

Another difficulty mentioned was simply the difficulty of establishing to any satisfactory level of proof that a particular injury was caused by abuse and not by accident as claimed by the child's parent or parents. Witnesses upon the Inquiry and literature they mentioned questioned the reliability of statistics. The general view appeared to be that there were many more instances of abuse than the statistics would indicate.

That position related to injuries as serious as those Kim suffered and which cause death as well as to less serious physical injuries and to other types of harm such as emotional damage which may be more serious and long-lasting than physical impairment.

The very nature of child abuse and the statistics which are available explain the problems encountered by those who seek to establish any statistical base for their opinions.

Parental abuse of a child often, or even usually, occurs in some private setting out of the sight or hearing of others. The abused child is usually under the age of three and so is too young to express any complaint to anyone. The abused child, by reason of fear of the abusing parent or some other emotional factor, may be unwilling to complain to anyone even if able to do so. For some reason, perhaps identifiable only by psychiatric or other examination of the child, the abused child may feel some sense of guilt and, thus, responsibility for the abuse he or she suffered. Sometimes, as in Kim's case, the abused child dies as a result of the abuse and so is unable to complain.

The authors of the Garber Report set forth a recommendation as follows:

"4. That guidelines for inclusion of data and diagnosis emphasize uniformity of reporting. Staff support at the Ministry should be made available to assure that the system now being formulated can be made operational and guidelines for record keeping by local children's aid society's be developed and standardized across the province."

Dr. Sohn in his testimony expressed the view that that recommendation related particularly to the operation of the Registry. He said the Ministry was preparing material which he felt would implement that recommendation at least in relation to the Central Registry.

On the basis of the testimony as to good intentions of the Ministry which are not fulfilled

for a variety of reasons, and thus, lest the recommendation of the Garber Report has not been implemented, I make the following recommendation.

This is another recommendation written in full knowledge of the provisions of paragraph h of subsection 2 of section 2 and subsection 3 of section 6 of the present Child Welfare Act. The full benefit of implementation of this recommendation will be achieved only if the Ministry regards the legislation as imposing upon the Minister, in mandatory terms, a duty to prescribe standards of service and practice and procedures and then a duty on the Director to ensure that the children's aid societies adhere thereto and comply therewith.

If the Ministry interprets the legislation otherwise the legislation should be amended to achieve the desirable and necessary result.

59. *I RECOMMEND THAT the Ministry ensure that the intention of the authors of the Garber Report as expressed in their recommendation numbered 4, be fulfilled and that standards be established, kept current, published and enforced so that there will be uniformity in the bases and criteria employed by children's aid societies in preparing their own records in respect of child abuse cases or reports and in preparing reports thereon to the Ministry or other authorities.*

RECOMMENDATION #60

I have written of the testimony which expressed concern about the failure of the public generally and professional persons in particular to comply with the statutory duty to report incidents of abuse to children or concerns for the well-being or safety of children.

The following recommendation is intended as a means of ensuring that all persons employed in or about public hospitals are aware of the statutory provisions and comply with them.

During the Inquiry there was testimony and discussion alluding to procedures whereby hospitals received accreditation in recognition of their attainment and maintenance of defined standards of service and care. The details of those procedures were not examined.

The Garber Report contained a recommendation based on its acceptance of the need for the formation and maintenance of multi-disciplinary teams to deal with child abuse and for the participation of medical and hospital personnel in the function of such teams.

That recommendation also recognized the basic problem which, as I have noted, was encountered by everyone who had to decide what circumstances would justify or require any report to be made to a children's aid society or Crown attorney.

However in the case of physicians, nurses and hospital personnel there is an added dimension to the basic problem. The testimony upon the Inquiry and literature referred to in testimony show that properly trained medical personnel may, upon observations made even prior to a child's birth and immediately after birth, form the opinion that a child may be a high risk child from birth or from discharge from hospital.

It may be that the reference in section 41 of The Child Welfare Act to a child's "need for protection" as a basis for a report to a children's aid society or Crown attorney would require and

justify medical personnel to make such a report immediately upon forming such an opinion.

But there was testimony that professional opinions not supported by "hard" evidence of abuse, such as marks of physical injury, were not sufficient to satisfy the courts. The testimony was primarily directed to evidentiary problems in relation to opinions of social workers, not medical doctors, but some of the testimony was expressed more broadly. Similarly that testimony was not primarily related to any statutory duty to report, but it seems to me that anyone forming such an opinion, before the child and mother are released from hospital after the child's birth, would have some concern as to whether such an opinion would be sufficient to justify or require the person forming that opinion to make a report thereon to a children's aid society or Crown attorney.

Accepting the validity of the testimony as to the ability of physicians to form such opinions with a satisfactory degree of accuracy, it would seem to me that it should be made clear to hospitals and physicians that an opinion formed even prior to the child's birth that the child from birth or discharge from hospital will be a high risk child is sufficient to require a report to be made to a children's aid society under The Child Welfare Act. Such an opinion would indicate the child's need for protection from birth.

The basis for such an opinion is discussed in connection with recommendation number 48 in this Report.

The recommendation in the Garber Report is:

"11. That hospital accreditation procedures should include standards for reporting child abuse, and for participation on multi-disciplinary child abuse teams."

I endorse that recommendation. Lest it has not yet been implemented, I make the following recommendation.

60.

I RECOMMEND THAT the Ministry take all appropriate and necessary steps to ensure that accreditation of public hospitals will require or involve such hospitals to meet or exceed specified standards for actions to be taken, procedures to be followed and reports to be made by the personnel of such hospitals, including medical practitioners enjoying any privilege therein, in any instance of abuse or suspicion of abuse or professional opinion of any of the hospital's personnel qualified to express such an opinion that the child, even from birth, will be a high risk child. Such actions and procedures shall include participation in the discussions and decisions of any multi-disciplinary team of persons formed or requested by a children's aid society to assist in any phase of the investigation, management or treatment of any case of child abuse.

RECOMMENDATION #61

As I have noted Dr. Bates and others who testified upon the Inquiry spoke of matters which might be regarded as indicating that a child may be a "high risk child" even from birth. Some of those factors would most likely be first noticed by the medical or hospital or public health personnel providing pre-natal care and then by those attending upon the birth of the child and then providing post-natal care.

The factors might be rooted in one or other of the parents of the child. For example, he or she may be seen to be immature and incapable of providing appropriate care to the child.

The factors may be rooted in other circumstances in the home to which the parents intend to bring the child. For example, it may be that the home is occupied or frequented by persons known to have abused other children.

The factors may be rooted in the child. He or she may be suffering from some deformity or illness. He or she may be unwanted or may be wanted, but wanted for the wrong reasons.

Medical and hospital personnel and public health nurses are likely to be among the first of any professional group to have contact with the new born child and the parents.

In Kim's case The Lambton Health Unit did have reason to visit with and to advise Jennifer Popen even prior to Kim's birth.

Dr. Jumean attended Jennifer Popen during her pregnancy with Kim. He attended Kim and Jennifer Popen after Kim's birth.

Other medical and hospital personnel were involved in some elements of the lives of Jennifer Popen and Kim during that same time.

I accept Dr. Bates' testimony that it is possible for medically trained and experienced persons to detect, accurately identify and correctly assess factors which may indicate that a child may be

a high risk child, one more likely than most to be abused, even from birth or discharge from hospital after birth.

Dr. Bates' testimony is supported by the writing of Doctors Fontana and Besharov in the work I have mentioned. They write of the need for careful supervision of the care of any newborn child who is determined to be in a high risk situation. They wrote as follows:

"We must therefore develop child abuse preventive programs for the high risk population; the underprivileged; the handicapped, the drug addicted; the alcoholics; the woefully immature and the unwed single parents. The encouraged participation of these parents in early preventive programs that offer human support services will ensure that quality of life for child and parents that will not incite parental misbehavior."

The success of any such programme will depend upon the co-operation of medical, hospital and public health personnel with children's aid societies and others who participate in the various teams or groups suggested by so many of the witnesses.

It will be a co-operation initiated by the particular knowledge, skills, training and experience of physicians and nurses. It may go beyond the type of communication or report contemplated by section 41 of The Child Welfare Act as it was in 1975 and 1976 or even section 49 of The Child Welfare Act, 1978. It will require agreement and acknowledgement that if, even without "hard" evidence of abuse or even without opportunity for a child to have been abused, a properly qualified person has formed the opinion that the child, even from birth, is a high-risk child, then the person forming that opinion must report thereon to a children's aid society and the children's aid society must then treat that report as it would treat any other report of information as to abuse of a child or a child's need for protection.

This is, in part, related to what Dr. Bates and others, including apparently the authors of the Garber Report in the preamble to their twelfth

recommendation, sensed as an evidentiary problem in court proceedings related to child abuse. They sensed that there was a tendency for courts to reject or not act upon the professional opinions of social workers and others not accompanied by "hard" evidence of injury to the child.

With all due respect I would hope that Dr. Bates and the others are in error in arriving at that conclusion. In my view, assuming that the court has been satisfied as to the expertise of the witness presenting the opinion and that the testimony is not otherwise successfully attacked or discredited, the rules of evidence presently applicable would enable a court to admit such testimony and to act upon it in an appropriate case.

61. *I RECOMMEND THAT the Ministry, in co-operation with other appropriate ministries of government, ensure that physicians and nurses, in private practice or in the employ of public hospitals or public health bodies, who provide care, whether pre-natal or post-natal or both, to mothers and children receive special training to enable them to detect, recognize and assess any matter which might indicate that any child, even a new-born child, may be a "high-risk" child. Hospitals and public health bodies should provide in-service training on such matters to doctors and nurses on their staffs or enjoying any privilege in their facilities to ensure that they remain current. Such training should emphasize that if a doctor or nurse, having recognized the presence of any such matter, should form the opinion that a child may be a "high-risk" child he or she is, by the Child Welfare Act, required to report such opinion and the information or observations on which it is based to a children's aid society.*

RECOMMENDATION #62

There may be concern on the part of physicians and nurses, and their employers if they are on the staff of a public hospital or public health body, that any such report, based solely on a professional opinion without any hard evidence to supplement it, would not ensure that the provisions of the Child Welfare Act would be available to protect the physician or nurse or employer from civil proceedings based on the making of the report.

In my view the establishment and function within the public hospitals and health bodies of teams of doctors and nurses to deal with child abuse should remove the concern of individual practitioners and ensure the validity of any opinion expressed as to a child's need for protection even in the absence of "hard" evidence.

There is no reason that this be restricted to reports in respect of new-born children. There may be factors present in an older child's life to indicate, without hard evidence, that he or she may be in need of protection.

Any concern of doctors and nurses in respect of reports based solely on professional opinion should be allayed. In my view the Ministry is in a position to do that with the co-operation of other ministries of government. However, lest there be any lingering concern in the mind of any physician or nurse which might inhibit him or her from making a report based solely on opinion, the concern should be removed by legislative action.

62. *I RECOMMEND THAT the Child Welfare Act be amended to ensure that no action for making the report shall be instituted against any doctor or nurse who reports to a children's aid society that in his or her opinion a child may be in need of protection although there is no "hard" evidence of abuse of the child or the child's need for protection, provided the report is not made maliciously and the opinion is not expressed maliciously.*

RECOMMENDATION #63

Another area of concern related to the absence of adequate lines of communication between the social workers of the Society and Mr. Lovatt, the Local Director, and the Board of Directors of the Society. The Farina Committee commented upon that lack. It was apparent from other testimony upon the Inquiry.

One prominent example of that deficiency of communication, as well as of recording, was the disagreement which became evident in February, 1976 when Police Constable Wyville, Police Constable Charlton, Mrs. Kirby and Mr. Carter visited Mrs. Harvey in her office to express concern about the suggestion, apparently bruited about in the Society, that Kim was to be returned to her home. The files of the Society do not record any of the events of that day. But neither Mrs. Kirby nor Mr. Carter, although they had strong opinions, went beyond Mrs. Harvey to express any concern to Mr. Lovatt. They seemed to think it was not appropriate to do so.

There was some testimony to the effect that Kim's case was the subject of much discussion or rumour among personnel of the Society long before it came to the attention of the Board of Directors late in 1977. Clearly Mr. Carter and Mrs. Kirby had been concerned enough about the case in February, 1976 to approach Mrs. Harvey to express opposition to the belief somehow formed by them and Police Constable Wyville and Charlton that Kim might be returned to her parents.

It was to my mind a serious reflection upon the administration of the Society that no one in the employ of the Society saw fit or felt free to raise the matter with Mr. Lovatt. It is an equally serious reflection upon the Society and its organization that no one in the employ of the Society or even outside of its employ, such as the two police officers, saw fit to mention any concern to the Board of Directors as a Board or to any individual member thereof with the hope that the Board would be informed and would then take appropriate action.

To my mind the most telling testimony as to absence of lines of communication within the Society

was that which revealed that until December, 1977 the Board of Directors of the Society was not aware that Kim was, by court order, in the custody and care of the Society when she died in August, 1976 as a result of abuse inflicted upon her. Apparently no one who knew anything about the case saw fit to mention it to the Board or to any member thereof during the intervening periods of about fifteen months.

Maybe in one sense that was a microcosm of our society generally and its unwillingness to become involved in the affairs of others. Maybe it was not unlike the incidents in cases mentioned by witnesses wherein neighbours or others chose not to report to anyone upon observations of what might have been child abuse. Maybe it was simply an example of a tolerance of our society, perhaps something like the varying tolerance of different communities for conduct which is acceptable or is not acceptable.

There was testimony too that even when Kim's case was raised at a meeting of the Board of Directors in December, 1977 some members of the staff of the Society who were there felt that the full and correct story was not told to the Board. But they remained silent.

I am aware that it is necessary for supervisory personnel to make decisions which may not be well-received by subordinate personnel. Subordinate personnel should not be encouraged to appeal as it were every such decision regardless of its content or importance. But certainly if the subject matter is one of critical importance, whether to the welfare of one child such as Kim or to the overall operation of the children's aid society, the concerned employee should have a means of expressing disagreement with or concern about the decision with the hope that it will be received by a higher authority within the society. The board of directors of each children's aid society should ensure that such a means of expression is available to every employee to be used, hopefully, only in appropriate circumstances. The procedure should ensure that the subordinate staff member is not deterred by fear of reprisal and that the supervisory or managerial staff does not feel threatened when a particular decision is questioned. Ideally the subordinate and the supervisory employees would join in the request to the higher authority for

review of the decision. Social work is not an exact science. Judgement is involved. No one person always has the correct answer to every problem.

In my view insistence upon employment of the team approach in cases of child abuse should minimize the instances of decisions which anyone might choose to question or to refer to high authority. But there will be instances where a minority of the team may wish to seek the opinion of the appropriate supervisor, the local director or even the board of directors.

On the testimony it was clear to me that social work, or at least that portion of it discussed upon the Inquiry, is not an exact science in which there is only one correct answer to a particular problem. So much is based on judgement or on assessment of a situation. From time to time upon the Inquiry a witness would state as much, saying that while he or she could not quarrel with a particular act of a social worker then being reviewed, he or she would have preferred that the social worker had done something else or something further. No one should, out of embarrassment or fear of reprisal, hesitate in appropriate cases to bring any difference of opinion to the attention of a supervisor, local director or board of directors of a children's aid society. Similarly no supervisor or local director should feel any embarrassment or anger because his or her opinion has been questioned.

Upon the testimony of highly qualified witnesses upon the Inquiry I am satisfied that it is imperative that the manual of practices and procedures of each children's aid society contain provision whereby a social worker, not satisfied as to a decision by a supervisor, without any embarrassment for either the social worker or the supervisor and without any fear of reprisal, may bring the matter to the attention of the local director for resolution. Similarly if the resolution by the local director is not satisfactory to either the social worker or the supervisor, there should be provision for the matter being presented to the board of directors or an appropriate committee thereof for resolution.

63.

I THEREFORE RECOMMEND THAT as part of its practices and procedures each children's aid society establish a process whereby any one or more of its social workers, concerned about the propriety or correctness of any decision made or proposed to be made in any case, may, without fear of reprisal and without appearing to threaten the authority or position of the team of social workers, the supervisor or the local director, as the case may be, bring the case and the particular decision to the attention of a supervisor, the local director or the board of directors, as the case may be, for review and determination. In the same vein the practices and procedures of each children's aid society should enable each employee to have a means of ensuring that full information about any case is available to any supervisor or the local director or the board of directors.

RECOMMENDATION #64

I have expressed the belief that workers engaged in any phase of a report or case of child abuse should have access to legal advice and should use it. That is contained in Recommendation #36, and I want now to expand thereon.

The testimony upon the Inquiry strongly supported and illustrated the need for children's aid societies to be represented by counsel in certain proceedings. In Kim's case the Society proceeded without any legal advice whatsoever. It may be somewhat ironic, but one of the stronger statements expressing that need came from Mr. Higgins. He had represented Jennifer Popen and Annals Popen in the proceedings in the provincial courts in respect of Kim. He had succeeded in preventing the Society from doing what it should have done. The Society sought no advice or assistance to overcome him.

After recommending that there be an improved means of communication between the children's aid society and other bodies, including, in Kim's case, public health, probation service, hospitals and police after the finding that Annals Popen had failed to protect Kim, Mr. Higgins testified:

"...Any combination of those organizations should be able to retain Counsel...I mean qualified legal counsel, if the staff spokesperson for Court work is not ideally qualified and this should be possible without any budgetary constraints from anywhere, whether it be Toronto or Ottawa. I'm sure that the Children's Aid Society would have had counsel throughout if their budget had permitted it. There should be absolutely no connection between the local budget and the ability to retain counsel by the Children's Aid Society for example."

He went on to enlarge upon that by saying:

"...Now, then, before a conviction for child abuse or in the event of a wardship situation, it seems to me that the Children's Aid Society, which would be the

only agency involved that ought to be able to have as much freedom in employing counsel as they would be if a conviction had been registered and a child perhaps were going to be returned.

One of the problems here has also been that the Crown Attorney's office has been asked to or has somehow or other been involved in this thing and the difficulty with their staff is they can never be sure the same Crown Attorney will be involved in one case from beginning to end had that been the case, things would have been certainly more efficiently dealt with.

Q. So you would suggest that the same Crown Attorney be seized of this matter and follow it right through?

A. Well, if it's a quasi criminal charge, yes but if it's a wardship situation, then I think that the Children's Aid Society should have their own lawyer or should have the ability to employ counsel without references to any constraints at all in budget.

Now then, my observation is...I might say that I even think that a qualified lawyer might have had a good crack at making me toe the line in so far as letting Mr. Carter see the children."

He added some comment as to what steps counsel retained by the Society might have taken to overcome his tactic which had effectively stopped Mr. Carter and the Society.

Again ironically, Mr. Carter, who was the direct target of Mr. Higgins' tactic, testified as to his difficulties with opposing lawyers generally. He said:

"...and then of course with the Legal Aid situation I found my role in a court hearing has become increasingly difficult without having legal protection for myself or the child before the court.

Q. You mean more and more parents and children are being represented by counsel?

A. Exactly, often by two separate legal representatives in the case of a separated family.

Q. Right.

A. So it becomes a very difficult - and the focus is certainly not on the child."

I understood him to use the words "legal protection" in the sense that it would be provided or ensured by representation and advice by counsel.

Mr. McPhedran expressed his belief that each children's aid society should have effective legal counsel. Because of the increasing complexity of social legislation and because of the concern for the rights of each individual, it was his opinion that, if it was involved in any way in any contested proceeding, a children's aid society should be required to be represented by counsel.

Inspector Ross expressed his opinion that each children's aid society should be represented by experienced trial counsel in all proceedings relating to the custody of children.

In the main body of the Report I have commented upon the inadequate representation of the Society upon the hearing of its application for an order declaring Kim to be a child in need of protection. That inadequacy related not only to the actual time in court in February, 1976 and on earlier occasions, but also to the preparation of the application from September, 1975 onward and to the steps taken by the Society after February, 1976 to and including the application in July and August, 1976.

In my view, if the Society had been represented by counsel that counsel would have ensured that the preparation for hearing in February, 1976, and hopefully earlier, was more complete, that Mr. Higgins did not succeed in his effort to deter Mr. Carter, that witnesses were present, that, subject to rulings upon the admissibility of evidence, all of

the information obtained upon a thorough investigation and the opinions of qualified social workers upon social work matters were presented, that a written report upon the proceedings, the reasons for judgement and any other matter was prepared for the Society's file and that consideration was given to what might next be required to continue to protect Kim.

All of the foregoing relates to the Society's application. But there were also the concurrent proceedings resulting from the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act.

In my view, counsel for the Society would have maintained a close liaison with the Crown Attorney and the Sarnia Police Force to exchange information and opinions and perhaps even to develop some common strategy in relation to the two proceedings. For example, if the investigation by police officers had revealed something not previously known to the Society, counsel for the Society would certainly have taken steps to seek to have that information presented to the Court upon the Society's application. That would apply as well to information such as that contained in the pre-sentence report upon Annals Popen together with Dr. Curtin's notes attached thereto. I am confident that counsel for the Society would have maintained a watching brief in the prosecution and would have prepared a detailed written report, with copies of documents such as the pre-sentence report and its enclosures, to be placed in the Society's file.

The Board of Directors of the Society recognized the need for the provision of legal services to the Society and its staff. That recognition was expressed by its resolution in January, 1976, making private funds available for such purposes. That resolution was passed in response to Mrs. Harvey's expression of the need for such services in cases involving abuse.

In 1978 the authors of the Garber Report expressed their opinion in this area by their recommendation numbered 12 which was written as follows:

"12. That in all child abuse court proceedings the Children's Aid Society must be represented by counsel; in all uncontested cases the Children's Aid Society should have access to legal opinion, in order to fulfill its protection mandate."

The matters that may arise from a report or instance of abuse are complex. At each stage, from the initial investigation until the very end, there may be questions relating to the rights, powers, obligations and duties of a children's aid society and its personnel, the relationship of a children's aid society with authorities or institutions or other community organizations, the confidentiality of material, the nature of the evidence to be sought or presented, the nature of any application to a court and countless other matters. These are essentially questions of law and procedure. Just as it is unfair to a social worker to ask him or her to express essentially medical opinions based on observation of a child, so is it unfair to ask that social worker to express essentially legal opinions.

In Kim's case, money was available for legal services. Its use was at Mr. Lovatt's discretion. That was known to Mrs. Harvey. That money was not used. It therefore seems that social workers may not recognize the full nature of their need for legal advice and assistance at various times. Mrs. Harvey's statement to Mrs. Farina declining the invitation to the seminar for court workers of the children's aid societies was an example of her inability or refusal to recognize her own limitations.

64. *I RECOMMEND THAT each children's aid society should employ or retain the services of one or more solicitors, preferably with training or experience in relation to family law, child welfare and child protection and with skills of advocacy. The advice of such a solicitor should be immediately available to the society's social workers at any time in relation to any report or instance of abuse or suspected*

abuse. The society's social workers should be required to consult with such a solicitor at appropriate stages of the investigation of such report or instance of abuse and subsequently in relation to any decision to be made during the management or treatment of the case including court proceedings of any sort. The solicitor should be advised of all conferences in relation to the case whether within the children's aid society or elsewhere, such as at the community child abuse team, and the matters to be discussed thereat. The solicitor should be required to attend such conferences if, in his or her opinion, the subject matter may involve matters of law or procedure, or if any social worker participating in the conference requests that the solicitor attend. All of that should form part of the society's manual of practices and procedures.

RECOMMENDATION #65

Counsel for the children's aid society will recognize whether any information obtained by the children's aid society during its investigation of any report or instance of abuse might be of interest to the police or Crown attorney. Such counsel should also be aware of any earlier involvement by the police or Crown attorney in the matter. There should be a policy of the society to require its counsel to establish and maintain a relationship of co-operation and mutual assistance with the police and Crown attorney in relation to reports and cases of child abuse.

65. *I RECOMMEND THAT counsel employed or retained by the children's aid society in respect of any report or instance of child abuse should establish and maintain liaison and co-operation with the Crown attorney and police to determine whether or not, in relation to the matter, any charge under the Criminal Code, the Child Welfare Act or any other statute, is contemplated by the Crown attorney or police or, in the light of information available to the children's aid society, should be considered. In the event any such charge is laid counsel for the children's aid society should co-operate with the Crown attorney to ensure an orderly and complete investigation and then, if required, an efficient procedure in court to complete all matters including the prosecution of any such charge and any application which the society may make in respect of the care of the child. That duty to co-operate corresponds to the duty of the Crown attorney and police to co-operate with the children's aid society as set forth in a subsequent recommendation.*

RECOMMENDATION #66

That then leads to consideration of the prosecution of Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act. It was a proceeding closely related to, but yet quite separate from the Society's application for custody of Kim. In relation to the immediately preceding recommendation I have written of the need for the liaison which counsel for the children's aid society upon any child welfare or child care matter should maintain with those responsible for the conduct of the prosecution of any criminal or quasi-criminal charge relating to the same matter.

The separation of the two proceedings in Kim's case arose naturally enough because of the involvement of the Sarnia Police Force and its perception of its duty to enforce the law. Appropriately the police officers sought and obtained advice from the Crown Attorney with reference to the nature of the proceedings and the presentation of the case in court.

Unfortunately the separation of the two matters was maintained and there was not adequate liaison between the Society on the one hand and the police and the Crown Attorney on the other.

In my view that came about primarily because Mrs. Harvey and Mr. Carter, for the Society, were not fully or correctly aware of the relationship between the two proceedings. They did not correctly understand the implications of decisions reached by the Crown Attorney and police in relation to the charge against Annals Popen and Jennifer Popen. They understood that the decision to withdraw the charge against Jennifer Popen had prevented or impeded the presentation of all evidence that they would otherwise have adduced upon the Society's application for custody of Kim.

That arose, at least in part, because they had not sought the legal advice which Mrs. Harvey, at least, knew was available. It arose also because of their ignorance of the law, an ignorance which Mrs. Harvey had implicitly denied when she declined Mrs. Farina's invitation to attend the workshop for court workers employed by children's aid societies.

There was testimony upon the Inquiry to the effect that the involvement of the Crown Attorney was desirable in relation to charges under section 40 of The Child Welfare Act.

His Honour Judge Nighswander said that the Crown Attorney should be involved whenever such a charge was laid. He said however that was not the practice anywhere in Ontario.

Mr. Hibberd expressed a similar view. He thought the Office of the Crown attorney should be more involved in some of the proceedings in the provincial court (family division).

Mr. Higgins supported the concept of the Crown attorney being involved in any prosecutorial proceedings under The Child Welfare Act. He refined that somewhat to suggest that greater efficiency would be achieved if one member of the Crown attorney's staff were assigned responsibility for the carriage of one matter from beginning to end.

I am aware of the provisions of subsection 3 of section 40 of The Child Welfare Act which permitted the judge conducting the trial of a charge laid under section 40 to hold a hearing and proceed as though the child had been brought before the judge as a child apparently in need of protection.

There was some testimony as to the need or desirability of joining or consolidating proceedings such as prosecution of a charge under section 40 of The Child Welfare Act with an application for an order declaring the child to be a child in need of protection.

That testimony was not firm and conclusive. At best it was tentative and indicated that the decision upon the point in any given case would be a matter depending upon the judgement of those responsible for the carriage of the two matters.

There was no testimony that such joinder or consolidation was considered by anyone in Kim's case.

It is open to the judge conducting the trial of a charge under section 40, on his or her own motion or on the motion of the person prosecuting the

charge, to treat that trial as a hearing of an application for an order to declare the child to be a child in need of protection.

Such an order for enlargement of the scope of the proceedings so as to include a charge under section 40 would not seem to be possible upon the hearing of an application such as that brought by the Society in respect of Kim.

In my view this is an area that might very well be the subject of liaison between counsel for a children's aid society and the Crown attorney and police officials. There may be valid reasons for the society wishing not to be identified directly with the prosecution of a parent lest such identification hamper the society in performance of other services to the same family at the time or later. However, apart from such considerations, the overall convenience of everyone and economy of time and effort would seem to favour the two matters proceeding as one or at least being heard together.

Perhaps because of lack of communication or understanding, there were a number of procedural problems in Kim's case. The two matters began in separate divisions of the provincial courts and were scheduled for hearing or trial on separate dates. Even after both were within the provincial court (family division) they were heard on separate dates.

Two groups, the Society upon its application and the Crown attorney and Sarnia Police Force upon the charge under section 40 of The Child Welfare Act, were responsible for separate investigations and preparations and for attendances of witnesses and for presentations in court.

Mr. Carter spoke of assumptions he made as to what police officers would do in investigation and preparation and, presumably, make available to the Society for its use upon the hearing of its application for custody of Kim. He told no police officer or the Crown attorney of his assumptions. In the result there were delays, witnesses were not available and some things which Mr. Carter expected to be done by others, such as police officers, were not done.

Employees of the Society claimed to be unaware of the intentions of the Crown attorney and Sarnia Police Force in the disposition of the charge under section 40 of The Child Welfare Act. While I rejected that claim, the very fact it was made illustrates the need for close and ongoing liaison between a children's aid society pursuing one proceeding and others, such as the Crown attorney and police, pursuing other procedures in respect of the same child.

Employees of the Society stated that the disposition of the charge under section 40 of The Child Welfare Act disrupted their entire approach to the Society's application and inhibited the introduction of evidence upon that application. They were in serious error. That was entirely of their own making. It resulted from their own ignorance of the law, particularly The Child Welfare Act, and their failure to obtain legal advice.

All of that could have been and should have been prevented by proper preparation for trial or hearing. In large measure the testimony to be adduced in support of the Society's application would incorporate, but would not be limited to, the testimony to be introduced in support of the prosecution of the charge under section 40 of The Child Welfare Act.

In addition to removing such substantial errors and misunderstandings co-operation between the children's aid society and others can achieve a more efficient use of the court's facilities and of the time of all concerned whether as counsel, agent, witness or party. Parties of somewhat common interest would not have to duplicate their efforts, but could exchange information and opinions and could apportion some tasks, such as securing attendance of witnesses, to one or the other as seemed most appropriate.

66. *I RECOMMEND THAT, if a charge under section 40 of The Child Welfare Act be laid by the police, a children's aid society or a private complainant, the Crown attorney be advised forthwith and thereafter the Crown attorney shall be responsible for*

the conduct of the prosecution of any such charge or for staying or withdrawing it. The justice before whom any person appears for the purpose of swearing an information alleging the offence should be responsible for ensuring that the Crown attorney is so advised. That latter may require the Ministry to obtain the co-operation of the Ministry of the Attorney General.

RECOMMENDATION #67

In Kim's case Mr. Hibberd appeared in court on very short notice to represent the Crown attorney upon the trial. He knew little about the case. That and what ensued from it demonstrated the value of Mr. Higgins' suggestion that one solicitor in the office of the Crown attorney be responsible for the prosecution of any charge from its inception to its conclusion. It may have been unfair to Mr. Hibberd. It certainly did not advance or protect Kim's interests.

Adoption of Mr. Higgins' suggestion would certainly ensure that the person in the office of the Crown attorney responsible for the case had sufficient time to prepare adequately for trial. It would probably ensure that in preparation for trial a complete liaison was established and maintained with all interested persons, such as the personnel of the children's aid society involved in the care of the child. In Kim's case there was no testimony to indicate any direct liaison between the Society and the office of the Crown attorney. Such liaison will be more likely and useful if the children's aid society has counsel instructed in relation to the case.

67. *I RECOMMEND THAT the Crown attorney, if not accepting the responsibility himself or herself, assign one solicitor employed or retained by the Crown attorney to have full responsibility for the conduct of the prosecution of any charge under section 40 of The Child Welfare Act.*

RECOMMENDATION #68

In my explanation of an earlier recommendation I set forth my view that counsel for a children's aid society in any court matter involving a child should maintain liaison and co-operation with the Crown attorney and police and exchange information and assistance if the Crown attorney or police are considering or have laid a charge under section 40 of The Child Welfare Act as a result of anyone's treatment or abuse of that child.

In my view there is a corresponding need for the Crown attorney and police, considering or having laid such a charge, to maintain such a liaison and co-operation in relation to information and mutual assistance with the children's aid society responsible for the care and protection of that child.

68. *I RECOMMEND THAT the police, as well as and the Crown attorney or solicitor responsible for the conduct of the prosecution of a charge under section 40 of The Child Welfare Act, immediately establish and maintain liaison and co-operation with the local children's aid society. One purpose of such liaison would be to discuss and to determine whether or not an application should be made in court for an order declaring the child to be a child in need of protection and, if such an application should be made, by whom and by what process. That liaison and co-operation should involve all phases of the two proceedings, whether or not they are joined, and should continue until both are completed. That duty to co-operate corresponds to the duty of the children's aid society to co-operate with the Crown attorney and police which is set forth in a preceding recommendation. This will involve*

*the co-operation of the Ministry
of the Attorney General and the
Ministry of the Solicitor General
with the Ministry.*

RECOMMENDATION #69

The testimony upon the Inquiry indicated that the professional staff of the Office of the Crown Attorney were over-burdened during Kim's lifetime.

That was demonstrated by the way in which the prosecution of Jennifer Popen and Annals Popen under The Child Welfare Act proceeded. Mr. Lang was originally consulted, a part-time Crown attorney appeared on at least one occasion when the trial was delayed because of the non-attendance of witnesses, Mr. Lang was again consulted and finally Mr. Hibberd, on short notice and with inadequate information and preparation, appeared upon the trial.

I recognize that officials of the Ministry of the Attorney General are aware of the varying demands upon the offices of Crown attorneys throughout Ontario and seek to ensure that each such office has personnel and facilities to meet the demands upon it.

However the preceding recommendations cannot be implemented unless the Crown attorney has the necessary personnel and facilities. This should be of concern to the Ministry.

69. *I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure that the Crown attorney in each county and district in Ontario be provided with sufficient funds to ensure that personnel and facilities are available to each such Crown attorney to enable implementation of recommendations in this Report requiring the involvement of the Crown attorney.*

RECOMMENDATION #70

The following recommendation relates to another area of the responsibility of the Ministry of the Attorney General.

During the Inquiry there was considerable uncontradicted evidence as to the lengthy delays in the hearing of matters in the Provincial Court (Family Division) of the County of Lambton. One reason for those delays was that Judge Nighswander was required to devote about one-half of his time and efforts to matters in the Provincial Court (Family Division) of the County of Kent.

The uncontradicted testimony was that speedy disposition of child welfare matters is essential for the welfare of the children affected thereby. If a child has been removed from a family home it is imperative that all concerned know quickly whether or not the child is to remain in the care of a children's aid society, and, if so, on what basis. Only then can adequate plans be made for the care and protection of the child by the society.

Apart from the delay from June until September, 1975, Kim remained in limbo as it were from September 1, 1975, until February 25, 1976. During that period no plans for her long term care could be made with any certainty that she would remain in the care of the Society to enable implementation of those plans.

Clearly the six month delay arose from many causes. But one cause certainly was the inability of Judge Nighswander, because of his other duties elsewhere and lengthy lists of matters to be heard, to fix early dates for hearing or trial. Kim's was not the only case affected by that inability.

I am aware from the testimony that, subsequent to March, 1976 and Judge Nighswander's retirement, a judge was appointed with responsibility only to hear matters in the Provincial Court (Family Division) of the County of Lambton. That should reduce delays resulting from insufficient time being available for the Judge sitting in that Court.

However, it would seem that the problem existed for some time before it was corrected. Kim and others were affected by it. A similar situation should not be allowed to arise.

I am aware that the Ministry of the Attorney General, responsible for the administration of the courts, maintains a procedure to record the number of matters commenced, dealt with and disposed of in each court. Those records may enable one to ascertain the number of proceedings which arise from allegations of abuse or from the apparent need of children for protection under The Child Welfare Act. Even so it is my view that the Ministry and children's aid societies have a particular and special interest to ensure that the provincial courts (family division) are able to deal expeditiously with cases involving child abuse or children apparently in need of protection.

70. *I THEREFORE RECOMMEND THAT the Ministry, the Ontario Association of Children's Aid Societies and the children's aid societies in Ontario maintain an ongoing survey of proceedings under the Child Welfare Act in the provincial courts (family division) to ascertain whether or not any inadequacy in the facilities of those courts, including the numbers of judges appointed thereto, contributes to any unreasonable delay in the hearing and disposition of such proceedings particularly those involving allegations of child abuse or children apparently in need of protection. If such survey should indicate that there is, in any such court in any county or district, unreasonable delay in such matters because of any inadequacy of the court's facilities, the Ministry, through appropriate procedures of government, should seek to ensure that the facilities of that court are improved so as to prevent any such delay.*

RECOMMENDATION #71

Inherent in the comment upon the inadequacy of the representation of the Society upon or in relation to the presentation of its application in respect of Kim must be concern for the adequacy of the representation of Kim upon that proceeding and in relation to the charge under section 40 of The Child Welfare Act. Mr. Carter spoke of the difficulty arising from the absence of "legal protection for [himself] or the child before the court."

In my view Kim's need for "legal protection" was the greater of the two. Without wishing to be melodramatic, the very life of the child was at stake.

Hopefully implementation of other recommendations set forth herein will ensure the best possible preparation and presentation of the application on behalf of the children's aid society. Hopefully too such preparation and presentation will be in the best interests of the child. However it is not difficult to envisage instances where, for some particular reason, it may not be in the best interests of the child that the children's aid society succeed in its application or in some particular part of it.

One such instance which readily comes to mind develops from the testimony to the effect that in some instances removal of an abused child from the family home may not be in the best interests of the child. This is one of the areas that makes social work an inexact science where there may be a variety of answers to each problem and each of those answers might be viewed as being a correct answer.

The authors of the Garber Report state that research indicates that children's aid societies feel that representation of children's best interests has been inadequate.

In Kim's case the inadequacy of representation of her best interests was the inevitable by-product, as it were, of inadequate representation of the Society.

As their thirteenth recommendation, the authors of the Garber Report recommended that

"13. Any child who is the subject of a child welfare hearing should be represented by his or her own lawyer, unless this is not recommended by the court."

There was testimony upon the Inquiry to the effect that the Ministry was prepared to accept that recommendation subject only to the amendment thereof to provide that if the court is of the opinion that representation of the child is desirable it may direct that legal representation be provided for the child. Presumably then such representation would be provided, but it was not clear just how that would be achieved or paid for.

That recommendation of the Garber Report, amended as suggested by the Ministry, was incorporated in section 20 of The Child Welfare Act, 1978. That section provides firstly that a child may have legal representation at any time in proceedings under Part II of that statute. That is merely permissive. The section then imposes upon the court the duty of determining whether legal representation is desirable to protect the interests of the child. If such representation is desirable, the court shall direct that legal representation be provided for the child. The section also sets forth circumstances which require the court to make such a direction.

The general concept of both the recommendation in the Garber Report and the 1978 legislation causes me no concern on the basis of the testimony upon the Inquiry. I do have concern about the specific form of the legislation. My concern relates particularly to the method of provision of representation and payment therefor. Who is to provide it? Who is to pay for it?

I understand the recommendation in the Garber Report to be that every child who is the subject of proceedings under The Child Welfare Act have separate legal representation unless the court hearing the matter otherwise directs. The legislation is somewhat the reverse of that approach. Representation is to be provided if the court directs it.

The legislation seems to contemplate two perhaps different situations. It provides firstly that a child may have legal representation. That is purely permissive. It makes no reference to how a child, under sixteen years of age by the terms of the legislation, may instruct counsel or arrange to pay for legal services. For example, one is left to wonder whether counsel retained for the child and paid by one or both of the child's parents or by a relative or a patron of the child might provide the independent legal representation that the recommendation in the Garber Report would seem to contemplate. This might raise for lawyers the same sort of problem that bothered some doctors who testified upon the Inquiry. Dr. Bates was not bothered. He was clear and firm. He said the child was his patient and he would act accordingly. Others were not so clear. They seemed to have some difficulty in seeing the child as an individual patient rather than as one of the members of a family which, perhaps collectively, were the patient. Those doctors might not act solely in the child's best interests without some consideration for what they perceived to be the best interests of the family of patients.

I would think that a solicitor, perhaps the solicitor who acted generally for the family, would be placed in an unenviable position if asked to represent a child upon some proceedings under the Child Welfare Act. The solicitor might very well represent the best interests of the child, but I do not know how the solicitor is expected to ascertain what are the best interests of the child. I think of the adage to the effect that not only must justice be done, but it must be seen to be done. Families are not always the cohesive units that fiction portrays as ideal. That must most likely be so if there is a suggestion that a child has been abused. Some of the family may agree and others may disagree with the position put forward on behalf of the child. In such a situation as the legislation would seem to contemplate the solicitor accepting such a retainer is bound to be damned by someone sometime no matter what he or she does or does not do.

There was testimony as to the feeling of some abused children which would lead them to blame themselves for having been abused by a parent or

which would lead them to some desire to seek favour from an abusing parent and thereby, hopefully, avoid further abuse. On the basis of such testimony I am not prepared to accept that an abused child, under sixteen years of age by statutory provision, is able to determine what are his or her own best interests. Thus the child may not be able to instruct counsel even if one were to assume that in other circumstances a child might be able to do so.

That is all the more so when one recalls the testimony as to most incidents of abuse occurring before the child is three. Such a young child cannot know his or her own best interests.

It appears to me to be self-evident that the allegedly abusing parent or guardian or the spouse or partner of such parent is not able to determine the child's best interests and thus is not able to instruct counsel on behalf of the child.

To a lesser degree I would think that all other relatives of the child, who might in ordinary circumstances be expected to ensure the child's best interests, are similarly unable to determine the child's best interests and to instruct counsel on behalf of the child.

But subsection 1 of section 20 of the 1978 legislation provides that a child may have legal representation. There is no provision in the legislation as to what the judge might do if someone appears and purports to represent the child. There is no provision for any challenge to any counsel's claim to represent the child. It is not beyond the realm of possibility that there may be competing claims to represent the child.

Subsection 2 of section 20 would not appear to be helpful in resolving a dilemma such as I have mentioned. It appears to be specifically directed to the duty of the court "where on an application under this Part II [of the statute] a child does not have legal representation." Only then must the court decide whether legal representation is desirable and, if it so decides, it must then direct that legal representation be provided to the child.

I should note that subsection 1 of section 20 applies to "proceedings" under Part II of the statute. That would seem to be broad enough to include situations such as those mentioned in section 25 whereby a parent may voluntarily place a child in the care of a children's aid society, or those mentioned in section 44 relative to the religious faith of the child or those mentioned in sections 46, 47, and 48 which, in conjunction with section 94, provide that certain acts constitute offences and are punishable.

However, subsection 2 may be used upon "an application" under Part II. That would seem to be more limited than "proceedings" mentioned in subsection 1. Conceivably subsection 2 would not apply to matters such as I have enumerated in the immediately preceding paragraph. It might be argued that it would not apply to what a children's aid society might do in compliance with subsection 1 of section 27 which requires that, within certain time limits of detaining a child in a place of safety or assuming the care of a child,

"the matter shall be brought before a court to determine whether the child is a child in need of protection."

or other things shall be done.

I am aware that section 11 of Ontario Regulations 386/79 made under The Provincial Courts Act provides that a proceeding shall be commenced by filing an application in the prescribed form. Thus all "proceedings" would appear to be "on an application."

I see no need for the use of different terms in the two subsections of section 20 of the 1978 legislation.

In my view the more inclusive term, "proceedings" would be preferable.

71. *I RECOMMEND THAT in all proceedings under the Child Welfare Act it should be incumbent upon the court in which the proceedings are conducted to determine*

whether separate legal representation is necessary or desirable to protect the interests of the child who is the real subject matter thereof. If the court determines that such representation is necessary or desirable it shall direct that it be provided. In making that latter determination the court should hear submissions, with or without testimony as the court may decide, from the parties to the proceedings as well as from anyone who may seek to be the child's legal representative to protect or advance the child's interest. Any direction for the provision of such legal representation should identify the solicitor or solicitors who shall provide it and shall provide for the remuneration of such solicitor or solicitors. Unless or until some arrangement is made for the provision of such legal representation under the Ontario Legal Aid Plan the cost thereof should be borne out of the general revenues of the Province of Ontario except in such cases where, with the knowledge and approval of the court, remuneration of such solicitor or solicitors is available and provided from some other source.

RECOMMENDATION #72

I have some difficulty with the language of subsection 3 of section 20 of the 1978 legislation. In subsection 2 it is provided that the court must direct the provision of legal representation if it determines such representation to be desirable. Subsection 3 then provides that "in determining whether [such] representation is desirable" the court must, in certain specified situations, direct the provision thereof. It would seem to be more correct to specify that in the circumstances described in subsection 3 the provision of such legal representation shall be deemed to be and shall be desirable. Subsection 2 would then become operative to require the court to make the appropriate direction.

72. *I RECOMMEND THAT the Ministry consider the amendment of section 20 of the 1978 legislation to incorporate the preceding recommendation #71 and to provide that in the circumstances described in subsection 3 of section 20 the provision of such legal representation shall be deemed to be and shall be desirable.*

RECOMMENDATION #73

There was testimony indicating a concern among social workers and others in the field that opinions in relation to child abuse expressed in testimony by social workers were not given much weight in the courts. I have mentioned that concern elsewhere in this Chapter.

The authors of the Garber Report wrote of comments and responses, presumably to them or their researchers, referring to "difficulties in obtaining and giving evidence, and the disposition of the Court to disregard any but unequivocal evidence of abuse."

Dr. Bates addressed that matter in the following portion of his testimony:

"Q. Doctor, before we go on to the next slide, dealing with social workers giving evidence in court, I take it that you've been present in the courtroom setting from time to time on child abuse cases, being called as a witness, is that correct?

A. Yes.

Q. Have you found that therefore drawing from what you've said, that there is sometimes little or no weight put on the social worker's opinion in the courtroom? The judge relies entirely upon the expert evidence of the physicians as to abuse?

A. I think very often judges rely more on the physical evidence of abuse and less on the pathology detected by the social workers in the home and the implications of that pathology. It's for that reason that I feel that we need to have expert witnesses in the social work field to bring into the courtroom research and other data about the importance of the interview, the pathology detected. We know that if a parent has a certain background history, that it may be next to impossible to help them and that that child may be in jeopardy. May be in jeopardy not because of the injuries we see now but because that

child is a special child for certain reasons that the parent can't stand and I'm going to talk about that shortly."

In my view implementation of a programme to accredit social workers as professional persons, including, in appropriate instances, certification as to special knowledge, skills and experience in relation to child abuse, will help to remove the problem as it is or is, by social workers, perceived to be.

My understanding of evidentiary matters is that, if there is in fact any difficulty in introducing opinion evidence of social workers, that difficulty is based on the inability of the party seeking to lead the evidence to satisfy the judge as to the qualification of the witness to give that evidence.

I would think that, once social work is recognized as a profession and once qualifications for membership in that profession and entitlement to use the designation "social worker" are established and enforced, any such difficulty would be removed by establishing that the witness is a member of the profession with appropriate experience and qualification.

The appearance of solicitors on behalf of children's aid societies should tend also to overcome some of the difficulties that the so-called court workers on behalf of children's aid societies have encountered in relation to evidentiary matters.

The next recommendation supplements the recommendation that social work be granted recognition as a profession and that use of the designation "social worker" be restricted so that it may be used only by those persons who have qualified to practice that profession.

73. *I RECOMMEND THAT within the profession of social work there be a category of social worker who shall be required to satisfy appropriate requirements of knowledge, training and experience and thus to be entitled to a*

further designation to denote his or her qualifications as a specialist in the field of child abuse. The requirements of qualification entitling anyone to such designation shall be established by the regulatory body of the profession.

RECOMMENDATION #74

My next recommendation is intended to assist counsel for children's aid societies and Crown attorneys in presenting evidence upon proceedings under the Child Welfare Act.

74. *I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to provide that the opinions expressed by social workers formed by them in relation to child welfare matters shall be admissible as evidence upon proceedings under the Child Welfare Act and shall be accorded weight in the same way as the professional opinions of other professional persons are found to be admissible and are weighed.*

RECOMMENDATION #75

A related difficulty mentioned by Dr. Bates related to the use of photographs of abused children as evidence in court proceedings related to those children.

After the testimony set forth in relation to a preceding recommendation Dr. Bates said:

"A. Just one other thing about court also that I have found troublesome and it is the view that is frequently held that colour photographs are inflammatory. That black and white photos can be admitted and even having those admitted is somewhat difficult but to have a colour slide as I'm later going to show you a colour slide, admitted into evidence is a hurdle that is almost impossible to overcome yet that is how the child appears. That's the reality of the situation and it is not inflammatory as far as I am concerned. It's a reality. It's what's after the child but I think that our judicial system needs to look more closely at that issue."

My understanding of evidentiary matters is that photographs, either coloured or black and white, are admissible as evidence provided the photographer is able to satisfy the court as to his or her knowledge and competence as a photographer and provided further that there is testimony to satisfy the court that the photographs do show "the reality of the situation," to use Dr. Bates' terms, and do not distort colours, dimensions or anything else.

The advocacy skills of solicitors appearing on behalf of the children's aid societies should assist in overcoming problems that might heretofore have been insurmountable for court workers.

Hearings and trials under The Child Welfare Act are conducted in a court composed of a judge alone. The problem of "inflammatory" testimony is not nearly so great as it might be in a court composed of a judge and a jury.

75.

I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to facilitate the use of photographs, either coloured or black and white, of abused children in the provincial courts (family division). Such an amendment should provide that such photographs shall be admissible in evidence upon the proceedings unless the party opposing their admission satisfies the judge that they should not be admitted.

RECOMMENDATION #76 and #77

In the Report and so far in these recommendations I have mentioned two matters involving what witnesses upon the Inquiry perceived to be problems in relation to the admissibility of testimony and its use by the courts. Those areas related to the opinions of social workers and to coloured photographs. I think there is a third area which might in some instances lead to problems similar to those mentioned in testimony.

In an indirect sense the possibility of the problem was raised upon the Inquiry. Claiming that the introduction of some testimony by Annals Popen would remove the solicitor-client privilege enjoyed by her and Annals Popen, Jennifer Popen succeeded in preventing Annals Popen from testifying about certain matters. I have stated my belief that such privilege should exist and my following comment and recommendations are not intended to diminish that privilege.

However, apart from that complication of the existence of such privilege, there is the more fundamental question as to whether in any case of abuse of a child a man or woman is competent or compellable as a witness for or against his or her spouse in proceedings under the Child Welfare Act. Such proceedings may be quasi-criminal in nature, as in the instance of a charge under section 40 of The Child Welfare Act, or they may be in the nature of a civil proceeding, as in the instance of an application by a children's aid society in respect of a child.

As I understand the present state of the law, a spouse is a competent and compellable witness for the prosecution without the consent of the accused or for the defence if the other spouse is charged with an offence under the Criminal Code in respect of violence allegedly inflicted by the accused upon one of the children of the spouses. I believe that in such a trial the spouse-witness is competent and compellable to testify as to communications between the spouses during their marriage. That opinion is based upon recent judicial interpretations of the specific provisions of the Canada Evidence Act.

However, so far as I am aware, those interpretations have not been challenged in or affirmed by the Court of Appeal of Ontario or the Supreme Court of Canada.

The provisions of the Evidence Act of Ontario are not the same as those of the Canada Evidence Act. Section 8 of the Evidence Act of Ontario provides that in proceedings authorized or permitted to be tried or heard before a court under the law of Ontario, which include proceedings of the sort under the Child Welfare Act, the husbands and wives of the parties to the proceedings are, "except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of any of the parties." Section 11, however, provides that a spouse is not compellable to disclose any communication between the spouses during the marriage. That is a comprehensive provision.

Section 25 of The Child Welfare Act provided that upon any application respecting a child apparently in need of protection, the judge hearing the application has the power to summon any person and require him or her to testify, the judge having "the same power to enforce the attendance of witnesses and compel them to give evidence and produce documents and things as is vested in any court in civil cases." A similar provision is found in section 28 of the Child Welfare Act.

Judge Nighswander apparently invoked that provision when he called Jennifer Popen to testify upon the Society's application for custody of Kim. There was no corresponding provision in The Child Welfare Act enabling the judge to compel a person to attend and testify upon the trial of a charge under section 40 of The Child Welfare Act. Nor is there in the present legislation.

I am aware of the provisions of subsection 3 of section 40 which enables the judge conducting the trial of a charge under section 40 to "hold a hearing in respect of any child concerned and [to] proceed as though the child had been brought before him as a child apparently in need of protection." Section 47 of the present legislation contains similar provisions. I doubt that any testimony adduced while the judge was "hold[ing that] hearing

in respect of [the] child" and "proceed[ing]" in that manner would necessarily be admissible or of use upon the determination of the guilt or innocence of the accused upon the charge under section 40.

The testimony upon the Inquiry was to the effect that most instances of abuse occur in private without witnesses. It would seem that some of the abuse inflicted upon Kim by Jennifer Popen occurred during Annals Popen's absence from the house. It may therefore be important in any proceeding under The Child Welfare Act that a spouse be compellable to disclose any communication between the spouses during the marriage if such communication relates in any way to abuse of a child of the marriage or of either spouse.

For example, during the absence of the father a child suffers an injury which may very well appear to have been suffered accidentally, and the mother, who was with the child at the time of the injury, gives a plausible explanation to the medical personnel who accept it as being true. However, on the return of the father, the mother tells him that the injury was caused by her deliberately striking the child. In reaction to that disclosure the father complains to the children's aid society and the police who commence some proceeding under The Child Welfare Act. On reflection the father decides he does not wish to testify about the conversation with his wife. It may very well be held that he cannot be compelled to testify about it and that may result in the failure of the proceedings begun by the children's aid society and police. The child would remain at risk.

As well the testimony upon the Inquiry was to the effect that very young children, that is under three years of age, were most likely to be abused. Kim was such a child. Such children are unable to testify.

Even if an older child were abused, he or she might not be able to testify under oath. Section 586 of the Criminal Code provides that

"No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated

in a material particular by evidence that implicates the accused."

It may very well be that there is no testimony, apart from the testimony of the spouse of the accused, which is capable of being corroboration of the child's testimony.

While the judicial interpretation of the Canada Evidence Act I mentioned earlier would be sufficient to compel the spouse of the accused to testify if the abused child were a child of the spouses, I am not satisfied that the application of those interpretations would extend to a case involving a child of a former marriage of one of them or a child in respect of whom they were in loco parentis.

Thus, even in a case of child abuse where a prosecution alleges an offence against the Criminal Code there may be some evidentiary problems preventing a man or woman from testifying against his or her spouse or enabling him or her to refuse to testify against his or her spouse.

In any proceeding under the Child Welfare Act arising from such circumstances the spouse of the accused could not be compelled to testify as to communications between the spouses during their marriage.

76. *I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure the amendment of the Child Welfare Act and the Evidence Act of Ontario so as to provide that in any proceedings under the Child Welfare Act arising out of an allegation that a child has been abused or is apparently in need of protection a man or woman is a competent and compellable witness for the prosecution or applicant, as the case may be, or for his or her spouse who is the accused or respondent, as the case may be, if the child named in the proceedings is the child*

of the spouses or either of them
or if the spouses are or either
of them is in loco parentis to
the child.

RECOMMENDATION #77

77.

I FURTHER RECOMMEND THAT the Ministry, through appropriate channels of government, request that consideration be given to an amendment of the Canada Evidence Act to like effect.

RECOMMENDATION #78

I have made recommendations with reference to certain evidentiary matters in proceedings under the Child Welfare Act.

This recommendation is generally related thereto.

There was an expression of opinion to the effect that if a child were removed from a home because of abuse by a parent and were found, as a result thereof, to be a child in need of protection, the child should never be returned to that home.

I regard that as an extreme view which would deny much of the testimony of the beneficial results that might flow from proper application of knowledge and skill to assist families and children.

However I am prepared to accept that one incident of abuse in a home, proven to the satisfaction of a court, should have some bearing upon the manner in which that home is viewed by the children's aid society and the courts after such proof.

I have made recommendations as to the care to be taken in considering the return of the child to the home and in supervising the child's care after any return.

I want now to consider how the matter might proceed if, after return of the child to the home, there is a situation in the home which the children's aid society regards as sufficient to justify fresh proceedings to declare the child once again to be a child in need of protection.

The recommendation I am about to make may, in a sense, be not far removed from what Judge Nighswander had in mind when, in February, 1976, in placing Kim in the care and custody of the Society, he said:

"...I am definitely going to note that he [Annals Popen] must give evidence that he has done something [about his alcohol problem] and that it is succeeding, before

the Court will permit the child to return to its parents..."

Judge Nighswander was placing an onus upon Annals Popen.

In my view that type of onus should continue to apply after the child's return. The parent should be expected to be able, if called upon to do so, to prove to the satisfaction of the court that the child in the home is not in need of protection.

In my view if, at any time after a child's return to the home, a condition exists in the home which causes the children's aid society to fear for the safety of the child in the home and to apply to the court for an order declaring the child to be in need of protection, the proof of the earlier finding that the child was a child in need of protection shall be prima facie proof of the child's need for protection.

Because of the testimony upon the Inquiry that one child of a family may be abused while other children of the family are not abused, I do not think it appropriate to extend the recommendation so as to apply it to proceedings in respect of any other child of the family.

However in the event of such proceedings being instituted in respect of another child of the family, proof of the earlier finding that a child of the family was a child in need of protection should be admissible upon the current proceedings to be given such weight as the judge hearing the matter decides.

The recommendation relates to proceedings under the Child Welfare Act. The Ministry might care to initiate discussions with the appropriate authorities for amendment of the Criminal Code and the Evidence Act of Canada to have a similar provision apply in relation to criminal proceedings alleging assault upon or the killing of a child.

In the absence of testimony directly upon the point, but upon the testimony that most abuse of children occurs while they are very young I am

proposing that either aspect should apply in proceedings commenced ten years or more after the original finding of the parent's guilt or the child's need for protection.

78. I THEREFORE RECOMMEND THAT the Ministry through appropriate channels of government seek amendment of the Child Welfare Act so as to provide that,
1. if, within ten years after a child has been found to be a child in need of protection, fresh proceedings are instituted to determine whether the child is in need of protection, proof of the earlier finding shall be prima facie proof in the fresh proceedings that the child is in need of protection; and
 2. if, within ten years after a child has been found to be a child in need of protection, proceedings are instituted to determine whether another child of the same family is in need of protection, evidence of the earlier finding shall be admissible as evidence upon the new proceedings to be given such weight as the judge hearing the matter may determine.

RECOMMENDATION #79

There was considerable testimony relating to the composition and function of the Board of Directors of the Society and the boards of directors of children's aid societies generally. A number of recommendations flow from that testimony.

The weight of the testimony was that members of the Board of Directors of the Society were, for the most part, uncertain as to their powers, rights, duties and obligations as individual members of the Board of Directors or as a body. There was little in the form of organized instruction of persons newly appointed to the Board of Directors. Some literature, such as The Child Welfare Act and "A Working Manual for Board Members of Children's Aid Societies" prepared by the Ontario Association of Children's Aid Societies in 1975, was available, but nothing was done to ensure that anyone read or understood any of it. It seemed that each new member of the Board of Directors learned "on the job" as it were, by observation and without specific instruction.

There was no testimony to suggest that this condition in the Society was in any way atypical.

Mr. McPhedran, who had served on the board of directors of another children's aid society before moving to the County of Lambton, expressed the gist of that testimony when, after noting that Mrs. Harvey and Mrs. Wood had testified to such effect, said:

"...I feel [there] must be a standardization on a basic orientation process for all new board members, probably through a legislative amendment, so that when people are interested in volunteering their services to a children's aid society board of directors, then they in effect know, once they've been approached, or possibly asked to run or stood for election, what is going to be involved, because I think most people come on with all the best intentions in the world and really they're just not aware of what they might have to get involved with."

Mr. Zwerver expanded upon that somewhat when he said:

"...an orientation manual along with appropriate audio visual material should be prepared for board members by the Association of Children's Aid Societies, in order that new board members understand the services, the functions and the legal requirements of the society and the responsibilities of board members within a corporation..."

In support of any course such as I describe in the next recommendation the society should ensure that each aspirant for election or appointment to its board of directors receives, in form suitable for on-going use and amendment from time to time, a document setting forth in clear language a summary of the subject matter of the course. The manual prepared by the Ontario Association of Children's Aid Societies in 1975, properly up-dated, might usefully serve that purpose.

79. *I RECOMMEND THAT all aspirants for appointment or election to the board of directors of a children's aid society be required to attend and participate in an orientation course conducted by the society wherein they will be informed and instructed as to the objects, purposes and duties of the society and the function, duties, powers and obligations of the members of the board of directors as a board, as members of the committees of the board, as individuals and as officers of the corporation. Such course is to be developed and presented by the personnel of the society so as to incorporate or reflect local conditions, but should contain elements that are common across the province. Each course, while distinctive, should be based upon material which*

should be prepared and distributed by the Ministry or the Ontario Association of Children's Aid Societies.

RECOMMENDATION #80

In the main body of the Report I have commented upon what I perceived to be the failure of the Ministry to fulfill its statutory duties to and in respect of children's aid societies. One aspect of that failure was the lack of supervision of the activities of the societies and the lack of communication by the personnel of the Ministry with the boards of directors of the societies as opposed to the local director.

That lack of communication was such that in some instances when personnel of the Ministry expressed criticism of the operation of a children's aid society it was expressed only to the local director of that society. The local director was then to decide whether or not to inform the board of directors of the criticism.

Mr. Allen testified upon this from his perspective as President of the Society. He was asked if, on the basis of the experience in Kim's case, he thought the Ministry should supervise the local children's aid society in its efforts to deal with such a case. His replies to that question and an associated question were recorded as follows:

"A. Well I think so. I believe that another role is needed here and that is an auditing function. It's difficult to say what's going to happen in the future but I'm sure we're going to have more and more cases and our procedures have to be monitored. The processes involved in making decisions, how they're done, the record keeping practices, all of these procedures are going to have to be attended to carefully and so I could see a role here increasing perhaps to audit on a random basis if nothing else to ensure that appropriate practices by an agency are being followed and then a report, if such was the case, at least on an annual basis; if a report was then made available to the board of directors and perhaps a consultation if there were areas of disagreement or concern: that process could indeed obligate the boards to pay closer

attention possibly to what it is they are administering and if there are any difficulties or concerns or shortfalls then the local people then might have the impetus or motivation to do something about it. I think, much as any agency that relies on a consumer service, there has to be some safeguard I would think from the central government.

Q. OK. Now, tied in then with this auditing process I take it that the Board has not had any such information available to it at the present time as you are suggesting for our term.

A. Not in the written form, no, and no, it's much less formal now. We have visitations from field consultants and I think we feel fairly confident with these people and they interact certainly with the staff, and I've come to recognize their skills and their judgments, but there is not that much that I'm aware of that's conveyed in written form and especially with respect to performance."

I gained the impression from the tenor of some of the testimony that there was a degree of what might be called "professional courtesy" extended by personnel of the Ministry to local directors of children's aid societies. That was comprised of exercise of discretion to choose not to inform the board of directors of what were regarded as relatively minor negative comments addressed to the local director. In that exercise of discretion the Ministry's personnel trusted the local director to correct the problem or to advise the board of directors, as he or she saw fit.

I am confident that any such exercise of discretion was well-motivated. However one is left to wonder as to the limits, if any, upon such discretion and the criteria to be used by the personnel of the Ministry when considering whether or not an exercise of such discretion was appropriate. Having heard the testimony upon the Inquiry and learning the serious results that can flow from errors of judgement in the field of child care as in

many other fields, it would seem to me to be preferable that the Ministry's staff be permitted no such latitude of discretion. The board of directors of the local children's aid society should know what comments are expressed or what observations are made in respect of the society and its personnel by the personnel of the Ministry.

The board of directors is responsible for and to the Society. It is the board which should decide any question of discretion.

The testimony upon the Inquiry was to the effect that the Ministry, commencing in 1978, would undertake complete operating reviews of every children's aid society at intervals of about five years. I have commented upon that earlier in these recommendations. Mr. Allen in his testimony contemplated annual reviews. His reference to such reviews being "on a random basis" seemed to relate to the subject matter of the annual review.

This is another area in which the Minister, commencing in 1983, might wish to satisfy himself as to the Ministry's achievement of that aim to review each society quinquennially.

It should be noted that the present Child Welfare Act, in paragraph (b) of subsection 2 of section 2 imposes on the Director a duty to "inspect or direct and supervise the inspection of the operation and records of societies." That is, for all practical purposes a re-enactment of paragraph (b) of subsection 2 of section 2 of The Child Welfare Act in force during Kim's lifetime. It contains no direction as to how such inspection or supervision shall be carried out.

The Ministry should acknowledge that its duty to inspect includes a duty to report thereon to the board of directors of the society so inspected. If the Ministry does not so acknowledge, the legislation should be amended to force the Ministry to make such a report.

80. *I RECOMMEND THAT upon any review of the operations of a children's aid society by personnel from the Ministry, the Ministry shall*

promptly furnish to the board of directors of that society a written report upon that review setting forth the date or dates thereof, the purposes thereof, the observations thereon, comment, assessment and evaluation in respect of the observations, and the recommendations, if any, of those who conducted the review and their superiors. If either the board of directors or the Ministry feel it necessary or desirable appropriate personnel from the Ministry shall meet with the board of directors of the children's aid society to discuss the contents of the written report and the implementation of any recommendation. If any such report contains any negative criticism of the operation of the children's aid society the Ministry shall ensure that the matter is reviewed again after the children's aid society has had appropriate time to correct any deficiency or error in its procedures or operations.

RECOMMENDATION #81

One area of concern expressed by many of the witnesses related to the inability of the board of directors of a children's aid society to evaluate the knowledge and skills of its supervisory or management personnel and the performance of duties by such personnel.

Implementation of the recommendation that social work be granted recognition and status as a profession with all that that should entail in the way of regulation and discipline of the profession should help in removing the difficulty.

Similarly implementation of the recommendation that a system for the accreditation of children's aid societies be developed should be helpful.

In the event any children's aid society were to have concern as to the qualifications of or the performance of duties by any management or supervisory employee it would be able to request assistance to that end from the governing body of the profession or from those responsible for administration of the accreditation process.

Even without either of those avenues the board of directors of a children's aid society should be able to seek assistance from qualified persons. One reservoir of appropriate personnel to provide that assistance should be the Ministry. Another resource group to whom a children's aid society might look for assistance is the Ontario Association of Children's Aid Societies.

For what it is worth, I note that in 1978 the Society chose to look to the Association rather than to the Ministry for help in relation to Kim's case. I regard that as a mute but sad commentary upon the Society's view of what the Ministry might have done to help.

81. *I RECOMMEND THAT the Ministry should ensure that there is a facility readily available to assist and advise the boards of directors of children's aid*

societies in relation to the qualifications of and performance of duties by management and supervisory personnel of the societies. Pending progress toward the recognition of social work as a profession with a governing and regulating body which may provide such a service and pending any system of accreditation of children's aid societies which may provide such a service, the Ministry should provide it or arrange with the Ontario Association of Children's Aid Societies to provide it. The existence of such a service should be made known to the boards of directors of each children's aid society at appropriate times, perhaps annually shortly after the annual meeting of the society. Such a service should extend to and be devised to deal with any complaint made by a member of the public in respect of the society or any of its supervising personnel.

RECOMMENDATION #82

From impressions I formed during the Inquiry it is my belief that children's aid societies might benefit from the adoption of a policy of appointing and employing local directors and supervisory personnel for fixed terms, initially at least, of relatively short duration.

Mr. Lovatt was a long-term employee of the Society who was appointed Local Director and from then on, so far as the testimony indicated, no real consideration was given by anyone to the manner in which he fulfilled the duties of that office. Certainly there was no recorded assessment or evaluation of his ability to continue to perform those duties after Mr. Charko's report to the Minister which led to the Minister's approval of Mr. Lovatt's appointment. Even the contents of that report were not revealed to the Society.

Much the same applied to Mrs. Harvey and her tenure as a supervisor.

It would seem to me to be desirable that at pre-determined intervals the performance and ability of local directors and supervisors of children's aid societies should be reviewed for the clear purpose of determining whether or not contracts of employment might be extended.

I would regard this as an adjunct to any review of performance during employment and any assessment to determine whether or not the incumbent has maintained a currently acceptable standard of qualification.

Such a procedure would allow for an orderly procedure to terminate or extend employment. It would allow the orderly introduction of fresh ideas into an organization that might be growing smug, self-satisfied and stagnant.

In the testimony there were suggestions that some of the problems within the Society revealed by the Inquiry and other investigations, such as by the Farina Committee, might have been "inherited" by Mr. Lovatt from earlier management. If so, the Society was stagnant. Mr. Lovatt had been Local

Director of the Society for about ten years before the Farina Committee was appointed. That should have been time enough to correct whatever problems he inherited.

In the testimony I heard of Mrs. Harvey's apparently impressive academic qualifications and her long experience. But I also heard of her statement that the Society could not benefit from attendance of any of its personnel at a seminar for court workers. That is a further indication of stagnation and reliance upon past records rather than current qualification. Every other children's aid society in Ontario, with one exception, felt it wise to be represented at the seminar.

From the testimony it appears that workers in children's aid societies are mobile and can and do move from society to society, or even from and to other social agencies, seeking experience, improvement and advancement in various ways. Term appointments to senior positions would not interfere with and indeed might encourage such mobility. Mobility permits the worker to gain varied experience and in turn permits the societies to learn, from the new employees, of practices, procedures and experiences elsewhere which might lead to improvement of former practices and procedures perhaps "inherited" and unchanged.

I heard no testimony as to any such policy of term appointments and mobility. From the variety of positions held by many of the more successful social work practitioners who testified it would seem there are no problems which are insurmountable. I had thought there might be problems in relation to retirement pensions, rights of seniority, vacations and other benefits of that nature.

If there be such problems implementation of the following recommendation may require the active involvement of the Ministry and perhaps even legislative enactment. Accordingly, lest there be such problems, I couch the next recommendation so as to involve the Ministry to attempt to achieve uniformity and, if need be, legislative authority for such implementation.

82.

I RECOMMEND THAT the children's aid societies, with the active encouragement and involvement of the Ministry and the Ontario Association of Children's Aid Societies, adopt and implement a policy of appointment and employment of local directors and supervisors for fixed terms with provisions for the extension of any term if the society and the appointee so agree during, say, the last year or six months of the fixed term.

RECOMMENDATION #83

There was substantial testimony to the effect that the structure and operational function of the committees of the Board of Directors of the Society did not satisfy the requirements of The Child Welfare Act.

A portion of Mr. Zwerver's testimony was directed to that issue when he said:

"A. Given the fact that a board of directors has the responsibility for the overall governing of the societies' operations, it's important then to look at the structure of the board and how it does operate. The Board of the Sarnia Children's Aid Society is twenty-seven strong. I was concerned in looking at and discussing the operation of the Board with the Board members, that it did not appear to have a well functioning committee structure and we've already heard reference made earlier in I believe Mr. Heath's presentations, about the position or the role of committees in the structure of the board of directors of children's aid societies. In a small society a board might, in fact, do most of its committee activities in what's called committee of the whole where the total board in fact, takes responsibility for certain committee functions. In a board of twenty-seven that's very difficult to do, to provide people with the level of information required to make them knowledgeable about service issues, to deal with policy issues that flow out of service concerns. My concern was that in fact, there was not in the first instance a functioning executive committee of the Board as prescribed by the Act and secondly, there did not appear to be a functioning services committee as well. I think it's important to just take a look at what the role of committees are within the context of a board of directors. Board committees, this is also spelled out in the handbook on page 15.

'Board committees are purely advisory ones unless specific authority has been delegated to a committee by the board of directors.'

And in the case of the Sarnia, Lambton Children's Aid Society, there are specific responsibilities delegated to the executive committee under their by-laws, but to no other committee, except for the nominating committee. But a committee's function is to bring the judgement and knowledge and interest of a group of interested members of the board to bear on one specific aspect of the society's operations and then to advise the staff in matters where staff have a decision making responsibility or to advise the board where the subject matter involves policy or is beyond the authority of the staff. The issue of the executive committee I felt was extremely important, apart from the fact that it's prescribed by the Act and the role of the executive committee is fairly clearly established. It appeared that a great deal of activity probably due to the membership of the Board, had to be dealt with by the total Board or by the President and sometimes, some other senior officers. There was not an ongoing meeting of the executive committee that could deal with major policy and service issues as they occurred or in preparation for board meetings and this could lead to long board meetings and agendas not necessarily being as well focussed as they could be. So I recommended that a functioning executive committee, that would meet on a regular basis, be established in order to facilitate the work of the Board and this was done. The other area related to the services committee. Again as outlined in the handbook for board members published by the Association, the services committee I believe is an essential part of the operation of a children's aid society, if a board is to be kept informed of the service demands and the service complexities of the agency and to assist the board and senior staff

members in all matters related to the service problems of the agency. Again although there had been a services committee in operation in the Society for a number of years, my understanding and from looking at records, it had met infrequently, it's activities were not well focussed and the level of knowledge about the services of the agency among the general Board was not as good as I felt it could be and I recommended that an active services committee be established to assist the Board, to assist the executive and to assist the senior staff in examining the service policies of the Society and their implications...."

I note Mr. Zwerver's reference to some matters being dealt with by the Board of Directors as a whole or by individuals rather than by the appropriate committee "probably due to the membership of the Board." That seems to me to be similar to testimony of other witnesses as to the lack of interest among members of the Board. That then relates to problems which hopefully may in part at least be resolved by assuring that truly interested persons, aware of the purposes and functions of children's aid societies and of the duties and obligations of members of the board of directors of such a society, are chosen to form the board of directors of the society.

However members of the board of directors are volunteers. Their interest must be maintained. Long meetings with little direction or substance surely do not sustain interest. There was testimony to suggest that that was the case in the Society.

In my view one aspect of the supervision of children's aid societies by the Ministry is to ensure that the requirements of the Child Welfare Act are met. That certainly includes the creation of the committees required by the statute or by the Regulations made thereunder. But the Ministry should not be content to see that those committees exist on paper. The Ministry should ensure that they operate in a useful and practical way. The Ministry should also ensure that other committees which may be necessary to meet any particular need of the individual

children's aid society are also created and functioning usefully to meet such need.

83. I THEREFORE RECOMMEND THAT the Ministry institute a programme of ongoing review of the structure and means of functioning of the board of directors of each children's aid society. The review should extend to and include the structure and function of the committees of that board of directors and any other committees within the society in which members of the board of directors participate or which report directly to the board of directors. Such reviews should be conducted at appropriate intervals, perhaps in conjunction with other ministerial reviews or perhaps by random attendance of personnel from the Ministry at meetings of the board of directors. The purpose of such reviews should be to assist the board of directors to establish and maintain a useful and functional structure of itself and its committees and efficient and productive meetings of itself and its committees. Each review should be followed by a written report to the board of directors setting forth the observations made during such review and any appropriate recommendations or directions arising therefrom to ensure compliance with statutory or regulatory requirements and, hopefully, to ensure that the interest of members of the board of directors is maintained and their individual talents are best used for the benefit of the society and the children and families it serves.

RECOMMENDATION #84

After his wide-ranging comment upon the need for co-operation which I have mentioned Mr. Charko became specific and expressed his opinion as follows:

"...For this reason I think also there should be greater consultation on hiring, particularly local directors. Presently the Ministry might object to certain persons to be hired as a local director, but if that person has requirements, meets the requirements as spelled out under regulations of Child Welfare Act, at least thirty years of age, has MSW or equivalent, he might be hired as local director, but that individual might not necessarily work together with other Agencies because of his personality and so on and we might feel that individual is not willing to be accountable to the province in certain areas. That whole area, I feel there should be greater consultation..."

It would seem that Mr. Charko was addressing the situation that would arise if the children's aid society proposed to employ as local director someone who possessed qualifications which would enable the society to appoint that person as its local director without reference to the Minister and without the approval of the Minister, but who, for whatever reason, was a person whose appointment as local director would be objectionable to the Minister.

The position of local director of a children's aid society is very important. It entails responsibility to the board of directors of the society for the administration and enforcement of the Child Welfare Act in the geographical area served by the society. The position entails powers granted to the incumbent by statute. In practice the board of directors will rely upon the local director, as its most senior employee, for guidance and advice in the operation of the society including its relationship with the Ministry and with other individuals, groups or organizations in the community. In practice too the Ministry will have considerable contact with the

local director in technical and administrative areas including reports, financial statements and budget procedures.

It seems to me that, in the same way that I feel the Ministry should inform the local children's aid society of the full contents of any report leading to the Minister's approval of the appointment of a local director, a children's aid society, proposing to appoint as local director someone who possesses qualifications enabling appointment as local director without the Minister's approval, should nonetheless refer its proposal to the Ministry for comment, particularly as to the suitability of the proposed appointee and his or her ability to fulfill the responsibilities of the office.

That is simply a precaution. If the person proposed as the local director is not presently an employee of the society a reference of the matter to the Ministry may provide some further information which should be considered in connection with the appointment. Such a referral would be useful even if the position is to be filled by the appointment of someone presently on the society's staff. There was considerable testimony as to the inability of a board of directors to evaluate the qualifications of its local director and his or her performance of the duties of the position. I think the same general remarks might relate as well to the society's ability to evaluate the qualifications and experience of its own most senior personnel who might ordinarily most likely be considered for promotion to the position of local director.

Bearing in mind the importance of the position and that, as was said in testimony, the very lives of children depend upon children's aid societies, it is my view that it is imperative that each board of directors receive as much information as possible about any person whom it proposes to appoint as its local director.

If the Ministry has fulfilled its statutory obligation to advise, supervise and inspect the children's aid societies its personnel will probably be in an excellent position to comment upon the qualifications, skills, abilities and general reputation of each local director of a children's aid

society in Ontario. Possibly too the Ministry's personnel will have had considerable opportunity to form a basis for such comment upon the supervisory staff and even some of the subordinate social workers of each society.

I believe strongly in the independence and autonomy of the local children's aid societies and their boards of directors. They should remain free to accept and act upon or to reject and not act upon any comment or response by the Ministry in respect of any person. But they should ask for and receive such comment from the Ministry. The responsibility is theirs. They must then make a decision.

The position of the local director of a children's aid society is so important in the society and the society's responsibility for the lives of children is so great, that the Ministry and its personnel must respond fully and freely to each children's aid society upon any proposed appointment. Fear of civil litigation arising from frank comment must be removed.

84. *I THEREFORE RECOMMEND THAT when a children's aid society is considering the appointment of a local director it must, in addition to any other inquiries or investigations it may care to make, request comment from the Ministry upon the professional qualifications, job experience and general reputation of each applicant or person who is being considered for appointment. There should be a corresponding obligation upon the Ministry to respond in writing to each such reference in absolute frankness and with immunity from any liability, civil or criminal, providing the response is made without malice. That may require amendment of the Child Welfare Act. The response from the Ministry would then be one of the factors to be considered by the board of directors of the Society in its deliberations.*

RECOMMENDATION #85

In my view the responsibilities of supervisors of social workers employed by children's aid societies approach those of the local directors of the societies. The boards of directors of the societies considering the appointment of such supervisors are faced with problems similar to those they meet in considering the appointment of local directors. The following recommendation is an elaboration or enlargement of the immediately preceding one.

85. *I RECOMMEND THAT, when a children's aid society is considering the appointment of supervisors of its social workers, it must request comment by the Ministry in respect of each person being considered for such an appointment. Such comment should be upon the suitability and ability of each person proposed for such appointment. The Ministry should be obliged to respond frankly and fully in writing with immunity from liability of any sort in the absence of malice. Any response by the Ministry should be but one factor in the deliberations of the board of directors of the society.*

RECOMMENDATION #86

I take it as being implicit in what I have written that the board of directors of each children's aid society should fully investigate and inquire about the abilities of persons it proposes to appoint to its more senior staff positions. If my recommendation as to recognition of social work as a profession is implemented and if a regulatory body for that profession is created, that regulatory body should be consulted about and be able to comment, with corresponding immunity, upon any person considered for such appointment to a senior social work position in any society. It is on that basis that I make the next recommendation.

In the absence of any such governing body of the profession it would seem reasonable for each children's aid society considering any such appointment to seek comment from others, such as the Ontario Association of Children's Aid Societies and past employers. I am not prepared to recommend that any such other be compelled to respond or be granted any special or extraordinary immunity from liability if he, she or it does respond.

86. *I RECOMMEND THAT, if social work is granted legislative recognition as a profession and if the legislation establishes a governing body to govern or regulate the practice of that profession, children's aid societies proposing to appoint anyone to the position of local director or supervisor of social workers must, in writing, inform that governing body of each such proposal, with the name of each person being considered for such appointment. The governing body should be free to comment upon the suitability of the person proposed and his or her ability to perform the duties of the office. Provided the comment is given without malice the governing body should be immune from any liability which anyone might*

seek to impose upon it for its having made the comment. The governing body's comment shall be a factor to be considered by the board of directors of the society in its deliberations upon the appointment.

RECOMMENDATION #87

In other areas of the Report I have set forth portions of the testimony and my comments upon the Central Registry for Child Abuse maintained by the Child Welfare Branch of the Ministry until 1978. I found it to be a useless facade without legislative sanction.

Dr. Bates perhaps expressed the general opinion of that Registry when he said:

"If there is broad spectrum of abuse and neglect in our community, why is it that we don't see more cases reported to the central registry. Now this registry was set up in the mid sixties and is located at Queen's Park, receives reports from the Children's Aid Societies and from those reports, we get these statistics and in 1977, it was I think 1045 cases reported to the registry. A great lump from 1976 and undoubtedly related to death in our province from child abuse that year and publicity in the media. But we shouldn't have to have deaths to improve reporting.

It's interesting that some children's aid societies do not fill out reports as adequately or as quickly as they should and therefore the total statistics are lower than what they should be in reality. I've been told by some workers that they've so much paperwork to do that they don't get the reports filled out so the Ministry doesn't know exactly how many cases are in the province and the Ministry will look at these figures I'm sure to try to determine what amount of resources they need to funnel into our society."

That was really a condemnation of the Registry and, indirectly, of the Ministry who, Dr. Bates assumed, used the reports to the Registry as a basis for some of its purposes.

But the testimony upon the Inquiry as to the relationship of that Registry to Kim's case was in my view absolutely devastating to the entire

concept of the Registry as a vehicle for any useful purpose. Not only was it useless to Kim, but it may even have been harmful to her in that anyone, not aware of what was happening at the Registry as revealed by the testimony upon the Inquiry, would have been justified in believing that anyone bearing the grandiose titles assigned to clerks by the Ministry had qualifications as a social worker far and beyond those of the clerk who managed the Registry and correspondence addressed to and from it. The Registry was a useless, perhaps harmful charade.

Despite reports to that Registry which, on the testimony upon the Inquiry, should have aroused concern in the minds of those responsible for the Registry if they were qualified, responsible and experienced social workers with expertise in child care and child abuse, the reports from the Society to the Registry merited only *pro forma* responses, if indeed any response at all was forthcoming.

Witnesses in the employ of the Ministry acknowledged that during Kim's lifetime the Registry was used mainly for statistical purposes. The validity of statistics derived therefrom was certainly questioned by Dr. Bates. I can recall no denial of his testimony by anyone and I choose to accept it as being sound.

The legislation enacted in 1978 gives legislative sanction to the Registry. There was no testimony as to the operation of the Registry under that legislation.

It would seem to me that the new legislation in some ways may be unduly cumbersome.

Section 52 of the new legislation requires each children's aid society to report to the Registry all information concerning the abuse of a child "after the information is verified in the manner determined by the Director [appointed by the Minister of Community and Social Services for the purposes of the legislation]." I am unable to find in the legislation or the Regulations made thereunder any words to assist me in understanding what may be necessary to "verify" information.

I can think of several bases that might be used to establish information as having been "verified." The highest standard would be proof beyond a reasonable doubt. That is the standard of proof generally required to establish guilt in criminal or quasi-criminal proceedings. Another standard is proof on a balance of probabilities. That is the standard of proof generally required to establish liability in civil proceedings.

I am left to wonder which, if either, of those standards is to be applied to establish verification of information. And by whom is the standard to be applied? Is it to be the local director of the children's aid society? Is it to be some one else in the employ of the children's aid society and, if so, who? I can readily imagine instances where the social worker or police officer directly responsible for the conduct of an investigation may have an opinion quite contrary to that of his or her superior.

I recall the confrontation between Mrs. Harvey and Mrs. Kirby, Mr. Carter and the two police officers in February, 1976. I recall the testimony upon the Inquiry that investigation of reports of child abuse requires special skills, including acceptance of the fact that a mother or a father or another friend or relative is capable of abusing a child and that children are indeed abused by parents, friends and relatives. And I recall Mr. Khattab's inability to believe that Jennifer Popen could abuse Kim.

Perhaps neither of the standards I have mentioned was contemplated as being applicable to "verify" the information. Perhaps all that was felt to be necessary was that the person supplying the information to the children's aid society had reasonable and probable cause to believe that the information was correct. Or perhaps all that would be necessary would be a suspicion by the investigative personnel of the children's aid society or police force that the child might have been abused. Or, accepting the weight of the testimony upon the Inquiry, particularly that of Dr. Bates, that persons possessing necessary skills and experience can accurately predict that a child not yet abused is a high risk child, one more likely than others to be

abused, perhaps all that would be required would be the expression of such an opinion by such a skilled person.

In my view the Registry would be a much more useful instrument if its use could be incorporated into the programmes which should be undertaken by the Ministry and the children's aid societies to prevent abuse. It would be regrettable if a children's aid society aware of a situation in a family which indicates that a child of that family is a high risk child could not alert the Ministry and, through the Ministry, any other children's aid society which at any later time might have contact with the family.

In my view the Registry would be more useful if the provision of the 1978 legislation, section 49, which imposes upon professional persons and officials special duties to report instances of abuse were extended in two ways.

Presently the special duty to report relates only to "abuse that may have been caused or permitted by a person who has or has had charge of the child." That would seem to exempt from the special obligation to report abuse caused by a sibling or other relative of the child or any person living in the same residence as the child and thus constituting a source of possible further abuse to the child. I see no reason for the limitation of the present legislation.

I appreciate that a medical doctor with the skills and experience of Dr. Bates and the facilities available to him through a world famous hospital in a large metropolitan city might very well be able to conduct some investigation to determine that there are reasonable grounds to suspect that the abuse suffered by a child was caused or permitted by someone who had charge of the child.

But not all medical doctors have such skills and experience nor do they have ready access to such facilities. They may not be able to conduct an investigation thorough enough to enable them to conclude that there are reasonable grounds to suspect that the abuse of child was so caused.

Even Dr. Bates acknowledged the need for investigation of incidents or reports of abuse to be conducted by persons with special skills and training which medical doctors and social workers, for example, may not possess.

Under the present legislation a medical doctor, for example, is liable to a financial penalty for failure to report abuse of a child which he or she has reasonable grounds to suspect was caused or permitted by a parent of the child having legal custody of that child. But there is no financial penalty imposed upon the same medical doctor for failure to report abuse of the same child which the doctor knows, let alone suspects, was caused by another person in the same household, or by a relative or neighbour or by a paedophile in the community. It would seem that abuse caused in any such way is at least as worthy of report as abuse caused by a person having charge of the child.

I recognize that abuse by one having charge of the child, such as a day care worker, constitutes, in a sense, a breach of the trust of the child and perhaps of the parents. But the continuing risk to the child may be just as great even though the abusing person does not have charge of the child.

In my view subsection 2 of section 49 of the 1978 legislation should be amended by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child." If the official or professional person is to have a special duty to report abuse that duty should relate to all instances of abuse however caused. It may very well be that, while a medical doctor may identify a particular injury as having been caused by abuse, it is beyond the professional competence of the doctor to establish the identity of the abuser.

In my view subsection 2 of section 49 of the 1978 legislation should not be limited in its application, as it now is, to abuse. It should be amended to impose upon officials and professional persons the special duty to report the existence of conditions which lead the official or professional person to conclude that the child may be a high risk child, a child more likely than others to suffer abuse.

I would regard the latter revision of the legislation as a part of a programme to use facilities presently available to identify situations of possible danger and thus to seek to prevent the situation progressing from one of possible danger to one of actual abuse of the child.

There were a number of suggestions upon the Inquiry as to the enlargement of the scope of the operation of the Registry. Those suggestions were wide ranging. One was that the Registry should be structured so as to be able to receive information at all times from all sources, not only from children's aid societies which have "verified" information they have received. It was suggested that if police officers, public health nurses, personnel on duty in the emergency departments of hospital, social workers, teachers, relatives, neighbours, friends or strangers observe a situation which arouses concern or suspicion they should be encouraged and able immediately to report that situation to a central repository of such reports. It was suggested that while one isolated report of a minor and isolated event might not in itself appear to be important it might be important if, for example by use of modern computer technology, it could be related to one or more other reports and then appropriate action could be undertaken.

This is not unlike the expert testimony upon the Inquiry as to Kim's injuries. Some of the injuries, if viewed in isolation from all others, might not appear to have been caused by abuse or to be in any way extraordinary. But when all of Kim's injuries were viewed with full knowledge of all of them the inescapable conclusion was that Kim had been abused.

What happened to Kim is in keeping with the expert testimony upon the Inquiry that abuse of a child may be progressive. The first injury may be minor, succeeding injuries may be more serious and, ultimately, the final injury may cause death. That was the progression Dr. Singh feared in March, 1975 and which did come to its sad conclusion in August, 1976.

87. *I RECOMMEND THAT the Ministry proceed to seek revision of the*

1978 legislation in the following ways:

(a) by enlarging the scope of the operation of the Central Registry so as to permit it to receive and record at all times from all sources information and reports of child abuse or situations of children apparently in need of protection because of an unusual risk of abuse. The Registry should be equipped to record and store any such information or report and to collate it with any relevant information or report previously received, recorded and stored. The Registry should have personnel qualified to assess and evaluate all such information and reports and to take appropriate action in respect thereof. The appropriate action may be to decide that nothing need be done other than to receive the information. Or it may require the staff of the Registry to inform the local children's aid society and police force or other authorities immediately and then, in due time, to ensure that the local children's aid society has properly responded to the matter by investigation and report;

(b) by amending subsection 2 of section 49 thereof by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child;" and

(c) by amending subsection 2 of section 49 thereof by extending its scope so as to include an obligation to report any situation which, in the opinion of the official or professional person, indicates that a child is in an unusually high risk of being abused.

Chapter XXXIII

Collection of Recommendations

1. I RECOMMEND THAT all concerned with the protection, care and welfare of children approach their respective tasks and duties in a spirit of voluntary co-operation with one another and others so as to ensure the best possible service to children and families in each community.

2. I THEREFORE RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act so as to provide that "abuse" includes a condition of any impairment of a child whether it be medical, emotional, developmental, psychological, psychiatric, educational, social or other.

3. I RECOMMEND THAT the Ministry and children's aid societies devise, establish, maintain and operate continuing programmes and services to prevent or reduce the incidence of child abuse in Ontario. The Ministry should maintain an ongoing assessment of such programmes and services to ensure that they reflect the best of current professional opinion and practice. The Ministry should not act in isolation, but should secure the co-operation, assistance and advice of other Ministries of Government and of children's aid societies, professional associations, institutions and agencies such as police, hospitals, physicians, public health nurses, schools and social workers, and of knowledgeable and interested persons such as Dr. Bates and others who offered to serve the Ministry in the best interests of children. Local children's aid societies should build upon the Ministry's programmes to operate local programmes to the same end adapted to accommodate local conditions.

4. I RECOMMEND THAT the Ministry, clearly in writing and by its actions in considering the estimated expenditures of children's aid societies, affirm its support of programmes by children's aid societies intended to seek to prevent or reduce the number of incidents of child abuse or the risk thereof. It should be made clear that during consideration of any proposed expenditures submitted to the Ministry by a children's aid society for approval pursuant to the Child Welfare Act proposed expenditures upon preventive programmes will be regarded as being of great importance.

5. I RECOMMEND THAT the Ministry and the children's aid societies devise, establish, maintain and operate continuing programme to inform the public generally of the presence of child abuse in Ontario and in our communities and to seek the assistance of members of the public in efforts to reduce or eliminate the incidence of abuse. Such programmes should emphasize that, even apart from statutory duty, we, as members of the public, owe it to our children and to ourselves to report our cares and concerns for the safety and well-being of our children and thus of our whole community.

6. I RECOMMEND THAT children's aid societies be encouraged to devise, develop, maintain and use programmes for the productive and fulfilling engagement of volunteers and supportive groups in the community in the various functions of the societies, including functions in relation to child abuse generally and in relation to specific instances of abuse. Teams of volunteers especially selected and trained may assist in child abuse matters. In the same way that social workers should not be required to work in the area of child abuse for lengthy periods of time, volunteers should serve on child abuse cases for relatively short periods of time although I recognize that in some instances the exigencies of a case may make it necessary or desirable for a volunteer to be involved in it for an unusual length of time. The Ministry should be prominent in such encouragement and should seek whatever amendment of legislation or regulations may be necessary to authorize and regulate the use of volunteers in any way, including those I have mentioned in the preamble to this recommendation.

7. I RECOMMEND THAT each children's aid society establish and maintain an ongoing programme to inform the public of the organization, function and activities of the society and of its need for continuing support from the community. That programme should seek to encourage members of the public to become members of the society and to participate in its affairs, perhaps as members of the board of directors, or as members of standing or special committees. The goal should be a broad base of community membership and support.

8. I THEREFORE RECOMMEND THAT the Ministry seek an amendment of the Child Welfare Act so as to remove therefrom the requirement that any municipal representative appointed to the board of directors of a children's aid society by a municipal council must be a member of that municipal council.

9. I RECOMMEND THAT the Ministry, through the appropriate processes and procedures of the Government of Ontario, seek to ensure that the curricula for the education and training of persons who wish to enter various professions and callings in the Province of Ontario which are governed or regulated in any way by any Ministry or branch of the Government of Ontario contain material upon child abuse sufficient to enable the candidates, when graduated or certified, to have degrees of knowledge, training and skill in relation to child abuse commensurate with their relative positions within their own professions and callings and in relation to other professions and callings. The training and education of candidates in each profession or calling should emphasize the need for the members of that profession or calling to cooperate with the members of other professions and callings in the entire range of activities in relation to child abuse. Those activities include the initial detection of the existence of abuse or the risk of its possible occurrence in the future, the subsequent investigation and then the management and treatment of the case in all of its aspects. The appropriate Judicial Council should be requested to include discussion of child abuse in the continuing programmes of seminars for judges, particularly those who sit in the provincial court (family division) and thus are most often most directly confronted with problems relating to child abuse. Such curricula should be the subject of on-going review to ensure that they remain current and reflect all developments in professional opinions, practices and procedure whether caused by legislation, regulation or judicial decision or resulting from experience with earlier opinions, practices and procedures.

10. I RECOMMEND THAT each person employed or practicing as a social worker or holding himself or herself out as a specialist in child abuse in any other profession or calling in the course of training for which there is a component related to child abuse, even though such component may have been added to the course of training since the graduation or certification of any such person, be required to maintain, by continuing courses and examinations upon the subject, an appropriate level of knowledge and skill in the light of current law, practice and procedure related to child abuse.

11. I THEREFORE RECOMMEND THAT the Ministry develop and operate an ongoing programme to inform members of the public generally and members of appropriate professions and practitioners of appropriate callings in particular of the statutory duty to report information of any incident or suspicion of abuse and of the importance of such reports to the children's aid societies.

12. I THEREFORE RECOMMEND THAT the Ministry seek the appropriate amendment of the Child Welfare Act so as to make it an offence for anyone having information about any incident of child abuse or suspected child abuse to fail to report such information to a children's aid society as required by the statute. Anyone found guilty of that offence should be liable to a fine not exceeding an amount to be prescribed in the legislation and which will be large enough to be a true deterrent to anyone who is considering remaining silent when in possession of information which, by reason of the legislation, he or she is required to report to a children's aid society. There was no testimony to enable me to suggest what such a penalty might be, but the present penalty of \$1,000.00 for persons having professional and official duties appears to me to be rather modest.

13. I THEREFORE ENDORSE AND RECOMMEND the retention of the privilege of communications between solicitor and client so that a solicitor is not required to report any information about abuse given by a client who is party to any proceeding in which the particular incident of abuse is or may be a factor.

14. I THEREFORE RECOMMEND THAT the Ministry co-operate with the Ministry of Education, the Ministry of Colleges and Universities and any other appropriate agency, governmental or otherwise, responsible for the preparation of curricula in schools and other educational facilities, to ensure that such curricula include adequate provisions for instruction in the responsibilities of parenthood. Such instruction should be part of the general curricula and should be part of every pupil's personal course of study in elementary and secondary schools. Appropriately advanced instruction should be available to all students in post-secondary schools, colleges and universities. Such instruction should be available in adult education programmes. Such instruction should include elements relating to child abuse. With education and knowledge and with the confidence resulting therefrom the cycle of abuse may be broken. Children's aid societies and multi-disciplinary abuse teams in local communities should be encouraged to participate in the preparation and delivery of such programmes.

15. I RECOMMEND THAT the Ministry devise, prepare and distribute to children's aid societies and similar organizations serving families and children materials for training of personnel engaged or to be engaged in the detection, reporting, investigation and management of cases of child abuse and in the protection of children from abuse. Those materials should be subject to ongoing review and revision to ensure that they reflect current policies and procedures and any developments resulting from amendments of legislation or regulations or from judicial decisions. Those materials should be made available by the Ministry to other ministries or levels of government or agencies and institutions for the training of personnel who may be called upon by children's aid societies and similar organizations to assist in efforts to prevent and minimize child abuse and the results thereof. The local children's aid society should ensure that community child abuse teams and the professions, callings, institutions or organizations represented thereon have an opportunity to receive such training and information or the portions thereof relevant to their activities.

16. I THEREFORE RECOMMEND THAT the Ministry should encourage each children's aid society to establish an adequate and current library of books and audio-visual materials, with appropriate equipment, for the use of the social workers employed by the society. The Ministry should make it clear that reasonable sums of such purposes will be approved as part of the annual budget process.

17. I RECOMMEND THAT every report or instance of child abuse be investigated and managed and treated by a team or teams of qualified persons. The local children's aid society shall have the primary responsibility for the creation of the team or teams to deal with the various aspects of each case. In some aspects of the case the team may be comprised solely of employees of the children's aid society, but preferably it should have representation from such other organizations, professions, callings, agencies, institutions and authorities as may be necessary to provide protection and care to any child involved in the particular case.

18. THEREFORE I RECOMMEND that each local children's aid society seek to employ social workers who, by reason of their special skills and knowledge of the languages and customs of the countries of origin of persons or families resident in the community but who were not raised in Canada, are especially qualified to assist in or manage cases or reports of abuse involving such persons and families.

19. I RECOMMEND THAT the Ministry seek the active co-operation of other ministries of government responsible for the regulation of professions, callings, institutions and authorities the practice or function of which may in any way relate to child abuse so as to ensure the establishment and function of multi-disciplinary teams. Each children's aid society shall be responsible for the institution of proceedings necessary for the formation of such team or teams as may be required to serve its community or communities. Each such team shall develop its own practices and procedures recognizing the dominant responsibility of the children's aid society and the Ministry to protect and care for children. It should be made clear that, provided it is made for the purpose of the team's consideration of a particular case, disclosure of information by and among persons serving on such a team shall not be nor be deemed to be a breach of any confidence that might otherwise attach to such information.

20. I THEREFORE RECOMMEND THAT each children's aid society select from amongst its social workers an appropriate number of persons to form the society's child abuse team. The social workers so selected shall be qualified for such assignment by reason of personal aptitudes, knowledge, skill and experience especially required to deal with all phases of child abuse cases. One or more members of that team shall be readily available at all times to provide service to existing or new cases as required. That team shall be assigned to provide service to all cases of abuse for which the society is responsible. Primary responsibility for an individual case will be assigned to an individual member of the team after discussion of the case by the team. One member of the children's aid society's management or supervisory staff shall be assigned as the resource person to whom the worker primarily responsible and the associated team of the society's workers may look for support or advice in case an emergency arises when normally desirable conferences cannot be convened, and who also will attend such regular conferences in relation to the case. Active service upon the team shall be rotated among the society's properly qualified social workers. Members of the team should be assigned to other duties as well. Less qualified social workers shall receive in-service training with the team so as to attain proper qualification and appointment to the team in due course.

21. I RECOMMEND THAT upon receipt by a children's aid society of any report or information relating to abuse or suspected abuse of a child the children's aid society must forthwith commence and diligently complete a thorough and orderly investigation. Procedures for the conduct of any such investigation should be devised by each children's aid society in a manner to satisfy or exceed standards therefor prepared or to be prepared and maintained by the Ministry. Those procedures should entail a prompt recording, in permanent form, of
- (1) the source, if known, and the contents of the report leading to the investigation;
 - (2) the preliminary results of the initial investigation;
 - (3) the assessment of those preliminary reports including such matters as the gravity of the case and the need for further investigation or other action;
 - (4) if further investigation or other action is required, the nature and purpose thereof; and
 - (5) the assessment of the complete investigation and its results.

Like all standards those standards must be the subject of on-going review and revision, if indicated.

22. I RECOMMEND THAT each children's aid society shall ensure that an appropriate number of its social workers, specially selected on the basis of aptitude, knowledge and skills, are specially trained to investigate reports and cases of child abuse and to report thereon promptly. Any such report shall contain the author's assessment or evaluation of each facet of the investigation together with recommendations as to what, if anything, might flow from the investigation and what further, if anything, might be necessary or desirable. Investigation of any report or case of child abuse should be entrusted only to such specially chosen and trained investigative social workers who may be assisted by other social workers who may be receiving in-service training in investigation of child abuse. The temporary absence of such specially trained investigative social workers should not delay the commencement of the investigation. It must begin at once with the most qualified social workers who are available and who should be relieved as quickly as possible. If its complement of social workers justifies or enables it to do so, each children's aid society should seek to ensure that the investigative social workers are not in direct contact with the family during the management and treatment of the case after finalization of any court proceedings arising from the investigation.

23. I RECOMMEND THAT in any instance of abuse or alleged abuse which, in the opinion of the child abuse team of the children's aid society, should be investigated by police officers the children's aid society should promptly inform the police force responsible for the provision of police services to the community and request its co-operation to conduct the investigation and, if deemed necessary, to gather particular information for the assistance of the children's aid society in its investigation, management and treatment of the case. The police must promptly assume conduct of the investigation and collection of information and must keep the children's aid society fully informed thereof. There should be a confidence between police officer and social worker to ensure a full exchange of information. This may require the Ministry to obtain the co-operation and support of the Ministry of the Solicitor General.

24. I THEREFORE RECOMMEND THAT if a local children's aid society lacks personnel qualified and skilled in the techniques of investigation of child abuse, or if the assignment of its personnel to investigation of an incident or report of abuse may diminish the society's ability to deal with other facets of the case, or if the nature of the case is such that it is necessary or desirable that the police be informed of it, the society should enlist the assistance of the local police force to conduct the investigative phase of the case. In such an instance the assistance should be given upon the pre-arranged understanding that, despite what may be revealed upon the investigation, criminal or quasi-criminal charges will not be laid if they might prevent or hinder the successful attainment of an overall satisfactory conclusion to the case in the best interests of the child, the family and the community.

25. I RECOMMEND THAT those assigned to investigate instances or reports of abuse be aware of the use to which the results of that investigation might be put. To that end those who conduct such investigations will require special training to make them aware of the various matters in respect of which they must seek information. In brief they should be trained to prepare a psycho-social history of the family.

26. I FURTHER RECOMMEND THAT in every incident in which abuse of a child has been caused or permitted by a member of that child's family the investigation into the abuse must be probing, broad and comprehensive. It must seek to obtain information to enable those who must make decisions as to the future care and well-being of that child to make correct and valid assessments or diagnoses of the various factors in the case and thus to make appropriate decisions.

27. I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not the child involved is, for any reason, one of any class or classes of children who may be high-risk children, children more likely than others to be abused. The investigators will require special training in this area, particularly in relation to the factors which are subjective in nature.

28. I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not one or both of the parents is or are inappropriate or inadequate in any way, whether physically, mentally, developmentally, emotionally or otherwise. This too is an area in which the investigators will require special training and instruction.

29. I THEREFORE RECOMMEND THAT in every instance of abuse or suspected abuse those who conduct the investigation, whether they be personnel of a children's aid society or police officers, should ensure that the child is examined by a medical doctor, preferably one with special training in paediatrics and abuse and preferably in a proper facility for such examination, such as the doctor's own examining room or in a hospital. The examination should not be limited to a physical examination, but should include such other tests or examinations as the examining doctor may deem necessary to ascertain the development of the child and any impairment which may have been suffered. The medical doctor should be requested to express an opinion as to the likelihood that any injury or condition discovered upon such examination resulted from abuse of the child. If possible the parent or parents of the child should be present or available to give, if he, she or they wish, any explanation or supposed explanation for the injury or condition. Failing attendance of the parent or parents the investigators should inform the doctor or other person conducting the examination of any explanation given for the presence of the injury or condition. The medical doctor or other consultant should be requested to express an opinion as to the validity of any explanation in relation to the injury or condition discovered upon the examination.

30. I THEREFORE RECOMMEND THAT the Regulations made under the Child Welfare Act be amended as follows:

1. to define the meaning of the expression "child in care" so as to make it clear that the expression includes a child from the moment of apprehension of the child by the society or from the moment of any voluntary delivery up of the child to the society or from the moment of any order or agreement committing or placing the child to or in the care and custody of the society, whichever comes first, until the expiration of any such apprehension, delivery, order or agreement and any extension thereof. It should be clear that the child remains in the care of the society if the child is residing physically or visiting the family home prior to such expiration;

2. to require the children's aid society to provide medical and dental examinations and treatment of an abused child as soon as practicable after the child comes into the society's care and thereafter not less frequently than annually while the child remains in the care of the society with the provision that if, while in care, the child is returned to the family home the society shall provide such examinations not less frequently than bi-weekly for at least three months after the child's return home and thereafter shall provide such examinations as often as the child abuse team and the medical and professional advisors of the society may advise in keeping with good practice of child welfare; and

3. to require the children's aid society to provide for such medical, emotional, developmental, psychological, educational, psychiatric and other assessment and treatment of an abused child in the care of the society and after the child's return home as the child abuse team and the medical and professional advisors of the society deem desirable or advisable in keeping with good practice of child welfare.

31. I RECOMMEND THAT the Ministry, through appropriate procedures, seek amendment of the Child Welfare Act so as to give a judge, hearing a matter thereunder in relation to a child who has been abused or found to be a child in need of protection, the specific authority to require the parents of that child or any person in loco parentis to that child or any person residing in the same home as such parents or person in loco parentis to the child to be examined physically and otherwise as the judge may direct for the purpose of determining whether the child might be at some unusual risk if left or returned to live in that home.

32. I THEREFORE RECOMMEND THAT the Ministry seek further amendment of section 29 of the Child Welfare Act so as to empower the court to make an order thereunder at any stage of an application to the court to determine whether the child is a child in need of protection.

33. I RECOMMEND THAT each children's aid society develop a procedure and practice whereby appropriate conferences of its personnel and others will be convened to consider all relevant factors and then to make decisions in respect of each case of child abuse. Decisions may relate to the assignment or transfer of responsibility for performance of duties or may relate to any stage or phase of the investigation, planning, management or treatment of the case. The requirement for such conferences should be clearly expressed in the society's manuals of practices and procedures. The Ministry should assist each children's aid society in this effort.

34. I RECOMMEND THAT each children's aid society in its manual of practices and procedures set forth the need for planning and completing the transfer of responsibilities for a case within the society. The manual should be clear and precise and set forth what is required and expected of each supervisor and worker involved in the transfer. It should stress the concern that service to and relationship with the particular family and every other family which might be affected by the transfer should be disrupted to the least extent possible. It should stress the need for the permanent records of the case to contain a resume of the reason for the transfer and what was done to effect it and how it was accomplished together with appropriate comment and assessment.

35. I RECOMMEND THAT each children's aid society develop and maintain an internal information system capable of enabling the administrative, supervisory and management personnel of the society to know at all times the status of every current case in the society. This is especially so in relation to serious matters requiring service by the society over an extended period of time.

36. THUS I RECOMMEND THAT each children's aid society ensure that its social workers are instructed in the art of preparing and recording reports for the files of the society and that those workers receive in-service training and instruction therein. Such instruction should emphasize that the recording should be more than mere administrative reporting of what was observed without any expression of opinion, judgement, assessment or evaluation thereof and expression of the perceived significance thereof to the overall plan for management of the case. The recording should contain reference not only to what has been observed, but also to what appears to be missing and what is desired or needed to enable the overall plan to be developed and implemented to successful conclusion. The policies and procedures developed or adopted by children's aid societies for the management and treatment of cases of abuse should require each worker having any contact or involvement with the case to record promptly the time and nature of such contact or involvement and his or her observations, if any, upon each such contact or involvement and to express an opinion as to the nature of the case upon the basis of those observations. Each children's aid society should develop and insist upon adherence to a system to ensure that a social worker's notes are prepared promptly, transcribed promptly and correctly, and then, in effect, confirmed, as corrected or revised if need be, promptly by the social worker and then acknowledged by the appropriate supervisor. The system for the preparation of recordings should form part of the manual of the practices and procedures of the society. The procedures of each children's aid society should ensure the original accuracy of all recordings and that they are not later altered or tampered with. The Ministry's supervision and inspection procedures should contain elements to that effect.

37. I THEREFORE RECOMMEND THAT, as part of any plan to return a child to his or her home after an incident of real or suspected abuse, the children's aid society should arrange for the complete medical examination of the child immediately prior to the date of the return and and for frequent complete medical examinations of the child after such return. The medical examinations should be conducted by a physician retained by the children's aid society. The first such examination after the return should be within two weeks of the return and subsequent examinations should be at intervals of not more than two weeks unless the child abuse team of the society, in conference with the examining physician, determines otherwise. All such examinations should be conducted in a hospital or in the office of the examining physician, in that physician's discretion having regard to the facilities required. The examining physician should be expressly authorized in his or her discretion to release information about the child's health to the physician who is the family doctor. Any such medical examination should include such tests as the examining physician may deem necessary to determine the child's development and any impairment thereof.

38. I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, establish and maintain an ongoing relationship with the physician who provides medical services to the child's family as the family's doctor. If the children's aid society engages another physician to provide medical services to the child it should instruct and authorize that physician to obtain the child's prior medical records from the family physician and other sources and, if the child is to be returned to the family home, to supply to the family physician the child's medical records for the period during which the child was in the care of the society. That exchange of information may lead to the family doctor's more easily recognizing situations of risk for or abuse to the child and thus to earlier and more beneficial report thereof to the children's aid society.

39. I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, maintain an ongoing relationship with those who, in any way, have assisted or may assist the children's aid society in relation to the case. Among such persons I would include anyone who had reported the case or the suspicion of abuse to the children's aid society or who willingly co-operated with the society in the provision of assistance or information. If for no reason other than common courtesy, they should be aware of the result of their reports or actions. More importantly they may be a means of preventing any recurrence of abuse, perhaps by keeping the society aware of any unusual circumstances or observation or perhaps merely as a result of the parents' knowing from testimony or otherwise that persons in the community are concerned about the welfare of the child. They are more eyes and ears of the society in the community.

40. I RECOMMEND THAT the Ministry, through appropriate channels of government, seek to obtain an amendment of the Child Welfare Act so as to provide that, in any instance where a child removed from the family home has been found to be a child in need of protection because of abuse or because of conditions in and about the family home which may constitute an unusual risk for the child and has been placed in the care and custody of a children's aid society, the child may not be returned to the family home prior to the expiration of the order placing the child in care of the children's aid society except by an order of a judge made on application and upon notice to such persons as the judge may direct. The judge should be empowered by the Child Welfare Act to impose such terms upon the return of the child as the judge deems necessary to protect the child.

41. I THEREFORE RECOMMEND THAT when a child who has been removed from the family home as a child in need of protection is returned to the family home the children's aid society should be especially vigilant and alert in its supervision of the child's care in the family home during the period immediately following the child's return. The children's aid society should be alert to the possible effect upon the child's care resulting from other events occurring at or about the time of the child's return. That period of especially close supervision should be not less than three months.

42. I RECOMMEND THAT if a children's aid society learns of the return or proposed return home of a child after lengthy absence from the home even for reasons not related to abuse, the society should ensure that every possible effort is made to assist and support the child's parents in the re-introduction of the child to the home. This would be a part of the society's programme of prevention of abuse.

43. I RECOMMEND THAT co-operation between public health nurses and social workers employed by local children's aid societies should be regulated by formal documents setting forth the need for and the basis of such co-operation. Children's aid societies should seek the active assistance of public health nurses as a means of observing conditions in any home in which a child, about which a children's aid society is concerned in any way, resides. Public health nurses must inform local children's aid societies of any circumstance which causes them to have any fear that a child might be in some danger of abuse even though there be no physical evidence of abuse. Public health nurses must assist local children's aid societies when requested and, by appropriate legislation, should be specifically authorized in the performance of their general duties in or about the home or family of any child to physically examine the child if the children's aid society has expressed any suspicion or concern that the child may be in any danger of abuse.

44. I THEREFORE RECOMMEND THAT the Ministry seek appropriate amendment of the Child Welfare Act to authorize or empower a judge, upon an application under that statute, to order and direct that public health nurses be given free access to any child named in such application for the purpose of examining such child as one means of ascertaining whether or not the child has been abused and/or as a means of preventing abuse to the child and supervising the care of the child.

45. I RECOMMEND THAT each children's aid society make arrangements to have legal services available to its personnel engaged in child abuse matters. If reasonably possible those services should be available at all times to meet emergency situations in such cases. The social workers of each children's aid society must be made aware of those arrangements and encouraged to avail themselves thereof in every instance. Procedures governing the handling of cases or reports of abuse should provide that, except in cases of emergency where full conferences are not practical, decisions to use or not to use such legal services should be made at conferences of the appropriate team or teams of workers and duly recorded as part of the permanent record of each case. If any court proceedings arise as a result of any instance of abuse the children's aid society must be represented by a solicitor even if the proceedings are unopposed.

46. I THEREFORE RECOMMEND THAT the Ministry establish and maintain a system whereby local children's aid societies shall have immediate access at all times, twenty-four hours a day, to advice and assistance from social workers skilled and qualified in all aspects of child abuse cases. In addition to such a system the Ministry should establish and maintain a group of social workers, especially highly trained in the investigative phases of abuse cases, so as to enable one or more of such workers to attend in a local community, promptly upon the request of the local children's aid society, to investigate any incident or allegation of abuse and to pursue any court proceedings which might ensue. Depending upon the nature of such court proceedings the local Crown attorney or the solicitor for the local children's aid society shall be instructed to present the material in court.

47. I FURTHER RECOMMEND THAT the Ministry's personnel conducting any such investigation, while having authority and responsibility for the conduct thereof, shall generally recognize the valid concerns of the local children's aid society for the eventual and long-term success of the management and treatment of the case. To that end the Ministry's personnel shall keep the local children's aid society fully and promptly advised of what has been revealed by the investigation. They should seek to obtain information required or desired by the society for its purposes in managing and treating the case. In similar vein the local children's aid society shall keep the Ministry's personnel advised of the society's plan or programme for the management and treatment of the case and the rationale therefor. In the event of any difference of opinion between the Ministry's personnel assigned to the case and the personnel of the local children's aid society, the matter should be resolved by more senior personnel of the Ministry whose decision should be the determination of the issue as between the Ministry and the local children's aid society, provided however that, if either party feels it necessary or advisable so to do, the question may be raised before the judge sitting in the court hearing the matter who may take the difference of opinion into consideration in determination of the main issue or issues in the proceedings.

48. I RECOMMEND THAT the Ministry establish and maintain a cadre or roster of experts in the field of child care, and particularly the detection, investigation, assessment, management and treatment of child abuse, thus including representatives from a number of professions, disciplines and callings, sufficient to enable it to provide prompt assistance by qualified persons to any children's aid society needing assistance. Such cadre should be composed of a sufficient number of such qualified persons as may be necessary to ensure that the person or persons with the skills and experience required in the particular circumstance will be quickly available to provide the necessary assistance, including physical attendance. A senior member of that cadre should always be available for consultation with the local children's aid societies and to assign responsibilities to appropriate members thereof, including authority to travel.

49. I RECOMMEND THAT the Ministry establish and maintain a list of persons employed or practicing in Ontario who possess special skills or knowledge and whose advice or assistance might be made available on some basis to assist a local children's aid society or multi-disciplinary team in a particular case requiring the application of special skill or knowledge.

50. I RECOMMEND THAT, while the local children's aid societies have primary responsibility for the care and protection of children residing within the geographical areas served by the societies, the Ministry must assert and acknowledge that it has an overriding and superior responsibility for the care and protection of all children in Ontario. To that end the Ministry should ensure that it always has sufficient resources of personnel, equipment and funds to enable it to perform its duties and obligations to children.

51. I RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations thereunder to provide that, for the purposes thereof, social work is a profession to be practiced only by persons possessing suitable academic qualifications and membership in a professional association to be created under the statute and to possess powers to regulate the practice of the profession including appropriate powers to establish standards of qualification for membership, competence and ethics and to impose penalties for failure to maintain qualification, for incompetence or for breach of ethics. Only members of the profession shall be entitled to be classified as social workers for the purposes of the Child Welfare Act.

52. I THEREFORE RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations made thereunder to provide;
1. that all persons entering the profession of social work for the purposes of child welfare after a date to be fixed by the Minister shall have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of Universities and Colleges of Canada;
 2. that persons who have served children's aid societies as social workers since a date to be fixed by the Minister shall be entitled to continue to do so provided they successfully complete courses as required or prescribed by the governing body of the profession and approved by the Minister;
 3. that members of the profession maintain satisfactory standards by successfully completing courses or examinations prescribed from time to time by the governing body of the profession and approved by the Minister.

53. I FURTHER RECOMMEND THAT the practices and procedures of each children's aid society provide that cases of abuse shall be assigned only to a worker or workers who have successfully completed special courses upon abuse prescribed by the governing body of the profession and approved by the Minister. If no such worker is on the staff of the society it shall seek and receive appropriate assistance from the Ministry.

54. I RECOMMEND THAT the Ministry, in clear and unequivocal written language understandable to everyone, even those who have no experience in writing, reading or understanding official documents, affirm to children's aid societies and their boards of directors, local directors and social workers that, in the planning for and the management and treatment of any case of abuse, no major decision is to be made on the basis of the society's financial position. The decision to apprehend the child or to leave him or her in the family home and the decision to retain the child in the physical control of the society or to return him or her to the family, with or without supervision, would certainly be major decisions. The child's very life depends upon each of those decisions. The Ministry should equally clearly state its willingness to give favourable consideration to requests for additional funds to support correct decisions which might otherwise over-tax a society's financial resources.

55. By way of extension to the immediately preceding recommendation I RECOMMEND THAT each children's aid society, again in similarly clear and unequivocal written language, inform all of its social workers of the Ministry's affirmation of that position and the society's intention to adhere thereto.

56. I RECOMMEND THAT the Ministry ensure that no child who has been abused or is in danger of abuse be at a disadvantage in relation to protection and care by reason of the location of that child anywhere in Ontario. The Ministry should ensure that each children's aid society have or have readily available to it the personnel and facilities to ensure that the child is not at any such disadvantage. If local conditions make it unreasonable for a children's aid society to have such personnel and facilities or to have them readily available, the Ministry must provide such personnel and facilities or make them available for the child, but they need not be in the same community as the child's home.

57. I RECOMMEND THAT the Ministry establish and maintain, possibly in co-operation with the Ontario Association of Children's Aid Societies, an ongoing programme to select and train social workers who may aspire to positions of responsibility as supervisors or local directors of children's aid societies. Successful completion of any course developed and presented as part of such a programme should be required of anyone seeking appointment to or employment in such a position. As mentioned elsewhere among these recommendations in other areas the programme should contain provision for facilities to enable persons who have achieved such positions to keep themselves aware of new or current developments and trends in relation thereto. The local children's aid societies should be assisted and encouraged by the Ministry in making it possible for appropriate members of their personnel to attend such courses.

58. I RECOMMEND THAT the Ministry continue its programme of establishing standards to be met by children's aid societies in all areas of service to children and families, particularly in relation to the protection of children from abuse. Those standards should be subject to ongoing study and revision by the Ministry's personnel in the light of the experience of the Ministry and children's aid societies with those standards. The Ministry should affirm its desire and willingness to receive and consider comment upon its previously published standards and recommendations with a view to revision thereof if necessary or desirable. The Ministry should ensure that copies of these standards are made available to every children's aid society and, through each children's aid society, to each social worker in the employ of that children's aid society. The Ministry should maintain a service to ensure that every children's aid society and every social worker in the employ of the children's aid societies is advised of any revision of the standards. The standards should be accompanied by explanatory and supporting material and, particularly for the supervisory employees of the children's aid societies, materials to be used by supervisory personnel during instruction or training of subordinate personnel in relation to the standards. Each children's aid society shall ensure, by adequate instruction and training of its personnel in relation to the standards and by adequate supervision of the work of each of its social workers, that the standards of service established by the Ministry are met or exceeded. The Ministry in its turn shall ensure, by adequate supervision and inspection of each children's aid society, that such standards are met or exceeded. The Ministry shall furnish to the president and local director of each children's aid society a written report upon any such supervision and inspection.

59. I RECOMMEND THAT the Ministry ensure that the intention of the authors of the Garber Report as expressed in their recommendation numbered 4, be fulfilled and that standards be established, kept current, published and enforced so that there will be uniformity in the bases and criteria employed by children's aid societies in preparing their own records in respect of child abuse cases or reports and in preparing reports thereon to the Ministry or other authorities.

60. I RECOMMEND THAT the Ministry take all appropriate and necessary steps to ensure that accreditation of public hospitals will require or involve such hospitals to meet or exceed specified standards for actions to be taken, procedures to be followed and reports to be made by the personnel of such hospitals, including medical practitioners enjoying any privilege therein, in any instance of abuse or suspicion of abuse or professional opinion of any of the hospital's personnel qualified to express such an opinion that the child, even from birth, will be a high risk child. Such actions and procedures shall include participation in the discussions and decisions of any multi-disciplinary team of persons formed or requested by a children's aid society to assist in any phase of the investigation, management or treatment of any case of child abuse.

61. I RECOMMEND THAT the Ministry, in co-operation with other appropriate ministries of government, ensure that physicians and nurses, in private practice or in the employ of public hospitals or public health bodies who provide care, whether pre-natal or both, to mothers and children receive special training to enable them to detect, recognize and assess any matter which might indicate that any child, even a new-born child, may be a "high-risk" child. Hospitals and public health bodies should provide in-service training on such matters to doctors and nurses on their staffs or enjoying any privilege in their facilities to ensure that they remain current. Such training should emphasize that if a doctor or nurse, having recognized the presence of any such matter, should form the opinion that a child may be a "high-risk" child he or she is, by the Child Welfare Act, required to report such opinion and the information or observations on which it is based to a children's aid society.

62. I RECOMMEND THAT the Child Welfare Act be amended to ensure that no action for making the report shall be instituted against any doctor or nurse who reports to a children's aid society that in his or her opinion a child may be in need of protection although there is no "hard" evidence of abuse of the child or the child's need for protection, provided the report is not made maliciously and the opinion is not expressed maliciously.

63. I THEREFORE RECOMMEND THAT as part of its practices and procedures each children's aid society establish a process whereby any one or more of its social workers, concerned about the propriety or correctness of any decision made or proposed to be made in any case, may, without fear of reprisal and without appearing to threaten the authority or position of the team of social workers, the supervisor or the local director, as the case may be, bring the case and the particular decision to the attention of a supervisor, the local director or the board of directors, as the case may be, for review and determination. In the same vein the practices and procedures of each children's aid society should enable each employee to have a means of ensuring that full information about any case is available to any supervisor or the local director or the board of directors.

64. I RECOMMEND THAT each children's aid society should employ or retain the services of one or more solicitors, preferably with training or experience in relation to family law, child welfare and child protection and with skills of advocacy. The advice of such a solicitor should be immediately available to the society's social workers at any time in relation to any report or instance of abuse or suspected abuse. The society's social workers should be required to consult with such a solicitor at appropriate stages of the investigation of such report or instance of abuse and subsequently in relation to any decision to be made during the management or treatment of the case including court proceedings of any sort. The solicitor should be advised of all conferences in relation to the case whether within the children's aid society or elsewhere, such as at the community child abuse team, and the matters to be discussed thereat. The solicitor should be required to attend such conferences if, in his or her opinion, the subject matter may involve matters of law or procedure, or if any social worker participating in the conference requests that the solicitor attend. All of that should form part of the society's manual of practices and procedures.

65. I RECOMMEND THAT counsel employed or retained by the children's aid society in respect of any report or instance of child abuse should establish and maintain liaison and co-operation with the Crown attorney and police to determine whether or not, in relation to the matter, any charge, under the Criminal Code, the Child Welfare Act or any other statute, is contemplated by the Crown attorney or police or, in the light of information available to the children's aid society, should be considered. In the event any such charge is laid counsel for the children's aid society should co-operate with the Crown attorney to ensure an orderly and complete investigation and then, if required, an efficient procedure in court to complete all matters including the prosecution of any such charge and any application which the society may make in respect of the care of the child. That duty to co-operate corresponds to the duty of the Crown attorney and police to co-operate with the children's aid society as set forth in a subsequent recommendation.

66. I RECOMMEND THAT, if a charge under section 40 of The Child Welfare Act be laid by the police, a children's aid society or a private complainant, the Crown attorney be advised forthwith and thereafter the Crown attorney shall be responsible for the conduct of the prosecution of any such charge or for staying or withdrawing it. The justice before whom any person appears for the purpose of swearing an information alleging the offence should be responsible for ensuring that the Crown attorney is so advised. That latter may require the Ministry to obtain the co-operation of the Ministry of the Attorney General.

67. I RECOMMEND THAT the Crown attorney, if not accepting the responsibility himself or herself, assign one solicitor employed or retained by the Crown attorney to have full responsibility for the conduct of the prosecution of any charge under section 40 of The Child Welfare Act.

68. I RECOMMEND THAT the police, as well as the Crown attorney or solicitor responsible for the conduct of the prosecution of a charge under section 40 of The Child Welfare Act, immediately establish and maintain liaison and co-operation with the local children's aid society. One purpose of such liaison would be to discuss and to determine whether or not an application should be made in court for an order declaring the child to be a child in need of protection and, if such an application should be made, by whom and by what process. That liaison and co-operation should involve all phases of the two proceedings, whether or not they are joined, and should continue until both are completed. That duty to co-operate corresponds to the duty of the children's aid society to co-operate with the Crown attorney and police which is set forth in a preceding recommendation. This will involve the co-operation of the Ministry of the Attorney General and the Ministry of the Solicitor General with the Ministry.

69. I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure that the Crown attorney in each county and district in Ontario be provided with sufficient funds to ensure that personnel and facilities are available to each such Crown attorney to enable implementation of recommendations in this Report requiring the involvement of the Crown attorney.

70. I THEREFORE RECOMMEND THAT the Ministry, the Ontario Association of Children's Aid Societies and the children's aid societies in Ontario maintain an ongoing survey of proceedings under the Child Welfare Act in the provincial courts (family division) to ascertain whether or not any inadequacy in the facilities of those courts, including the numbers of judges appointed thereto, contributes to any unreasonable delay in the hearing and disposition of such proceedings particularly those involving allegations of child abuse or children apparently in need of protection. If such survey should indicate that there is, in any such court in any county or district, unreasonable delay in such matters because of any inadequacy of the court's facilities, the Ministry, through appropriate procedures of government, should seek to ensure that the facilities of that court are improved so as to prevent any such delay.

71. I RECOMMEND THAT in all proceedings under the Child Welfare Act it should be incumbent upon the court in which the proceedings are conducted to determine whether separate legal representation is necessary or desirable to protect the interests of the child who is the real subject matter thereof. If the court determines that such representation is necessary or desirable it shall direct that it be provided. In making that latter determination the court should hear submissions, with or without testimony as the court may decide, from the parties to the proceedings as well as from anyone who may seek to be the child's legal representative to protect or advance the child's interest. Any direction for the provision of such legal representation should identify the solicitor or solicitors who shall provide it and shall provide for the remuneration of such solicitor or solicitors. Unless or until some arrangement is made for the provision of such legal representation under the Ontario Legal Aid Plan the cost thereof should be borne out of the general revenues of the Province of Ontario except in such cases where, with the knowledge and approval of the court, remuneration of such solicitor or solicitors is available and provided from some other source.

72. I RECOMMEND THAT the Ministry consider the amendment of section 20 of the 1978 legislation to incorporate the preceding recommendation #71 and to provide that in the circumstances described in subsection 3 of section 20 the provision of such legal representation shall be deemed to be and shall be desirable.

73. I RECOMMEND THAT within the profession of social work there be a category of social worker who shall be required to satisfy appropriate requirements of knowledge, training and experience and thus to be entitled to a further designation to denote his or her qualifications as a specialist in the field of child abuse. The requirements of qualification entitling anyone to such designation shall be established by the regulatory body of the profession.

74. I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to provide that the opinions expressed by social workers formed by them in relation to child welfare matters shall be admissible as evidence upon proceedings under the Child Welfare Act and shall be accorded weight in the same way as the professional opinions of other professional persons are found to be admissible and are weighed.

75. I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to facilitate the use of photographs, either coloured or black and white, of abused children in the provincial courts (family division). Such an amendment should provide that such photographs shall be admissible in evidence upon the proceedings unless the party opposing their admission satisfies the judge that they should not be admitted.

76. I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure the amendment of the Child Welfare Act and the Evidence Act of Ontario so as to provide that in any proceedings under the Child Welfare Act arising out of an allegation that a child has been abused or is apparently in need of protection a man or woman is a competent and compellable witness for the prosecution or applicant, as the case may be, or for his or her spouse who is the accused or respondent, as the case may be, if the child named in the proceedings is the child of the spouses or either of them or if the spouses are or either of them is in loco parentis to the child.

77. I FURTHER RECOMMEND THAT the Ministry, through appropriate channels of government, request that consideration be given to an amendment of the Canada Evidence Act to like effect.

78. I THEREFORE RECOMMEND THAT the Ministry through appropriate channels of government seek amendment of the Child Welfare Act so as to provide that,
1. if, within ten years after a child has been found to be a child in need of protection, fresh proceedings are instituted to determine whether the child is in need of protection, proof of the earlier finding shall be prima facie proof in the fresh proceedings that the child is in need of protection; and
 2. if, within ten years after a child has been found to be a child in need of protection, proceedings are instituted to determine whether another child of the same family is in need of protection, evidence of the earlier finding shall be admissible as evidence upon the new proceedings to be given such weight as the judge hearing the matter may determine.

79. I RECOMMEND THAT all aspirants for appointment or election to the board of directors of a children's aid society be required to attend and participate in an orientation course conducted by the society wherein they will be informed and instructed as to the objects, purposes and duties of the society and the function, duties, powers and obligations of the members of the board of directors as a board, as members of the committees of the board, as individuals and as officers of the corporation. Such course is to be developed and presented by the personnel of the society so as to incorporate or reflect local conditions, but should contain elements that are common across the province. Each course, while distinctive, should be based upon material which should be prepared and distributed by the Ministry or the Ontario Association of Children's Aid Societies.

80. I RECOMMEND THAT upon any review of the operations of a children's aid society by personnel from the Ministry, the Ministry shall promptly furnish to the board of directors of that society a written report upon that review setting forth the date or dates thereof, the purposes thereof, the observations thereon, comment, assessment and evaluation in respect of the observations, and the recommendations, if any, of those who conducted the review and their superiors. If either the board of directors or the Ministry feel it necessary or desirable appropriate personnel from the Ministry shall meet with the board of directors of the children's aid society to discuss the contents of the written report and the implementation of any recommendation. If any such report contains any negative criticism of the operation of the children's aid society the Ministry shall ensure that the matter is reviewed again after the children's aid society has had appropriate time to correct any deficiency or error in its procedures or operations.

81. I RECOMMEND THAT the Ministry should ensure that there is a facility readily available to assist and advise the boards of directors of children's aid societies in relation to the qualifications of and performance of duties by management and supervisory personnel of the societies. Pending progress toward the recognition of social work as a profession with a governing and regulating body which may provide such a service and pending any system of accreditation of children's aid societies which may provide such a service, the Ministry should provide it or arrange with the Ontario Association of Children's Aid Societies to provide it. The existence of such a service should be made known to the boards of directors of each children's aid society at appropriate times, perhaps annually shortly after the annual meeting of the society. Such a service should extend to and be devised to deal with any complaint made by a member of the public in respect of the society or any of its supervisory personnel.

82. I RECOMMEND THAT the children's aid societies, with the active encouragement and involvement of the Ministry and the Ontario Association of Children's Aid Societies, adopt and implement a policy of appointment and employment of local directors and supervisors for fixed terms with provisions for the extension of any term if the society and the appointee so agree during, say, the last year or six months of the fixed term.

83. I THEREFORE RECOMMEND THAT the Ministry institute a programme of ongoing review of the structure and means of functioning of the board of directors of each children's aid society. The review should extend to and include the structure and function of the committees of that board of directors and any other committees within the society in which members of the board of directors participate or which report directly to the board of directors. Such reviews should be conducted at appropriate intervals, perhaps in conjunction with other ministerial reviews or perhaps by random attendance of personnel from the Ministry at meetings of the board of directors. The purpose of such reviews should be to assist the board of directors to establish and maintain a useful and functional structure of itself and its committees and efficient and productive meetings of itself and its committees. Each review should be followed by a written report to the board of directors setting forth the observations made during such review and any appropriate recommendations or directions arising therefrom to ensure compliance with statutory or regulatory requirements and, hopefully, to ensure that the interest of members of the board of directors is maintained and their individual talents are best used for the benefit of the society and the children and families it serves.

84. I THEREFORE RECOMMEND THAT when a children's aid society is considering the appointment of a local director it must, in addition to any other inquiries or investigations it may care to make, request comment from the Ministry upon the professional qualifications, job experience and general reputation of each applicant or person who is being considered for appointment. There should be a corresponding obligation upon the Ministry to respond in writing to each such reference in absolute frankness and with immunity from any liability, civil or criminal, providing the response is made without malice. That may require amendment of the Child Welfare Act. The response from the Ministry would then be one of the factors to be considered by the board of directors of the Society in its deliberations.

85. I RECOMMEND THAT, when a children's aid society is considering the appointment of supervisors of its social workers, it must request comment by the Ministry in respect of each person being considered for such an appointment. Such comment should be upon the suitability and ability of each person proposed for such appointment. The Ministry should be obliged to respond frankly and fully in writing with immunity from liability of any sort in the absence of malice. Any response by the Ministry should be but one factor in the deliberations of the board of directors of the society.

86. I RECOMMEND THAT, if social work is granted legislative recognition as a profession and if the legislation establishes a governing body to govern or regulate the practice of that profession, children's aid societies proposing to appoint anyone to the position of local director or supervisor of social workers must, in writing, inform that governing body of each such proposal, with the name of each person being considered for such appointment. The governing body should be free to comment upon the suitability of the person proposed and his or her ability to perform the duties of the office. Provided the comment is given without malice the governing body should be immune from any liability which anyone might seek to impose upon it for its having made the comment. The governing body's comment shall be a factor to be considered by the board of directors of the society in its deliberations upon the appointment.

87. I RECOMMEND THAT the Ministry proceed to seek revision of the 1978 legislation in the following ways:

(a) by enlarging the scope of the operation of the Central Registry so as to permit it to receive and record at all times from all sources information and reports of child abuse or situations of children apparently in need of protection because of an unusual risk of abuse. The Registry should be equipped to record and store any such information or report and to collate it with any relevant information or report previously received, recorded and stored. The Registry should have personnel qualified to assess and evaluate all such information and reports and to take appropriate action in respect thereof. The appropriate action may be to decide that nothing need be done other than to receive the information. Or it may require the staff of the Registry to inform the local children's aid society and police force or other authorities immediately and then, in due time, to ensure that the local children's aid society has properly responded to the matter by investigation and report;

(b) by amending subsection 2 of section 49 thereof by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child;" and

(c) by amending subsection 2 of section 49 thereof by extending its scope so as to include an obligation to report any situation which, in the opinion of the official or professional person, indicates that a child is in an unusually high risk of being abused.

SCHEDULES

SCHEDULE 1-A

CALENDAR OF SITTINGS

Judicial Inquiry Into the Care of Kim Anne Popen by
the Children's Aid Society of the City of Sarnia and
the County of Lambton

Day 1 - June 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
John M. Wing, Q.C.
Donald L. Whitman
Rosemary J. McCully
Allen Ingram

Witnesses

Nil

Transcript - Volume 1
Exhibits - #1-12 (inclusive)

Day 2 - July 4, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Donald L. Whitman
Donald Elliott
Allen Ingram

Agent Present

Murray Chitra

Witnesses

Ronald Turner
Donald W. Ross
James R. Allan
Christopher Gander
Edward J. Kennedy
Barry A. Wyville
Lyle J. Waters

Transcript - Volume 1A
Exhibits - #13-20 (inclusive)

Day 3 - July 5, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Donald L. Whitman
Donald Elliott
Allen Ingram

Agent Present

Murray Chitra

Witnesses

Donald W. Ross
Douglas G. Vandenberghe
Judith A. Vandenberghe
Madeline Cecile
Adrian Cecile
Abdul M. Khattab

Transcript - Volume 2
Exhibits - #21-24 (inclusive)

Day 4 - July 6, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Allen Ingram

Agent Present

Murray Chitra

Witnesses

George Brouwer
Catherine Maughan

Transcript - Volume 3
Exhibits - #25-40 (inclusive)

Day 5 - July 10, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully
Allen Ingram

Witnesses

Lucy Duncan, M.D.
Elizabeth Kuly
G. Patodia, M.D.

Transcript - Volume 4
Exhibits - #41-45 (inclusive)

Day 6 - July 11, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Allen Ingram
Donald L. Whitman

Witnesses

Brian E.V. McCrudden, M.D.
Kunwar Singh, M.D.
Malcolm D. Thorp, M.D.

Oral representation by
Corrine Lovatt

Transcript - Volume 5
Exhibits - #46-62 (inclusive)

Day 7 - July 12, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Donald L. Whitman

Witnesses

Edward Hibberd
Judge Q.L. Nighswander
Annals A. Popen

Transcript - Volumes 6 and 6A
Exhibits - #63-64

Day 8 - July 13, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Peter Merchant
Allen Ingram
Donald L. Whitman

Witnesses

Jennifer A. Popen
Wayne Chalmers
Betty L. Hewitt

Transcript - Volume 7
Exhibits - nil

Day 9 - August 9, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Joseph M. Donohue
B. Thomas Granger
Rosemary J. McCully
Peter Merchant
Donald L. Whitman
Allen Ingram

Witnesses

S. F. Jumean, M.D.
Peter C. McCabe
Audrey L. Dick

Transcript - Volume 8
Exhibits - #65-75 (inclusive)

Day 10 - August 10, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Audrey L. Dick

Transcript - Volume 9
Exhibits - nil

Day 11 - August 11, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Joseph M. Donohue
Rosemary J. McCully
Peter Merchant
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Audrey L. Dick
Harold R. Carter

Transcript - Volume 10
Exhibits - #76-82 (inclusive)

Day 12 - August 14, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Mary I. Kirby
Lois E. Archer

Transcript - Volume 11
Exhibits - nil

Day 13 - August 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Yuan Shirley Lo

Transcript - Volume 12
Exhibits - nil

Day 14 - August 16, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Yuan Shirley Lo
Dorothy W. Myers
Mabel W. Harvey

Transcript - Volume 13
Exhibits - nil

Day 15 - August 17, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Mabel W. Harvey

Transcript - Volume 14
Exhibits - #83-84

Day 16 - August 21, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Donald L. Whitman
Allen Ingram

Witnesses

Mabel W. Harvey
David A. Allen
Mildred P. Wood

Transcript - Volume 15
Exhibits - #85-90 (inclusive)

Day 17 - August 22, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witnesses

John H. McPhedran
William J. Lovatt

Transcript - Volume 16
Exhibits - nil

Day 18 - August 23, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witness

William J. Lovatt

Transcript - Volume 17
Exhibits - #91-104 (inclusive)

Day 19 - August 24, 1978

Counsel Present

Robert G. Murray

Joseph M. Donohue
B. Thomas Granger
Rosemary J. McCully
Allen Ingram

Witness

William J. Lovatt

Transcript - Volume 18
Exhibits - #105-110 (inclusive)

Day 20 - August 25, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witnesses

Andrew M. Lang
Silvio J. Mainville

Transcript - Volume 19
Exhibits - #111-112

Day 21 - September 6, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Sandra L. Saul
James R. Allen
Winona J. Hoad
Kathy Mitchell

Transcript - Volume 20
Exhibits - #113-114

Day 22 - September 7, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Joseph M. Donohue
Peter Merchant

Witness

Stephen Charko

Transcript - Volume 21
Exhibits - #115-116

Day 23 - September 8, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Joseph M. Donohue

Witnesses

Stephen Charko
Barry A. Wyville

Transcript - Volume 22
Exhibit - #117

Day 24 - September 12, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
B. Thomas Granger

Witness

John K. Macdonald

Transcript - Volume 23
Exhibits - #118-128 (inclusive)

Day 25 - September 13, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger
Joseph M. Donohue
Donald Elliott

Witnesses

John K. Macdonald
Bruce R. Heath

Transcript - Volume 24
Exhibits - #129-133 (inclusive)

Day 26 - September 14, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
B. Thomas Granger
Donald Elliott

Witnesses

Bruce R. Heath
Arne Petersen

Transcript - Volume 25
Exhibits - #134-135

Day 27 - September 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger

Donald Elliott
Allen Ingram

Witnesses

Arne Petersen
Margaret Farina

Transcript - Volume 26
Exhibits - nil

Day 28 - September 20, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
Donald Elliott
B. Thomas Granger

Witnesses

Margaret Farina
Harry Zwerver

Transcript - Volume 27
Exhibits - #136-138 (inclusive)

Day 29 - September 21, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Joseph M. Donohue

Witness

Harry Zwerver

Transcript - Volume 28
Exhibits - #139-141 (inclusive)

Day 30 - September 22, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger

Witness

Harry Zwerver

Transcript - Volume 29
Exhibits - nil

Day 31 - September 27, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Peter Merchant
John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Witness

Jennifer A. Popen

Transcript - Volume 30
Exhibits - nil

Day 32 - September 28, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Peter Merchant
B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Witnesses

Jennifer A. Popen
William Higgins

Transcript - Volumes 31 and 32
Exhibits - #142-143

Day 33 - September 29, 1978

Counsel Present

Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Witness

William Higgins

Transcript - Volume 33
Exhibit - #144

Day 34 - October 3, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully

Witnesses

Robert M. Sharen - (presented
oral and written submission)
Raymond Wyrzykowski - (presented
oral submission)
Debroah Ginn
Inez Williams - (presented oral
submission)
Frances Kameka

Transcript - Volume 34
Exhibits - #145-146

Day 35 - October 16, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully

Witness

Francis J. Turner, Ph.D.

Transcript - Volume 35
Exhibit - #147

Day 36 - October 17, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Witness

Herbert A. Sohn, Ph.D.

Transcript - Volume 36
Exhibits - #148-149

Day 37 - October 18, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger

Witness

Robert Bates, M.D.

Transcript - Volume 37
Exhibit - #150

Day 38 - October 19, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Donald L. Whitman
Joseph M. Donohue

Agent Present

Murray Chitra

Witnesses

Nil

Transcript - Volume 38
Exhibits - #151-152

Day 39 - January 8, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger, Q.C.
Donald L. Whitman
Carl Fleck, Q.C.
Brenda J. Bowlby
Peter Merchant
Raymond V. Donohue

Agent Present

Murray Chitra

Witnesses

Lloyd John Clark
Douglas G. Vandenberghe -
(presented oral and written
submissions)
Sister Rita Heenan

Submissions

(Oral and written submissions) Peter Merchant
(Oral and written submissions) B. Thomas Granger, Q.C.
(Oral and written submissions) Donald L. Whitman

Transcript - Volume 39
Exhibits - #153-170 (inclusive)

Day 40 - January 9, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Carl Fleck, Q.C.

Agent Present

Murray Chitra

Witnesses

Nil

Submissions

(Oral and written submissions) Murray Chitra
(Oral and written submissions) Rosemary J. McCully

Transcript - Volume 40
Exhibits - #171-173

Day 41 - January 10, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Brenda J. Bowlby
Allen Ingram

Witnesses

Nil

Submissions

(Oral submissions) Rosemary J. McCully
(Oral and written submissions) B. Thomas Granger, Q.C.

Transcript - Volume 41
Exhibit - #174

Day 42 - January 11, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Brenda J. Bowlby
Allen Ingram

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.
(Oral and written submissions) Brenda J. Bowlby

Transcript - Volume 42
Exhibits - nil

Day 43 - January 15, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger, Q.C.
Donald L. Whitman
Rosemary J. McCully

Witnesses

Dorothy W. Myers
Betty L. Hewitt

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.

Transcript - Volume 43
Exhibit - #175

Day 44 - January 16, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger, Q.C.
Rosemary J. McCully
Brenda J. Bowlby

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.

Transcript - Volume 44
Exhibits - nil

Day 45 - January 17, 1979

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Carl Fleck, Q.C.
Raymond V. Donohue

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.
(Oral and written submissions) Carl Fleck, Q.C.
(Oral submission) Raymond V. Donohue

Transcript - Volume 45
Exhibit - #176

Day 46 - July 16, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Joseph M. Donohue
Rosemary J. McCully
B. Thomas Granger, Q.C.

Witnesses

Nil

Submissions

(Written submission) Rosemary J. McCully
(Oral submission) Joseph M. Donohue

Transcript - Volume 46
Exhibits - #177-182 (inclusive)

SCHEDULE 1-B

COUNSEL APPEARING BEFORE THE JUDICIAL INQUIRY

- | | |
|--|---|
| Ms. Brenda J. Bowlby
London, Ontario | - Associate Counsel with
Mr. Thomas Granger, Q.C. |
| Mr. Joseph M. Donohue
Sarnia, Ontario | - Counsel for
Mr. William Lovatt |
| Mr. Raymond V. Donohue
Sarnia, Ontario | - Counsel for St. Joseph's
Hospital, Sarnia; and
Mr. A. M. Khattab |
| Mr. Donald Elliott
Sarnia, Ontario | - Counsel for the Ontario
Association of Children's
Aid Societies,
Mrs. Margaret Farina and
Mr. Arne Petersen |
| Mr. Carl Fleck, Q.C.
Sarnia, Ontario | - Counsel for the Sarnia
Police Force and its
members |
| Mr. Bradley Thomas
Granger, Q.C.
London, Ontario | - Counsel for the Children's
Aid Society, Sarnia, as a
Corporate Body, it's
members, directors and
staff with the exception
of Mr. W. Lovatt and
Mrs. M. Harvey |
| Mr. Allen Ingram
London, Ontario | - Associate Counsel with
Mr. Thomas Granger, Q.C. |
| Mr. Peter Merchant
Sarnia, Ontario | - Counsel for
Mrs. Jennifer A. Popen |
| Mrs. Rosemary J. McCully
Toronto, Ontario | - Counsel for the Ministry
of Community and Social
Services, Toronto and it's
staff |

Mr. Donald L. Whitman - Counsel for
Sarnia, Ontario Mrs. Mabel Harvey

Mr. John M. Wing, Q.C. - Counsel for
Sarnia, Ontario Mr. Annals A. Popen

AGENT APPEARING BEFORE THE JUDICIAL INQUIRY

Mr. Murray Chitra - Student at law
Toronto, Ontario Agent for the Ministry of
Correctional Services
Mr. George Brouwer and
Mrs. Catherine Maughan

SOLICITORS MAKING WRITTEN REPRESENTATIONS TO THE
JUDICIAL INQUIRY

Mr. Colin L. Campbell Toronto, Ontario	- Solicitor for Dr. M. Thorp, Dr. K. Singh and Dr. S. Jumean
Mr. R. E. Rowcliffe Toronto, Ontario	- Solicitor for Dr. M. Thorp

SCHEDULE 1-C

LIST OF EXHIBITS

Exhibit
Number

Description of Exhibit

1. ORDER by The Honourable Keith C. Norton, Minister of Community and Social Services appointing His Honour, Judge H. Ward Allen, a Judge for the County and District Courts of the Counties and Districts of Ontario to investigate all matters relating to the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and County of Lambton.

2. Affidavit of Publication and tear sheets of advertisements of Notices of Public Hearing from the following newspapers:
 - a) The Sarnia Gazette
 - b) The St. Clair Gazette
 - c) The Plympton Wyoming Gazette
 - d) The Lambton County Gazette

3. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Forest Standard newspaper.

4. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Sarnia Observer newspaper.

5. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Watford Guide-Advocate newspaper.

6. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Advertiser-Topic newspaper. (Petrolia, Ontario)
7. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Windsor Star newspaper.
8. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the London Free Press newspaper.
9. Tear sheet of advertisement of Notice of Public Hearing from The Chatham Daily News newspaper.
10. Copy of letter sent to all interested Counsel by the Executive Secretary to the Judicial Inquiry. This letter sets forth the time, date and location of commencement and sittings of the Judicial Inquiry.
11. Certified copy of Papers and Documents of Children's Aid Society of the City of Sarnia and the County of Lambton from the Records of the Ministry of Consumer and Commercial Relations of the Province of Ontario.
12. Pamphlet copy of The Child Welfare Act Revised Statutes of Ontario - Chapter 64, as amended to August 31, 1975.
- 13.A) Four Colour photographs of Kim Anne
B) Popen showing injuries -- photographs
C) taken August 31, 1975.
D)

- 14.A) Ten colour photographs of Kim Anne Popen
B) (post-mortem) - showing injuries -
C) photographs taken August 11, 1976.
D)
E)
F)
G)
H)
I)
J)
15. Certified Copy of Investigation Report, dated June 16, 1975, City of Sarnia Police Department, commencing June 16, 1975 to August 31, 1975.
16. Summons to a Person Charged With an Offence addressed to Mrs. Jennifer Popen Chapter 64, Section 40(1) of the Child Welfare Act, R.S.O., 1970.
17. Summons to a Person Charged with an Offence addressed to Mr. Annals Popen Chapter 64, Section 40(1) of the Child Welfare Act, R.S.O., 1970.
18. Copy of Hospital Discharge Summary (Miss Kim Popen) dated September 5, 1975, by Doctor K. R. Singh (not signed - see Exhibit #24).
19. Confidential Crown Counsel Brief prepared by Constable B. Wyville, Sarnia Police Force and dated October 23, 1975.
20. Certified copy of Record of Proceedings before His Honour Judge Q. L. Nighswander in the Provincial Court (Family Division) for the dates of November 17, 1975, January 19, 1976, February 23, 1976 and March 29, 1976.

- 20.A Certified copy of excerpt of hearing held before His Honour Judge Q. L. Nighswander in the Provincial Court (Family Division) on February 23, 1976.
21. Copy of Orders Respecting Wards of Children's Aid Societies signed by His Honour Judge Q. L. Nighswander on February 25, 1976, in relation to Kim Anne Popen.
22. Copy of Memorandum from A. M. Khattab, St. Joseph's Hospital, Sarnia to Mrs. M. Harvey, Children's Aid Society, Sarnia, dated September 4, 1975, noting that Miss Kim Popen may need some assistance after leaving hospital.
23. Copy of Memorandum from A. M. Khattab, St. Joseph's Hospital to the Children's Aid Society, dated September 8, 1975, noting "This case requires deep investigation which we are sure you will conduct."
24. Copy of Hospital Discharge Summary (Miss Kim Popen) signed by Doctor K. R. Singh.
25. Pre-Sentence Report Re: Annals Ambrose Popen prepared by G. Brouwer - Charge Section 40(1) Chapter 64 of the Child Welfare Act, 1970; dated March 29, 1976.
26. Letter from James J. Curtin, M.D., F.R.C.P.(c) to Mr. I. T. Walters, Senior Probation and Parole Officer Re: Annals Popen - dated March 19, 1976.
27. Probation Order of His Honour Judge Q. L. Nighswander, Provincial Court (Family Division) dated March 29, 1976, Re: Annals Ambrose Popen.

28. Certificate of Conviction in Provincial Court (Criminal Division) Re: Annals Ambrose Popen (Section 40(1) of the Child Welfare Act).

29. Information of Constable B. Wyville, Sarnia Police Force, dated October 16, 1975, alleging that Annals and Jennifer Popen, "being together and having the custody of a child Kim Anne Marie Popen, unlawfully did fail to protect the child contrary to Chapter 64, Section 40(1) of the Child Welfare Act, Revised Statutes of Ontario."

- 30.-38. Monthly Report Sheets of Volunteer Probation Officer, Kate Maughan, Ministry of Correctional Services Re: Annals Ambrose Popen.
 30. Month of June 1976;
 31. Month of July 1976;
 32. Month of August 1976;
 33. Month of September 1976;
 34. Month of October 1976;
 35. Month of November 1976;
 36. Month of December 1976;
 37. Month of January 1977;
 38. Months of February and March 1977.

39. Copy of Pre-Sentence Report Re: Jennifer Angela Popen, Prepared by G. Brouwer. Charge Section 217 Criminal Code of Canada Manslaughter.

40. Copy of Pre-Sentence Report Re: Annals Ambrose Popen, Prepared by G. Brouwer. Charge Section 217 Criminal Code of Canada Manslaughter.

41. Letter to Judge George Thomson, Ministry of Community and Social Services, dated December 16, 1977 from Lucy Duncan M.D., D.P.H., Director and Medical Officer of Health, The Lambton Health Unit.

42. Directive to the Nursing Department, The Lambton Health Unit, dated June 16, 1978, from Dr. Lucy M. C. Duncan, Procedure Re: Child Abuse Records.
43. Child Health Record - The Lambton Health Unit Re: Kim Anne Popen, years 1974 to 1976 (inclusive).
44. Report of Post-mortem Examination made upon the body of Kim Popen dated August 26, 1976.
45. Diagrams of anterior and posterior views showing injuries as noted in the Report of Post-mortem Examination (Exhibit #44).
46. Radiological Report - St. Joseph's Hospital Re: Miss Kim Anne Popen - March 22, 1975 - M. F. Bennett, M.D.
47. Radiological Report - St. Joseph's Hospital Re: Miss Kim Anne Popen - March 25, 1975 - B. E. McCrudden, M.D.
48. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - August 31, 1975 - M. F. Bennett, M.D.
49. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - September 1, 1975 - B. E. McCrudden, M.D.
50. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - September 1, 1975 - B. E. McCrudden, M.D.
51. Consultation Form - St. Joseph's Hospital Completed by K. R. Singh, M.D. - dated 26/3/75 Re: Kim Anne Popen.

52. Consultation Report - March 27, 1975
Consultant K. R. Singh, M.D.
Re: Miss Ann Marie Popen.
53. Consultation Form - St. Joseph's Hospital - Completed by K. R. Singh, M.D. - dated August 31, 1978 - Re: Miss Kim Popen.
54. Admission and Discharge Form - St. Joseph's Hospital - dated August 31, 1975 - Re: Miss Kim Popen.
55. Consultation Report. August 31, 1975
Consultant - K. R. Singh, M.D. - Re: Miss Kim Popen.
56. Transcript of taped conversation between K. R. Singh, M.D. and Mrs. Jennifer A. Popen which took place at St. Joseph's Hospital, Sarnia, on August 31, 1975.
57. Guidelines to staff of St. Joseph's Hospital, Sarnia, prepared by the Child Abuse Committee, dated June 4, 1978.
58. Report of S. Jumean, M.D. - Dated April 28/29, 1975 - Re: Miss Kim Anne Popen.
59. Emergency Entrance Report - March 22, 1975 - St. Joseph's Hospital, Sarnia - Re: Kim Anne Popen.
60. History Report - Prepared by M.D. Thorp, M.D., on March 25, 1975 - Re: Baby Kim (Anne Marie) Popen.
61. Emergency Entrance Report - August 31, 1975 - St. Joseph's Hospital, Sarnia - Re: Kim Popen

62. History Report - Prepared by M.D. Thorp, M.D. on August 31, 1975 - Re: Miss Kim Popen.
63. Certified copy of Confidential Crown Counsel Brief, prepared by Constable B. Wyville, Sarnia Police Force, dated October 23, 1975 and with three letters attached thereto.
64. Certified Copy of Proceedings before His Honour Judge Q. L. Nighswander on the 8th day of September, 1975 in the Provincial Court (Family Division) upon an Application of the Children's Aid Society, Sarnia under Section 26(b) of the Child Welfare Act, Re: Kim Anne Popen.
65. Notes made by S. Jumean, M.D. - Re: Kim Anne Popen for period ending January 12, 1976.
66. Admission Form - St. Joseph's Hospital, Sarnia - Re: Miss (Kim) Ann Marie Popen dated March 22, 1975.
67. Admission Form - St. Joseph's Hospital, Sarnia - Re: Miss Ann Marie Kim Popen dated April 28, 1975.
68. Report of William Gannon, M.D. dated August 6, 1976 - Re: Kim Popen.
69. Report of Medical History, Children's Aid Society, Sarnia to S. Jumean, M.D. - Re: Kim Popen - period September 12, 1975 to May 26, 1976.
70. Letter to His Honour Judge H. Ward Allen dated July 14, 1978 from M. Thorp, M.D.

71. Letter to M. Thorp, M.D., dated July 25, 1978 from His Honour Judge H. Ward Allen.
72. Letter to His Honour Judge H. Ward Allen - dated July 26, 1978 from R. E. Rowcliffe, Barrister and Solicitor, on behalf of M. Thorp, M.D.
73. Child Care File from the Children's Aid Society of the City of Sarnia and County of Lambton. Opened on September 5, 1975, Re: Kim Anne Popen.
- 73.A History of the Children's Aid Society involvement with the Popen family, (Removed from the Child Care File - Exhibit #73).
74. Family Services File from the Children's Aid Society of the City of Sarnia and County of Lambton, opened August 31, 1975 Re: Annals and Jennifer Popen.
- 74.A History of the Children's Aid Society involvement with the Popen family (Removed from the Family Services File - Exhibit #74).
75. Minutes of Team 1 Meetings June 3, 1975 to September 30, 1975 (Ordered sealed by His Honour Judge H. Ward Allen and to be kept apart from other exhibits due to their confidentiality in respect of other wards and clients of the Children's Aid Society.
76. Form - Family Services Case Management Information System.
77. Intake Information Form (Team 1 Log) Confidential.

78. Children's Aid Society Index Card
Annals and Jennifer Popen
Children: Kim Anne Marie and Karie
First dated August 1975.
79. Letter to the Children's Aid Society,
Sarnia attention of Mr. Carter dated
November 18, 1975, from William F.
Higgins, Barrister and Solicitor, per:
Sam F. Harvey.
80. Monthly Report - Family Services,
Children's Aid Society - Month of August
- 1975, Confidential.
81. Staff Evaluation - Children's Aid
Society, Sarnia - Re: H. R. Carter -
1975 - Confidential.
82. Staff Evaluation - Children's Aid
Society, Sarnia - Re: Harold Carter -
1977 - Confidential.
83. Report for Child Welfare Branch,
Ministry of Community and Social
Services, Toronto, dated December 8,
1977, Prepared by the Children's Aid
Society, Sarnia.
84. Minutes of Meeting - November 7, 1977 -
Financial Information Systems Committee,
Ministry of Community and Social
Services.
85. Forms (White and Green), Children's Aid
Society of the City of Sarnia and County
of Lambton - Intake Slip.
86. Minutes of Meeting, Board of Directors -
Children's Aid Society, Sarnia on
Thursday, December 15, 1977.

87. Minutes of Meeting, Board of Directors - Children's Aid Society, Sarnia on Tuesday, February 28, 1978.
88. Report on Survey of the Children's Aid Society, Sarnia - Survey completed by P. McKen and G. Dummitt - Child Welfare Supervisor, Sylvio Mainville. Statistics Used - month of September 1972 dated April 19th, 197 .(sic)
89. Report to the Board of Directors, Children's Aid Society, Sarnia on Child Welfare Surveys - Survey completed by Tiiu Ingel and Dianne Poole. Child Welfare Supervisor: Sylvio Mainville. Statistics Used - month of September 1973 dated February 22, 1974.
90. Minutes of Meeting, Board of Directors, Children's Aid Society, Sarnia on Tuesday, February 26, 1974.
91. Letter to Harold E. Fulton, Esq. Messrs, Campbell, Jarvis, McKenzie and Fulton, Barristers and Solicitors, dated September 22, 1977 from C. I. Scott, Deputy Secretary, The Law Society of Upper Canada Re: Ruling of the Professional Conduct Committee concerning a question of Conflict of Interest.
92. Memoranda to all Local Directors of Children's Aid Societies from the Director, Children's Services Bureau, Ministry of Community and Social Services, dated July 25, 1975, February 17, 1976, March 22, 1976, June 15, 1976, July 23, 1976 November 16, 1976, January 21, 1977, January 26, 1977 May 16, 1977, October 2, 1977, November 4, 1977 and April 7, 1978.

93. Guidelines for Practice and Procedure in Handling Cases of Child Abuse. Published by the Ontario Association of Children's Aid Societies, Toronto, Ontario; July 1976.
94. Standards of Practice and Procedure for Services to Children in Alternate Care. Published by the Ontario Association of Children's Aid Societies - June, 1974.
95. Memorandum to Presidents and Local Directors of Ontario Children's Aid Societies Re: 1976 Operating Budget from the Director, Children's Services Bureau, Ministry of Community and Social Services, Toronto; dated December 16, 1975.
96. Memoranda to Ontario Children's Aid Societies from the Ministry of Community and Social Services, Toronto; dated March 12, 1976, January 13, 1976 and January 15, 1976.
97. Letter to President, Lambton Children's Aid Society, dated May 7, 1976 from the Minister, Ministry of Community and Social Services, Toronto; re: 1976 estimates.
98. Minutes of Meeting, Board of Directors - Children's Aid Society, Sarnia; Tuesday, January 6, 1976.
99. Monthly Reports of Local Director - Children's Aid Society, Sarnia; Months of April, May, June, September, October and November of 1976.

100. Memorandum to all Ontario Children's Aid Societies, dated February 15, 1978, from the Director of Child Welfare, Ministry of Community and Social Services, Toronto; Re: Indices of numbered memoranda.
101. Report on Selected Issues and Relationships - Task Force on Community and Social Services; January, 1974.
- Report on Ministry Organization Structure - Task Force on Community and Social Services; June, 1973.
102. Brief for need of Increased Staff Complement, Children's Aid Society of the City of Sarnia and County of Lambton with covering letter attached dated March 27, 1975.
103. Report of The Task Force on Child Abuse (The Garber Report) June 19, 1978.
104. Auditors' Reports to the Board of Directors, Children's Aid Society, Sarnia and County of Lambton for the years of 1973 to 1977 (inclusive).
105. Letter to Director, Children's Services Bureau, Ministry of Community and Social Services, Toronto; dated December 13, 1974, from William J. Lovatt, Local Director, Children's Aid Society; Re: 1975 Budget.
106. Letter to Mr. Bill Lovatt, Director, Children's Aid Society, Sarnia, dated January 30, 1976 from Lorne C. Henderson - Minister Without Portfolio; with copy of letter attached thereto addressed to The Honourable James Taylor, Q.C.; Minister of Community and Social Services, Toronto.

107. Letter to Mr. Bill Lovatt, Director, Children's Aid Society, Sarnia; dated February 25, 1976, from Lorne C. Henderson, Minister Without Portfolio with copy of letter attached thereto received from The Honourable James Taylor, Q.C., Minister of Community and Social Services, Toronto.
108. Form Letter from the Director, The Family and Children's Services of Hastings County dated February 9, 1978.
109. Estimate of Expenditure - year 1978 Submitted by William Lovatt, Local Director of the Children's Aid Society on February 16, 1978 to The Honourable Minister of Community and Social Services and others.
110. Estimate of Expenditure - year 1978. Submitted by Peter McCabe, Acting Local Director, Children's Aid Society, Sarnia and Assistant Executive Director, Essex County, Children's Aid Society on June 27, 1978 to The Honourable Minister of Community and Social Services and others.
111. Copies of documents from the files of the Ministry of Community and Social Services:
- Lambton Field Services File; June, 1969;
 - Children's Aid Society; Lambton File, June-July 1971;
 - Special Study; Lambton Field Services File, 1971;
 - Field Worker's Report; Lambton, September 30, 1972;
 - Children's Aid Society; Field Report, September 30, 1973;
 - Children's Aid Society; Field Report, September 30, 1974.

112. Report on Persons Allegedly Causing Physical Ill-Treatment of a Child:
1. Report dated September 8, 1975 over the signature of William Lovatt, Local Director of the Children's Aid Society;
2. Report dated September 27, 1976 over the signature of William Lovatt, Local Director of the Children's Aid Society.
Both reports addressed to Miss Betty C. Graham, Director, Child Welfare Branch;
Re: Kim Anne Marie Popen.
113. Letter to The Honourable William Davis, Premier, dated July 20, 1976 from the Staff Association of the Children's Aid Society of the City of Sarnia and County of Lambton.
114. Letter to the President, Staff Association of the Children's Aid Society of the City of Sarnia and County of Lambton, dated August 6, 1976, from The Honourable James Taylor, Q.C., Minister of Community and Social Services, Toronto.
115. Communication - Child Welfare Branch, Ministry of Community and Social Services, Toronto; dated April 14, 1976, to the Children's Aid Society, Sarnia, requesting a report on the current status of case File No. 75-5196 - Kim Anne Marie Popen and with reply signed by William Lovatt and dated May 7, 1976.
116. Contentious Issue Report; Re: Death of Child Kim Anne Marie Popen, dated December 12, 1977; Prepared by Child Welfare Branch, Ministry of Community and Social Services.

117. Statement by The Honourable James Taylor, Q.C., Minister of Community and Social Services to the Children's Aid Societies, Thursday, December 18, 1975.
118. Organizational Chart, Ministry of Community and Social Services; July 1977.
119. Organizational Chart, Child Welfare Branch, Ministry of Community and Social Services; May 1978.
120. Organizational Chart, Children's Services, Ministry of Community and Social Services.
121. Letter to the Director, Child Welfare Branch, Ministry of Community and Social Services; dated March 17, 1977, from H. B. Cotnam, M.D., Chief Coroner for Ontario Re: Kim Anne Popen.
122. Letter to H. B. Cotnam, M.D., Chief Coroner for Ontario dated March 25, 1977, from the Director of Child Welfare, Ministry of Community and Social Services, Re: Kim Anne Popen.
123. Memorandum to the Director, Child Welfare Branch, dated May 13, 1977, from William J. Lovatt in response to that Branch's request for information (see Exhibit #115).
124. Memorandum to all Ontario Children's Aid Societies, dated January 21, 1977, from the Director, Child Welfare Branch, Ministry of Community and Social Services, Re: Protection of Children at Risk.

125. Memorandum to all Children's Aid Societies and Directors of Children's Residences, dated January 26, 1977 from the Director, Child Welfare Branch, Ministry of Community and Social Services, Re: Deaths of Children (in Child Welfare and corrections systems).
126. Child Abuse in Ontario - Research Report 3, Ontario Ministry of Community and Social Services - Research and Planning Branch, November 1973.
127. A working manual for Board Members of Children's Aid Societies, Prepared by Ontario Association of Children's Aid Societies. First Printing, 1975.
128. Minister's Opening Comments - Meeting of Children's Aid Societies to Discuss Implementation Planning of the Report of the Task Force on Child Abuse, September 8, 1978;
and
Ministry Response to the Recommendations of the Task Force on Child Abuse (See Exhibit #103 - "The Garber Report").
129. Letter to the President, Children's Aid Society, Sarnia, dated May 7, 1976 from The Honourable James Taylor, Q.C., Ministry of Community and Social Services, Re: 1976 Estimates.
130. Bill 114; An Act to revise the Child Welfare Act - First Reading, June 8, 1978.
131. Bill 114; An Act to revise the Child Welfare Act (Reprinted for consideration by the Social Development Committee) - Second Reading, June 19, 1978.

132. Letter to Mr. R. N. McQuarrie, President, Ontario Association of Children's Aid Societies, dated December 19, 1977, from David A. Allen, President, Children's Aid Society, Lambton County.
133. A Review of the Popen Case, Prepared for the Children's Aid Society of the City of Sarnia and County of Lambton by a Committee chaired by Mrs. Margaret Farina, Associate Executive Director, Ontario Association of Children's Aid Societies. February 24, 1978 (See Exhibit #145 "The Farina Report" dated February 15, 1978).
134. Policies in Regard to Family Services, Children's Aid Society, Sarnia.
135. Policies for Child Care Services, Children's Aid Society, Sarnia.
136. News release - January 31, 1978 - Ministry of Community and Social Services entitled "Norton announces Lambton Children's Aid Society Investigation."
137. Extracts of the Official Record Legislature of Ontario - February 22 and 23, 1978 - Re: death of Kim Anne Popen.
138. Interim Report to the Board of Directors, Children's Aid Society of the City of Sarnia and County of Lambton prepared by Harry Zwerver, Special Field Consultant to the Children's Aid Society, Sarnia and Director, Planning and Development, Child Welfare Branch, Ministry of Community and Social Services, dated April 11, 1978.

139. Estimate of Expenditure - year 1978
(First submission) Submitted by William Lovatt, local Director, Children's Aid Society, on November 29, 1977 to the Honourable Minister of Community and Social Services and others.
140. Letter to Mr. D. Allen, President, Lambton Children's Aid Society, dated January 12, 1978, from Edward Magder, Assistant Director, Ministry of Community and Social Services, Re: Review of 1978 advance estimate of expenditures.
141. Workload Analysis - Children's Aid Society, Sarnia, Lambton - compiled by Harry Zwerver, Special Field Consultant to the Children's Aid Society, Sarnia and Director, Planning and Development, Child Welfare Branch, Ministry of Community and Social Services, dated September 21, 1978.
142. Statement of Jennifer A. Popen, dated June 10, 1978 - received by Investigator L. J. Clark, at the Kingston Penitentiary for Women.
143. Transcript of Hearing before His Honour Judge Q. L. Nighswander, Provincial Court (Family Division) on January 19, 1976, Re: Section 40(1) of the Child Welfare Act, Annals Ambrose Popen and Jennifer Angelle Popen (sic).
144. Letterhead form "Children's Aid Society of The City of Sarnia and the County of Lambton."

145. A Review of the Popen Case prepared for The Children's Aid Society of the City of Sarnia and the County of Lambton by a Committee chaired by Mrs. Margaret Farina, Associate Executive Director, Ontario Association of Children's Aid Societies, February 15, 1978. (See Exhibit #133 "The Farina Report" dated February 24, 1978).
146. Statement of Mr. Robert M. Sharen, Reeve, Town of Grand Bend, Ontario, dated June 15, 1978 and presented orally to the Judicial Inquiry on October 3, 1978.
147. Curriculum Vitae - Francis Joseph Turner, Ph.D., Dean of Social Work at Wilfred Laurier University, Waterloo, Ontario.
148. Legal Issues in Child Abuse - Bernard M. Dickens, Working paper of the Centre of Criminology, University of Toronto, January 1976.
149. Ontario Medical Review - Volume 45, Number 1, January 1978 - Child Abuse, Special Report.
150. Twenty-nine colour photographs obtained from slide photographs of a presentation given by Robert Bates, M.D., Director, Child Abuse Programs, Hospital for Sick Children, Toronto.
151. Lethal Family Situations - Child Abuse Deaths in England, the United States and Canada, An International Comparison by Cyril Greenland, McMaster University, Hamilton, Ontario. August 1978.

152. The Interim Report - The College of Physicians and Surgeons of Ontario. February 1978.
- 153-165. Notices to persons who may be affected by the Report:
- 153. To: Jennifer A. Popen;
 - 154. To: M. D. Thorp, M.D.;
 - 155. To: R. Kunwar Singh, M.D.;
 - 156. To: S. F. Jumean, M.D.;
 - 157. To: Robert Cook, Chief of Police, Sarnia Police Force;
 - 158. To: Judy Vandenberghe;
 - 159. To: Douglas Vandenberghe;
 - 160. To: A. M. Khattab;
 - 161. To: The Administrator, St. Joseph's Hospital, Sarnia, Ontario;
 - 162. To: William J. Lovatt;
 - 163. To: William F. Higgins;
 - 164. To: S. Lotta, M.D.;
 - 165. To: B. McCrudden, M.D.
166. Statement of Judy and Douglas Vandenberghe, dated December 19, 1978 and presented orally to the Judicial Inquiry by Douglas Vandenberghe on January 8, 1979.
167. Letter to Robert G. Murray, Associate Counsel to the Judicial Inquiry, dated December 5, 1978 from B. E. McCrudden, M.D., Re: Notice (see Exhibit #165 and #175) and attached thereto the reply of Robert Grant Murray, Associate Counsel to B. E. McCrudden, M.D.
168. Letter to Mr. N. D. McRae, Counsel to the Judicial Inquiry, dated December 27, 1978 from Mr. William F. Higgins, Re: Notice (see Exhibit #163).
169. Written submission made on behalf of Mabel Harvey by her Counsel, D. L. Whitman.

170. Written submission made on behalf of Jennifer Popen by her Counsel, Peter R. Merchant.
171. Written submission made on behalf of the Ministry of Correctional Services and its staff by their Counsel, Murray W. Chitra.
- 172-173. Notices to persons who may be affected by the Report:
172. To: Andrew Lang;
173. To: Edward Hibbert.
174. Written submission made on behalf of the Children's Aid Society of the City of Sarnia and County of Lambton by their Counsel B. Thomas Granger, Q.C. and Ms. B. J. Bowlby.
175. Letter to Robert G. Murray, Associate Counsel to the Judicial Inquiry, dated January 2, 1979 from B. E. McCrudden, M.D., Re: Notice (see Exhibit #165 and #167).
176. Written submission made on behalf of the Sarnia Police Force and Officers James Allen, Barry Wyville and Christopher Gander by their Counsel, Carl E. Fleck, Q.C.
177. Written submission made on behalf of the Ministry of Community and Social Services and its staff by their Counsel, Rosemary J. McCully.
178. Additional written submission made on behalf of the Ministry of Community and Social Services by it's Counsel, Rosemary J. McCully.

179. Bill 114; An Act to revise the Child Welfare Act - Third Reading, December 12, 1978.

180. Affidavit of William John Lovatt for use upon an Application for Judicial Review Pursuant to the Judicial Review Procedure Act, 1971 S.O. 1971, Chapter 48.

181. Cross-examination on an Affidavit of William John Lovatt (Exhibit #180) taken before Mr. David Mackay Jackson, Local Registrar and Special Examiner, at Sarnia, Ontario on March 29, 1979.

182. Notice of withdrawl by the applicant William Lovatt of his Application for Judicial Review dated January 24, 1979.

SCHEDULE 1-D

WITNESSES APPEARING BEFORE THE JUDICIAL INQUIRY

1. ALLAN, (Staff Sergeant) James - Sarnia Police Force
2. ALLEN, David A. - Member Board of Directors and Past President - Children's Aid Society for the City of Sarnia and County of Lambton
3. ARCHER, Lois Eleanor - Co-ordinator of Child Placement Services and Supervisor of Child Care Worker - Children's Aid Society, Sarnia
4. BATES, (M.D.) Robert - Director - Child Abuse Program, Hospital for Sick Children, Toronto (For particulars of Curriculum Vitae see Schedule 1-E)
5. BROUWER, George - Probation and Parole Officer - Ministry of Correctional Services, Sarnia
6. CARTER, Harold Raymond - Social Worker 2, Children's Aid Society, Sarnia (For particulars of Curriculum Vitae see Schedule 1-E)
7. CECILE, Adrian - Children's Aid Society Foster parent to Kim Anne Popen
8. CECILE, Madeline - Children's Aid Society Foster mother to Kim Anne Popen

9. CHALMERS,
(Constable)
William K. - Sarnia Police Force
10. CHARKO, Stephen - Supervisor of Field
Services, Child Welfare
Branch, Ministry of
Community and Social
Services, Toronto - (For
particulars of Curricula
Vitae see Schedule 1-E)
11. CLARK, (Provincial
Constable),
Lloyd John - Petrolia Detachment,
Ontario Provincial Police
12. DICK, Audrey
Lillian - Social Worker 2
Children's Aid Society,
Sarnia
13. DUNCAN, (M.D.)
Lucy - Medical Officer of Health,
County of Lambton
14. FARINA, Margaret - Chairman of Committee
formed at the request of
the President of the
Children's Aid Society,
Sarnia to study and review
the case handling and
decision making of the
Popen case. (For
particulars of Curriculum
Vitae see Schedule 1-E)
15. GANDER, (Constable)
Christopher James - Sarnia Police Force
16. GINN, Deborah - Babysat Kim Anne Popen
17. HARVEY, Mabel T. - Supervisor of Family
Services, Children's Aid
Society, Sarnia - (For
particulars of Curriculum
Vitae see Schedule 1-E)
18. HEATH, Bruce Ross - Member of "Farina"
Committee - (For
particulars of Curriculum
Vitae see Schedule 1-E)

19. HEENAN, (Sister)
Rita - Executive Director,
St. Joseph's Hospital,
Sarnia
20. HEWITT, Betty
Louise - Registered Nurse -
Formerly on staff at
St. Joseph's Hospital,
Sarnia
21. HIBBERD, Edward - Assistant Crown Attorney,
County of Lambton - (For
particulars of Curricula
Vitae see Schedule 1-E)
22. HIGGINS, William - Barrister and Solicitor,
Former member Board of
Directors, Children's Aid
Society, Sarnia - (For
particulars of Curricula
Vitae see Schedule 1-E)
23. HOAD, Winona - Volunteer worker
Children's Aid Society,
Sarnia
24. JUMEAN, (M.D.),
S.F. - Popen family doctor
25. KAMEKA, Francis - Nephew of Annals Popen
26. KENNEDY,
(Constable),
Edward James - Sarnia Police Force
27. KHATTAB, Abdul M. - Director of Social
Services, St. Joseph's
Hospital, Sarnia - (For
particulars of Curricula
Vitae see Schedule 1-E)
28. KIRBY, Mary I. - Social Worker 2,
Children's Aid Society,
Sarnia
29. KULY, Elizabeth - B.Sc. (Nursing),
Public Health Unit
County of Lambton

30. LANG, Andrew - Crown Attorney for the County of Lambton - (For particulars of Curricula Vitae see Schedule 1-E)
31. LO, Yuan Shirley - Social Worker 1, Children's Aid Society, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)
32. LOVATT, Corinne - Wife of William John Lovatt
33. LOVATT, William John - Former local Director, Children's Aid Society of the City of Sarnia and County of Lambton - (For particulars of Curricula Vitae see Schedule 1-E)
34. MAINVILLE, Sylvio J. - Director - Family and Children's Services for the City of St. Thomas and County of Elgin
35. MAUGHAN, Catherine - Volunteer Probation Worker, Ministry of Correctional Services, Sarnia
36. MITCHELL, Kathy - Former Volunteer Co-ordinator, Children's Aid Society, Sarnia
37. MYERS, Dorothy Winifred - Office manager, Children's Aid Society, Sarnia
38. MACDONALD, John Kennedy - Director - Child Welfare Branch, Ministry of Community and Social Services 1974-1978 - Area Planning Co-ordinator, Ministry of Community and Social Services - (For particulars of Curricula Vitae see Schedule 1-E)

39. McCABE, Peter - Assistant Executive Director of the Essex County Children's Aid Society -- Interim Director, Children's Aid Society, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)
40. McCRUDDEN, (M.D.), Brian Edward Victor - Radiologist, St. Joseph's Hospital, Sarnia
41. McPHEDRAN, John - President of the Board of Directors, Children's Aid Society, Sarnia
42. NIGHSWANDER (Judge) Q. Lloyd - Provincial Court Judge (Family Division) - (For particulars of Curricula Vitae see Schedule 1-E)
43. PATODIA, (M.D.) G. - Pathologist
44. POPEN, Annals Ambrose - Father of deceased Kim Anne Popen
45. POPEN, Jennifer Angela - Mother of deceased Kim Anne Popen
46. PETERSEN, Arne - Member of "Farina" Committee - (For particulars of Curriculum Vitae see Schedule 1-E)
47. ROSS, (Inspector), Donald, W. - Sarnia Police Force
48. SAUL, Sandra Lynn - Social Worker 2, Children's Aid Society, Sarnia
49. SHAREN, Robert Mark - Reeve, Town of Grand Bend, Ontario
50. SINGH, (M.D.), Kunwar - Chief of Pediatrics, St. Joseph's Hospital, Sarnia - (For particulars of Curriculum Vitae see Schedule 1-E)

51. SOHN, (Ph.D.),
Herbert Alvin - Co-ordinator of the Child Abuse Program, Ministry of Community and Social Services, Toronto - (For particulars of Curriculum Vitae see Schedule 1-E)
52. THORP. (M.D.),
Malcolm Duff - General medical practitioner - Sarnia
53. TURNER, (Constable)
Ronald J. - Sarnia Police Force
54. TURNER, (Ph.D),
Francis Joseph - Dean of Social work at Wilfred Laurier University - Waterloo, Ontario - (For particulars of Curriculum Vitae see Schedule 1-E)
55. VANDENBERGHE,
Douglas - Close friend of Annals and Jennifer Popen
56. VANDENBERGHE, Judy - Close friend of Annals and Jennifer Popen
57. WATERS, (Staff
Sergeant),
Lyle J. - Sarnia Police Force
58. WILLIAMS, Inez - Oral submission to Inquiry with respect to the Lovatt family
59. WOOD, Patricia
Mildred - Member of the Board of Directors, Children's Aid Society, Sarnia
60. WRZYKOWSKI,
Raymond - Barrister and Solicitor, Sarnia - Past President, Board of Directors of Children's Aid Society, Sarnia
61. WYVILLE (Constable)
Barry A. - Sarnia Police Force

62. ZWERVER, Harry

- Director of Planning and Development, Metropolitan Toronto Children's Aid Society and Special Field Consultant, Ministry of Community and Social Services - (For particulars of Curricula Vitae see Schedule 1-E)

SCHEDULE 1-E

Qualifications of Certain Witnesses
Appearing Before the Judicial Inquiry

Robert Bates, M.D.

Doctor of Medicine - University of Toronto, 1968.

Two years specialty training in pediatrics at the Hospital for Sick Children, Toronto.

One year of further training in pediatrics at Sydney, Australia.

Chief medical resident at the Hospital for Sick Children, Toronto.

Fellowship in Pediatrics, 1973.

On full-time staff at Hospital for Sick Children, Toronto, until January 1978.

Appointed Director of Child Abuse, Hospital for Sick Children, Toronto, January 1973.

Member of the Garber Task Force on Child Abuse, June, 1978.

Has had papers published in various journals and text books, including Violence in the Family delivered to the Second International Conference of the Family Law Association, Montreal, P.Q., 1977.

Has given expert evidence on Child Abuse at all levels of court in Ontario.

Mr. Harold Carter

2 1/2 years at Stroud Polytechnical Institute,
towards a Degree in a Bachelor of Arts Course.

1942 - 1946 Royal Air Force.

1946 - 1951 Part-time studies and Manager of a Radio
and Television Store related to Air Force experience
in radio.

1951 - emigrated to Canada.

Extension Course - University of Western Ontario -
1 Credit towards Degree.

1960 - Child Welfare Branch Course in Social Work.

1964 - Advanced Course in Social Work Child Welfare
Branch.

Positions Held

Social Worker with the Children's Aid Society for the
City of Sarnia and County of Lambton.

Social Worker II (1978) with the Children's Aid
Society for the City of Sarnia and County of Lambton.

Mr. Stephen Charko

Two year course in Youth's Services - Augsburg,
West Germany.

Master of Arts Degree - University of Ottawa.

Has taken numerous other courses in Social Work and
Social Case Work at the University of Ottawa and
supervisor and local director administrative courses.

Positions Held

Case worker in Family Services and Child Care
Departments - Children's Aid Society of Ottawa and
Carleton County.

Supervisor Family Service for Children's Aid Society
of Stormount, Dundas and Glengarry.

Local Director, Children's Aid Society, District of
Kenora.

Child Welfare Supervisor, Child Welfare Branch of
Ministry of Community and Social Services.

Supervisor of Field Services for Child Welfare Branch
from August, 1971.

Mrs. Margaret Farina

Bachelor of Arts - University of British Columbia, 1947.

Bachelor of Social Work - University of British Columbia, 1952.

Master of Social Work - University of Toronto, 1962.

Master of Education - University of Toronto, 1976.

Positions Held

Caseworker, intake worker, supervisor, branch director, regional director (family service), project director (research).

Field instructor for Faculty of Social Work, University of Toronto.

Executive Director, Ontario Association of Family Service Agencies.

Associate Executive Director, Ontario Association of Children's Aid Societies.

Program Development Specialist, Child Welfare Branch, Ministry of Community and Social Services (June, 1978).

Relevant Publications and Reports include:

Standards of Practice and Procedure for Children in Alternate Care (Ontario Association of Children's Aid Societies - 1974).

Guidelines for the Handling of Cases of Child Abuse (Ontario Association of Children's Aid Societies - 1976).

Assessment of the Family Counselling Services of the Children's Aid Society of the County of Simcoe, 1974.

A Study of the Costs of Children in Outside Paid Institutions, Children's Aid Society of Sudbury and Manitoulin, 1976.

Mrs. Mabel Winnifred Harvey

Bachelor of Arts - McMaster University, Hamilton, Ontario, 1945.

Master of Social Work - Smith College, Northhampton, Mass., 1953.

Positions Held

Social Worker, Children's Aid Society, City of Ottawa.

Social Worker, Children's Aid Society, City of Sarnia and County of Lambton.

Regina General Hospital, Regina, Saskatchewan - Psychiatric Wing.

Children's Home Society, Jacksonville, Florida.

Department of Child Welfare, New Orleans, Louisiana.

New Orleans Child Guidance Centre - Working with a team of Psychiatrists and Psychologists and Social Workers with Disturbed Children and their families.

Supervisor of Family Services for the Children's Aid Society for the City of Sarnia and County of Lambton.

Professional Associations

Member of The National Association of Social Workers (U.S.A.).

Member of the Academy of Certified Social Workers (U.S.A.).

Mr. Bruce R. Heath

Bachelor of Arts - University of Toronto, 1961.

Bachelor of Social Work - University of Toronto,
1963.

Master of Social Work - University of Toronto, 1964.

Positions Held

Social Worker, intake worker, supervisor of
protection department, Catholic Children's Aid
Society of Hamilton-Wentworth.

Unit supervisor (protection department) and district
supervisor (family services department) Catholic
Children's Aid Society of Metropolitan Toronto.

Local Director of the Children's Aid Society of the
County of Huron.

Field consultant and supervisor, Child Welfare
Branch, Ministry of Community and Social Services,
Toronto.

Mr. Edward Hibberd

Called to the Bar of Ontario 1957.

Assistant Crown Attorney for the County of Lambton
from 1974.

Mr. William Higgins

Barrister and Solicitor practising from 1954 in the City of Sarnia in private practice. Approximately 50 per cent of his practice is in the Family Law area.

Acted for Annals Popen and Jennifer Popen in 1975/76 upon charge of neglecting Kim contrary to section 40 of The Child Welfare Act, R.S.O. 1970 and upon Children's Aid Society application for Crown wardship of Kim.

Elected to the Board of Lambton County Children's Aid Society in March 2, 1976 and resigned early 1978.

Acted for Jennifer Popen upon manslaughter charge arising out of Kim's death from September, 1976 to trial in December, 1977.

Mr. Abdul Khattab

Master of Theology - University of Alazhar, Egypt.

Bachelor of Social Work - Institute of Social Services in Egypt.

Master's Degree in Sociology - University of Alberta.

Position Held

Social Worker - St. Joseph's Hospital in Sarnia from 1974.

Mr. Andrew Matthew Lang

Called to the Bar of Ontario in 1971.

Prosecutor with Federal Department of Justice 1971 and 1972.

Assistant Crown Attorney, County of Lambton from January 31st 1972 to August 31st 1973.

Crown Attorney for County of Lambton from September 1, 1973.

Mrs. Shirley Lo

Bachelor of Arts - Taiwan University, 1970.

Master's Degree in Elementary Education - University of Connecticut (Included courses in Social Psychology, Early Child Development, Characteristics of Emotionally Disturbed Children, Elementary Science, Elementary Children's Literature, Curriculum Audio Visual Aids and Sociology and General Psychology in Undergraduate years).

Positions Held

Office Clerk, Connecticut, U.S.A.

Social Worker I, Children's Aid Society of the City of Sarnia and the County of Lambton.

Worked with a temporary retired Social Worker at the Children's Aid Society and worked with other Social Workers on their investigations.

Assigned the Kim Anne Popen Case.

Mr. William John Lovatt

Bachelor of Arts in Honours, Modern Language -
University of Birmingham, England, 1951.

Bachelor of Social Work - University of Toronto,
Ontario, 1963.

Accounting Course - LaSalle Business College,
Chicago, U.S.A. (Correspondence Course).

Courses sponsored by the Child Welfare Branch of the
Ontario Government and the Ontario Association of
Children's Aid Societies.

Basic Child Welfare Course.

Supervisory Course.

Administrative Course.

Positions Held

Personnel Selection in Statistics - Royal Air Force.

Personnel Assistant to Senior Engineer, General
Electric Company of England.

Case Worker - Children's Aid Society, City of Sarnia
and County of Lambton.

Sole Supervisor for the Children's Aid Society, City
of Sarnia and County of Lambton.

Local Director - Children's Aid Society, City of
Sarnia and County of Lambton.

Community Involvement

Founding Director and Chairman of the Case Worker
Selection Committee, Big Brothers of Sarnia Lambton.

Member of the City of Sarnia Youth Committee.

Founding member of the Coordinating Committee for
Children and Youth in Sarnia Lambton.

continued

Mr. William John Lovatt

Community Involvement (continued)

Founding Consultant and on Personnel Committee Huron House Boys' Home.

Member and Chairman of the Program Committee of the Health, Education and Welfare Group in Sarnia.

Founding Director and member of the Planning and Program Committee and the Personnel Committee of the Social Planning and Research Council for Lambton County.

Member of the Mental Retardation District Working Group Lambton County.

Member of the Advisory Council Lambton College in the General Arts and Applied Science Department.

Member of the Advisory Council for Early Childhood Education and Basic Job Readiness Training.

Past Cub Master in the Scouting Movement.

Chairman of the Parish Hall at local church.

Member of the church choir.

Past member of the church Board of Management.

Mr. John Kennedy Macdonald

Bachelor of Science in Social Sciences - University of Ottawa.

Masters Degree in Social Work - University of Toronto.

Positions Held

Foster Care Home Finder - Catholic Children's Aid Society for Hamilton-Wentworth.

Administrative Assistant, Institutional Services Worker, Supervisor of Institutional Services, Director of Child Placement Resources - Catholic Children's Aid Society of Metropolitan Toronto.

Director of Child Welfare for Ministry of Community and Social Services from 1974 to 1978.

Area Planning Co-ordinator for the Ministry of Community and Social Services.

Mr. Sylvio Mainville

Bachelor of Arts Degree - University of Ottawa.

Masters Degree in Social Work - University of Ottawa.

Positions Held

Social Worker and later Supervisor - Cochrane and Timmins District Children's Aid Society.

Lecturer at School of Nursing in Timmins on human growth and behaviour.

Child Welfare Consultant with the Ministry of Community and Social Services from September 1970 until later January 1976.

Supervisor of Child Welfare Branch of said Ministry from 1970 to 1973.

Mr. Peter McCabe

Bachelor of Arts Degree - University of Western Ontario.

Masters Degree in Social Work - University of Ottawa.

Positions Held

Director of Catholic Social Services for the Diocese of London.

Social Worker - Children's Aid Society in Guelph.

Head of Children's Services Departmentt - Niagara Region Children's Aid Society.

Assistant to Local Director - Children's Aid Society, Windsor.

Interim Local Director, City of Sarnia and Lambton County Children's Aid Society.

Judge Quincy Lloyd Nighswander

Education and Experience

Post War - Worked as a Social Worker - Big Brothers' Organization in Toronto - 1 year.

Following 2 years, Field Worker - Children's Aid Society, County of Simcoe.

Then attended School of Social Work.

1950-1953 - Director of the Children's Aid Society of the County of Kent, Chatham.

1953-1968 - Ontario Provincial Probation Officer dealing with both adult and juvenile offenders.

1968 - Appointed Provincial Judge (Family Division) for Chatham and Kent County and Sarnia and Lambton County.

Employed full time as Provincial Judge (Family Division) for Chatham and Kent County and Sarnia and Lambton County May 1969 through September 1976.

1976 to 1977 Provincial Judge (Family Division) for Chatham and Kent County.

Mr. Arne Petersen

Bachelor of Arts - University of Copenhagen, Denmark,
1953.

Bachelor of Social Work - University of Manitoba,
1960.

Master of Social Work - University of Manitoba, 1961.

Positions Held

Social Worker, Department of Health and Welfare,
Province of Manitoba.

Social Work Supervisor, Department of Health and
Welfare, Province of Manitoba.

Social Work Supervisor, Children's Aid Society,
London, Ontario.

Department Head of Family and Protective Services,
Children's Aid Society, London, Ontario.

Teaching Master at Fanshaw College (Social Welfare
Worker Course), London, Ontario.

Department Director of Children's Services and
Resources, Children's Aid Society of London, Ontario.

Assisted as Director of Services at St. Thomas
Children's Aid Society during the winter of 1975/76.

Serving as Board Member at the Madame Vanier
Children's Services, London, Ontario and at Girls'
Group Home Incorporated, London, Ontario.

Kunwar Singh, M.D.

Doctor of Medicine - University of Osmania
Hyderabad, India, 1965.

Positions Held

Children's Hospital Montreal, P.Q. 1967 Specialized
in Pediatrics.

Children's Hospital - Halifax, N.S., 1968 Specialized
in Pediatrics.

Admitted to the Royal College of Physicians and
Surgeons, 1971 and licensed to practice Medicine in
the Province of Ontario - Established a practice in
pediatrics, Sarnia, Ontario, 1971.

Chief of Pediatrics, St. Joseph's Hospital, Sarnia,
Ontario.

Chairman, Child Abuse Committee, Sarnia General
Hospital, Sarnia, Ontario, November, 1976.

Herbert A. Sohn, Ph.D

Bachelor of Arts - University of Florida, U.S.A.,
1949.

Master of Social Work - University of Toronto, 1961.

Doctorate in Social Work - University of Toronto,
1975.

Positions Held

Youth worker, department head, assistant program
director and director YMCA and YWHA, Toronto.

Human rights officer and assistant director, Ontario
Human Rights Commission, Ministry of Labour.

Research and teaching assistant, University of
Toronto.

Staff training consultant, Director of Vocational
Rehabilitation, Director of the Senior Citizens
Bureau, and Director of Social Services for
Metropolitan Toronto.

Co-ordinator of Child Abuse Programs, Ministry of
Community and Social Services, Toronto.

Francis J. Turner, Ph.D.

Bachelor of Arts - University of Western Ontario,
1949.

Theology - University of Western Ontario, 1949-51.

Bachelor of Social Work - University of Ottawa, 1953.

Master of Social Work - University of Ottawa, 1955.

Post-Masters Courses - University of Toronto, Faculty
of Social Work, 1956-58 (part-time).

Doctorate in Social Work - Columbia University,
School of Social Work, 1963.

Academic Career

Dean, Faculty of Social Work, Wilfred Laurier
University, 1975.

Vice-president: Academic (acting), Wilfred Laurier
University, September 1974 - September 1975.

Visiting Professor, Oxford University, Department of
Social and Administrative Studies, 1974
(April-Sept.).

Dean, Faculty of Social Work, Wilfred Laurier
University (Waterloo Lutheran), 1969 - April 1974.

Professor and Chairman, Department of Social Work,
Memorial University of Newfoundland (leave of absence
from W.L.U. to assist in establishing programme)
1968-69.

Professor, Waterloo Lutheran University, 1967-68.

Associate Professor, Waterloo Lutheran University,
1966-67.

Assistant Professor, University of Ottawa, School of
Social Welfare, 1963-66.

continued

Francis J. Turner, Ph.D. (cont'd)

Extra University Relevant to Social Work

Chairman, Board of Accreditation, Canadian Association of Schools of Social Work, 1970-73.

Chairman, Ontario Association of Deans and Directors of Schools of Social work, 1970-73.

Consultant, Undergraduate programmes in Social Work; Kings College, Western, Lakehead University, Memorial University, Ryerson Polytechnical Institute, Universite de Moncton.

Professional Career

PRACTICE POSITIONS

Chief Social Worker	Ontario Hospital, New Toronto, 1962-63.
Unit Supervisor	Ontario Hospital, New Toronto, 1960-62.
Social Worker	Catholic Charities, White Plains, New York, 1960 (Summer).
Assistant Director	Catholic Social Service Bureau, Peterborough, 1957-59.
Social Worker	Catholic Children's Aid Society of Toronto, 1956-57.
Social Worker	Catholic Children's Aid Society of Windsor, 1952-53, 1955-56.

Has been involved in various capacities as author and editor in the publication of books and is the author of many learned articles, reports and lectures relating to social work.

Mr. Harry Zwerver

Bachelor of Arts in Behavioural Sciences - Calvin College, 1965.

Bachelor of Social Work - University of Toronto, 1966.

Completing Master's course in Social Welfare Policies - McMaster University.

Positions Held

Intake worker and community worker with North York branch of Metropolitan Toronto Children's Aid Society.

Co-ordinator of Lawrence Heights Family and Child Services.

Head of Family Services department and sometimes Acting Branch Director, Etobicoke branch of Metropolitan Toronto Children's Aid Society.

Instructor in Social Services and Law Enforcement - programs at Humber College.

Executive Assistant to the Executive Director of the Metropolitan Toronto Children's Aid Society.

Director of Planning and Development for the Metropolitan Toronto Children's Aid Society.

Chairman of the Financial Information Systems Review Committee co-sponsored by the Ministry of Community and Social Services and the Ontario Association of Children's Aid Societies.

March 7, 1978 appointed as a Special Field Consultant responsible for the operation of the City of Sarnia and Lambton County Children's Aid Society.

continued

Mr. Harry Zwerver (cont'd)

Community Involvement

Member of Child Welfare Case Management Information System Steering Council.

Member of the Children's Services Divisions Information Systems Task Force.

Member of the Divisions Provincial Standards Development Advisory Committee.

SCHEDULE 2-A

CALENDAR OF SIGNIFICANT EVENTS IN KIM'S LIFE
INCLUDING COURT APPEARANCES

January 13, 1973 Annals Ambrose Popen and Jennifer Angela Popen (nee Mair) were married in Jamaica.

January 27, 1974 Jennifer Popen joined her husband in Sarnia, Ontario.

January 11, 1975 Kim was born in Sarnia.

March 22, 1975 Kim was admitted to hospital with a fracture of the left arm.

March 26, 1975 Dr. Singh suspected Battered Child Syndrome and referred case to hospital's social worker.

March 31, 1975 Kim suffered an upper respiratory infection.

April 12, 1975 Kim was treated, as a hospital out-patient, for an upper respiratory infection.

April 28, 1975 Kim was admitted to hospital suffering bronchiolitis and diaper rash.

June, 1975 At request of a relative, Mrs. Fay Popen, Dr. Jumean examined Kim in his office and noted multiple bruises.

June 16, 1975 By telephone Dr. Jumean notified the Sarnia Police Force and The Lambton Health Unit of Kim's injuries and her relative's allegation.

June 17, 1975	Residence of Mr. & Mrs. Cecil Popen visited by Sandra L. Saul, Winona J. Hoad and Police Constable Gander for purposes of inspecting Kim.
June 19, 1975	Dr. Jumean examined Kim in his office and notes same bruising as on previous visit that month.
August 31, 1975	Kim was admitted to hospital suffering multiple bruises and fresh fracture of the left arm.
August 31, 1975	Kim was taken into care of the Society after both parents signed a non-ward agreement effective for one month.
September 1, 1975	X-rays revealed two ribs on left side of Kim's rib cage had healing fractures.
September 5, 1975	Kim was released from hospital to care of Society and was placed in a foster home.
September 8, 1975	Provincial Court (Family Division). Application for wardship brought by the Society. Adjourned to October 29, 1975.
September 10, 1975	Kim removed from first foster home and placed in foster home of Mr. & Mrs. Cecile.
October 16, 1975	Information laid charging Annals Popen and Jennifer Popen under section 40(1) <u>The Child Welfare Act</u> "Fail to <u>Protect Child.</u> "
October 29, 1975	Provincial Court (Family Division). Application for wardship adjourned to January 19, 1976.

October 30, 1975 Provincial Court (Criminal Division). Charge against Kim's parents under The Child Welfare Act adjourned to November 13, 1975.

November 13, 1975 Provincial Court (Criminal Division). Charge under The Child Welfare Act adjourned to November 17, 1975 and transferred to the Provincial Court (Family Division).

November 17, 1975 Provincial Court (Family Division). Annals Popen and Jennifer Popen enter pleas of Not Guilty to the charge under The Child Welfare Act. Adjourned to January 19, 1976.

January 19, 1976 Provincial Court (Family Division). Application for wardship and the charge under The Child Welfare Act both adjourned to February 25, 1976.

February 23, 1976 Provincial Court (Family Division). Annals Popen entered a plea of Guilty to the charge under The Child Welfare Act. The same charge against Jennifer Popen was withdrawn by the Crown. Adjourned to March 29, 1976 for pre-sentence report and sentence.

February 25, 1976 Provincial Court (Family Division). The Society's request for a two month wardship of Kim was increased to six months by the presiding judge.

March 29, 1976 Provincial Court (Family Division). Annals Popen placed on probation and sentence was suspended for a period of one year.

May 27, 1976 Kim was returned home to her parents.

August 4, 1976 Provincial Court (Family Division). The Society requested a supervision order. The matter was adjourned to September 13, 1976, with Kim in the care of the Society.

August 11, 1976 Kim was pronounced dead.

September 18, 1976 An Information was laid charging Annals Popen and Jennifer Popen under Section 217 Criminal Code of Canada - manslaughter.

August 11, 1977 Preliminary Hearing concluded at Provincial Court (Criminal Division). Annals Popen and Jennifer Popen committed to trial by judge and jury on the charge of manslaughter - Section 217 Criminal Code of Canada.

November 28, 1977 In the Court of the General Sessions of the Peace for the County of Lambton. Annals Popen and Jennifer Popen entered pleas of Not Guilty to the charge under Section 217 Criminal Code of Canada - manslaughter.

December 5, 1977 In the Court of the General Sessions of the Peace for the County of Lambton. Jennifer Popen changed her plea to that of Guilty to the charge of manslaughter - Section 217 Criminal Code of Canada. Remanded to December 31, 1977 for sentence upon being found guilty by the jury.

- December 8, 1977 In the Court of the General Sessions of the Peace for the County of Lambton. Annals Popen found guilty by the jury on the charge of manslaughter - Section 217 Criminal Code of Canada. Remanded to December 21, 1977 for sentence.
- December 21, 1977 In the Court of the General Sessions of the Peace for the County of Lambton. Jennifer Popen was sentenced to seven years imprisonment. Annals Popen was sentenced to one year imprisonment. (Annals Popen was subsequently released from custody pending his appeal against conviction.)
- June 1, 1981 In the Supreme Court of Ontario Court of Appeal - Appeal by Annals Popen against his conviction only. Unanimous finding. "Accordingly, in the result the appeal is allowed, the conviction is quashed and a new trial is ordered."
- December 8, 1981 In the Court of the General Sessions of the Peace in and for the County of Lambton. Annals Popen, upon a directed verdict by the presiding judge was found not guilty by a jury on the charge under Section 217 Criminal Code of Canada - manslaughter.

SCHEDULE 2-B

Extracts from The Child Welfare Act, R.S.O. 1970,
Chapter 64 and Regulations thereunder as of
March 26, 1975

INTERPRETATION

1. In this Act
 - (a) "approved estimate" means the estimate of net expenditures of a children's aid society finally approved under sections 8 to 11;
 - (b) "children's aid society" or "society" means a children's aid society approved by the Lieutenant Governor in Council under this Act;
 - (c) "Director" means a director appointed for all or any of the purposes of this Act;
 - (d) "local director" means the local director of a children's aid society appointed under this Act;
 - (e) "Minister" means the Minister of Community and Social Services;
 - (f) "municipality" means a county, metropolitan municipality, city or separated town, but does not include a city or separated town in a metropolitan municipality, and in a territorial district means a city, town, village, township or improvement district;
 - (g) "prescribed" means prescribed by the regulations;
 - (h) "regulations" means the regulations made under this Act. R.S.O. 1970, c.64, s.1; 1972, c.1, s.19(3); 1975, c.1, s.1.
2. (2) The Director shall,
 - (a) advise and supervise children's aid societies;

- (b) inspect or direct and supervise the inspection of the operation and records of children's aid societies;
- (c) exercise the powers and duties of a children's aid society in any area in which no society is functioning;
- (d) inspect or direct and supervise the inspection of any place in which a child in the case of a society is placed;
- (e) prepare and submit an annual report to the Minister;
- (f) keep books of account of all moneys received by him, showing the receipts and disbursements;
- (g) perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council.

4. (1) Every children's aid society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the regulations in the area in which the society has jurisdiction, who shall co-operate with the Director to this end and who shall carry out such other duties as are required of him by the constitution, by-laws and directions of the society.

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a constable and a school attendance counsellor, and he shall be deemed to be an officer within the meaning of section 10 of The Public Authorities Protection Act, and that section and the other provisions of that Act apply to him in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c.64, s.4.

5. The Director or a local director or any person acting under the authority of either of them may call to his aid in the performance of

his duties a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c.64, s.5.

6. (1) Every children's aid society shall be incorporated under The Corporations Act or a predecessor thereof and shall be approved by the Lieutenant Governor in Council.

(2) Every children's aid society shall be operated for the purposes of,

(a) investigating allegations or evidence that children may be in need of protection;

(b) protecting children where necessary;

(c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protecting of children;

(d) providing care for children assigned or committed to its care under this or any other Act;

(e) supervising children assigned to its supervision under this or any other Act:

(f) placing children for adoption;

(g) assisting the parents of children born out of wedlock or likely to be born out of wedlock and their children born out of wedlock; and

(h) any other duties given to it by this or any other Act.

(3) Every society shall provide at least the standard of services prescribed by the regulations.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with the Director forthwith after they are made, and no such by-laws or amendments shall come into

operation until they have been approved by the Minister. R.S.O. 1970, c.64, s.6.

7. (1) A children's aid society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide.
8. (1) Every children's aid society shall before a date to be fixed each year by the Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its next expenditures as defined by the regulations for operations, for the year next following, and the council of every municipality with whom the estimate is filed shall, subject to subsection 1 of section 11, grant its approval to the estimate within sixty days of the date fixed by the Director.
9. (1) After the estimate of net expenditures has been filed with the Director and approved by the council of each municipality with whom it was filed pursuant to subsection 1 of section 8, the Minister may approve the estimate as filed or he may, subject to subsection 2, vary the amount of the estimate and approve the estimate as so varied.

(2) Where the Minister intends to vary the amount of the estimate and to approve the estimate as so varied he shall, at least thirty days prior to the approval, give notice of his intention to the children's aid society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c.1, s.5, part.
11. (1) Where the council of a municipality or a district child welfare budget board does not agree with the amount of the estimate submitted

to it by a children's aid society or does not agree with the portion that is referable to the municipality it may, on or before the expiration of the period of time fixed under subsection 1 of section 8, for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, instead of granting its approval to the estimate under section 8 or 10, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c.64, s.11(1); 1975, c.1, s.7(1).

(2) Where a children's aid society, the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate that the Minister intends to approve as varied under subsection 2 of section 9, any one of them may, before the Minister's approval is given under subsection 2 of section 9, request him to refer the matter to a child welfare review committee. 1975, c.1, s.7(2).

PART II

PROTECTION AND CARE OF CHILDREN

20. (1) In this Part,
- (a) "child" means a boy or girl actually or apparently under sixteen years of age;
 - (b) "child in need of protection" means,
 - (i) a child who is brought, with the consent of the person in whose charge he is, before a judge to be dealt with under this Part,
 - (iii) a child where the person in whose charge he is cannot for any reason care properly for him, or where that person has died and there is no suitable person to care for the child,

- (x) a child where the person in whose charge he is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for his health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,
- (xii) a child whose life, health and morals may be endangered by the conduct of the person in whose charge he is;
- (c) "foster home" means a home, other than the home of his parent, in which a child is placed for care and supervision but not for the purposes of adoption;
- (d) "judge" means a provincial judge presiding in a provincial court (family division);
- (e) "parent" means a person who is under a legal duty to provide for a child, or a guardian or a person standing in loco parentis to a child, other than a person appointed for the purpose under this Act,....
- (f) "place of safety" means a receiving home or foster home or an institution for the care and protection of children, and includes a hospital;

(2) Subject to subsection 8 of section 27, applications under this Part shall be heard by a judge presiding in a provincial court (family division) established for the county or district in which the child was taken into protective custody. R.S.O. 1970, c.64, s.20(2); 1975, c.1, s.12(5).

21. (1) A constable or other police officer, the Director, a local director or a person authorized by the Director or by a local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may without warrant take the child to a

place of safety and detain the child there until the matter can be brought before a judge, or he may apply to a judge for an order requiring the person in whose charge the child is to produce the child before a judge at the time and place named in the order. R.S.O. 1970, c.64, s.21; 1975, c.1, s.13(1).

(2) Where a person authorized under subsection 1 has reasonable and probable grounds to believe that a child apparently in need of protection is on any premises, he may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

22. (1) If it appears to a justice of the peace, on information laid before him on oath,

(a) that there is reasonable cause to suspect that a child is in need of protection; or

(b) that a child has unlawfully departed or has been unlawfully removed from the care or custody of a children's aid society,

the justice may issue a warrant authorizing any person named therein to search for the child and to take him to and detain him in a place of safety. R.S.O. 1970, c.64, s.22(1); 1972, c.109, c.3; 1975, c.1, s.14.

(2) A person authorized by the warrant may enter, if need be by force, any house, building or other place specified in the warrant and may remove the child therefrom.

(3) It is not necessary in an information or warrant under this section to describe the child by name. R.S.O. 1970, c.64, s.22(2, 3).

23a. (1) In this section, "parent" means a person who is under a legal duty to provide for a child, or a guardian, or a person standing in loco parentis to a child other than a person appointed for the purpose under this Act.

(2) Subject to the approval of the children's aid society having jurisdiction in the area

where the parent resides, or the Minister, a parent,

- (a) who through circumstances of a temporary nature is unable to make adequate provision for his child; or
- (b) who is unable to provide the services required by his child because of the special needs of the child,

may voluntarily place the child into the care, custody or under the supervision of the society or of the Crown, as the case may be.

(3) Where a society or the Minister agrees to receive a child into the care, custody or under the supervision of the society or of the Crown, as the case may be, with the consent or at the request of a parent of the child and without an order under this Part respecting the care, custody or supervision of the child, the society or the Minister, as the case may be, shall enter into a written agreement with the parent or parents for the care, custody or supervision of the child for such period of time, subject to subsections 4 and 6, as may be agreed between the parties to the agreement.

(4) An agreement entered into pursuant to subsection 3 in respect of a child referred to in clause (a) of subsection 2, shall be for a period not exceeding twelve months provided that the parent or parents and the society where the Director approves or the parent or parents and the Crown, as the case may be, may from time to time agree, subject to subsection 6, to extend the agreement for a further period or periods of time, that shall not exceed an aggregate of twelve months, and may agree to vary any other term or condition thereof not prescribed by the regulations.

(6) Any party to an agreement made under this section, at any time during the period of the agreement or any extension thereof, upon giving at least fifteen days notice in writing to the other party or parties, as the case may be, may terminate the agreement.

24. (1) As soon as is practicable and within five days of detaining a child in a place of safety under section 21 or clause (a) of subsection 1 of section 22, or of assuming the care of a child under section 22a, as the case may be,

(a) the matter shall be brought before a judge to determine whether the child is a child in need or protection; or

(b) the child shall be returned to the parent or person in whose charge he was immediately prior to his apprehension or to the assumption of his care, as the case may be.

(2) Subsection 1 does not apply to a child in the care, custody or under the supervision of a children's aid society pursuant to an agreement entered into under section 23a. 1975, c.1, s.16.

25. (1) Where an application is made to a judge respecting a child apparently in need of protection, there shall be a hearing to determine whether or not the child is in need of protection, and where the judge finds that the child is in need of protection, the judge shall also determine the child's age, name, the location where the child was taken into protection and, subject to section 37, the religious faith of the child. 1975, c.1, s.17(1).

(2) The judge or a justice of the peace has the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as may be requisite, and the judge has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases. R.S.O. 1970, c.64, s.25(2); 1975, c.1, s.17(2).

(3) The judge may hear any person on behalf of the child, the local director of the children's aid society or any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a

regional welfare administrator of the Ministry of Community and Social Services or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c.64, s.25(3); 1972, c.1, s.19(3).

(10) Where a hearing is adjourned, a judge shall make such order for the temporary care and custody of the child as he thinks advisable. R.S.O. 1970, c.64, s.25(10); 1973, c.75, s.1.

(11) The provisions of this section apply mutatis mutandis to proceedings under subsection 5 of section 27, section 31 and subsection 1 of section 32. 1972, c.109, s.4(2).

26. (1) Where a judge finds the child to be a child in need of protection, he shall make an order,

(a) that the child be placed with or returned to his parent or other person subject to supervision by the children's aid society for a period of not less than six months and not more than twelve months as in the circumstances of the case he considers advisable; or

(b) that the child be made a ward of and committed to the care and custody of the children's aid society having jurisdiction in the area in which the child was taken into the protective care of the society for such period, not exceeding twelve months, as in the circumstances of the case he considers advisable; or

(c) that the child be made a ward of the Crown until the wardship is terminated under section 32 or 35 and that the child be committed to the care of the children's aid society having jurisdiction in the area in which the child was taken into the protective care of the society. R.S.O. 1970, c.64, s.26; 1973, c.75, s.2.

29. A judge may, in any case arising under this Part, make such order as he considers proper regarding the right of access to the child by any person or by either parent of the child,

having regard to the welfare of the child, the conduct of the person or parent and the wishes of the parents, and may at any time alter, vary or discharge any order so made. R.S.O. 1970, c.64, s.29.

30. Every order made under this Part shall contain a statement of the facts upon which the decision of the judge is based. R.S.O. 1970, c.64, s.30.

31. (1) Where a child has been committed as a ward of a children's aid society, the society may at any time and shall, before the expiration of the period of wardship other than under section 35, apply to a judge for further consideration, and the judge shall thereupon further inquire and determine whether the circumstances justify a further order under section 26, and may make such further order or terminate the existing order, but in no case shall an order be made that results in the child being a ward of the society for a continuous period of more than twenty-four months. R.S.O. 1970, c.64, s.31; 1973, c.75, s.4.

(2) Where a child is a ward of the children's aid society, a parent of the child may, after the expiration of six months from the last order made under clause (b) of subsection 1 of section 26, and upon giving notice to the society, apply to a judge for termination of the order and,

(a) where the judge is satisfied that the termination is in the best interests of the child, he may terminate the order; or

(b) the judge may make such further order under this Part as he deems necessary in the interest of the welfare of the child, but in no case shall an order be made that results in the child being a ward of the society for a continuous period of more than twenty-four months. 1975, c.1, s.20.

38. (1) A ward of the Crown or of a children's aid society may be placed by the society for any period of time in a foster home or other suitable place according to the needs of the child,

and every ward so placed shall receive an education in accordance with the laws of Ontario and in keeping with his intellectual capacity, and provision for his occupational training and for his total development shall be such as a good parent would make for his own child.

(2) A ward of the Crown or of a children's aid society who has been so placed may at any time be removed by the society when, in the opinion of the Director or the local director, the welfare of the ward so requires.

40. (1) Any person having the care, custody, control or charge of a child who abandons, deserts or fails to support the child or inflicts cruelty or ill-treatment upon the child not constituting an assault or otherwise fails to protect the child is guilty of an offence and on summary conviction before a judge is liable to a fine of not more than \$500 or to imprisonment for a term of not more than one year, or to both.

(3) The judge may in connection with any case arising under subsection 1 or 2 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before him as a child apparently in need of protection. R.S.O. 1970, c.64, s.40.

41. (1) Every person having information of the abandonment, desertion, physical ill-treatment or need of protection of a child shall report the information to a children's aid society or Crown attorney.

(2) Subsection 1 applies notwithstanding that the information is confidential or privileged, and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable and probable cause. R.S.O. 1970, c.64, s.41.

REGULATION 86
GENERAL
INTERPRETATION

1. In this Regulation,
- (b) "child in care" means a person under the age of eighteen who is in the care of a society in a place other than the home of his parent pursuant to an order made under clause (b) or (c) of subsection 1 of section 26 of the Act or pursuant to an agreement under section 23a of the Act and includes a former Crown ward who has attained the age of eighteen years and is under twenty-one years of age who is receiving care and maintenance from a society pursuant to section 35 of the Act;
 - (d) "recognized school of social work" means,
 - (i) a school of social work that is a member of the National Committee of Canadian Schools of Social work of the Association of Universities and Colleges of Canada, and
 - (ii) any graduate school of social work outside of Canada having, in the opinion of the Minister, a course in social work at least equivalent to a course given at a school referred to in subclause (i);
 - (e) "social worker" means a person whose duties consist of investigating or supervising the care of children, whether in the care of a society or otherwise, providing guidance and counselling and who has the qualifications of a social worker set out in section 13 and includes a social worker supervisor. O. Reg. 320/71, s.1; O. Reg. 633/75, s.1.
- 4b. (1) Subject to subsection 2, where the actual costs of a society for any year are determined under the Act and this Regulation in accordance with Form 1, an adjustment may be made between the approved estimate for that year and the actual costs when so determined, and where approved by the Minister the amount of the

adjustment shall either be paid to the society by Ontario and each municipality in the area in which the society has jurisdiction or refunded by the society to Ontario and to the municipality, as the case may be, in the proportion to the respective financial obligations of Ontario and the municipality to the society in that year for such actual costs.

(2) The Minister, instead of approving the amount of the adjustment under subsection 1, may vary the amount of the adjustment and approve the amount as so varied, and thereafter subject to subsections 6 and 7, Ontario and each municipality in the area in which the society has jurisdiction shall pay to or have refunded by the society, as the case may be, their respective portions of the amount as so varied.

(3) After the estimate of net expenditures of a society has been finally approved by the Minister under section 9 or 11 of the Act, the society may at any time during the balance of the year, file with the Director and with each municipality in the area in which the society has jurisdiction,

- (a) an amendment to the approved estimate; or
- (b) a supplementary estimate,

of net expenditures of the society for the year, not included in the original approved estimate, and, subject to subsection 7, the municipality or supplementary estimate, as the case may be, within sixty days after the receipt thereof.

(4) Where the municipality and the Minister approve the amount of the amendment to the approved estimate or the amount of the supplementary estimate submitted under subsection 3, the amount shall be deemed to be part of the approved estimate of the society for that year for the purpose of determining the amounts payable to the society under section 12 of the Act and section 4a.

(5) After the amendment to the approved estimate or the amount of the supplementary estimate has

been filed with the Director and approved by the council of each municipality under subsection 3, the Minister may approve the amendment or the supplementary estimate or he may, subject to subsection 6, vary the amount of the amendment or the supplementary estimate and approve the amount as so varied.

(6) Where the Minister intends,

- (a) to refuse to approve the payment of an adjustment made under subsection 1 or the amount of the amendment to the approved estimate or the amount of a supplementary estimate under subsection 3; or
- (b) to vary the amount of the adjustment under subsection 1 or the amount of the amendment to the approved estimate or the amount of a supplementary estimate under subsection 3, and approve any such amount as so varied,

he shall, at least thirty days prior to the refusal or approval, as the case may be, give notice of his intention to the society and to the council of each municipality in the area in which the society has jurisdiction.

(7) Where the children's aid society or the council of any municipality in the area in which the society has jurisdiction does not agree with the Minister's intention,

- (a) to refuse to approve the payment of an adjustment made under subsection 1 or the amount of an amendment to the approved estimate or the amount of the society's supplementary estimate made under subsection 3; or
- (b) to vary the amount of the adjustment or the amount of the amendment to the approved estimate or the amount of the supplementary estimate,

any one of them may, before the Minister's refusal or approval is given, as the case may be, request the Minister to refer the matter to a child welfare review committee and thereafter

the provisions of section 11 of the Act apply mutatis mutandis to a request for review made under this subsection.

- 10b. For the purposes of sections 17 and 23a of the Act, special needs of children are needs related to or created by physical, mental, emotional, behavioural or other handicaps of children. O. Reg. 633/75, s.6, part.
11. The local director of a children's aid society shall have attained the age of at least thirty years or otherwise have demonstrated unusual maturity and,
- (a) shall have successfully completed two years of professional education in social work at a recognized school of social work and have had at least three years experience as a social work practitioner in child welfare;
 - (b) shall have educational qualifications that together with his experience in social work are, in the opinion of the Minister, suitable for the position; or
 - (c) held the appointment of local director on the 1st day of June, 1966. R.R.O. 1970, Reg. 86, s.11.
12. Every children's aid society shall employ adequate supervisory staff for its social workers and a social work supervisor shall have,
- (a) the qualifications of a social worker III, IV or V but shall have had at least three years experience as a social work practitioner in child welfare; or
 - (b) such other educational and personal qualifications together with progressive experience in social work practice as, in the opinion of the local director, constitute adequate and suitable preparation for supervisory duties. R.R.O. 1970, Reg. 86, s.12.

13. (1) Every children's aid society shall classify its social workers according to the following classifications:
1. Social Work Assistant, being a person who,
 - (a) has successfully completed Grade 13 in Ontario or its equivalent as determined by the Minister; or
 - (b) was actively engaged as a social worker in a children's aid society for a period of at least one year immediately before the 1st day of January, 1966.
 2. Social Worker I, being a person who,
 - (a) holds a Bachelor of Arts degree from a university in Ontario preferably with a major emphasis in social science, or holds a certificate in welfare from an institution of post-secondary school education in Canada at least equivalent to the course at Ryerson Polytechnical Institute leading to a Certificate in Welfare; or
 - (b) has other educational qualifications as the Minister considers equivalent thereto and at least two years of experience in welfare work.
 3. Social Worker II, being a person who,
 - (a) has successfully completed one year of full-time study in social work at a recognized school of social work and, where the recognized school of social work is outside Canada or the United States of America, has had at least one year of experience as a social worker in Canada; or
 - (b) has had at least three years of progressively responsible experience in welfare work in Ontario with the qualifications of a Social Work Assistant or two years of such experience with the qualifications of a Social Worker I.

4. Social Worker III, being a person who,
- (a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America;
 - (b) has successfully completed one year of full-time study in social work at a recognized school of social work in Canada or the United States of America and, after the study, has had at least two years of experience in social work;
 - (c) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least one year of experience in social work; or
 - (d) has successfully completed a course of professional education in social work at a recognized school of social work in a country other than Canada or the United States of America and has had at least three years of experience in social work in Canada.

5. Social Worker IV, being a person who,
- (a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least three years of experience in child care or family welfare services;
 - (b) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least four years of experience in child care or family welfare services; or
 - (c) has successfully completed a two years course of professional education in social work at a recognized school of social work

outside Canada or the United States of America and, after graduation, has had at least five years of experience in child care or family welfare services.

6. Social Worker V, being a person who,

(a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least five years of experience in social work of which at least two have been in child care or family welfare services;

(b) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least six years of experience in social work of which at least two have been in child care or family welfare services; or

(c) has successfully completed a two years course of professional education in social work at a recognized school of social work outside Canada or the United States of America and, after graduation, has had at least seven years of experience in social work of which at least three have been in child care or family welfare services.

(2) No person shall be classified in a classification under subsection 1 unless, in the opinion of the local director, he is of a character and temperament suited to the work of a social worker. R.R.O. 1970, Reg. 86, s.13.

14. (1) Every children's aid society shall record any complaint respecting children in need of protection within twenty-four hours of its receipt.

(2) Within twenty-one days after a complaint is recorded, the society shall investigate the complaint and record a report of determining whether or not the child is in need of

protection and, if so, including a tentative plan for the welfare of the child and the steps taken to implement the plan and, where the child is not taken into protective care, the case shall be reviewed not later than sixty days after the complaint was recorded. R.R.O. 1970, Reg. 86, s.14.

15. (1) Every society shall, within sixty days after the admission of a child to the care of the society, prepare and record a plan for the care, treatment and progress of the child while in the care of the society and shall review and, if necessary, amend the plan every three months thereafter.

(2) Each child's educational progress and social adjustment shall be assessed and recorded annually. R.R.O. 1970, Reg. 86, s.15.

16. (1) Every child in care shall be medically and dentally examined as soon as is practicable after the admission of the child to care, and thereafter shall be medically and dentally examined at intervals of not more than one year.

(2) A report of each medical and dental examination shall be recorded and any treatments recommended in the report shall be carried out within the times recommended therein.

(3) Where necessary and available, psychological and psychiatric assessments and treatments shall be provided and recorded for any child in care in accordance with his needs. R.R.O. 1970, Reg. 86, s.16.

17. Where it is in the best interest of a child in care, the society shall maintain the child's relationship with his family. R.R.O. 1970, Reg. 86, s.17.

18. (1) Every child admitted to the care of a society shall be placed in a foster home or in another home in keeping with his needs.

29. (1) An order under subsection 10 of section 25 of the Act shall be in Form 11. O. Reg. 633/75, s.10.

(2) An order under clause (a) of subsection 1 of section 26 or subsection 5 of section 27 of the Act shall be in Form 12.

(3) An order under clause (b) of subsection 1 of section 26 of the Act or in respect of a ward of a children's aid society under section 27 of the Act shall be in Form 13. R.R.O. 1970, Reg. 86, s.29(1-3).

(4) An order under clause (c) of subsection 1 of section 26 of the Act or in respect of a Crown ward under section 27, 32 or 35 of the Act shall be in Form 14. O. Reg. 320/71, s.7.

30. The judge shall cause to be transmitted a certified copy of each order made in Form 11, 12, 13 or 14 to,

(a) the person, children's aid society, institution or home that applied for the order; and

(b) each person required by the Act to be given notice of the hearing. R.R.O. 1970, Reg. 86, s.30; O. Reg. 320/71, s.8.

31. The judge shall cause to be transmitted to the Director a certified copy of each order made under clause (c) of section 26 of the Act or under subsection 1 of section 32 of the Act. R.R.O. 1970, Reg. 86, s.31.

SCHEDULE 2-C

Extracts from The Crown Attorneys Act, R.S.O. 1970,
Chapter 101 as amended

Appointment 1. -(1) The Lieutenant Governor in Council may appoint a Crown attorney for each county and for each provisional judicial district and such Crown attorneys and assistant Crown attorneys for the Province as he considers necessary. R.S.O. 1960, c.82, s.1; 1964, c.15, s.1(1).

Special Crown attorneys (2) The Crown attorneys and assistant Crown attorneys appointed for the Province or a county or provisional judicial district thereof shall act anywhere in the Province as directed by the Deputy Attorney General. 1964, c.15, s.1(2); 1967, c.18, s.1.

Assistant Crown attorneys 2. The Lieutenant Governor in Council may appoint one or more assistant Crown attorneys for any county or provisional judicial district who shall act under the direction of the Crown attorney and when so acting has the like powers and shall perform the like duties as the Crown attorney. R.S.O. 1960, c.82, s.2.

Duties: 12. The Crown attorney shall aid in the local administration of justice and perform the duties that are assigned to Crown attorneys under the laws in force in Ontario, and, without restricting the generality of the foregoing, every Crown attorney shall,

to examine information etc. (a) examine informations, examinations, depositions, recognizances, inquisitions and papers connected with offences against the laws in force in Ontario that the provincial judges, justices of the peace and coroners are required to transmit to him, and, where necessary, cause

such charges to be further investigated, and additional evidence to be collected, and sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions may not be delayed unnecessarily or fail through want of proof;

to conduct
prosecutions

(b) conduct, on the part of the Crown, preliminary hearings of indictable offences and prosecutions for indictable offences,

(i) at the sittings of the Supreme Court where no law officer of the Crown or other counsel has been appointed by the Minister of Justice and Attorney General,

(ii) at the court of general sessions of the peace,

(iii) at the county or district court judges' criminal court, and

1953-54
c.51(Can.)

(iv) before provincial judges in summary trials of indictable offences under the Criminal Code (Canada)

in the same manner as the law officers of the Crown conduct similar prosecutions at the sittings of the Supreme Court, and with the like rights and privileges, and attend to all criminal business at such courts;

cases
brought
by private
prosecutors

(d) watch over cases conducted by private prosecutors and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his interposition;

summary
conviction
matters

(e) where in his opinion the public interest so requires conduct proceedings in respect of any offence punishable on summary conviction;

SCHEDULE 2-D

CROWN COUNSEL BRIEF

CONFIDENTIAL

First appearance date .. October 30, 1975
Summons
Custody
Bail
Indicated plea

PARTICULARS OF ACCUSED:

	NAME (sic)	AGE	ADDRESS
1.	<u>Jennifer Angelle Popen</u>	<u>19</u>	<u>287 Devine St., Sarnia</u>
2.	<u>Annals Ambrose Popen</u>	<u>36</u>	<u>287 Devine St., Sarnia</u>
3.	_____	_____	_____

ALL CHARGES: Give substance and Section Nos.

Sec. 40(1), Chapter 64 Child Welfare Act, Revised Statues
of Ontario

PARTICULARS OF OCCURRENCE: Date _____ Time _____
Place Sarnia, Ont.

COMPLAINANT: Name Kim Anne Marie Popen Address: 287 Devine St. Sarnia

General description of _____
property to which charge _____
relates and value of _____
damage where relevant _____

ALL WITNESSES, INCLUDING POLICE OFFICERS:

Give name, address. Include age.

Name	Address	Age	Subpoenaed
Mrs. Dick	Children's Aid Society		
Mr. Harold Carter	Children's Aid Society		
Nurse Betty Hewitt	St. Joseph's Hospital		
Dr. K.R. Singh	Sarnia Medical Arts Building		
Dr. Jumean	145 Wellington St.		
P.C. Turner	Sarnia Police Dept.		
P.C. Wyville	Sarnia Police Dept.		
Miss Cappa	St. Joseph's Record's		

Officer in charge of case and responsible for preparation of this report:

P.C. Wyville Date report prepared October 23, 1975

Counsel for accused _____

EVIDENCE

(A synopsis to be followed by a concise statement of what each witness will state:
(attach all witness' statements)

1. On August 31, 1975 at 3:10 p.m., P.C. Wyville attended a call to the Children's Ward of St. Joseph's Hospital in regards to a battered child. At the hospital he spoke with the doctors and nurses about Kim Popen, age 7 months and was led to believe (sic) from these persons, that this child had received injuries that showed she had been beaten.

While at the hospital, he viewed the child and saw that she was bruised on both arms, both ankles and one cheek and had a cut lip. Further investigation showed the following medical history of this child:

- (a) Born January 11, 1975
- (b) Admitted to St. Joseph's (sic) Hospital with a fractured left arm on March 22, 1975.
- (c) Admitted again with black eyes on April 22, 1975.
- (d) Admitted on August 31, 1975 with fracture to one arm, swelling and bruising of both elbows, both ankles and left cheek and the left upper lip was slightly cracked and bleeding.

2. Mrs. Dick will say that she was called to St. Joseph's Hospital on August 31, 1975 and saw the marks on the child and spoke with Mr. and Mrs. Popen. She had the child signed over to the Children's Aid Society at that time.

3. Mr. Carter will say that he is looking after the Popen case and has talked with both parents. He can also give past history and involvement with the Popens.

4. Nurse Betty Hewitt will say that she saw the child on August 31, 1975 and can verify the marks on the child. She had also seen the child with similar marks in the past.

5. Dr. Singh will say that he examined Kim Popen on August 31, 1975 and at this time he found slight swelling and bruising of the left and right elbows, bruises on both ankles and a bruised left cheek and cut lip. He can also say that he has seen this child on March 27, 1975 when the child was 2 months old and at this time her left arm was fractured. He can say that in his opinion the child is battered.
6. Dr. Jumean will say that he has seen the child on numerous occasions. On June 16/75 the child was brought to his office with a cut lip and severe bruises over her face, neck and buttocks. Approximately 6 weeks prior to this, the child was hospitalized with a broken arm. Approximately 3 weeks prior to the child being brought to his office, she was checked by him at the hospital for a respiratory ailment and at that time he observed she had a black eye. On June 16, 1975 he can say he reported to the police that he believed the child was battered.
7. P.C. Turner will say that he was called to St. Joseph's Hospital on August 31, 1975 to take pictures of Kim Popen.
8. P.C. Wyville will say the same as the above synopsis.

THE QUEEN

vs.

(sic)

.....Mrs. Jennifer Angelle Popen.....

.....Mr. Annals Ambrose Popen.....

.....

.....

.....

Charges:
 (Description and Section Nos.)

1. Chapt. 64, Sec. 40(1) Child Welfare Act Revised Statutes of Ontario
2.
3.
4.
5.
6.

To appear in.....#3.....Provincial Court
 (Court No. where more than one court in area)

Arrest	Warrant	Summons
Date of Arrest.....		
Occurrence No.....		
Officer i/e case.....	P.C. Wyville.....	
Div. or Unit.....	Morality.....	

CROWN COUNSEL BRIEF

CONFIDENTIAL

SCHEDULE 2-E

History of the Children's Aid Society
involvement with the Popen family
(Removed from the Family Services File)

JUNE 17/75
REFERRAL
AD/mh

Detective Gander came to the office regarding an infant (Kim) six months of age and possibly abused. Police received an anonymous call last night to the effect that the infant has multiple bruises over the face and neck. Allegedly over the last six weeks the infant has had a broken arm on one occasion and on another a black eye when admitted to hospital for other causes. Detective Gander was desiring an Agency worker's company and assistance should or when admission is gained and access to the child is made via permission or warrant. S. Saul and case aide W. Hoad (R.N.) accompanied Detective Gander to the address in search of the infant.

JUNE 17/75
SS/mh

Win Hoad and I accompanied Detective Gander to 240 Devine Street to investigate a possible abuse charge. No-one was at home at this address and while speaking to a neighbour it was perceived that the family didn't live there any longer. Upon further investigation, it was determined that baby Kim was staying with her Aunt, Mrs. Cecil Popen of 548 Devine.

We visited Mrs. C. Popen's home and she showed us the marks on the child. She said they were approximately two weeks old and the marks were very faded and would not have been noticeable if Mrs. C. Popen had not pointed them out. The child was quiet and contented while her Aunt handled her. The child had a cut on her lip and tongue which Mrs. Popen stated had

been caused by the child's mother who had been forcing the child to eat.

Jennifer Popen arrived shortly thereafter to take her child, for she had heard that the Children's Aid was checking up on her. She rushed in, grabbed the baby and started to hustle her out the door until Detective Gander stopped her. She agreed to sit down and talk, but she was extremely defensive and hostile. She denied having ever physically hurt her child and stated that she knew how to care for her children. In response to my question re any possible feeding problems, she answered positively that she was having problems, but refused to accept help of any sort when I offered to have a L.H.U. nurse give her a hand.

Her husband, Annals, known as Kerri, was also there and agreed with his wife that the child was receiving good care etc. However, he let Jennifer do the talking for him and he did not try to disagree with her for she verbally struck out at him.

We stayed until Jennifer had given Kim a bottle and I was amazed at how upset the child was when Jennifer held her and in particular, prepared to feed her. I told Jennifer that C.A.S. would be around to see her in a week or so, but she was not pleased about this. I believe it would be advisable to take a L.H.U. nurse and introduce her whether Jennifer wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks.

Jennifer Popen - 18 years (quite immature) - hostile, defensive.

Dr. Jumean - family physician - 337-3729.

Annals Popen 30 ish in age, meek, bows down to wife's hostility, is said to drink heavily, is on strike at present.

JUNE 19/75
MTH/mh

This case was due for assignment to H.R.C. for service including Public Health nurses. There was serious concern that the mother might take off to Jamaica with the child in view of the way she had been observed handling her. There was apparently a misunderstanding about the opening of the case at that time.

AUG. 29/75

H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most "volatile" and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received.

AUG. 31/75
REFERRAL

Dr. Jumean was the family doctor - the child was observed with black eye out at the Mall - reported to Dr. Jumean who promptly visited the mother. The outcome not known, but the mother does not want Dr. Jumean seeing child now. Kim is supposed to have climbed out of crib and fallen, mother claims Kim can sit, crawl and pull herself up over and out of the crib.

Mrs. Popen took Kim to the Sarnia General Hospital where she saw a doctor Haig. He told her to come back on the 30th for X-Rays etc. She didn't and she took the child to St. Josephs Hospital, where the child was admitted about 1:30 a.m. (technically Aug. 31st).

About 3:15 today the mother came to take the child home - the police were called and C.A.S. Apparently Drs. Thorpe and Singh both examined the child and concur that the bruising is

most difficult to explain from falling or bumping and strongly indicate having been inflicted, by some person or persons. X-Rays revealed the chip in the elbow, said by the doctors to also be a most unusual injury to former broken arm - healed and sound. This break is in the other arm.

Non-Ward care was reluctantly consented to by the parents - the father does not want a repeat of today - he recognises no-one wants a repeat of child injury. The consents were given on the recognition that no-one could remove the child from hospital without C.A.S. consent, with the exception of C.A.S., and that if the baby were discharged it's return home depended on the results and findings of police investigation as well as C.A.S. assessment as to the infant's safety if or when returned.

AUG. 31/75

Case opened to H.R. Carter.

Call received from Constable Wyeville, (sic) City Police, to attend at St. Josephs Hospital where the child Kim was presently with bruising to both arms at the elbows and both ankles. Abuse was strongly suspected by staff doctors and police. The mother was there trying to have the child released.

On arrival, Mrs. Popen was found to be declaring that eight months old Kim had pulled herself up out of her crib onto the dresser where she fell and was found by the mother on the floor. Mr. Popen had been sent for by her, to verify her story.

Both parents state vehemently that if someone is mistreating their child, it is not them. Mr. Popen repeatedly declared that no-one was taking his child away from him - he did not

mistreat it. He finally realized his wife had come to the hospital to get the child against what he'd told her. At this time it was learned that the child had broken (chipped) bone in the elbow. The parents agreed to Non-Ward care while treatment of the child was provided and police investigations were in progress.

There is a history of previous seemingly unclarified situations re this child. e.g. two months of age - child in hospital with fractured arm bone (upper) - explanation "child fell out of walker," sitter blamed for abuse - sitter returned to Jamaica. Mother now says false abuse, child only fell.

SEPT.1/75-
FEB. 29/76
HRC/mh

Kim was released from St. Josephs Hospital and is directly under child care worker Mrs. Mary Kirby (see child care file # 9563). Appointment visits of both parents to the child at the agency are arranged and carried out under Mrs. Kirby's supervision. Mr. Ian Harvey, the Popen's solicitor, wrote to us requesting more frequent visits by letter dated November 18th 1975 (on file).

MEDICAL
DATA:

Medical data was received September 8th 1975 and October 22nd 1975. This relates to facts of hospitalization of Kim at St. Josephs Hospital on March 22nd 1975, April 22nd 1975 and the more recent August 31st 1975. The details of this and discharge summary of Dr. K.R. Singh are on file and self-explanatory.

COURT
ACTION:

The initial Court Hearing for September 8th 1975 was adjourned to October 29th 1975 10.00 a.m. Oct. 29th/75 adjourned to January 19th 1976. January 19th 1976 adjourned to February 25th 1976. Criminal charges were laid under the Child Welfare Act, and were held October 30th/75,

adjourned to November 13th/75, adjourned to January 19/76, adjourned to February 23rd/76 at 10.00 a.m. The disposition of the criminal charges were that Mr. Popen admitted guilt and sentencing regarding this will be handed down March 29/76.

At Family Court February 25th/76, an order of six months Society Wardship was given plus the proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course at Lambton College and care of weekly supervision in their home by C.A.S. and all future visits of Kim to them shall be in their home under the C.A.S. worker's supervision.

Results of these visits to be reported to the Supervisor, Mrs. Harvey weekly. Witnesses on our behalf giving evidence were Mrs. Betty Hewitt, R.N. St. Josephs Hospital, resident # 344-0930; Mrs. Jean Cappa, Director of Medical Records, St. Josephs Hospital 336-6121; Dr. D. Singh - 336-6311; Mrs. A. Dick and Mrs. M. Kirby, C.A.S. staff; Constable Barry Wyville, Sarnia City Police (Morality) 337-2111. Mr. Harvey and Mr. Higgins, solicitors, 337-3278, attended on behalf of the Popen's. Following the results of today's Court Hearing all witnesses were contacted and advised and thanked sincerely for the mountainous effort they had given on behalf of this case.

With regard to worker/client case relationships, case goals etc. this was legally restricted by the Popen's lawyer and substantiated by a telephone call from Mr. Higgins to myself on January 16th 1976 at which time Mr. Higgins requested my help in changing a Court date. In trying to comply with his wishes I agreed I would be in touch with Mr. and Mrs.

Popen, to which Mr. Higgins replied "please, over my dead body you don't." Consequently, under these circumstances, but by obligation to give evidence of recent home situations it was necessary I request permission from Mr. Higgins office for the only two home visits which were January 16/76 and February 20/76. On both these occasions permission was granted but with the added instruction "don't quiz them."

The home visit of February 20/76 was necessary in that the Popen's (sic) had moved their residence and currently reside at 220 South Mitton Street 336-3799. This residence is owned by Mr. Doug Vandenberghe, 336-2473. This is a young person, initially stated by Mrs. Popen to be a cousin, and who was in fact in the previous home on the evening of Mr. Popen's admittance to throwing the shoes at the baby, striking the baby on the lips. Mr. Vandenberghe lives in the adjoining present residence of the Popen's (sic). Mr. Vandenberghe attended the Popen's (sic) in the initial visits to the child and was quite openly belligerent toward myself and Mrs. Kirby.

Mr. Popen is said to have changed jobs recently and has not attended the visits to his daughter for the two previous occasions. Prior to this he has diligently visited with his wife approximately every two weeks when visits have been of a half-hour duration and on occasions I have been able to have casual conversation with them while in the office for this purpose.

PERSONAL
OBSERVATIONS:

I feel Mrs. Popen is a proverbial liar, apart from being a young, inexperienced 18 year old mother of two children and presently in the advanced

stages of pregnancy. She stated "I didn't want the others to know" (meaning the morality division) that a seven month old child had died while they were resident in Jamaica. The cause of this death was not stated and on questioning Mrs. Popen became her usual evasive self. Mr. Popen has admitted to drinking problems and has little or no conception of child raising, etc. Mr. Popen is aged 38 and has numerous extended families residing constantly and always within his own location. Mrs. Popen on the other hand, presents a rather isolated person, has stated she is not liked by her husband's family or the extended families by the name of Kameka, who are numerous in this area. Mrs. Popen stresses a great deal of confidence in Mr. Vandenberghe and he has attended all the Court Hearings with the Popen's (sic). My home visits to both residences, I have found it to be extremely neat and clean and would adequately meet Kim's needs. Following the Court Hearing on February 25th 1976, and during the following six months Society Wardship, and in consultation with my supervisor, this case will be transferred to Mrs. S. Lo as of February 29th 1976 and the child care file will remain with Mrs. M. Kirby.

FURTHER POINTS FOR CLARIFICATION: HRC/mh

Observation of Mrs. Popen's handling of her child; observation of Mrs. Popen's health during her pregnancy; she has stated to me on two occasions she has unaccountable blackouts, one out of the home and one in the home during which time the gas burners were on the stove and food was burnt. When this incident was remarked on in Mr. Popen's presence, it was found he was not aware of this and/or Mrs. Popen is lying again, since our initial acquaintance in September 1975 she has regularly alternated in the statement

she was pregnant and wasn't pregnant, however observations now show she is quite evidently pregnant. Support and substantiate Mr. Popen's attendance for psychiatric treatment, A.A. involvement and in working with his Probation Officer, Mr. George Brower, 337-8891 (appointment with Mr. Brower February 25th/76, Mr. Brower did not attend or communicate with our office); to liaison between C.A.S. worker and Mr. Brower (sic) in all matters concerning ongoing situation. Prepare pre-sentence report at Mr. Brower's (sic) request. Arrange and assist enrollment of the Popen's (sic) in the Parent Education course at Lambton College.

Case transferred to Mrs. Lo. MTH

FEB. 27/76
SL/mh

I went to visit Mrs. Jennifer Popen at her home on marginal date. They had just moved to this two bedroom apartment on 220 S. Mitton Street two weeks ago. The Popen's had lived here before and had established a good relationship with the landlord and his family. Jennifer said they were like brother and sister to the Popens. The apartment was very nicely kept up. Jennifer offered to show me the bedrooms and kitchen. I had even checked the crib, it was quite sturdy. Everything looked fine.

Jennifer was very talkative today. She told me about her family in Jamaica. Her mother had 13 children from a number of different men. She was the third one. When she was about 14, one day she came home from school and found out her mother was gone. She had to quit school at Grade 9 to take care of her younger brothers and sisters. At that time the youngest one was only six months. She cared for the children by herself for almost two years until she got married in

1973. Her mother returned home before the wedding, and had been taking care of her own kids ever since.

Jennifer said her father was a very strict man. According to her mother, the man had left them when Jennifer was five. However, Jennifer later met him and visited him occasionally. She said even now when she thought of her father she was still afraid of him. She mentioned her husband's drinking problem and said since he joined A.A. three months ago, he had not had that problem since. It seemed that their landlord was a member of A.A. three years ago and gave Mr. Popen a lot of encouragement rejoining such association and getting help. Jennifer stated the reason for her husband's going was because he wanted their child, Kim, to come back. She also expressed her interest in going to the Parental Effectiveness Training Course.

ASSESSMENT:

It has been only two years since Jennifer came from Jamaica to Canada. (Her husband has been here for 19 years already). She was brought up with a set of ideas and standards that were quite different from those of Canadians. With her experience taking care of younger brothers and sisters, she felt that she knew enough in regard to child rearing. Yet, she did not realize supplying food, clothing and lodging being only one aspect of child rearing. It also takes a lot of knowledge and technique to guide and discipline them. Besides this, she showed no bitter feelings towards her mother's irresponsibility. Instead, Jennifer felt she could get along fine with her mother, and her mother was the only one that Jennifer could trust her child with. This is beyond the worker's understanding at this moment.

PLAN:

This is the first time that I, a new worker with this case, had a chance to visit with Mrs. Popen alone. I believe she wanted very much to impress me in a positive way, which is only fair. Nevertheless, I plan to visit them often to try to offer enough encouragement and understanding, and help them to keep up with their decisions.

MARCH 4/76
SL/mh

Jennifer again was neatly dressed and talkative today. She stated that she had never been real close to her mother because she was brought up by her grandmother until she was seven years old. She was never able to call her mother "Mom," but had always called her grandma by such name. Jennifer also said that her son was still alive and presently living with her grandmother. He is five years old now and calls her Aunt Jennifer. From the picture she showed me, it was very clear that the boy had a white father. When he was seven months old, Jennifer's mother refused to care for the child, therefore, Jennifer's grandmother had taken the boy and had reared him from then on. Kim was under foster care since September 1975. Mr. Popen had been wanting to have Jennifer's son come to their home to stay but Jennifer said her grandma loved the boy very dearly and she did not have the heart to take him away from her. When discussed about child beating she again stated no matter how frustrated she got, she could not hit a baby.

I believe now that Kim is under foster care and the tension is not there, Jennifer probably felt like what she said toward the child. Once Kim comes home to stay the situation will be different. It then will require close observation of the child and intensive moral support for the parents. I plan

to see both Mr. and Mrs. Popen in our next interview and observe how they interrelate with each other.

MARCH 18/76
SL/mh

Both Mr. and Mrs. Popen were seen at their home this evening. They were told that the Parent Effectiveness Training Course will start on April 22nd, Thursday, 7-10 p.m. and Kim would not be returned home to live until we see how they respond to the course. They accepted this quite well. Jennifer mentioned that the child would start home visits one month after the court that is March 25th, 1976. However, they realized that such decision in regards to when home visits should start was left to C.A.S. by the Judge and Kim's visit will not take place until later. Both Mr. and Mrs. Popen were disappointed but decided to take it as they did. Jennifer also asked during Kim's home visits whether the worker or driver will stay in the house with the baby and herself. She felt she would need Kim's undivided attention. I told her for the first couple of times we will have to see how Kim responds at their home, but after the initial period, unless we feel it is necessary for us to be present during any specific visit, for example, visit when father is back home from work, the parents and the child will be left alone. When the question of Kim's being returned home to live before the new baby is due in July was brought up, they were told it depends on how they handle the child during the home visit and how well they and the child relate with one another. However, we agreed to make it a goal for all of us to work at for the time being. Mr. Popen watched the worker intensely for a while at the beginning of the session, then relaxed and started to answer questions. He talked about his A.A. meetings and said that stopping

drinking did not bother him at all. He also put much emphasis on his love for Kim and said he would never abuse Kim any more. He had had a psychological assessment done and the result would be sent to the concerned personnel. Due to the fact that Mr. Popen no longer has drinking problems, we know Kim would come back shortly as well as a second child is on the way, the relationship between Mr. and Mrs. Popen tended to be relaxed. There was more respect from Jennifer to Mr. Popen; she still wanted to ask questions on their behalf but Mr. Popen did get a lot of chances to say what was on his mind. It seemed that with the present situation they both felt that it was worthwhile to work at their problems and both were looking forward to the future.

MARCH 29/76
SHIRLEY LO/md

The Popen's were in court on marginal date. Mr. Popen again pleaded guilty to the charge of neglecting to protect his child. Due to the positive results of psychiatry assessment, it would indicate that Mr. Popen was not in need of psychiatric treatment. Due to his involvement with A.A. and apparent intention to enroll in the Parent Effectiveness Training Course, Mr. Popen was put on probation and sentence was suspended for one year. However, if he violates his probation, he will face 6 months to 1 year in jail.

APRIL 1976

Kim has started her home visit on April 15th, 1976. Since then, Kim has visited her parents every Thursday. Visiting periods started from 1 and 1/2 to 2 hours. Twice Kim has had lunch at home. Both Mr. and Mrs. Popen were home during Kim's first visit. The worker was able to be there with them too. Both parents were very affectionate toward Kim. They were a bit uncomfortable and

nervous due to the fact that I was there and hesitated to say "no" to some of Kim's requests. They introduced a lot of toys for her to play with and had a good time watching her. However, it did seem that sometimes the parents would give different instructions to Kim, for example, when Kim wanted to play with the little china ornaments on the table, one parent would say "yes" while the other one would say "no." Mr. and Mrs. Popen really need to go to the P.E.T. course to acquire enough knowledge on disciplining children.

SL/po

Aside from Kim's home visits, this worker has been visiting their home at least once a week. The family situation keeps on progressing. At first, Mrs. Popen felt it was hard to turn down people's requests, for instance, one time she was asked to help one of her sisters-in-law to move. In spite of her own pregnant condition, and Mr. Popen's advice not to go, she went and exerted herself almost a little bit too far until she suddenly realized that she should not do so. Ever since then, she has learned to say no to her relatives and friends and felt much better to be able to say so. Mrs. Popen also felt much more comfortable with C.A.S. One time she volunteered to let the worker know her feelings about their former worker, Mr. Carter. She stated that she was very rude to Mr. Carter at first, yet he still sent them a card a Christmas, which made her realize that he was really trying to help and felt sorry for what she had done.

Mr. Popen has been going to A.A. meetings and stated that he felt so much better because he can control himself now. Mr. Popen seems to be a hard working man and is able to provide his family with things they need.

He stated that if it was not so hard to take time off work so frequently, he would like to be home every time during Kim's visits. We have spent time discussing background for parents who physically ill treated their children. Such incidents do not necessarily happen to parents who don't love their children. When parents have reached their limit, no matter how much love they have for their children, they usually resolve their frustration and anxiety by falling back on their own background - in this case, severe physical punishment. Mr. & Mrs. Popen beleive (sic) such a thing will not happen again since now they realize what caused it.

The Popens do not associate with their relatives that much any more. Neither do they have many friends outside the family. However, they are on very good terms with the Vanderbergs, (sic) and claim they have been able to learn a lot from this couple. The relationship between Mr. & Mrs. Popen has been steady over the months but I feel they will have to come to an agreement on their disciplinary measures and will have to learn more on giving support to each other.

The P.E.T. Course started on April 26th. The Popens enjoyed the course very much. They were fascinated by their teacher, Mr. Jim Stevens, and thought he was wonderful. At first, they said, they were a little shy but when Mr. Stevens started to talk they became very interested and forgot about their shyness. Mr. Popen has been having problems with his eyes and cannot read too long. They decided to take turns. Mr. Popen would read one page and Jennifer would read another. Mr. Popen also found it hard to write because he uses his left hand.

Nevertheless, they planned to either have him write his own answers slowly or give his answers to Jennifer for her to put down. They understand the only way for them to learn anything in this course is to answer their questions honestly and try to apply what they discuss in their class to their daily lives. Mrs. Popen felt most people had problems with teenagers than with younger children. They were encouraged to bring up their interests and questions with younger children in the class too.

MAY 6/76
SL/po

The Popen's second baby is due on July 6/76. The parents would like to have Kim returned home to live before the new baby is due. In this case they can have enough time with Kim before they get busy with a new baby. The home visits have been proven to be very disruptive to Kim. Her behaviour regressed every time after her visit at home. After a meeting held by Family Service supervisor, Mrs. Harvey, Adoption Supervisor, Mrs. Archer, Child Care worker, Mrs. Kirby and myself, it was decided that Kim should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby. Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose.

Both Mr. and Mrs. Popen were seen this evening. They were told how we feel towards their home situation. I let Mr. Popen know at the present time my main concern is with him. I felt he is moving toward the right direction but he needs to work harder because he is not quite there yet. They also

were urged to apply to each other what they have learned at the P.E.T. course. We spent time discussing how important it is to be able to say no to others. They seemed to agree with this. Mr. Popen felt that he has improved a lot in this area but stated that he would try harder. They both realize that their family unit is the most important and nothing, not even relatives, should come between them. We discussed the importance of being honest to each other and to the worker. Their ability to help and support each other is emphasized again. We also talked about Kims (sic) temper and the patience and firmness it requires to cope with her. Kim will have to know who is the boss from the very beginning. They were asked to think about what we have discussed on that day. If there are more problems or questions, they should not hesitate to bring them up next time.

MAY 7/76
SL/po

Mrs. Kirby and I have decided to place Kim back home on May 27th. In the meantime no home visits will be made by Kim before this date.

SL/mw

Mrs. Popen was notified of our plan. She was glad that Kim was coming back. Jennifer said her husband helped her make beds, change bedsheets, etc. over the weekend. She used to do everything for him but doesn't do so anymore. (e.g. he will have to wash his own feet when coming back from work).

Jennifer also described her mother as a tight person who secretly puts her money away and asks people for more. Her mother used to scare them with ghosts so that they stayed indoors at night. Jennifer stated that she would never do such a thing to her own children.

MAY 31/76
SL/mw

Kim was returned home to live on May 27. Mr. Popen was not present at Kim's return but had taken the afternoon off. On marginal date a home visit was made. Jennifer said Kim was doing alright on weekends, eating good and sleeping well. Kim had thrown temper tantrums on several occasions when she could not get what she wanted. She would lie on the floor, cry and kick her feet. Jennifer tried to be firm with her telling her if mommy says no, it's no. Then Kim would quit crying, get up realizing that she couldn't get anything. Jennifer and I also discussed using simple terms explaining things to Kim when she was refused anything. As far as relatives interferred goes, the Popens should be firm and consistent with Kim and ignore other peoples (sic) gossip.

JUNE 1-16/76
SL/mw

During this period Mr. & Mrs. Popen and Kim are readjusting to each other. The overall situation is under control. Kim has been good most of the time and Mr. & Mrs. Popen are rather proud of her. However, Kim does have her good days and bad days. Sometimes she gets up in the morning in a wretched mood and would remain in that mood for the rest of the day or even a couple of days. Her parents then would try their best to cope with the situation. Kim has got a stomach flu near the end of June, together with the fact that she was teething, she became miserable. She could not eat too much and would be up several times at night. Jennifer was trying to be firm and patient with her and was rather exhausted when Kim recovered from the flu. In the meantime the second child's due date gets nearer every day and Jennifer was informed by Dr. Jumean that she had put on too much weight. Unless she watched her diet carefully she would

probably have a hard time delivering the child, which scares Jennifer very much.

Jennifer now understands what our worker Mrs. Kirby told her about Kim who when she is mad will hurt herself and destroy things. Jennifer has also seen Kim being mean to others and kicking younger babies or animals. She said she was glad she was informed of Kim's behaviour so that she knew what to look for and how to react when such behaviour occurred. Jennifer also mentioned that she's pleased with the fact that C.A.S. did get involved, although she felt that taking Kim away from them for nine months is rather too long. It was said that Mr. Popen still has mixed feelings toward C.A.S. He was able to see that our taking Kim into care helped him make a decision as to quit drinking. Yet, he was not happy with the fact that we've had Kim for so long.

Jennifer also mentioned the way their lawyer, Mr. Higgins, worked with them and how they were told not to say anything. They finally got fed up and began to wonder whether the lawyer really wanted to help them with their problems or just to win the case. She indicated that they were rather relieved when six months society wardship was granted and the court was over.

JUNE 17 -
JULY 6/76
SL/mw

Jennifer felt that Kim is playing her trick of one parent against the other again. Sometimes Kim would be very hard to discipline in the daytime but when Mr. Popen came home from work she would become such a sweet little girl that Mr. Popen could not believe what Jennifer had told him about Kim. Since Kim was an active child, she often bumped into things and hurt herself. Mr. Popen was not happy

about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again.

Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time. We also discussed Kim's changing moods and her behaviour. Mr. Popen said a couple of days ago Jennifer went out with her girlfriend for a whole day and left Kim with him. He was then able to see with his own eyes what Jennifer meant about Kim. He realized that being firm, yet loving was the only way to deal with her.

On July 6/76 the Popen(sic) second child, Karie was born.

JULY 7-23/76
SL/mw

Jennifer stayed in the hospital for a week with the baby. During this period she hired a babysitter to care for Kim during the day. A visit was attempted to see if the babysitter could cope with Kim, however no one was home.

Home visits to the Popen has been frequent. For the last couple of times Jennifer appeared very tired, cold and distant to the worker. The baby was healthy and had already begun to have baby cereal, but Kim was rather spoiled by the babysitter and wanted only cookies but not food. Jennifer tried to cope with that by reducing the cookie intake gradually. Mr. Popen doesn't feel too good lately due to his bad back, but Mr. Popen usually will cook on weekends and

relieve Jennifer of some housework duties. We have discussed jealousy on the older child's part when there is a new baby at home and the importance of getting the older child involved.

Jennifer looked very unhappy but she was not able to share it with me as to what was bothering her. She also seemed to be living in fear that C.A.S. is waiting for another chance to take her child away. Jennifer was rather upset when asked if she detected any tendency on her husband's part to taking his frustrations out on the children. She said the past experience was enough to let him know that he should not do such things.

On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis. She smiled, relaxed and said there is nothing wrong between her husband and herself as I had suspected earlier but she felt that C.A.S. has sent me out to spy on them. Jennifer also was upset because it seemed to her that since the new baby was born, everybody (probation officer, Mrs. Kate Maughan, and myself) has been asking her how her husband is and whether there is any tendency for him to go back drinking or abusing the children. Since this has been questioned so many times before and had done so much explaining they hated to do it again. They wanted the past in the past. We then discussed why people were being especially careful when the second child arrived. She seemed to be able to understand that

with a new baby coming to the home, it is very easy to complicate the situation and create problems. It was pointed out again that right now is a crucial time and is very important to keep things under control.

Jennifer was loving towards Kim. Kim was smiling and singing most of the time and her eating habits have almost returned to normal. Jennifer has been giving Kim unsweetened cookies which Kim doesn't like and refuses to have. Neither does she ask for sweet cookies, knowing that her mother doesn't have them.

JULY 26/76

A call was made to the Popen's this morning in order to arrange a time for this worker to see them. It seemed that Jennifer Popen was trying to put me off. After I discussed the situation with my supervisor, we decided to apply for supervisory order before Society Wardship expires, due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough. Court date was arranged on August 4, 1976.

At 6:30 p.m. home visit was made to the Popens. Mr. Popen had not come back from work yet. Knowing that I was going to discuss something important, Jennifer had her friend Judy Vandenberghe there. She was very nervous and apprehensive. I explained to Jennifer the reasons we asked for a supervisory order and if things went on smoothly, there would not be any change in our original plan. We would only visit on a helpful and supportive basis. She was asked to discuss this with her husband.

JULY 27/76
SL/mw

Notices of Hearing were served to Mr. & Mrs. Popen today. Jennifer was more relaxed today, but she was barbequing

outside and did not spend much time with me. Mr. Popen said he understood why we would need a supervisory order and felt it was alright with them. Knowing we were going to ask for an adjournment on August 4, they decided not to go to the court and let me tell them what happened.

AUG 4/76
Sl/mw(sic)

Brief visit to the Popens. Jennifer was told the adjourned date for the court. She said they were thinking of moving because she did not get along with her next door neighbour. During this period, Kim was sitting beside her mother quietly, watching T.V.

AUG 11/76
SL/mw

Early in the evening, a call was made by Mr. Popen's sister-in-law, Grace Popen, saying Kim had died of a fall from the patio. Jennifer wanted me to go over. In the meantime, another call was received from Sarnia Police requesting me to go to Sarnia General Hospital. At Sarnia General Emergency I identified the child to be Kim Popen. Later on, as the parents were talking to the detectives, a message was left for the Popen's (sic) to call me again if they needed me.

AUG 12/76
SL/mw

Home visit. Mr. Popen was at funeral home arranging the funeral. Jennifer looked tired and strained. She said she did not sleep at all last night. She stated that the child first fell from her high chair yesterday afternoon and said "hurt! hurt! hurt!" but could not tell Jennifer where it hurt. Since then Kim had been bumping into things as if she was in a daze. The child was seen leaning on her left leg when walking. Judy Vandenberghe said she also noticed the child appeared to be a little dizzy. After supper Jennifer put Kim out on the back porch, a porch 3 feet high, without any railings, to play. Several minutes later, she found the

child had fallen from the patio and was unconscious. Not long after they reached the hospital the child died.

Kim was left with an 18 year old babysitter Debbie Ginn while Jennifer was in hospital having Karie. The only persons Kim had ever been left alone with were Mr. Francis Kameka and his mother. Detectives Ross and Walters (sic) were investigating into this situation.

AUG 13/76
SL/mw Popen second child, Karie was taken into care and under our protection.

AUG 16/76
SL/mw Our workers, Mrs. Kirby, Mr. Carter and myself attended Kim's funeral on marginal date. Later on in the afternoon, Jennifer informed the worker they now were staying at 211 Cameron St. 337-9663. The place belongs to Mr. Popen's brother.

AUG 18/76
Sl/mw(sic) Court date for Karie had been adjourned to August 30 at 1:30 p.m.

AUG 30/76
SL/mw Court date for Karie again had been adjourned to Sept. 20 1:30 p.m. due to fact that we have to base our action on the result of investigation on Kim's death.

AUG 31/76
SL/mw Jennifer went over to Port Huron to take the lie detector test. Her lawyer, Mr. Higgins had gone with her. The result of this test is unknown to us.

SEPT 1/76
SL/mw Karie is arranged to be baptized at St. Joseph's Church on marginal date and the Popen's (sic) will also have their first visit with the child at the same time.

SEPT 20/76
SL/mk Six months society wardship was granted for Karie Popen, Jr. on marginal date. Information re Karie's

development is in child care file #9563 worker, Mrs. Mary Kirby.

SEPT/76
JAN/77
SL/mk

In mid September both Mr. and Mrs. Popen had been arrested and charged with manslaughter. Mr. Popen was granted bail on Sept 20/76 on condition he raise a \$3,000 surety. Mrs. Popen was remanded to St. Thomas Psychiatric Hospital for assessment for a period not to exceed 60 days. Court hearing was adjourned from Sept. 27/76 to Nov. 29/76 to Jan.13/77 to Feb. 17/77. Jennifer was out of St. Thomas Hospital at the end of November 1976. But it was said that she had taken an overdose, therefore spent the Christmas and New Year's holidays at 3 East in Sarnia General Hospital and was committed to St. Thomas Psychiatric (sic) Hospital by Dr. Tufford. It was also said she had never shown any emotion toward her dead child during this period.

FEB-MAY/77

Court hearing was adjourned from Feb. 17/77 to March 31/77 to June 15 and 16 for preliminary hearing regarding Kim's death.

On Feb. 16/77 a conference was held here in Sarnia by St. Thomas Psychiatric Hospital social worker Nancy Cadesky, Mr. Khatab, social worker at St. Joseph's Hospital and myself. Jennifer was still being assessed at the time and was at St. Thomas behaviour modification ward. The hospital staff were having a difficult time gathering background information. Whatever they have gotten were rather unreliable because Jennifer appeared to be manipulative, and pre-fabricating. Their first assessment from Sept. 23/76 to Nov. 22/76 tended to indicate that Jennifer has personality disorder, is paranoid and has suicidal tenency (sic). This second time the staff wondered if

Jennifer will have psychotic behaviour when under a stress situation. In the hospital Jennifer is always neat and collected and appears to be co-operative with the staff. However, the things she told the staff were rather unbelievable, e.g., she had a twin sister who died years ago, both twin sister and her dead child bid her to join them etc.

Mr. Popen has been phoning and visiting Jennifer in the hospital one or two times a month. Sometimes Jennifer would refuse to see him or speak to him. Annals Popen has not been working since last August. Court hearing regarding Karie, Jr. was adjourned to March 14 then to April 4/77. During this period Mr. Popen gave us his sister and brother-in-laws names, Merline and Henry Kameka, 105 S. Vidal St. 336-9203, saying this couple can look after Karie before the Popen's (sic) court situation is clarified. However, when visiting the Kameka parents, this worker was told that their landlord had just put their house for sale, therefore before they know where to go, they could not look after Karie. Under this circumstance, no investigation was necessary re this couple's ability to care for another young child.

Eight months society wardship was granted for Karie Popen Jr on April 4, 1977.

JUNE/77
SL/mk

Preliminary hearing for the Popens in the Criminal Court took place on June 15 and 16. As the court has not finished questioning all the witnesses, this preliminary hearing again is remanded to August 11, and 12, 1977. This worker was subpoenaed as a witness but was not called for this preliminary hearing.

TRANSFER
SUMMARY
SL/mk

As the court is investigating into this situation, there is nothing we can do except consulting with the child care worker, Mrs. M. Kirby, regarding Karie's development and assisting her in arranging visits between parents and child. As this worker is leaving the agency, this case is transferred to Mr. H.R. Carter as of June 27, 1977.

See progress report #1
See progress report #2

A REVIEW OF THE POPEN CASE

prepared for

THE CHILDREN'S AID SOCIETY OF THE CITY OF SARNIA

AND THE COUNTY OF LAMBTON

by

A Committee chaired by

Mrs. Margaret Farina, Associate Executive Director,
Ontario Association of Children's Aid Societies.

February 15, 1978.

This is a confidential document. It was prepared for the Board of Directors of the Children's Aid Society of Sarnia and the County of Lambton. The Committee disclaims any responsibility for breach of the rules of confidentiality should any of its contents be disclosed to persons outside the Corporation.

The Mandate

The mandate for this review was stated in a letter received from the President of the Lambton Society dated December 19, 1977 and addressed to the president of the Ontario Association of Children's Aid Societies.

"I am requesting, subject to your agreement, that you select three social workers whom you feel could visit Sarnia in order to 1) study this case in detail; 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies; and 3) make a report summarizing the activities of the staff with respect to this case and offer any reactions or recommendations they feel appropriate ...

The intention of such a review would be to examine the appropriateness of the staff's actions in this case in order to prevent the recurrence of such a tragic event in the future." (Appendix 1)

Subsequent to receipt of this request a chairman was appointed and a committee of three was struck. Mrs. Margaret Farina, Associate Executive Director of the Ontario Association of Children's Aid Societies was appointed chairman, the committee members being Mr. Bruce Heath, a former local director of a children's aid society and presently a Supervisor with the Ministry of Community and Social Services, and Mr. Arne Petersen, Director of Resources with the London Family and Children's Services. Composition of the committee was considered carefully and it is thought that a good representation of relevant expertise was achieved. The committee met on January 13th to study written material pertinent to the task and to discuss the method that would be used. Subsequently we visited Sarnia on January 25th to 28th to interview those people concerned directly with the case, and others concerned with the operation of the Society, and generally to conduct this phase of the review. The committee worked under considerable time pressure as its report was requested for the Lambton Society's February Board meeting.

We take this opportunity to express our thanks to the Society President, Mr. David Allen, the Local Director, Mr. William Lovatt and those we interviewed for the excellent co-operation on their part.

We also take this opportunity to commend the Board of Directors of the Society and the President for having requested this review.

We also note at the outset of this Report that of some 1178 children who have come into the care of the Society over the past ten years, Kim Popen is the only one to have died from other than natural causes while in the Society's care. While we note this, we also note that one is too many, and it is our hope, shared by the Society, that this Report will assist in assuring as far as is humanly possible that this never happens again.

The Method Used

The method the committee adopted was to read all case material, reports, court transcripts and press clippings related to the case; to interview all those persons who were involved in decision-making or case handling; and any others who were associated with the case. In addition we talked with people who are associated with the Society but who were not involved in this case, and we read letters received from two former foster parents.

All interviews were held in the Village Inn rather than on Society premises as it was felt that this more neutral setting would be more conducive to an open sharing of information. Interviews were scheduled by the Society president, and staff members were informed of our desire to talk to them. Certain key people were requested to make appointments. In three instances interviews were conducted by telephone because people were not available, and in at least two cases we asked staff members to return for a second interview as we wished to clarify information they had given in the light of subsequent information received. In addition to this, a local radio station carried several reports of our presence in the city and the purpose of our visit, inviting anyone interested to arrange to see us. We also had extended interviews both initially and at the

conclusion with the President and the Local Director. It is the opinion of the committee that more than a reasonable opportunity was given for interested persons to come forward.

Interviews were conducted with 11 staff members including 3 supervisors (2 present and 1 past) and the Local Director, 2 board members including the president, 3 members of the Lambton police, the hospital social worker, the probation officer and volunteer, the society solicitor, one of the physicians involved in the case, and the Supervisor of Field Services for the Ministry of Community and Social Services. A total of 22 people were interviewed.

Areas of Concern

The chronological listing of events in the Popen case constitutes Appendix II. This material was taken from a photocopy of the family service file which was supplied to the committee. A separate report for the Child Welfare Branch was compiled and dated December 8, 1977, and a further report was prepared for the Society Board of Directors, dated December 15, 1977.

The committee is concerned that discrepancies exist in these separate reports. The family service record indicates referral on June 17, and the initial enquiry states clearly that "this defensive, hostile young mother should be closely supervised considering the history of the recent six weeks." (two previous hospitalizations). The Child Welfare Branch report has the referral dated June 1. The report to the Board of Directors does not give a specific date other than the month.

In the June 19th entry in the family service file, it is stated that the case was due for assignment to H.R.C., but ... "there was apparently a misunderstanding about the opening of the case at that time." The Child Welfare Branch report states that "the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary." This is denied by the police. The Child Welfare Branch report indicates that the case was opened to H.R.C. on August 31. The report to the Board of

Directors states that in June, 1975, there was "insufficient evidence to warrant intervention on the part of the society" and that the police accepted a "watching brief." We explored this thoroughly with the police and they deny any such arrangement, stating that they assumed the case would be acted upon by the Society following referral, and indeed they made a follow-up telephone call to the Society on July 2nd. They also note that any decision or arrangement would be recorded in their files.

The committee is of the opinion that these discrepancies are serious in that they could indicate an attempt to camouflage case handling that is seriously inept, and is inexcusable in a case that is clearly one of child abuse. Two points are at issue, 1) the handling of this case in the initial phase, and 2) the unexplained discrepancies in the various reports, the record, and the information from the police.

The committee notes the excellent quality of the initial intake on June 17 and the responsiveness of the Society at that phase of the case. There appears to be no adequate explanation, however, for the fact that this case was left unattended from mid June until August 29, a period of roughly 10 weeks.

In our interviews we spent considerable time trying to determine what had happened to the Popen case during these 10 weeks. The caseworker to whom it was assigned (H.R.C.) claimed no knowledge of the case until August 29th, as the record indicates. The supervisor who would have made the assignment suggested that the caseworker simply didn't "pick up" the case. It was also suggested that he may have been on vacation. A check of agency records indicated that he was not. In addition, the supervisor noted that she did not know where the case was during the summer, and that the usual case opening procedure was not followed "for some reason." We note that the record indicates "a misunderstanding" in the opening of this case. In any event there is no escaping the fact that responsibility for case assignment and for monitoring what happens to cases, rests clearly with the supervisor and no one else. This is particularly important in abuse cases. The explanations given to the committee are not sufficient.

The committee is concerned about the apparent interference on the part of the Popen's lawyer, Mr. Higgins, with the caseworker, H.R.C., in the handling of this case. The case record states that:

"With regard to worker/client case relationships, case goals, etc. this was legally restricted by the Popen's lawyer and substantiated by a telephone call from Mr. Higgins to myself on January 16, 1976 at which time Mr. Higgins requested my help in changing a Court date. In trying to comply with his wishes I agreed I would be in touch with Mr. & Mrs. Popen, to which Mr. Higgins replied "please, over my dead body you don't." Consequently, under these circumstances, but by obligation to give evidence of recent home situations it was necessary I request permission from Mr. Higgins' office for the only two home visits which were January 16th/76 and February 20/76. On both these occasions permission was granted but with the added instruction "don't quiz them."

We questioned the caseworker's lack of knowledge of his rights and his failure to challenge or to ignore Mr. Higgins' interference. The worker informed us that he had in fact enquired of the supervisor whether Mr. Higgins had the rights he had assumed, and he was told by the supervisor to honour Mr. Higgins' request. We could obtain from the supervisor no answer that would explain this situation. When we asked why she did not consult the judge (whom she frequently consulted on matters of legal procedure) we were told that she "didn't think of it." We must wonder why consultation was not sought from any source. We were also informed by more than one person that the supervisor herself was intimidated by Mr. Higgins and "would have difficulty in going against his wishes."

We were informed by the supervisor that on the day of the court hearing (February 25) she approached Mr. Higgins and invited him to become a member of the Society's Board of Directors. He did in fact join the Board in March, 1976 and resigned in January, 1978.

We were also informed by the supervisor that she had previously asked the Local Director to retain an agency lawyer and this request had been denied on the grounds of lack of funds. (This was not verified).

We are concerned about some of the practices that appear to take place around court hearings. For instance at the February 25, 1976 court hearing, the supervisor asked for two months society wardship, when, we are told, the caseworker recommended six months. The Judge gave six months wardship in spite of the Society's request for the two months. When questioned about this the supervisor informed us that asking for only two months was "a strategy," that Mr. Higgins on behalf of the parents wanted two months and that the supervisor was in fact wishing to appear to be complying with his wishes. She informed us that she had privately spoken to the judge and informed him that she really wanted six months but would be asking for only two. This "strategy" was never, apparently, communicated to the caseworker, who was given the explanation that she would ask for two months because the child had been in the Society's care already for about six months.

If this is an accurate example of the way the court is used, and if this is an example of methods employed by the Society's supervisor/court worker, and if this is an example of the degree of trust between supervisor and caseworker and of the attitude to Mr. Higgins, then it brings the Society's integrity into question, as well as that of the court.

The committee is concerned about the rationale for and the procedure used in transferring the case from the first caseworker, H.R.C., to Mrs. L. It is usual procedure when a case is to be transferred for this to be discussed in conference with (at least) the supervisor and the two workers. It is also customary professional practice for the rationale for the transfer to be clearly spelled out and recorded. Also it is professionally sound for the transfer to take place on a gradual basis with the client given an understanding of the reasons for transfer and an opportunity to meet the new worker prior to the withdrawal of the present worker. In

the Popen case we find no discussion of the reasons for transfer, only the notation that "...in consultation with my supervisor this case will be transferred to Mrs. S. Lo..." On enquiring about this, the supervisor gave as her reason for transfer the fact that she wanted a female worker on this case and thought that Mrs. L., being oriental and Mrs. P. being Jamaican, and both young, they would "be a good match." She also noted that Mrs. L. had more time, being new on the staff, having a small caseload, and that Mrs. Popen would not talk to H.R.C. Our conversation with H.R.C. gave a different picture. He stated that the supervisor told him the case was to be transferred to Mrs. L. and it is his strong feeling that this was done in order to appease Mr. Higgins.

In any event, we question the method used in transferring this case and note that transfer should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim. In considering the method used in transfer we must question the supervisor's use of her authority, as well as her professional practice.

Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L. had been with the Society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel. Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor.

The process of decision-making in the agency comes into question and we are particularly concerned about the crucial decision to return Kim to her parents. The dynamics of this decision were explored meticulously as they relate also to the authority structure in the Society which will be discussed separately.

In exploring the decision to return Kim to her parents, we talked with the supervisor, the (now

retired) adoption supervisor, the child care worker, both family service workers and two police officers.

The record indicates that the decision to return Kim was made at a case conference on May 6, 1976 which involved both supervisors, the child care worker and the family service worker. It is our understanding that the question was whether to return Kim before the birth of the second child in early July, or to keep her in care until Mrs. Popen had learned to cope with the new baby. There did not seem to be any question of Kim's eventual return home. Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the conference was merely a formality, that the family service supervisor had previously made the decision that the child would be returned, and that the opinion of others would not be considered. We were also told that the constable, when he heard at a meeting prior to May that Kim might be returned, exclaimed "Do you want her in her grave within three months?" We verified this with the constable, who recalls making a statement to that effect although he could not vouch for the exact words used. The hospital social worker reported to us that he was "amazed to hear that the child had been returned." The Child Care record indicates Kim's upsets and regression after visits home, and Mrs. Popen's awkward handling of the child. It would appear that the philosophy of the family service department supervisor was to return children to their homes as soon as possible regardless of the opinion of other workers familiar with the case. It appears that the Society lost sight of its primary mandate which is to protect children.

It is a serious situation if all the facts in each case are not considered and opinions and observations shared and discussed. In a social work agency case decisions must be made for each case on an individual case basis, and not on the sole basis of an overall philosophy. In view of the evidence given to us, our opinion is that the family service supervisor failed to consider other opinions and made the decision to return Kim without adequate evidence that she would be safe. In fact, on the contrary, there was considerable evidence that this was still a

high risk home at the time the decision was made to return Kim home and continued to be so.

We note that since there had been only two visits prior to transfer of the case to Mrs. L. and work with the family was limited to a period of three months prior to Kim's return (sic). We also note in the recording the superficial quality of the relationship and understanding. A similar naivete is evident in the expectation that a Parent Effectiveness Training course, which had begun only ten days prior to the May 6 decision, would solve the Popen's parenting deficiencies. More specific indicators are: the notation that Mrs. Popen did not understand the needs of children; the relationship of the parents to Kim; the fact that (May 6) "home visits have proven to be very disruptive to Kim. Her behaviour regressed every time after her visits at home"; the description of Mrs. Popen's handling of Kim's temper tantrums and the child's reaction is not realistic; in the June 17 recording Mrs. Popen explains that Kim bumps into things and hurts herself; there is notation of Kim's difficult behaviour and of the pressures on Mrs. Popen; although a friendly relationship had been established with Mrs. Popen, this changed after the birth of the baby and she became "cold and distant," looked tired and unhappy and "seemed to be living in fear" that the CAS would take the child away, she seemed suspicious of the worker, and on July 26 was trying to avoid the worker. The Society was concerned enough to apply for a supervision order "due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough."

Discussion of decision-making brings into question the authority structure in the agency. We were told in the course of our interviews that the family service department assumed an unusual degree of case control, that the supervisor of that department had the final word, and that opposing her decisions was regarded as a personal affront. When there is a difference of opinion in a case matter it should be accepted practice that further opinion be sought, and that the person with final authority be brought into the decision-making process, namely the society director. This did not happen in the Popen case. Because we were told so often of the supervisor's misuse of authority and the facts

substantiate it, we must give credence to it. We must also question the fact that the local director apparently was either unable or reluctant to do anything about this situation in his Society. It is certainly possible, if not probable that he would not know the facts of the Popen case, since he would rely on the supervisor to keep him informed. But certainly he could not avoid knowing of the strains brought about by the supervisor's assumption of authority.

The committee is concerned that after the death of Kim the Society left the baby Karie in the care of the parents from August 11 to August 13 before apprehending. We are told by the supervisor that the baby was, in fact, in the care of neighbours in the same building, but the police inspector assures us that Karie was in the care of the parents except for a period of two to three hours during which time the Popens were with the police. The police inspector also informed us that when he contacted the supervisor to discuss taking Karie into care, he was told that the society "had no basis to take him into care." He informed us that in order to have the Society apprehend the baby it was necessary for the Crown Attorney and the Coroner's office to telephone to request this. (This latter was not verified).

The committee is concerned about the lack of involvement of the Society with agencies and services in the community. In any suspected child abuse case the onus is on the agency with prime responsibility, i.e. the CAS, to call regular case conferences involving all persons in any way connected with the case. Regular conferencing did not take place in the Popen case, rather, when information was shared this seemed to happen on an individual and also casual basis. This kind of all-inclusive conference should be held at a minimum at points of decision-making, and ideally at least monthly. In the Popen case such conferences should have included any agency personnel connected with the case including the foster mother, and other professional people such as the police, PHN, probation personnel and the hospital social worker and possibly Mrs. Popen's doctor. The decision to return a child in a risk situation is too crucial to be left to one or two individuals.

The qualifications of staff in the Society need further exploration. While we appreciate that various kinds of training have a role in a protective service, we note that the worker assigned to this case did not have social work qualifications or experience. We also note the lack of knowledge of the Society's authority on the part of the first caseworker assigned to the case, as well as the family service supervisor in relation to the Society's rights and the interference of the lawyer. This brings into question the frequency and level of in-service training programs and the provision by the Society for continuing education for staff in general. We understand that professional development programs are complicated by the unusual role of the clerical staff in the agency, and that tensions between professional and clerical staff are heightened by clerical staff expecting to be included in professional development meetings. While it is essential that clerical staff be a part of any general staff meetings, it is inappropriate that they attend professional development sessions. We must ask why this situation has been allowed to develop.

The role of administration is brought into question by these latter concerns. In also every interview with staff members comment was made about the failure of the director to exercise his authority or to give leadership to the staff. In the opinions of most, this resulted in his role being usurped by the supervisor of the family service department who lacked the proper authority to act as an administrator. Of all the complaints listed by staff it was the lack of firm leadership and control by the local director that resulted in the greatest sense of frustration and almost a feeling of abandonment. The committee was surprised to learn of the lack of clear procedural directives and written guidelines. We were informed that there is insufficient planning for children in care, that they are "neglected in care" and "moved from pillar to post with little planning." We also have the picture of little discipline and sloppy practices in the family service department. We are informed that Society records which are quite correctly kept in a vault are, in fact, readily accessible to a variety of people since so many have the combination and ready access.

Staff morale at all levels and in all departments is very low, with the possible exception of the Child Care Department, and apparently has been for some time. We note that the Supervisor of Field Services of the Ministry of Community and Social Services was called in June and again in November, 1977 to discuss staff problems, but it appears that no follow-up occurred (sic) following his visits.

The committee recognizes that in a service organization as complex as a children's aid society it is usual for some tensions to exist between departments. We were given the impression, however, that these tensions in the Lambton Society have become extreme to the point where they can interfere with or impede individuals in their work.

We are told of very poor relationships between staff and board, with little communication or real understanding of each other's roles and functions. There seem to be no clear channels of communication within the Society and no way for board members to know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or commitment to the organization.

We would like to think that the events of the Popen case could not be repeated today. However, we have doubts about this and note that three staff members of the Society told us about the reluctance of the Society to take action when cases are referred. Two cases were cited to us. In one there were 12 complaints and referrals over a period of six months. Nine such calls were made before the Society visited, having referred the matter to the Lambton Health Unit. The first visit was made in November (no one home), and the child was finally apprehended in December. This occurred (sic) in 1976, wardship being granted in January, 1977.

If this report is factual (and it can be checked) then we have doubts about the Society's capacity for responsiveness in the carrying out of their mandate, and again of the quality of supervision and professional standards.

We have gone into some detail in regard to the Society's role in the Popen case. We cannot, however, leave the impression that total responsibility rests with the Society. The responsibility for the events of the Popen case must be shared between the Society, the Ministry, the legal system and the community. Having detailed the Society's role, we look briefly at the others.

a) The Ministry of Community and Social Services

One of the purposes of the Child Welfare Branch of the Ministry of Community and Social Services is to supervise the way in which the societies carry out their mandate. This is spelled out in the Child Welfare Act (Part 1, Section 2(a)) as follows:

The Director shall

- a) advise and supervise children's aid societies;
- b) inspect or direct and supervise the inspection of the operation and records of children's aid societies;

The Ministry did not, in fact, carry out this function during the time of the Popen case.

Another purpose of the Ministry is to provide adequate funding so that an acceptable level of service is maintained. In our interviewing we heard repeatedly of high case loads, lack of time on the part of staff and insufficient supervisory staff. We have noted that a Society solicitor was not obtained due to lack of funds. We have noted the need for appropriate staff qualifications and for training programs. We suspect that the energies of the local director were channeled into budget rather than service considerations. We note that the Society has no accountant on staff. All of these considerations contribute to low staff morale and decreased effectiveness.

b) The Legal System

The legal system as it was demonstrated in this case must surely take some responsibility. We note especially the number of adjournments, and the interference of the lawyer with the Society caseworker. Although these actions may be accepted legal practice we see them as obstructing the Society's handling of the case.

In the criminal case hearing involving the Popens' and the Crown, the judge took the liberty, in the name of justice, to speak privately to the press and to condemn the CAS for "almost criminal neglect" in their handling of the case. The same press report indicates that evidence did not disclose the role of the Children's Aid Society. (Appendix III)* To our knowledge the judge's statement was made without the Society ever having the opportunity to defend itself or to explain its actions. We believe that there is another, more appropriate channel that could have been used (request for a judicial enquiry) to give the judge an opportunity to express his concern.

c) The Community

The community must also share in the responsibility for the death of this child. The Board of Directors of the Society is made up of representatives of the community and we are aware through lack of attendance at meetings and apparent lack of interest in the work of the Society, of an apathy on the part of many members of the Board, and an apparent lack of interest in serving on the Board, on the part of the community.

The derogatory appellation "child snatchers" is well known to CAS staff, and in an effort to encourage the community to use their services, societies generally have reacted by being hesitant to apprehend children, and having apprehended, to re-uniting them with their families as soon as possible.

A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected

*Not included in exhibit filed.

incidents, perhaps of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported. For example, in one instance a neighbour, in giving evidence at the criminal hearing, stated that she had heard Kim screaming for "five or ten minutes." She did nothing.

Recommendations

Based on our findings in the review of the Popen case, the following are the recommendations of the committee:

1. That a select committee of the Board, using other appropriate personnel, undertake a thorough review of the administration of the Society. The committee's mandate should include as a minimum,
 - a) the channels of communication within the Society and between staff and Board, (sic)
 - b) examination of the responsibilities of members of the Board,
 - c) examination of the job and reporting responsibilities of staff, and the administrative structure of the Society,
 - d) examination of the mechanisms for regular periodic case review,
 - e) recommendation of measures that might be taken to increase understanding between Board and staff.
2. That the Ministry provide consultation to assure that the Board's committee has the resources it requires to accomplish its task.
3. That the Board review the competence of supervisory staff and other staffing needs of the Society to assure that it is in fact able to provide a high quality service, with particular reference to its mandatory functions.
4. That the Board and staff work together to update or establish written policies and procedures for all programs and services of the society.

5. That the Ministry of Community and Social Services honour its legislated function of regular review and consultation with the societies, and report regularly to each society's Board of Directors.
6. That, in addition to case monitoring, the Ministry provide on-going consultation of a professional calibre to assist the Society to maintain professional standards of practice.
7. That the Province undertake to investigate the adequacy of funding for the child abuse program and protection services of this society to assure that adequate funding is provided for the Society to carry out its mandate as spelled out in the legislation.
8. That the Province review the present practice relating to use of the courts and the legal system in child welfare cases. In view of the events in the Popen case we are not convinced that the present system is the best possible to protect children and safeguard the rights of parents.
9. That the Board of the Lambton Society receive appropriate direction from the Law Society of Upper Canada related to conflict of interest when a solicitor who is a member of the Board is representing parties in a case which is active with the Society.
10. While we note that some steps have been taken to improve the handling of child abuse cases, it is recommended that the Society study and adhere to procedures detailed in "Guidelines of Practice and Procedure in the Handling of Cases of Child Abuse", published by the Ontario Association of Children's Aid Societies in 1976.

This Report is respectfully submitted by the review committee.

(Mrs.) Margaret Farina, BA, MSW, MEd., Chairman,
Associate Executive Director,
Ontario Association of Children's Aid Societies

"Margaret Farina"

Mr. Bruce Heath, BA, MSW,
Supervisor,
Ministry of Community and Social Services

"Bruce R. Heath"

Mr. Arne Petersen, BA, MSW,
Director of Resources,
Family and Children's Services of London and
Middlesex

"Arne Petersen"

APPENDIX I

652, Winchester Crescent
Sarnia, Ontario
N7S 4P7.

1977 12 19

Mr. R.N. McQuarrie, President
Ontario Association of Children's Aid Societies,
Suite 501
663 Yonge Street
Toronto, Ontario
M4Y 2P4

Dear Mr. McQuarrie:

No doubt you have been following the recent news release and editorials in the press pertaining to the conviction of Mr. & Mrs. Annals Popen relating to the death of their daughter Kim Anne Marie Popen. Prior to her death Kim had been a temporary ward of the Lambton County Children's Aid Society. She died shortly after her return to her natural parents.

Many have questioned the decision made by our agency to return Kim to her parents. Our own board is especially concerned. At an emergency board meeting held on Thursday December 15, 1977 (see attached news release) a motion was passed to request that a review committee of three social workers be appointed to review this case in detail. This request was favourably received in an earlier telephone conversation on the same day with Mr. Scotty Dymond, your executive director.

I am requesting, subject to your agreement, that you select 3 social workers whom you feel could visit Sarnia in order to 1) study this case in detail, 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies, and 3) make a report summarizing the activities of the staff with respects to this case and offer any reactions or recommendations they feel appropriate. Hopefully a report could be made available for Janury 24, 1978, which is our next regular board meeting.

cont...

The intention of such a review would be to examine the appropriateness of the staffs' actions in this case in order to prevent the recurrence of such a tragic event in the future. Because our board is essentially a lay group we are not in the best position to take an objective nor impartial view of the matter. Hence a "peer review" would be more fitting.

I am unaware of any past requests which are similar to the one being proposed here. Nevertheless I am hoping that you will look favourably on it. It could provide, for any member of our staff who may wish to express their views, an opportunity to do so.

I would welcome your early reply to this request as well as any suggestions you may have with respect to funding such a study. My business telephone number is 1-519-336-1500, and home number is 1-519-542-9713. Between December 22nd and January 2nd, 1978, I will be in Montreal and can be reached at the residence of Victor Longhurst, telephone number 1-514-747-4057. Alternatively you may wish to communicate as necessary with Mr. William Lovatt our local director.

Yours truly,

"David A. Allen"

David A. Allen, President
Children's Aid Society
Lambton County.

cc: Mr. H.H. Dymond, Executive Director
Mr. Wm. Lovatt, Local Director
Mr. Stephan Charko, Supervisor of Field Services

APPENDIX II

Case Events in Chronological Sequence as reported in Family Service file.

June 17, 1975. Referral by Det. Gander. Social Worker and case aide visit. Report written "should be closely supervised considering the history of the recent 6 weeks."

June 19 Recording. Case was due for assignment. "Apparently a misunderstanding about the opening of the case at that time."

August 31 Case opened to H.R.C.

September 1 Kim released from hospital, under care of child care worker, Mrs. M.K.

September 8 Initial Court hearing, adjourned to Oct. 29.

October 29 Court adjourned to January 19, 1976.

October 30 Criminal charges laid by police under C.W.A. Adjourned to November 13.

November 13 Adjourned to January 19, 1976.

January 16, 1976 P's lawyer, Mr. Higgins, tells worker not to be in touch with Ps ... "over my dead body." Worker requested permission of Mr. H. to visit and was told "don't quiz them."

January 16 Home visit.

January 19 Adjourned to February 23, 1976.

February 20 Home visit (only 2 home visits by H.R.C.) Worker records his feeling that Mrs. P. is a

proverbial liar - reveals her story of death of previous child at 7 months in Jamaica, her evasion of reasons. Mrs. P. isolated, young, inexperienced.

February 23

Mr. P. admits guilt.

February 25

Society gets order of society wardship for 6 months. Mr. P. to attend A.A., both parents to attend PET course. Weekly supervision in their home by CAS. Results of Kim's visits to be reported to supervisor, M.H., weekly.

February 29

Case transferred to Mrs. L. (H.R.C. informed of the transfer following court hearing of February 25.)

Noted Mrs. P's pregnancy. Mr. Brower, Probation, did not attend February 25 hearing nor did he communicate with CAS office.

February 27

Mrs. L. begins visits to P. Home. Records Mrs. P's revelations re her background, fact that she raised her brothers and sisters but did not seem to know that food, clothing and lodging were only one aspect of child rearing.

March 4

Home visit. Mrs. P. speaks of a 5 year old son in Jamaica. Worker records that with Kim in care tension is reduced in the home and that once Kim returns the situation will be different. It will require close observation and intensive moral support to parents.

March 18

Home visit. Mr. & Mrs. P. Home. PET course to begin April 22.

March 29 Court. Mr. P. pleads guilty of charge of neglecting to protect child. Probation and suspended sentence for 1 year.

April 15 Kim begins home visits weekly. Some differences in handling noted, need of course in parenting noted.

Worker continues weekly visits. Improvement noted and discussion of etiology of abuse. Need of parenting course noted.

May 6 Ps would like Kim home prior to birth of new baby. Worker records that the home visits have been very disruptive to Kim. Reported case conference, M.H., L. Archer, M. Kirby, Mrs. Lo decided Kim should either be returned home as soon as possible or home visits be stopped and Kim returned after parents adjusted to new baby. Need another visit before deciding.

Home visit. Ps told the society unsure, and worker feels Mr. P. needs to improve.

May 7 Mrs. K. and worker select May 27 as day to return Kim. No visits prior to that date. Mrs. P. informed.

May 27 Kim returned home.

May 31 Home visit. Kim has temper tantrums, hard to manage, is better on weekends when Mr. P. home.

June 1-16 "Overall situation is under control." Kim has flu near end of June and is teething, miserable. Some problems in handling Kim noted.

June 17-July 6 Difficulties in managing Kim reported. Reported that Kim would hurt self by bumping into things.

July 6 Karie born.

July 7-23 Home visits continue. Mrs. P appeared tired, cold and distant to worker. Some problems with Kim noted. Mrs. P seems afraid CAS will remove Kim again, is assured CAS not asking for continuing supervision order. July 23 Kim appeared happy.

July 26 Worker telephones. Mrs. P "putting her off." Worker and supervisor decide to apply for supervision order. "Home not stable." Court date arranged for Aug. 4.

July 27 Notices of hearing served on Mr. & Mrs. P.

August 4 Brief home visit. Kim sitting quietly.

August 11 Relatives phone to say Kim had died from a fall off patio.

August 12 Home visit. Mrs. P reports Kim was dizzy.

August 13 Karie taken into care.

August 18 Court date for Karie. Adjourned to August 30.

August 30 Court adjourned to September 20.

August 31 Mrs. P to Port Huron for lie detector test with Mr. Higgins.

September 20 6 months society wardship granted for Karie.

September 15 Mr. & Mrs. P. arrested, charged with manslaughter. Mr. P. granted

bail on September 20. Mrs. P. to St. Thomas Psychiatric Hospital.

September 27 Court hearing adjourned to November 9.

November 9 Adjourned to November 29.

November 29 Adjourned to January 13, 1977.

January 13, 1977 Adjourned to February 17, 1977. (at end of November Mrs. P out of St. Thomas took overdose. Committed to St. Thomas).

February 17 Court hearing adjourned to March 31.

March 31 Adjourned to June 15 and 16.

March 14 Court hearing re Karie adjourned to April 4.

April 4 8 months society wardship granted for Karie.

June 15-16 Preliminary hearing for Mr. & Mrs. P. Remanded to August 11 and 12, 1977.

June 27 Case transferred to H.R.C.

A REVIEW OF THE POPEN CASE

prepared for

THE CHILDREN'S AID SOCIETY OF THE CITY OF SARNIA

AND THE COUNTY OF LAMBTON

by

A Committee chaired by

Mrs. Margaret Farina, Associate Executive Director,
Ontario Association of Children's Aid Societies.

February 24, 1978

This is a confidential document. It was prepared for the Board of Directors of the Children's Aid Society of Sarnia and the County of Lambton. The Committee disclaims any responsibility for breach of the rules of confidentiality should any of its contents be disclosed to persons outside the Corporation.

The Mandate

The mandate for this review was stated in a letter received from the President of the Lambton Society dated December 19, 1977 and addressed to the President of the Ontario Association of Children's Aid Societies.

"I am requesting, subject to your agreement, that you select three social workers whom you feel could visit Sarnia in order to 1) study this case in detail; 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies; and 3) make a report summarizing the activities of the staff with respect to this case and offer any reactions or recommendations they feel appropriate...

The intention of such a review would be to examine the appropriateness of the staff's actions in this case in order to prevent the recurrence of such a tragic event in the future." (Appendix 1)

Subsequent to receipt of this request a chairman was appointed and a committee of three was struck. Mrs. Margaret Farina, Associate Executive Director of the Ontario Association of Children's Aid Societies was appointed chairman, the committee members being Mr. Bruce Heath, a former local director of a children's aid society and presently a Supervisor with the Ministry of Community and Social Services, and Mr. Arne Petersen, Director of Resources with the London Family and Children's Services. Composition of the committee was considered carefully and it is thought that a good representation of relevant expertise was achieved. The committee met on January 13th to study written material pertinent to the task and to discuss the method that would be used. Subsequently we visited Sarnia on January 25th to 28th to interview those people concerned directly with the case, and others concerned with the operation of the Society, and generally to conduct this phase of the review. The committee worked under considerable time pressure as its report was requested for the Lambton Society's February Board meeting.

We take this opportunity to express our thanks to the Society President, Mr. David Allen, the Local Director, Mr. William Lovatt and those we interviewed for the excellent co-operation on their part.

We also take this opportunity to commend the Board of Directors of the Society and the President for having requested this review.

We also note at the outset of this Report that some 1178 children who have come into the care of the Society over the past ten years, Kim Popen is the only one to have died from other than natural causes while in the Society's care. While we note this, we also note that one is too many, and it is our hope, shared by the Society, that this Report will assist in assuring as far as is humanly possible that this never happens again.

The Method Used

The method the committee adopted was to read all case material, reports, court transcripts and press clippings related to the case; to interview all those persons who were involved in decision-making or case handling; and any others who were associated with the case. In addition we talked with people who are associated with the Society but who were not involved in this case, and we read letters received from two former foster parents.

All interviews were held in the Village Inn rather than on Society premises as it was felt that this more neutral setting would be more conducive to an open sharing of information. Interviews were scheduled by the Society president, and staff members were informed of our desire to talk with them. Certain key people were requested to make appointments. In three instances interviews were conducted by telephone because people were not available, and in at least two cases we asked staff members to return for a second interview as we wished to clarify information they had given in the light of subsequent information received. In addition to this, a local radio station carried several reports of our presence in the city and the purpose of our visit, inviting anyone interested to arrange to see us. We also had extended interviews both initially and at the

conclusion with the President and the Local Director. It is the opinion of the committee that more than a reasonable opportunity was given for interested persons to come forward.

Interviews were conducted with 11 staff members including three supervisors (2 present and 1 past) and the Local Director, two board members including the president, three members of the Lambton police, the hospital social worker, the probation officer and volunteer, the society solicitor, one of the physicians involved in the case, and the Supervisor of Field Services for the Ministry of Community and Social Services. A total of 22 people were interviewed.

Areas of Concern

The chronological listing of events in the Popen case constitutes Appendix II. This material was taken from a photocopy of the family service file which was supplied to the committee. A separate report for the Child Welfare Branch was compiled and dated December 8, 1977, and a further report was prepared for the Society Board of Directors, dated December 15, 1977.

The committee is concerned that discrepancies exist in these separate reports. The family service record indicates referral on June 17, and the initial enquiry states clearly that "this defensive, hostile young mother should be closely supervised considering the history of the recent six week." (Two previous hospitalizations). The Child Welfare Branch report has the referral dated June 1. The report to the Board of Directors does not give a specific date other than the month.

In the June 19th entry in the family service file, it is stated that the case was due for assignment to H.R.C., but ... "there was apparently a misunderstanding about the opening of the case at that time." The Child Welfare Branch report states that "the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary." This is denied by the police. The Child Welfare Branch report indicates that the case was opened to H.R.C. on August 31. The report to the Board of

Directors states that in June, 1975, there was "insufficient evidence to warrant intervention on the part of the society" and that the police accepted a "watching brief." We explored this with the police and they deny any such arrangement, stated that they assumed the case would be acted upon by the Society following referral, and indeed that they made a follow-up telephone call to the Society on July 2nd. They also note that any decision or arrangement would be recorded in their files.

The committee is of the opinion that these discrepancies are serious and that they warrant further exploration. Two points are at issue, 1) the handling of this case in the initial phase, and 2) the unexplained discrepancies in the various reports, the records, and the information from the police.

The committee notes the excellent quality of the initial intake on June 17 and the responsiveness of the Society at that phase of the case. Our interviews, however, produced no adequate explanation for the fact that this case was left unattended from mid June until August 29, a period of roughly 10 weeks. In view of this, procedures, routines and monitoring of the way in which cases are transferred from intake should have further scrutiny (sic).

The committee's questioning related to the Society's role in relation to the court brought us to the conclusion that a solicitor should be retained. It was also apparent to us that staff training is required specifically to give staff an understanding of their role in relation to the court, and their rights in relation to legal representatives of clients.

We also suggest strongly to the Society that they request the Law Society of Upper Canada to advise them in relation to the possibility of a conflict of interest when a lawyer who is also a Board member represents a client who is an active case with the Society.

The committee is concerned about the rationale for and the procedure used in transferring the case from the first caseworker, H.R.C., to Mrs. L. It is usual procedure when a case is to be transferred for this to be discussed in conference

with (at least) the supervisor and the two workers. It is also customary professional practice for the rationale for the transfer to be clearly spelled out and recorded. Also it is professionally sound for the transfer to take place on a gradual basis with the client given an understanding of the reasons for transfer and an opportunity to meet the new worker prior to the withdrawal of the present worker. In the Popen case we find no discussion of the reasons for transfer, only the notation that "...in consultation with my supervisor this case will be transferred to Mrs. S. L....". On enquiring about this, the supervisor gave as her reason for transfer the fact that she wanted a female worker on this case and thought that Mrs. L., being oriental and Mrs. P. being Jamaican, and both young, they would "be a good match." She also noted that Mrs. L. had more time, being new on the staff, having a small caseload, and that Mrs. Popen would not take to H.R.C. Our conversation with H.R.C. gave a different picture. He informed us that he had not been involved in the decision to transfer, and his views of the reasons for transfer were at variance with those stated to us by the supervisor.

In any event, we question the method used in transferring this case and note that transfer should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim.

Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L. had been with the Society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel.

The process of decision-making in the agency comes into question and we are particularly concerned about the crucial decision to return Kim to her parents. The dynamics of this decision were explored as they relate also to the authority structure in the Society which will be discussed separately. In exploring the decision to return Kim to her parents, we talked with the family service supervisor, the (now retired) adoption supervisor,

the child care worker, both family service workers and two police officers.

The record indicates that the decision to return Kim was made at a case conference on May 6, 1976 which involved both supervisors, the child care worker and the family service worker. It is our understanding that the question was whether to return Kim before the birth of the second child in early July, or to keep her in care until Mrs. Popen had learned to cope with the new baby. There did not seem to be any question of Kim's eventual return home. Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions. We were also told that the constable, when he heard at a meeting prior to May, that Kim might be returned, exclaimed, "Do you want her in her grave within three months?"

We verified this with the constable, who recalls making a statement to that effect although he could not vouch for the exact words used. The hospital social worker reported to us that he was "amazed to hear that the child had been returned." The child care record indicates Kim's upsets and regression after visits home. It would appear from the information given to us that the Society, in an effort to re-unite the family, lost sight of its primary mandate which is to protect children. It is our opinion that the process of decision-making related to the handling of cases requires further scrutiny.

We note that there had been only two visits prior to transfer of the case to Mrs. L. and work with the family was limited to a period of three months prior to Kim's return. We also note from the recording what we interpret to be a superficial quality of the relationship and understanding. A similar naivete is evident in the expectation that a Parent Effectiveness Training course, which had begun only ten days prior to the May 6 decision, would correct the Popen's parenting deficiencies. More specific indicators are: the notation that Mrs. Popen did not understand the needs of children; the

relationship of the parents to Kim; the fact that (May 6) "home visits have proven to be very disruptive to Kim. Her behaviour regressed every time after visits at home." Mrs. Popen's handling of Kim's temper tantrums and the child's reaction as described in the record sounds unrealistic; in the June 17 recording Mrs. Popen explains that Kim bumps into things and hurts herself; there is notation of Kim's difficult behaviour and of the pressures on Mrs. Popen; although a friendly relationship had been established with Mrs. Popen, this changed after the birth of the baby and she became "cold and distant," looked tired and unhappy and "seemed to be living in fear" that the CAS would take the child away; she seemed suspicious of the worker, and on July 26 was trying to avoid the worker. The Society was concerned enough to apply for a supervision order "due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough."

The committee is concerned that after the death of Kim the Society left the baby Karie in the care of the parents from August 11 to August 13 before apprehending. We are told by the supervisor that the baby was, in fact, in the care of neighbours in the same building, but the police inspector assures us that Karie was in the care of the parents except for a period of two to three hours during which time the Popens were with the police. The police inspector also informed us that when he contacted the supervisor to discuss taking Karie into care, he was told that the Society "had no basis to take him into care." He informed us that in order to have the Society apprehend the baby it was necessary for the Crown Attorney and the Coroner's office to telephone to request this. (This latter was not verified).

The committee is concerned about the apparent lack of involvement of the Society with agencies and services in the community at the time. In any suspected child abuse case the onus is on the agency with prime responsibility, i.e. the CAS, to call regular case conferences involving all persons in any way connected with the case. Regular conferencing did not take place in the Popen case, rather, when information was shared this seemed to happen on an individual and almost casual basis. This kind of

all-inclusive conference should be held at a minimum at points of decision-making, and ideally at least monthly. In the Popen case such conferences should have included any agency personnel connected with the case including the foster mother, and other professional people such as the police, PHN, probation personnel and the hospital social worker and possibly Mrs. Popen's doctor. The decision to return a child in a risk situation is too crucial to rest with one or two individuals.

The qualifications of staff in the Society need further exploration. While we appreciate that various kinds of training have a role in a protective service, we note that the worker assigned to this case did not have social work qualifications or experience. We also note that, according to the information given to us, there was a lack of knowledge of the Society's authority on the part of the first caseworker assigned to the case, as well as the family service supervisor in relation to the Society's role with the court, and legal representatives. This brings into question the frequency and level of in-service training programs and the provision by the Society for continuing education for staff in general. We understand that professional development programs are complicated by the unusual role of the clerical staff in the agency, and that tensions between professional and clerical staff are heightened by clerical staff expecting to be included in professional development meetings. While it is essential that clerical staff be a part of any general staff meetings, it is inappropriate that they attend professional development sessions. We must ask why this situation has been allowed to develop.

The role of administration is brought into question by these latter concerns. In almost every interest with staff members comment was made about the lack of leadership and direction on the part of the local director. Of all the complaints listed by staff it was the lack of firm leadership and control by the local director that resulted in the greatest sense of frustration and almost a feeling of abandonment. The committee was told that there are few clear procedural directives or written guidelines. We were informed that there is insufficient planning for children in care, that they are "neglected in care" and "moved from pillar to post with little

planning." We also have the picture of little discipline and sloppy practices in the family service department. We are informed that Society records which are quite correctly kept in a vault are, in fact, readily accessible to a variety of people since so many have the combination and ready access.

Staff morale at all levels and in all departments is very low, with the possible exception of the Child Care Department, and apparently has been for some time. We note that the Supervisor of Field Services of the Ministry of Community and Social Services was called in June and again in November, 1977 to discuss staff problems, but it appears that no effective follow-up by the Society occurred (sic) following his visits.

The committee recognizes that in a service organization as complex as a children's aid society it is usual for some tensions to exist between departments. We were given the impression, however, that these tensions in the Lambton Society have become extreme to the point where they can interfere with or impede individuals in their work.

We are told of poor relationships between staff and board, with little communication or real understanding of each other's roles, authority and functions. There seem to be no clear channels of communication within the Society and no clear means by which board members can know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that Board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or committment to the organization.

We would like to think that the events of the Popen case could not be repeated today. However, we reserve opinion about this and note that three staff members of the Society told us about the apparent reluctance of the Society to take action

when cases are referred. Two cases were cited to us. In one there were 12 complaints and referrals over a period of six months, the first being in July. Nine such calls were made before the Society visited, having referred the matter to the Lambton Health Unit. The first visit was made in November (no one home), and the child was finally apprehended in December. This occurred in 1976, wardship being granted in January, 1977. The committee recognizes that this was a verbal report and was unsubstantiated by evidence. The case records, however, can and should be checked.

We have gone into some detail in regard to the Society's role in the Popen case. We cannot, however, leave the impression that total responsibility rests with the Society. Responsibility for the events of the Popen case must be shared by other systems which impinge upon the Society. Having detailed the Society's role, we look briefly at some of the others.

a) The Ministry of Community and Social Services

One of the purposes of the Child Welfare Branch of the Ministry of Community and Social Services is to supervise the way in which the societies carry out their mandate. This is spelled out in The Child Welfare Act (Part 1, Section 2(a)) as follows:

The Director shall

- a) advise and supervise children's aid societies;
- b) inspect or direct and supervise the inspection of the operation and records of children's aid societies'

It would have been desirable had the Ministry had closer contact with the Society during this period.

Although we did not verify, we heard repeatedly of high case loads, lack of time on the part of staff and insufficient supervisory staff. We have noted the need for appropriate staff qualifications and for training programs. We suspect that the energies of the local director

were channeled into budget rather than service considerations. We note that the Society has no accountant on staff. All of these considerations contribute to low staff morale and decreased effectiveness, and they are areas that require further examination, by the Board of Directors and the Ministry.

b) The Community

The community must also share in the responsibility for the death of the child. The Board of Directors of the Society is made up of representatives of the community and we were made aware through lack of attendance at meetings and apparent lack of interest in the work of the Society, of an apathy on the part of many members of the Board, and an apparent lack of interest in serving on the Board, on the part of the community.

A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected incidents, perhaps because of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported. For example, in one instance a neighbour, in giving evidence at the criminal hearing, stated that she had heard Kim screaming for "five or ten minutes." She did nothing.

Recommendations

The committee's explorations in relation to the Popen case raise serious concerns. Our mandate was not to conduct a legal review, or were we constituted to do so. Sufficient observations, however, lead us to recommend to the Board of Directors that they request the Ministry of Community and Social Services to initiate a Judicial Enquiry without delay.

It is a further recommendation of the committee that the Ministry be requested to provide whatever professional staff may be necessary to assist the Society to carry out its mandate pending the results of the Judicial Enquiry.

This Report is respectfully submitted by the review committee.

(Mrs) Margaret Farina, BA, MSW, MEd., Chairman,
Associate Executive Director,
Ontario Association of Children's Aid Societies.

"Margaret Farina"

Mr. Bruce Heath, BA, MSW,
Supervisor,
Ministry of Community and Social Services.

unsigned

Mr. Arne Petersen, BA, MSW,
Director of Resources,
Family and Children's Services of London and
Middlesex.

"Arne Petersen"

Reasons for Judgement
His Honour Judge Q.L. Nighswander
Delivered February 25, 1976

Judge:

Now first, the evidence that was accepted into the record from the charge against Mr. Popen under Section 41 of the Child Welfare Act as now a part of the evidence in this case as accepted by all parties and provided for under Section 40-3 of the Act, is that the child Kim Popen received severe injuries, some of these injuries as a result of Mr. Popen's responsibilities, and on his own admission, occurred while he was under the influence of alcohol. I have had the evidence of Dr. Singh and the hospital records which corroborate his evidence, that this child was examined and admitted to the St. Joseph's Hospital on the 22nd of March, 1975, and at that time the child had a fracture of the left arm. Dr. Singh stated that the mother's explanation of this fracture that the child had been injured while being dressed was not consistent with any such injury that he had observed as a paediatrician (sic). That was his evidence, that that was not an explanation that was acceptable to him. Then a further admission on the 31st of August where the child, on the evidence of Dr. Singh and the admitting nurse and the nurse on the ward where the child was, that this child was found to have a new fracture on the left arm, bruising on the left and right arm, bruising on the knees, a cut on the lip and bruising on the cheek, and Exhibits 1 and 2 illustrate some of these bruises and injuries. The bruising on the upper arms of the child was bruising that was around on both sides of the arm, and the explanation that this could have been caused by a fall is an explanation that seems physically impossible, for a person to be bruised on both sides of two arms. Dr. Singh stated than an explanation that was given to him was that the baby fell from the crib; he stated that babies can't pull themselves up at that age, and are not indeed to the point of walking or crawling out of a crib. Now, we have the mother's evidence that she took the child to

the hospital when she observed this. She observed her husband while he was drinking, having ahold(sic) of the child; that the child fell from the crib since she was sitting on some kind of a rocker or some other kind of sitter in the crib, and fell out because the edge of the crib was down, and she found the child under the bed. Now, this could happen. There is no question about this. This could happen, but it certainly could not physically possibly cause all the injuries to the child. It could have caused one or two of the bruises, but it would not seem possible for a child to have bruises on both sides of its arms and its knees and two ankles and a cut lip from one fall. I am satisfied that the injuries to this child were caused - many of them at least - by mishandling by the people in whose charge the child was. Mr. Popen, the father, has admitted that some of this could have been caused by himself, and he pled guilty to a charge that accused him of this. The mother in her evidence has suggested that she did see her husband while drinking, holding the child. I can appreciate the mother and her difficulties in giving evidence against her husband when in fact this is what she would be doing, but we are dealing here with care of a child. I find that this child is in need of protection in accordance with Section 20(1)(b)(iii) of the Child Welfare Act; that this child's date of birth is the 11th of January, 1975; that the place where the child was taken into protection is the City of Sarnia and the religion of the child is Roman Catholic. Now, it is clear on the evidence that we have parents who have demonstrated that they are interested in their child. They have come to visit, and the description of their visits is not inconsistent with parents that were interested in their child; and it is also noted that it was the mother of the child that initiated medical care when the child needed it. However, loving and being interested in a child is not enough for any child. A child, to survive in this world, needs other kinds of care, and I am quite satisfied that this child received a number of injuries as a result of brutal handling on the part of the father. Maybe he didn't intend to harm the child, but that does not do anything for the child when the child receives injuries. For a child two months of age to have a broken arm from being dressed, I accept the evidence of Dr. Singh that this is completely inconsistent with any injury that could be sustained while a child

is being dressed. Certainly a child probably could have strained muscles and so forth, but a fracture of an arm for a two-months child is consistent with very improper handling, as with the other bruises. Now, the Children's Aid Society today has suggested two months Society Wardship, and this is agreeable to the parents, but I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child. The father has suggested and admitted that he has an alcohol problem and that this is the cause of all this trouble. If this is so, then before this child can be safe near this man, we have to have clear-cut evidence that this man has done something very concrete about his problem. If it is severe enough to cause this child this injury, then it is not going to be corrected overnight. Some time is necessary. On the other hand, I believe that these parents have a sincere interest in their baby, although they have demonstrated an unusual way, to date, in expressing it. I am, therefore, going to make an order today for Society Wardship for a period of six months. I am aware that the child has been in care for a length of time, but at the same time we have no evidence before us of what Mr. Popen has done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time. I, therefore, am committing the child to the care and custody of the Children's Aid Society, City of Sarnia, County of Lambton, for a period of six months dating from today.

SCHEDULE 2-I

THE LAMBTON HEALTH UNIT

To: Nursing Department Date: June 16, 1978
From: Dr. Lucy M.C. Duncan

PROCEDURE RE CHILD ABUSE RECORDS

Please observe the following procedures in the interest of accuracy and confidentiality.

1. When child abuse or neglect is reported to us or suspected by our staff a family folder is to be set up at once.
2. Staff are to make a written record on a NCR memo of conversations, including telephone call, regarding the child.
 - one copy is for the family folder
 - one copy is to be given to Dr. Duncan for her Child Abuse Case File
 - one copy is to be retained by the nurse assigned to visit the case.
3. Nurse's Report of Examination of Child (Form N#7) is to be filed in Family File in Front Office, and a copy of Examination Report is to be given to Mrs. Harrison to take to Children's Aid Society.
4. Record on family file date case transferred to Children's Aid Society.
5. The nursing family record and the separate family folder are to be kept for ten years.
6. These confidential reports may only be disclosed with Dr. Duncan's permission.

Lucy M.C. Duncan.

THE LAMBTON HEALTH UNIT

GUIDELINES

Re: CHILD ABUSE CASES

C.A.S.

DR. DUNCAN

HOSPITAL CHILD
ABUSE COMMITTEE

MRS. CAROL HARRISON

DISTRICT PUBLIC HEALTH NURSE

Referrals to The Lambton Health Unit come from concerned citizens, the schools, social agencies, the police, doctors, and the Hospital Child Abuse Committee.

Dr. Duncan is the Health Unit representative on the Hospital Child Abuse Team.

Mrs. Carol Harrison is Liaison Nurse between the Children's Aid Society and The Lambton Health Unit.

In Dr. Duncan's absence a delegate (Mrs. Harrison or Mrs. Dent) attends the Hospital Child Abuse Committee Meeting.

Dr. Duncan will copy the Hospital Child Abuse Committee Minutes to give to Mrs. Lefebvre so she may notify the Public Health Nurses who have suspected cases of abuse in their district. The Minutes then pass to Mrs. Harrison.

Letters to the Children's Aid Society are to be signed by Dr. Duncan and a copy given to Mrs. Harrison.

Referrals to The Lambton Health Unit and to Mrs. Harrison from the Children's Aid Society must be confirmed in writing (NCR acceptable) and replies from The Lambton Health Unit to the Children's Aid Society will be in writing.

LD/cc - April 13, 1978

THE LAMBTON HEALTH UNIT

CHILD HEALTH PROGRAMME

NURSE'S REPORT

DATE OF VISIT _____

REQUEST FROM: Hospital _____ Family Doctor _____ Police _____
Family Court _____ C.A.S. _____ School _____

CHILD'S NAME _____ Date of Birth _____

ADDRESS _____

PARENT OR GUARDIAN _____ Telephone No. _____

FAMILY PHYSICIAN _____

INSTRUCTIONS TO VISITING NURSE

- 1) Request child be undressed.
- 2) If a bruise, burn or other injury is present, the nurse is to state site and size of lesion on this report.
- 3) If child abuse or neglect is suspected, the nurse is to notify Dr. Duncan (or Nursing Director) immediately.

CLOTHING _____

EMOTIONAL STATE _____

NUTRITION _____

SKIN CONDITION _____

HEAD _____

NECK _____

CHEST _____

ABDOMEN _____

GENITALIA _____

BACK _____

BUTTOCKS _____

ARMS _____

HANDS _____

LEGS _____

FEET _____

COMMENTS OR EXPLANATION GIVEN _____

HEALTH COUNSELLING GIVEN _____

NURSE'S SIGNATURE _____

REFERRAL TO: C.A.S. _____ Hospital Child Abuse Team _____

LD/CC
May 25.78

LIAISON WITH CHILDREN'S AID SOCIETY

Objectives:

- To improve communication.
- To establish regular meetings with C.A.S. in order to make appropriate referrals.
- To participate in inter-agency conferences.
- To avoid over-lapping of services.
- To interpret the role and functions of C.A.S. and P.H.N.
- To consider and evaluate the variables which may influence the health status and social well-being of the child.
- To enhance the effectiveness of the delivery of services.
- To consider the factors that influence the development and implementation of a plan of action.
- To encourage attitudes and actions which facilitate the prevention of disease and will promote the optimum health of the child.
- It must be noted that the P.H.N.'s are guests in the homes they visit. The clients can refuse them entry, except where there is a Court Order.
- When a P.H.N. suspects child abuse, she must notify C.A.S. and Dr. Duncan/or Mrs. Lefebvre.

LD/cc
June 16, 1978

CHAPTER 8LEGISLATION AND THE CENTRAL REGISTER

"One of the greatest delusions of this world is the hope that the evils of this world can be cured by legislation."

The Central Register of Child Abuse, the hub of all legislation in this area, has been in operation since 1966. It is maintained by the Child Welfare Branch and is Ontario's first systematic documentation of child abuse. In the first four years of its operation, over 1,600 cases were reported. In about 4 per cent of the cases, the abuse was repeated. Charges were laid in 172 cases, and these resulted in 49 convictions.

The availability of such statistical information seems sufficient justification for the Register's continued existence. However, in the course of our study, it became evident that for statistical purposes alone the Central Register is of limited value. The reasons for this will be discussed below. It also became obvious from our inquiries that the information contained in the Register is rarely used by the local Children's Aid Societies. Since it is inadequate for research purposes, and apparently ineffective for service, should the Central Register be continued? Some comments on the past and future of Child Abuse Legislation, and a review of the research findings, provide our answer to this question.

CHILD-ABUSE LEGISLATION

The Child Welfare Act (Ontario) 1965 states:

Sec. 41(1) Every person having information of the neglect, abandonment, desertion or physical ill-treatment of a child shall

report the situation to a Children's Aid Society or Crown Attorney.

- (2) Subsection 1 applies notwithstanding that the information is confidential or privileged and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable or probable cause.

Physicians are not specifically mentioned in Section 41, and there is no penalty for failure or refusal to report cases of abuse.

The term "physical ill-treatment" can be widely interpreted and is not defined in this section. However, Section 19, dealing with Protection and the Care of Neglected Children, does appear to cover physical abuse.

"Child in need of protection" means: Section 19 (xii) - A child whose life, health or morals may be endangered by the conduct of the person in whose charge he is."

The Canadian Criminal Code, Section 197, could also be used to presecute parents (or anyone in loco parentis) for failing to provide the necessities of life for any child under the age of sixteen. Other sections of the Criminal Code make it a criminal offence to assault or cause bodily harm to any person.

REPORTING IN PRACTICE

We found widespread differences between local Children's Aid Societies in the kinds of cases they reported to the Central Register. Variations in the use of the Register may be partly explained by the different criteria of child abuse. Metro Toronto C.A.S., for example, rarely if ever reported cases of sexual assault or severe over-disciplining. Ottawa C.A.S. reported all such cases. The Director of another C.A.S. explained that cases were only reported by his agency after a physician's examination had confirmed that the child's injury was the result of

deliberate abuse. These are only a few instances of how the Register is used by different societies.

There is need of a generally accepted definition of child abuse so all such instances can be reported in a standardized way. There is also need of a time-limit for the reporting of cases. Some agencies report cases immediately, others delay several weeks. Even in the recording of data, the margin for error is too large. There is not even a standard way of writing dates, so an event occurring on October 6th, 1969, may be annotated as 10.6.69 and then recorded as occurring on June 10, 1976, - a trifling matter perhaps? A serious source of error in duly reported cases was the failure of some Societies to provide all the information required of them. This accounts for gaps in some tables on such crucial points as age and sex of child, who reported the case, and so on. If more care was taken in accurately reporting cases in the past, the value of the Central Register's data would be correspondingly higher today.

CROWN ATTORNEYS

The Child Welfare Act, Section 41, provides an option to those reporting child abuse. Cases may be reported either to a Children's Aid Society or to a Crown Attorney. The C.A.S. involvement has already been described. What is the role of the Crown Attorney?

Through the office of the Director of Public Prosecutions Crown Attorneys were asked to provide information on the number of cases of child abuse reported to them in 1970. Ten positive replies were received, yielding 30 cases in all. The next step, to collect more detailed information on these 30 cases, was - to say the least - unrewarding. Only one of the Crown Attorneys consulted could assist us. Incredible though it may seem, we were repeatedly informed that no records of reported cases of child abuse were kept on hand. The C.A.S. involved appeared to have no knowledge of the Crown cases, and, as far as can be ascertained, the Crown Attorneys did not report the cases to the Central Register. This unfortunate gap in reporting needs to be closed. Crown Attorneys should report all cases

of child abuse brought to their attention to the C.A.S. and to the Central Register. If these cases are reported to the C.A.S., they may be followed up; if they are reported to the Central Register, there will be centralized listing of all reported abuse cases available to social workers and authorized researchers.

THE SUPERVISING CORONER'S OFFICE

The Crown Attorneys do not as a matter of course report cases of abuse to the Central Register. Do the Coroners in Ontario report the battered child deaths that are known to them? By courtesy of the Ontario Supervising Coroner, the records of 46 suspected or confirmed cases of abuse leading to death, which occurred between January 1965 and May 1971, were made available to us for study. Only nine of the 46 cases were reported to the Register. This is a most serious omission. In at least 18 of the 46 cases, young brothers and sisters were also at risk.

Two cases, neither of them reported to the Register, demonstrate the problem.

- (1) The mother was pregnant at the time of her child's (sic) death. She had two other children, one of whom was reported to have a black eye and a bruised back.
- (2) The father was jailed for assaulting and killing his seven-week-old baby. A year earlier, he was given a suspended sentence for mistreating another child who subsequently died of pneumonia.

In conclusion, the following points must be made about the Central Register:

1. Not all cases of child abuse are being reported by the responsible agencies.
2. When cases are reported, the data are frequently incomplete.
3. The fact that the staff of the C.A.S. makes only sporadic use of the Register suggests

that the staff places little confidence in its value.

4. If the Register is to serve a useful function, guidelines defining child abuse will have to be issued to all reporting agencies.
5. In the future the staff of the Child Welfare Branch must take a more zealous approach to matters of documentation to improve the quality of the Register.
6. Child abuse is coming to be regarded as a gross symptom of family distress, rather than a serious result of an individual's pathological condition, so the Register itself should be reorganized to reflect this. In the future, emphasis should be placed on information relating to family function and dysfunction instead of on the isolated abusive episode.

DO WE NEED A CHIILD (sic) ABUSE REGISTER?

"The need to discover and identify child victims of abuse is the compelling reason for devising a case-finding tool such as the reporting law." Thus does the American Humane Association's publication, "Child Abuse Legislation in the 1970's" stress the need for a Central Register. But the Association's publication provides little evidence that the Registers are being used for the purposes for which they were originally designed (9).

Those who defend the Register stress the fact that the Register records each instance of abuse to a child. To avoid detection abusive parents often take their children to a different hospital or doctor when medical attention is required. The Central Register should alert the responsible authority of repeated abuse. In actual practice, the Register is rarely used for this purpose. Indeed, doctors not only fail to report cases to the Register, they hardly seem to be aware of its existence.

The reluctance of physicians to use the Register is well known. Some are anxious to protect

the parent from what they regard as the punitive intervention of the C.A.S.; others want to avoid court proceedings. Legally the physician must report all instances of abuse to the Register, so this issue would be sharpened if and when a penalty for failing to report were introduced (10).

Mandatory reporting has already been proposed by Mary Van Stolk, who recommended a fine of \$500 or three months of imprisonment or both for erring physicians. Subsequently, she has increased the recommended fine to \$1,000. But legislators are unlikely to adopt such a proposal. In addition, the knowledge that physicians face fines and penalties might deter parents from securing the necessary medical attention for their injured offspring.

Extracts from The Police Act
R.S.O. 1970, Chapter 351

PART VI
GENERAL

Constables
empowered
to act
throughout
Ontario

54. Every chief of police, other police officer and constable, except a special constable or a by-law enforcement officer, has authority to act as a constable throughout Ontario. R.S.O. 1960, c.298, s.46; 1966, c.118, s.14.

Duties and
powers of
members of
police forces

55. The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables. R.S.O. 1960, c.298, s.47; 1966, c.118, s.15

SCHEDULE 2-L

CHILDREN'S AID SOCIETY, SARNIA POLICIES FOR CHILD CARE SERVICES

1. These services are for children whom the Society has taken into its care, either with the parents' consent and approval, or by apprehension as provided in Section 20 (Child Welfare Act, 1965):-

"A constable or other police officer, the Director, a local director or a person authorized by the Director or by a local director may take without warrant to a place of safety any child apparently in need of protection and detain the child there until the child can be brought before a judge, or he may apply to a judge for an order requiring the person in whose charge the child is to produce the child before a judge at the time and place named in the order."

2. These services include suitable planning for the children in the care of Society, placement and supervision of children in foster homes or any other suitable facilities approved by the Society. Adoption is included in a separate section.
3. The Society shall be responsible for providing for the total development of the child, such as a good parent would.
4. In order to fulfill this responsibility the Society shall work in co-operation with foster parents, staff of institutions and all other community resources in the best interests of the child.

ADMISSION TO CARE

The needs of the child shall be the principal criterion(sic) for the decision whether to remove him from his parents and provide another type of care.

The Society shall supervise wards of other Societies placed in this area when requested by the parent Society or by the Child Welfare Branch.

PLANS FOR CHILD

The Society endorses the plan to work with a child's parent(s) where practicable, with the object of re-establishing the home for the child.

For Crown Wards, the Society shall, wherever possible and advisable, arrange for adoption and if this is not possible or advisable, arrange for other satisfactory permanent care.

The Society shall, to the best of its ability, assist the child to prepare adequately for leaving Crown guardianship.

FOSTER HOME FINDING

- (a) Applications to become foster parents shall be accepted from people living in the City of Sarnia or County of Lambton.
- (b) The Foster Homefinder shall be responsible for the Home Studies of applicants. He shall be responsible for bringing to the attention of his supervisor the areas of need. The Local Director shall keep the Board of Directors informed of the situation relative to this area of work and the Board of Directors, Local Director and staff will study the situation with a view to implementation of plans to meet the needs.

The aim of this department shall be to have approved foster homes available for all children.

- (c) The rate of board paid to foster parents shall be reviewed yearly by the Child Care Committee which shall report their findings to the Board of Directors and make recommendations on which the Board shall act.

SPENDING MONEY

Spending allowances shall be provided to foster parents for the children in their care - the amount to be determined by the Board of Directors.

CLOTHING

The Society shall be financially responsible for clothing for the children in its care. The foster parents shall be encouraged to dress a ward on a comparable standard with their own home and community. The Society shall ensure that all children in its care are adequately clothed.

MEDICAL CARE

Each child admitted to care shall have a medical examination at the earliest possible time after he is taken into care and not later than one week after admission, if a doctor's appointment can be secured.

After the initial examination, babies shall be seen as often as required by the doctor or in case of illness. Older children shall have a complete medical examination once a year and shall receive such other medical care as is required from time to time.

DENTAL CARE

All children admitted to care who are three years of age and over shall have dental examinations and care as soon as dental appointments can be made. Thereafter yearly examinations and necessary care shall be arranged.

MENTAL HEALTH SERVICES

Psychological and psychiatric assessments and treatment shall be provided for children in care, using such consultants and services as are available to the community.

EDUCATION

Every ward placed in a foster home or other suitable place according to his needs, shall receive an education and training in accordance with the laws of Ontario and in keeping with his intellectual capacity and ability.

Where a ward is dependent for educational purposes after his 18th birthday, The Child Welfare Act, 1965, provides for wardships to be continued until his 21st birthday.

The Society shall be financially responsible for school supplies not provided by the school.

RELIGIOUS TRAINING

Wards shall be given the opportunity to participate in the training and activities of their religious faith.

SCHEDULE 2-M

CHILDREN'S AID SOCIETY, SARNIA
POLICIES IN REGARD TO FAMILY SERVICES

1. Family Services are services to families who have problems with which they need help. These problems may be related to finances, family relationships, child behaviour and environment.
2. Family Services may be divided into two parts, both required by Section 6 (2), The Child Welfare Act, 1965:-

Part 1 (a) Investigating allegations or evidence that children may be in need of protection.

and

(b) Protecting children where necessary.

Part 2 Services for Families.

Providing guidance, counselling and other service to families for protecting children or for the prevention of circumstances requiring the protection of children.

3. Families Served

Families are eligible for the services of the Society if:-

- (a) There are children of the union in the home under sixteen years of age, or the woman is expecting a child of the union.
- (b) The parents are legally married, or are living in common-law union, or there is only one parent in the home. (If in the common-law union, the service requested is similar to that given to Unmarried Parents, it will be transferred to the category of Unmarried Parents).

- (c) When requested, counselling services will be given to previous wards who are single, if it is felt the service will be of value to the ex-ward. If married they will be eligible for service in the same manner as any other family.

4. Service to Families

The case worker assigned to the case shall provide casework services to the family, which will include counselling, using agency resources (the Society has donation funds on occasions which are not ear-marked) and community resources. Where indicated, group counselling services shall also be provided.

Except in cases where the need for protection of a child is present, as defined in The Child Welfare Act, the family may withdraw from the service at any time and the agency may discontinue service if the client shows an inability to respond to the service.

5. Standards of Service

- (a) Standards of service are laid down in the Regulations of The Child Welfare Act, 1965 as follows:-

Section 12 (1) Every children's aid society shall record any complaint respecting children in need of protection within twenty-four hours of its receipt.

- (2) Within twenty-one days after a complaint is recorded, the society shall investigate the complaint and record a report determining whether or not the child is in need of protection and, if so, including a tentative plan for the welfare of the child, and the steps taken to implement the plan and, where the child is not taken into protective care, the case shall be reviewed not later than

sixty days after the complaint was recorded.

- (b) The policy of this Society shall be that an immediate investigation shall be made when the complaint indicates that the child(ren) is/are in immediate need of protection. Any other complaint shall be investigated within three working days. In cases of mutual agreement between the client and the worker, the service may be initiated after three working days.

6. Placement Services

Placement of a child outside his own home shall be undertaken only in circumstances where no solution can be found for meeting the needs of the child in his own home, and only where it is in the best interests of the child.

7. Types of Care

Wardship: Under The Child Welfare Act, 1965, where there is apparent evidence of a child needing protection under the statutory definition of the term, application may be made to the Court for a hearing to determine if the child is in need of protection. This shall be done within five days of apprehension. The Judge may make an order returning the child to his parents, (this may be with or without Children's Aid Society supervision), making the child a ward of the Society for up to one year (Society Ward), or making the child a ward of the Crown. Further orders may be made in regard to a Society Ward - such wardship not to extend beyond two years. If it extends to two years, the child must either be returned to his parents or the person to whose charge he was before coming into care, or be made a Crown Ward.

Non-Ward Care: Non-Ward care may be considered for short-term care, e.g. parent in hospital or in some cases of children being placed on adoption.

8. Services to Parents during Society Wardship

During the period when a child is a Society Ward, a case worker shall offer services to the parents to help them establish a home suitable for the children to be returned to them. Service to the family shall, wherever possible, be continued after the children are returned home.

9. Miscellaneous Services

Official Guardian Investigations: These shall be carried out at the request of The Official Guardian in divorce cases where there are children under sixteen years of age, or children over sixteen years of age still attending school full-time.

Family Allowance Investigations: These shall be carried out at the request of the Family Allowance Division of the Department of Health & Welfare.

Out of Town Enquiries: When requests for service are received from agencies beyond the jurisdiction of this Society, this service shall be given.

SCHEDULE 2-N

Extracts from The Probation Act
R.S.O. 1970, Chapter 364

1.-(1) Such probation officers as are considered necessary for the purpose of this Act shall be appointed under The Public Service Act.

Appointment
of probation
officers
R.S.O. 1970,
C.386
JURISDICTION

(2) Every probation officer appointed in accordance with subsection 1 is a probation officer in and for the Province of Ontario and shall perform his duties in such part of Ontario as is assigned to him from time to time by the Minister of Correctional Services 1965, c. 103, s.1(1)

(3) A probation officer shall be deemed to be an officer of every court in the part of Ontario to which he is assigned and shall carry out the directions of the judges presiding in such courts. R.S.O. 1960,c.308,s.1(4); 1965,c.103,s.1(2), amended.

Status

2.-(1) It is the duty of a probation officer and he has power with regard to any person convicted at a sittings of the Supreme Court for the trial of criminal cases, or at the general sessions of the peace, or at the county judges' criminal court, or at a provincial court in the part of Ontario to which he is assigned.

Powers and
duties

(a) to procure and report such information as to the antecedents, family history, previous convictions, character of employment and other information respecting any person so

convicted as the court requires;

- (b) to supervise under the direction of the court before whom such person was convicted the employment, conduct and general condition under which the person so convicted may be placed during the period of probation imposed by the court;
- (c) to see that any person so convicted reports from time to time as the court prescribes, and to report to the court if the person so convicted is or is not carrying out the terms on which sentence is suspended, and so see that such person, in case of default, is brought again before the court for sentence;
- (d) to see that any person so released on suspended sentence duly makes restitution and reparation;
- (e) to see that any person so convicted while on probation duly carries out any order of the court requiring him to make due provision for the support of his wife and any other dependants for whom he may be liable;
- (f) to do all such other things as are directed by the court or by the regulations made under this Act.

(2) In the performance and exercise of the powers imposed by or under section 1, a probation officer is a provincial constable. To be ex officio provincial constable R.S.O. 1960,c.308,s.3, amended.

5.-(1) Where a person is charged with Probation having committed an offence against any statute of Ontario, the court before which such person is brought for trial may make such inquiries as it considers proper as to the character and reputation of the person charged and as to whether or not he had been previously convicted of any offence under the Criminal Code (Canada) or against a statute of Ontario, and if it appears that, regard being had to his age, character and antecedents, it is expedient that he be released on probation of good conduct, such court may release him under one or more of the following directions and conditions:

1953-54
c.51(Can.)

1. That such person enters into a recognizance recognizance with or without sureties to keep the peace and to be of good behaviour.
2. That such person be placed upon probation probation for such period and under such circumstances as the court before which he is brought prescribes.
3. That such person shall report report to from time to time during such probation period of probation to any officer probation officer that the court designates.
4. That such person shall be under supervision the supervision and direction of and such probation officer during direction the period of probation, and shall obey and carry out the instructions and directions of the probation officer.
5. That such person pay the costs payment of of the prosecution or some costs portion of the same within such period and by such instalments as the court before which he is brought directs.

6. That such person make restitution restitution and reparation to any person or persons aggrieved or injured by the offence charged, for any actual damage or loss thereby caused.
7. That such person while on support of probation be ordered to provide family for the support of his wife and any other dependant or dependants for whom he is liable.
8. That such person perform and other carry out any other direction conditions and condition that the court and before which he is brought directions prescribes and considers proper to impose.

(2) The court before which such person Place of is brought, before directing the release abode of or discharge of any such person, shall person be satisfied that such person or his charged to surety has a fixed place of residence or be in regular occupation in the county or jurisdiction place for which the court acts, or in which such person is likely to live during the period named for the observance of the conditions.

(3) If any court having power to deal Failure to with such person in respect of the carry out charge against him, or if any court is conditions satisfied by information on oath that such person has failed to observe any of the conditions of his recognizance, or has failed to observe and perform any direction or condition made in reference to probation or otherwise, a new information may be issued against such person for the original offence charged, and in addition an information may also be issued against such person for a breach of any of the directions and conditions so imposed.

(4) Upon summary conviction of a breach Penalty of any of the directions and conditions so made, such person, in addition to any penalty that may be imposed for the original offence, is liable to a fine of not more than \$50. R.S.O. 1960,c.308,s.6, amended.

The Sarnia Police Force
INVESTIGATION REPORT

Date: June 16, 1975
Time: 2:30 p.m.
Officer: S/Sgt. Allan
Name of Complainant: Dr. Jumean
Address: 145 Wellington Street
Phone: 337-3729

Complaint: Battered Child

Details:

1. At the above time and date, Dr. Jumean called the Morality Office to report a battered child. He stated that a person, who wished to remain anonymous, brought a Kim Popen, DOB: January 11, 1975, father, Annals Popen, mother, Jennifer Popen, into his office this date. Dr. Jumean stated that approximately 6 weeks ago, this child was hospitalized with a broken arm. At that time the mother stated that the child fell. Approximately 3 weeks ago, the child was treated for a respiratory ailment and at that time the doctor observed it had a black eye. At this time the child was brought to his office and it had a cut lip and severe bruises over the face, neck and buttocks.
2. Heresay(sic) information received by the doctor was to the effect that the father comes home drunk and beats up the mother who in turn beats up the child for retaliation.
JRA
3. The Popen's address is 240 Devine Street, Sarnia.
4. On June 17, 1975 at 10:20 a.m., P.C. Gander went to the Children's Aid Society and talked to a Mrs. Dick and explained to her that we wanted their assistance in picking up the Popen girl. She agreed we should and sent with me a Sandy Saul who works for the Children's Aid and a Win Hoad who works as a case agent.

5. On June 17, 1975 at 10:45 a.m. we went to 240 Devine St. and learned that the Popen's (sic) no longer live there.
6. A check with Dr. Jumean revealed that the baby is at 548 Devine St., at a sister-in-law's.
7. At 11:10 a.m., this date, the two lady's (sic) and P.C. Gander talked to a Mrs. Cecil Popen of 548 Devine St. We also saw the baby girl, Kim Ann Marie Popen, and we could not see the marks that were supposed to be on her face and neck and buttocks. The baby was well cared for and was very quiet while we were there.
8. At 11:30 a.m., this date, the baby's mother, Jennifer Popen, and father, Annals Popen of 263 S. Brock St., phone 344-3584, came into the sister-in-law's house. Sandy Saul talked to the mother and calmed her down, assuring her that if she wanted to keep the baby she would have to take care of it properly or she would make sure she got the baby from her - to protect her. Mr. Popen stated that all the injuries that have been stated are not out of neglect, that it was an accident. Sandy Saul felt in her own mind that the baby appeared to be well taken care of and that it would be better to leave things as they were for now. She told Jennifer that she would come around and see her next week and help her. Jennifer is only 18 years old and doesn't seem to be a motherly type.
9. Sandy Saul will contact us next week and let us know what the reaction and response is of Mrs. Jennifer Popen.

CJG

10. On July 2, 1975 at approx. 10:00 a.m., after checking with Mrs. Sandy Saul at the Children's Aid Society, it was learned that it had been turned over to another worker, a Harold Carter. The reason was that it was going to take a lot of time to help Mrs. Popen and her emotional problems.
11. On August 31, 1975 at 3:10 p.m., Mrs. Betty Hewitt, nurse in the Children's Ward of St.

Joseph's Hospital, notified the Sarnia Police Dept. of a battered child that had been admitted to the ward.

12. Upon my arrival to St. Joseph's, I was met by P.C. Kennedy and Mrs. Hewitt. She informed me that the child was Kim Anne Marie Popen, DOB: Jan. 11/75. Kim Popen had been admitted to St. Joseph's at 1:25 a.m., August 31, 1975.
13. Upon speaking with the two doctors that examined the child, Dr. Thorp, 322 Wellington St. and Dr. Singh, Sarnia Medical Arts Bldg., they both felt that the child had been misused or battered.
14. P.C. Turner was notified and pictures of the child were taken.
15. P.C. Wyville looked at the child and could see that both elbows were bruised and swollen, both ankles were badly bruised, the left cheek was bruised and the left side of her upper lip was cut and swollen.
16. At 4:00 p.m., P.C. Wyville spoke with the child's mother, Jennifer Angelle (sic) Popen, DOB: Sept. 7, 1957, 287 Devine St., at St. Joseph's Hospital. Mrs. Popen stated that Kim had fallen out of the crib on August 29, 1975 and again on August 30, 1975. She also stated that Kim was in the hospital on March 22, 1975 with a broken arm. This had occurred when she had fallen out of the walker.
17. P.C. Wyville notified the Children's Aid from St. Joseph's Hospital. Mrs. Dick from the Children's Aid came to the hospital and spoke with Mr. and Mrs. Popen and P.C. Wyville. The child was signed over to the Children's Aid at this time.
18. Mr. and Mrs. Popen were advised by P.C. Wyville that an investigation would be held and possible charges laid.

BAW

SCHEDULE 2-P

The Child Welfare Act, 1978 Extracts
Ontario Regulation 389/79 Extracts
Ontario Regulation 388/79 Extracts

Interpre- 47. -(1) For the purposes of this
tation section and sections 49, 50, 51 and 52,
"abuse" means a condition of,

(a) physical harm;

(b) malnutrition or mental ill-health of
a degree that if not immediately
remedied could seriously impair
growth and development or result in
permanent injury or death; or

(c) sexual molestation.

Desertion, (2) No person having the care, custody,
abuse, control or charge of a child shall abandon
etc., of or desert the child or inflict abuse upon
child the child or permit the child to suffer
abuse.

Further (3) A court may, in connection with any
proceed- case arising under subsection (2), hold a
ings as hearing in respect of any child concerned
to child and may proceed as though the child had
been brought before the court as a child
apparently in need of protection. 1978,
c.85, s.47.

Leaving 48. -(2) No person having the care,
child custody, control or charge of a child
shall leave the child without making
reasonable provision, in the circum-
stances, for the supervision, care of
safety of the child.

Further (2) A court may in connection with any
proceed- case arising under subsection (1) hold a
ings as hearing in respect of any child concerned
to child and may proceed as though the child had
been brought before the court as a child
apparently in need of protection.

Onus (3) Where a person is charged with contravening subsection (1), the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten, rests with the person charged. 1978, c.85, s.48.

Reporting abuse of child 49. -(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society.

Duty of professional to report (2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society.

Privilege abolished (3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection (1) or (2) unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true.

Solicitor and client privilege (4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client. 1978, c.85, s.49.

Interpretation 52. -(1) In this section,
(a) "Director" means an employee of the Ministry appointed by the Minister for the purposes of this section;

(b) "registered person" means a person named in or otherwise identifiable from the register established under subsection (3), but does not include the person or persons making the report to a society pursuant to subsection 49 (1) or (2) who are not themselves the subject of the report.

Society to report information concerning abuse (2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Register (3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 49 (1) or (2) unless such person or persons are themselves the subject of the report.

Information confidential (4) Subject to subsections (5) to (10) and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection (3).

Exceptions (5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under the Coroners Act and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection (3) and may disclose or transmit that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

R.S.O.
1980,
c.93

Idem (6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection (5) or to any other person referred to in this subsection:

1. A person who is on the staff of,
 - i. the Ministry,
 - ii. a society, or
 - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem (7) A person who has the written approval of the Director and who is engaged in bona fide research may inspect the information referred to in subsection (4) but shall not use or communicate the information for a purpose other than research, academic pursuits or the

compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem (8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem (9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection (4) that is approved by the Director.

Idem (10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register in-admissible (11) The register established under subsection (3) is inadmissible in evidence for any purpose in any proceedings, except,

(a) to prove compliance or non-compliance with any of the provisions of this section;

(b) in an appeal made under subsection (19);

R.S.O. 1980, c.93 (c) in proceedings under the Coroners Act; or

(d) in proceedings referred to in section 51.

Request for a hearing (13) A person to whom a notice is given under subsection (12) may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register.

Hearing (14) Where the Director receives a request under subsection (13), the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of the Statutory Powers Procedure Act apply, with necessary modifications, to the hearing.

R.S.O.
1980,
c.93

Parties (15) A registered person to whom notice is given under subsection (12), the society that received the information concerning the registered person under subsection 49 (1) or (2) and such other persons as the director may specify are parties to the hearing.

Notice (16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held.

Decision of Director (17) Where the Director, after holding a hearing, determines that the information in the register with respect to a registered person should not be in the register or that the information is in error, the Director shall, subject to subsections (19) and (20), cause the registered person's name to be expunged from their register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of authority to hold a hearing (18) The Director may authorize any other person to hold a hearing required under subsection (14) and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections (14) to (17).

Appeal (19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection (17) to the Divisional Court.

Decision of Divisional Court (20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection (18), as the case may be, to be disposed of in accordance with such directions as the Divisional Court considered proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Record of proceedings at hearing inadmissible (21) The record of proceedings in any hearing held under subsection (14) or in any appeal under subsections (19) and (20) is inadmissible in evidence in any other proceedings for any purpose except proceedings under clause 94 (1)(c) and subclause 94 (1)(f)(iv). 1978, c.85, s.52.

Ontario Regulation 388/79
Under The Child Welfare Act, 1978

26. Where the Director who maintains the register established under subsection 3 of section 52 of the Act receives an inquiry from a society under subsection 1 of section 8 of Ontario Regulation 389/79, the Director shall forthwith notify the society whether any person referred to in the information received by the society under section 49 of the Act has been previously identified in the register, the date of any such prior identification and the society or other agency that reported the prior identification. O. Reg. 388/79. s.26.

27. -(1) A report by a society to the Director of verified information concerning the abuse of a child made under subsection 2 of section 52 of the Act shall be in Form 6.

(2) The Director may extend the period of time prescribed in subsection 2 of section 8 of Ontario Regulation 389/79 where, in the opinion of the Director, exceptional circumstances justify the extension.

(3) Where a case concerning the abuse of a child has been reported under subsection 2 of section 52 of the Act and the case has not been closed by a society, any further report on the status of the case required under subsection 3 of section 8 of Ontario Regulation 389/79 shall be made in Form 7 by the society to the Director maintaining the register. O. Reg. 388/79, s.27.

28. -(1) The information reported to the register under subsection 2 of section 52 of the Act shall be recorded in the register in Form 8.

(2) Information in the register established under subsection 3 of section 52 of the Act shall be maintained in the register for at least twenty-five years unless the information has been previously expunged or amended pursuant to a decision by the Director made under subsection 10 of section 52 of the Act. O. Reg. 388/79, s.28.



Please print clearly or type. See reverse side for detailed instructions.

Identification of Child

Last Name		Known as (if applicable)	
First Name(s)		Sex <input type="checkbox"/> M <input type="checkbox"/> F	Birthdate day month year

Identification of Alleged Abuser(s)

Last Name		Known as (if applicable)	
First Name(s)		Age	

Mailing Address

Last Name		Known as (if applicable)	
First Name(s)		Age	

Mailing Address

Relationship to this child

- Father Mother Sibling Other relative Unrelated

If UNRELATED, specify

- C.L. Parent Step parent Foster Parent Other (describe)

Indications of Abuse

- Abrasions Burns/Scalding Malnutrition Sexual molestation Other (specify)
- Bruises Fractures Poisoning Incest
- Dislocation Subdural Haematoma Drug/Alcohol abuse Mental ill health (describe)
- Internal injuries No visible injuries

Incident

Date of Incident day month year	<input type="checkbox"/> Date not known	<input type="checkbox"/> Previous incident	Date Incident reported to C.A.S. day month year	Number of children under 16 yrs. of age living at home at time of incident
Place of Incident <input type="checkbox"/> Child's home <input type="checkbox"/> Other (specify)				Did Child die? <input type="checkbox"/> Yes <input type="checkbox"/> No
Previous reported abuse of child by this or any other alleged abuser(s) <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes, state jurisdiction number of reporting C.A.S.		

Person(s) with whom Child living at time of incident

Last Name		Known as (if applicable)	
First Name(s)		Maiden Name (if applicable)	Age
Last Name		Known as (if applicable)	
First Name(s)		Age	

Relationship to Child

- Parent C.L. parent Step parent Foster parent Relative Other (describe)

Previous C.A.S. involvement with Child/Family

Has the C.A.S. been involved with this Child or Family before? If yes, - is this an open protection case? - is this a closed protection case? - is this a Foster Child?

Yes No Yes No Yes No Yes No

Please see reverse side

Reporting Society

Name of Society	Jurisdiction No.	Date
Name(s) of Caseworker(s)	Authorized Signature	

Action taken on behalf of the Child

Medical

Examined by a Physician <input type="checkbox"/> Yes <input type="checkbox"/> No	Examined by a Registered Nurse <input type="checkbox"/> Yes <input type="checkbox"/> No	Child hospitalized <input type="checkbox"/> Yes <input type="checkbox"/> No	If YES, for <input type="checkbox"/> medical assessment <input type="checkbox"/> medical treatment
---	--	--	---

C.A.S.

Present status <input type="checkbox"/> Investigation proceeding	<input type="checkbox"/> Investigation completed	<input type="checkbox"/> Continued supervision	<input type="checkbox"/> Other (specify)
---	--	--	--

Child's present whereabouts <input type="checkbox"/> Home <input type="checkbox"/> Hospital <input type="checkbox"/> In care <input type="checkbox"/> Other (specify)
--

If HOME, is alleged abuser still present? <input type="checkbox"/> Yes <input type="checkbox"/> No	If NOT AT HOME, was Child apprehended? <input type="checkbox"/> Yes <input type="checkbox"/> No	If ELSEWHERE, was Child placed by parent(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No	Other children taken INTO CARE? <input type="checkbox"/> Yes <input type="checkbox"/> No	If YES, number
---	--	--	---	----------------

Court proceedings

Charges laid against alleged Abuser(s) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending	If YES, <input type="checkbox"/> Criminal Code <input type="checkbox"/> The Child Welfare Act, 1978
---	--

If YES, specify charges:

Status of case <input type="checkbox"/> Care by agreement*	Application for protection made <input type="checkbox"/> Yes <input type="checkbox"/> No	If YES, date day month year	<input type="checkbox"/> On adjournment*	<input type="checkbox"/> Application dismissed	<input type="checkbox"/> Supervision*	<input type="checkbox"/> Society Wardship	<input type="checkbox"/> Crown Wardship
---	---	--------------------------------	--	--	---------------------------------------	---	---

*Child in care and custody of (name)	Referred to <input type="checkbox"/> Another C.A.S. in Ontario (specify Society's Jurisdiction No.) <input type="checkbox"/> Outside Ontario
--------------------------------------	---

This form is to be filed with the Register within 14 days after the Children's Aid Society has verified the information of suspected abuse. Each section is to be completed, unless the information is unavailable or considered unreliable.

Any omissions or errors in the initial Report may be addressed in the follow-up report (Form 7) (20-00-171).

Identification of alleged abuser(s)

If the child abuse is classified as neglect, this category may be omitted unless responsibility for the care of the child is clearly that of one individual (e.g., mother at home with child, single parent).

Identification of alleged abuser(s) may be omitted if the identity of the alleged abuser is uncertain.

Indications of Abuse

A diagnosis of mental ill health may be made by a qualified social worker, preferably in consultation with a registered psychologist or psychiatrist.

Incident

Date Not Known - addresses malnutrition, dehydration, poisoning, etc., where a specific date cannot be established.

Person(s) With Whom Child Living at Time of Incident

Name of any Parent substitute - refers to the person with whom child was residing at the time of the incident. A baby-sitter, if not in constant live-in contact with a child, is not a parent substitute.

Previous Incident - you may not be able to specify dates of previous incidents because of their repetition over a considerable time period (e.g., repeated incidents of sexual abuse reported months or years after the first incident). In such cases, this category may be omitted.

Number of Children under 16 years of age living at home at time of incident - assumes that the children are residing in the same household as the alleged abuser(s). The minimum number inserted here will be 01.

Previous Reported Abuse - includes reports made by another Children's Aid Society or by your Society. If another Society has filed a previous Report, insert applicable CAS jurisdiction number.

Previous Report(s) of Abuse by Alleged Abuser - if previous abuse concerned a child other than the one who is the subject of this Report, specify legal name of that child.

Relationship to this Child - foster parent includes an institutional and/or group home.

Action Taken on Behalf of the Child

CAS

In care - means a CAS foster home, including placement by the CAS in an institution or group home.

Other - includes a voluntary placement of the child in a substitute home.

Court Proceedings

Pending - means that a decision has not yet been made to prosecute the alleged abuser, or that charges have been laid and the matter is awaiting trial.

Reporting Society

The Report must be signed by the caseworker(s) who is responsible for the case at the date of submission of the Report to the Register.

Jurisdiction number - that number assigned to each CAS on the DATA SHEET USED FOR ABUSE STATISTICS.

Ontario Regulation 389/79
Under The Child Welfare Act, 1978

8. -(1) Every society that receives information under section 49 of the Act concerning the abuse of a child shall enquire of the Director who maintains the register established under subsection 3 of section 52 of the Act, within three days after receiving the information, to determine whether any person referred to in the information has been previously identified in the register.

(2) A report by a society to the Director under subsection 2 of section 52 of the Act of verified information concerning the abuse of a child shall be made within fourteen days after the information is verified by the society in the manner determined by the Director.

(3) Where a case concerning the abuse of a child has been reported by a society under subsection 2 of section 52 of the Act and the case has not been closed by a society, a further report made under subsection 3 of section 27 of Ontario Regulation 388/79 by the society to the Director who maintains the register established under subsection 3 of section 52 of the Act shall be made within four months after the making of the original report made under subsection 2 of section 52 of the Act and subsequent reports of the case to the Director shall be made on each anniversary of the original report until the case is closed by the Society.

(4) A case concerning the abuse of a child reported to the register by a society under subsection 2 of section 52 of the Act shall not be closed by the society until the treatment or prevention of the abuse is no longer the primary objective of the society's involvement with the family or because the case has been referred to another society or child protection agency recognized by a jurisdiction outside of Ontario. O. Reg. 389/79, s.8.

SCHEDULE 2-Q

INVOLVEMENT OF POLICE OR CROWN ATTORNEY

Extract from Guidelines for Practice and Procedure
in Handling Cases of Child Abuse (O.A.C.A.S.)

Although local situations vary, it is usual that the police or the Crown Attorney are notified in the following circumstances:

1. Where a child has died.
2. Where serious injury has occurred, e.g. loss of limb or organ or damage to the head. In general, this would include those serious injuries at the extreme end of the physical abuse continuum.
3. Cases of sexual abuse.
4. Where injuries are perpetrated by non-family members, e.g. babysitters, casual boyfriends, etc.
5. Where abuse is non-specific, i.e. where the whole family, including all the children and the spouse are at risk and protection is required.
6. Where child abuse is repetitious.
7. Where the worker may require police protection. (Sec.41).C.W.A.

It should be remembered that when the Crown Attorney or the police are involved, charges may be laid by them, and the social worker may be called upon to give evidence. As in other instances, this evidence should be factual rather than opinion, and for that reason, notes should be taken which can be used in court.

When a situation is referred to the police, the CAS continues to remain active and to use this referral in the way that court is often used - that is to focus the problem and to highlight for the parent the severity of the situation. Such involvement by authority should make it clear to parents that society in general will not tolerate their behaviour. The CAS's continued involvement should be supportive

to the parents and should indicate to them the readiness of the society to help them to meet their responsibilities.

SCHEDULE 2-R

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT
OF A CHILD

Form (1975)

TO: DIRECTOR,
CHILD WELFARE BRANCH

FROM: THE CHILDREN'S AID SOCIETY
OF:

I. IDENTIFICATION:

A. ALLEGED OFFENDER

B. CHILD

NAME: NAME: BIRTHDATE/
AGE

ADDRESS: ADDRESS:
HAS THE C.A.S. BEEN
INVOLVED WITH THIS CHILD OR
FAMILY BEFORE Yes No

RELATIONSHIP TO CHILD IF YES, IS THIS
AN ADOPTED CHILD Yes No
IF YES, WHERE WAS

OTHER IDENTIFYING INFORMATION OR
EVIDENCE ADOPTION COMPLETED:
 THIS SOCIETY
 ANOTHER ONTARIO >
 C.A.S. >specify
 ANOTHER PROVINCE >below
 OTHER >

II. INCIDENT

DATE PLACE SOURCE OF COMPLAINT

NATURE OF ALLEGED ILL TREATMENT

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:

YES NO

IF YES, WERE THEY NOTIFIED BY:

COMPLAINT C.A.S.

CROWN ATTORNEY

OTHER (SOCIETY)

Sarnia General Hospital

WERE CHARGES LAID:

YES NO

IF YES, BY WHOM

Sarnia City Police Dept.

DATE: Pending

RESULT _____

WAS CHILD: MADE A NON-WARD MADE A SOCIETY WARD

KEPT UNDER SOCIETY SUPERVISION

LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: YES NO

OTHER ACTION TAKEN Application for Wardship for the other child

Karie, born July 1976 made August 18, 1976, adjourned to Sept.

20/76.

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY DROPPED DISMISSED

WITHDRAWN SENTENCED

IS THIS CASE STILL ACTIVE WITH THE SOCIETY YES NO

IF NO, WHEN WAS IT CLOSED _____

SUBSEQUENT SOCIETY ACTION Parents have been charged with
manslaughter.

COMMENTS: _____

PLEASE NOTIFY THE BRANCH OF ANY
CHANGE IN THE STATUS OF THIS CASE,
ESPECIALLY CHARGES, IF ADDITIONAL
SPACE IS REQUIRED, USE THE REVERSE
SIDE OF THIS FORM.

"Sept. 27/76"

DATE OF REPORT

"William J. Lovatt"

LOCAL DIRECTOR

SCHEDULE 2-S

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT OF A CHILD

August 30, 1975

TO: MISS BETTY C. GRAHAM, DIRECTOR, CHILD WELFARE BRANCH FROM: THE CHILDREN'S AID SOCIETY OF: the City of Sarnia and County of Lambton

I. IDENTIFICATION:

A. ALLEGED OFFENDER Mr. &/or Mrs. Popen

B. CHILD Kim Anne Marie

NAME: Annals Ambrose & Jennifer Angelle(sic) Popen

NAME: BIRTHDATE/ AGE Jan.11/75

ADDRESS: 287 Devine Street, Sarnia County of Lambton PHONE 519-336-4487

ADDRESS: HAS THE C.A.S. BEEN INVOLVED WITH THIS CHILD OR FAMILY BEFORE x Yes No IF YES, IS THIS AN ADOPTED CHILD Yes No IF YES, WHERE WAS

RELATIONSHIP TO CHILD Natural Parents

ADOPTION COMPLETED: THIS SOCIETY ANOTHER ONTARIO > C.A.S. >specify ANOTHER PROVINCE>below OTHER >

OTHER IDENTIFYING INFORMATION OR EVIDENCE OF PREVIOUS OFFENCES Previous similar complaint June/75

II. INCIDENT

DATE PLACE SOURCE OF COMPLAINT Aug. 30/75 287 Devine St. Sarnia St. Joseph's Hospital (Children's Ward)

NATURE OF ALLEGED ILL TREATMENT

Admitted for the third time, with fracture and bruises, August 31st 1975. Dr's suspect possible battered child syndrome. The skin examination revealed slight swelling and bruising of the left and right elbow region and slight bruises on the lower end of the tibia and femur on both sides of the ankle. There is a slight bruise over the left cheek and the left upper lip is slightly cracked and bleeding. The measurements of the bruises on the left and right elbow are about three to four cms. by six cms. and the bruises over the lower part of the tibia and fibula on both sides were all around the ankle.

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:

YES NO

IF YES, WERE THEY NOTIFIED BY:

COMPLAINT C.A.S.
 CROWN ATTORNEY
 OTHER (SOCIETY)

WERE CHARGES LAID:

YES NO

IF YES, BY WHOM

DATE: Pending
RESULT _____

WAS CHILD: MADE A NON-WARD MADE A SOCIETY WARD

KEPT UNDER SOCIETY SUPERVISION

LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: YES NO

OTHER ACTION TAKEN _____

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY DROPPED DISMISSED

WITHDRAWN SENTENCED _____

IS THIS CASE STILL ACTIVE WITH THE SOCIETY YES NO

IF NO, WHEN WAS IT CLOSED _____

SUBSEQUENT SOCIETY ACTION _____

COMMENTS: _____

PLEASE NOTIFY THE BRANCH OF ANY
CHANGE IN THE STATUS OF THIS CASE,
ESPECIALLY CHARGES, IF ADDITIONAL
SPACE IS REQUIRED, USE THE REVERSE
SIDE OF THIS FORM.

DATE OF REPORT _____

LOCAL DIRECTOR _____

SCHEDULE 2-T

COMMUNICATION

CHILD WELFARE BRANCH, MINISTRY OF COMMUNITY AND SOCIAL SERVICES
 DATED: April 14, 1976

TO THE CHILDREN'S AID SOCIETY OF
 SARNIA, Ontario

FROM Mrs. R. Powell,
 for Director,
 Child Welfare Branch,
 Parliament Buildings
 Toronto, Ontario

NAME OF CHILD	BIRTH DATE
<u>Kim Anne Marie Popen</u>	
NAME OF APPLICANT/ADOPTIVE PARENTS	YOUR FILE NO.
<u>Mr. and Mrs. Annals Ambrose Popen</u>	
ADDRESS	OUR FILE NO.
	<u>75-5196</u>

PLEASE CHECK APPROPRIATE BOX

We would appreciate a report on the current status of this case. -----

. . .

REPLY (where applicable) _____ DATE _____
 P.S. This is with reference to your
Report on Persons Allegedly
Causing Physical Ill Treatment
of a Child dated September 8, 1975.

Re your file No. 75-5196 - Mr. and Mrs. Annals Ambrose Popen.
At Ontario Provincial Family Court on February 25th 1976, an
order of six months Society Wardship was given to C.A.S. The long
delay of Court Hearing was due to the manoeuvring on the part of
the legal representatives. Mr. Popen had pleaded guilty to the
charge of neglecting to protect the child and a psychiatric
examination was ordered by the Judge; however, the police and
C.A.S. still suspect that Mrs. Popen had been a part of such
alleged ill treatment of the child and will keep watching this
ongoing situation closely. Due to the positive results of
psychiatric assessment, which indicated Mr. Popen was not in need
of psychiatric treatment, his diligent involvement with A.A. and
the parents' intention to enroll in the Parent Effectiveness
Training Course, Mr. Popen was put on probation on March 29th
1976, and sentence was suspended for one year.

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:

YES NO

IF YES, WERE THEY NOTIFIED BY:

COMPLAINT C.A.S.

CROWN ATTORNEY

OTHER (SOCIETY)

St. Joseph's Hosp. Sarnia.

WERE CHARGES LAID:

YES NO

IF YES, BY WHOM

Sarnia City Police Dept.

DATE: Pending

RESULT _____

WAS CHILD: MADE A NON-WARD MADE A SOCIETY WARD

KEPT UNDER SOCIETY SUPERVISION

LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: YES NO

OTHER ACTION TAKEN Application for Society Wardship made
September 8th 1975 - adjourned to October 29th 1975.

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY DROPPED DISMISSED

WITHDRAWN SENTENCED _____

IS THIS CASE STILL ACTIVE WITH THE SOCIETY YES NO

IF NO, WHEN WAS IT CLOSED _____

SUBSEQUENT SOCIETY ACTION Dependent on Police Investigation
and parental co-operation.

COMMENTS: _____

PLEASE NOTIFY THE BRANCH OF ANY
CHANGE IN THE STATUS OF THIS CASE,
ESPECIALLY CHARGES, IF ADDITIONAL
SPACE IS REQUIRED, USE THE REVERSE
SIDE OF THIS FORM.

Sept. 8th, 1975.
DATE OF REPORT

"William J. Lovatt"
LOCAL DIRECTOR

SCHEDULE 2-U

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT
OF A CHILD

August 11, 1976

TO: MISS BETTY C. GRAHAM, DIRECTOR,
CHILD WELFARE BRANCH

FROM: THE CHILDREN'S AID SOCIETY
OF: the City of Sarnia
and County of Lambton

I. IDENTIFICATION:

A. ALLEGED OFFENDER
Mr. &/or Mrs. Popen

B. CHILD
Kim Anne Marie

NAME:
Annals Ambrose & Jennifer Angelle(sic)

NAME: BIRTHDATE/
AGE
Popen Jan.11/75

ADDRESS:
287 Devine Street, Sarnia
County of Lambton PHONE
519-336-4487

ADDRESS:
HAS THE C.A.S. BEEN
INVOLVED WITH THIS CHILD OR
FAMILY BEFORE Yes No
IF YES, IS THIS
AN ADOPTED CHILD Yes No
IF YES, WHERE WAS

RELATIONSHIP TO CHILD
Natural Parents

ADOPTION COMPLETED:
 THIS SOCIETY
 ANOTHER ONTARIO >
 C.A.S. >specify
 ANOTHER PROVINCE >below
 OTHER >

OTHER IDENTIFYING INFORMATION OR
EVIDENCE
Previous history of child abuse,
Mr. Popen
OF PREVIOUS OFFENCES
Father pleaded guilty in court on
Mar.29/76.

II. INCIDENT

DATE	PLACE	SOURCE OF COMPLAINT
Aug. 11/76	220 S. Mitton St. Sarnia	Sarnia General Hospital

NATURE OF ALLEGED ILL TREATMENT

Child died shortly after arriving at the hospital, Doctors again suspected possible battered child syndrome. The police have conducted a full investigation into the situation.

Mrs. Popen is pregnant once again and this second child is due in July 1976. Present goals of this case as follows:

- 1) Working toward returning the child, Kim, back home to live before the other baby is due.
- 2) Giving weekly supervision in their home.
- 3) Assisting their following through with the P.E.T. Course and Mr. Popen's A.A. involvement.

"Entered in Child Abuse
Registry 75/76"

SIGNATURE "William J. Lovatt"

SCHEDULE 2-V

Interim Report to the Board of Directors
Children's Aid Society
of the City of Sarnia & County of Lambton
prepared by Harry Zwerver,
dated April 11, 1978

Introduction

Since arriving at the Children's Aid Society of Sarnia and Lambton County four weeks ago I have been impressed by the continuous co-operation and support which I have received from both the Staff and the Local Director.

In spite of many staff being under a great deal of pressure due to the demands of their workloads and the natural apprehensions and suspicion which have come with the events of the past several months, they have been most frank and honest in dealing with me.

There is an obvious desire on the part of this agency's staff to deal with the problems which have been, or may be, identified and to move ahead.

The prolonging of the time period before the Judicial Inquiry commences is having negative effects on several staff and even the announcement of a time frame would begin to resolve some of their anxiety.

During my initial period of time at CAS I have focussed primarily on the front line service provided by the Society, mostly through the Family Services Department. I have met with total staff in several staff meetings, have met with every staff member individually at least once, although with some fairly briefly at this stage and have attended the Family Services and Children's Services unit staff meetings, the Management group meetings, met with the Group Home parents, attended the Joint Staff Association/Personnel Committee meeting and have met with representatives of a number of community agencies.

I have not yet had much of an opportunity to examine the administrative functions of the

Society except where they are reflected in service delivery; this I will begin to do this week as well as beginning to examine the Society's budgetary process and the statistical information system.

This then is a very preliminary and incomplete presentation in which I will briefly note some of my observations then, for your consideration, note actions already taken and/or my recommendations for future action.

I will divide my report into three parts - Services, Administration and Board.

A. Services

1. General Observations

Generally, there appears to be a very basic lack of knowledge about the Child Welfare Act and its Regulations. The violations of the requirements of the Act regarding child protection services, including the use and requirements of Court are very serious. This is compounded by the almost total lack of written policies and procedures.

Recommendations

- 1.1 Initiate a basic training, or in some cases, retraining program for all agency social work and support staff.
- 1.2 Develop written policy and procedure manuals for the Family Services Department and expand those in the area of services to children in care.

2. Criteria for Service

With current budgetary pressures placed upon Children's Aid Societies service criteria tend to be determined by the workload pressures at intake. Community agencies and CAS staff themselves are not clear about this agency's service criteria - what cases will be opened for service and which will not be and why not.

Recommendations

2.1 It is important for the Society to be clear about its criteria for the provision of service, so that staff in providing or refusing service or referring cases elsewhere feel that they are still carrying out their mandate under the Child Welfare Act, as well as being supported in their decisions by the Board and administrator.

3. The Investigation of Reports of Child Abuse or Neglect

Every person having information about the abandonment, desertion, physical ill-treatment or need for protection of a child must report this information to a Children's Aid Society. (Section 41(1) The Child Welfare Act). The Act also requires that Children's Aid Societies record and investigate these complaints promptly so that a determination as to whether a child is in need of protection can be made.

In more recent directives from the Child Welfare Branch it has been made clear that the investigation of complaints of physical ill-treatment cannot be delegated to another organization or individual, and that the treatment plan for cases of suspected or confirmed child abuse must be co-ordinated by a worker from the CAS.

There have been cases noted in this Society where neglect and abuse have been reported or alleged and which were not investigated by CAS, or appear to have gone uninvestigated for long periods of time.

Recommendations

3.1 All reports of alleged child abuse must be investigated immediately. Where another agency is involved or makes the referral they may be asked to be involved with the Society; but in no case will they be delegated the responsibility for the actual investigation.

3.2 Where injuries exist, a child is to be medically examined immediately and it is

the CAS worker's responsibility to see that this occurs.

- 3.3 In situations of obvious injury to a child and in all cases of alleged sexual abuse the police must be notified in case they wish to lay charges under the Criminal Code.
- 3.4 Under no circumstances should a child who appears to have been abused be admitted into care on a Non-Ward Agreement. If admission is warranted it should be by means of an apprehension and the case brought before the Court within five days.
- 3.5 No child admitted due to actual or suspected child abuse should be discharged from care without a proper case planning conference.
- 3.6 A more fully detailed child abuse procedure including involvement with hospitals, doctors, police and other community contacts be drafted immediately. (Models are already available.)

4. Emergency After Hours and Week-end Service

The Society is responsible for the provision of basic protective services twenty four hours a day, seven days a week. The specific responsibilities of the Society are clearly spelled out in The Child Welfare Act.

Presently, the switchboard at the agency is open from 9.00 a.m. until 5.00 p.m., Monday through Friday. Outside those times callers to the agency's telephone number will not have their calls answered.

In emergencies individual foster parents or clients may be able to call workers at home. A complainant or a community person in need of advice or information is not redirected. There is no after hours telephone number listed in the telephone directory.

If someone is desperate enough to call the Police they may be directed to the Children's Aid

Society duty worker on call for that particular day or week. It is not clear whether collateral agencies generally are aware that the police will channel their emergency calls.

The various police departments however, are left to the job of screening calls when they do come to them, and sometimes are not clear about which worker is on call especially as the worker duty roster gets changed between workers.

In a survey completed by the Local Director for the Ministry of Community & Social Services in January of this year, he estimated that the number of calls actually referred to workers averaged out to less than one per week night and three per week-end for an average of five per week.

The Society's contract for after hours' staff coverage is exceedingly generous given present volumes.

Recommendations

- 4.1 The Society should provide a more appropriate after hours service. Options should include a call forwarding system, the use of a Telephone Answering Service where calls are screened or directed, or at a minimum a recording which refers emergency calls to the police, with an appropriate notice in the telephone directory.

5. Case Opening and Case Recording Procedures

From our preliminary observations it appears that there are no clear criteria for statistically opening a case for service. Family Service cases are often not recorded within the time frame required by The Child Welfare Act.

There is no systematic bring-forward system which assists the workers in completing their recording within the time periods required by the Act. Recording tends to be "process" recording rather than goal-oriented recording and diagnostic descriptions tend not to be available.

Recommendations

- 5.1 Set up a statistical system which can be triggered by the department secretaries. In this way much of the worker activity presently not counted will become statistically identifiable.
- 5.2 Establish a goal oriented case management system which will reflect good social worker practice within the time requirements established by The Child Welfare Act.

6. Case Planning Conferences

At present time there are no structured case planning conferences or sessions except for the discussion held within the individual service units.

Recommendations

- 6.1 A system of structured case planning conferences or meetings of appropriate Society staff and collateral persons should be established to ensure proper case planning. This should be tied in to a goal oriented case recording format discussed in the previous section of this report.

These sessions which should be formalized as part of the administrative process in the Society should include at least the following functions:-

1. Pre-Admission
2. Pre-Placement
3. Admission Review
4. Child Planning
5. Case Planning
6. Replacement
7. Court Planning

Some of these could possibly be combined due to the size of the agency. The appropriate staff from both departments including Supervisors and in some cases the Local Director should be involved.

(We have already instituted Court Planning conferences)

7. Responsibility for Children in the Care of the Society

At present, except for the children under five years of age, there is no consistent practice as to which children are carried by the Family Services worker and which are carried by the Children's Services worker.

Due to the apparent pressures on the Family Services staff concern has been expressed by foster parents, some Family Service staff themselves and foster care workers that children in foster care are not being seen frequently enough and that foster parents are not receiving the support necessary to care for often very difficult children. This has, it is reported, led to several foster homes closing in the recent past.

The present system for the supervision of children in care has led to serious inter-departmental problems - a serious division in the Society with each group having difficulty understanding the roles and responsibilities of the other.

Recommendations

7.1 That a serious examination of the present two departments structure be undertaken.

8. Wards in their Own Homes

As a general rule, Society Wards and Crown Wards are maintained and supervised by the Society in its own resources or in resources paid for by the Society, or through another Ministry residence or facility.

Occasionally a ward will be sent home by the Courts on a trial basis or will have visits home as part of a planned return by the Society.

A ward continues to be the legal responsibility of the Society until wardship is terminated, thus a return home is a very serious matter and must

be considered very carefully and then visits adequately supervised.

There have been incidents where a Society Ward or a Crown Ward have been living in their own home, sometimes with the knowledge and permission of the Society, and sometimes not.

Recommendations

- 8.1 Clear policies must be established regarding the return home of wards; the Court should be informed of all such plans and their approval sought beforehand. Where a child leaves our care against our wishes the Court must be informed immediately.

9. Medical Examinations of Children in Care

The Child Welfare Act requires that every child admitted into the care of a Children's Aid Society be medically examined as quickly as possible after admission - (Regulation 16(1)). Except for the under five year olds there is presently no policy or general practice in this regard.

It appears that many children are not medically examined at all except when it appears to the worker or foster parent that this is necessary.

This practice leaves the Society in a very vulnerable position.

Recommendations

- 9.1 All children should be examined medically upon admission and immediately prior to discharge.
- 9.2 A contract should be made with one paediatrician or family practitioner to do these for the Society. If this is not possible, a division by age of child could be made to allow this to be done by more than one medical practitioner.

If all else fails we should see if the outpatient department of local hospitals could take on this responsibility.

- 9.3 Proper medical files should be maintained on every child in care. These should be reviewed and updated as medical events occur. This would also provide the basis for the annual medical and dental examinations required under The Child Welfare Act.

10. Parental Visiting

Presently there is no clear policy or pattern for children in care visiting with their parents.

In some cases parents have not seen their children for long periods of time regardless of the legal status of these children.

In several recent Court cases this issue has been raised by the Family Court Judge as a concern, to the point where he has threatened to make access orders a part of his finding in order to ensure that a proper visiting pattern does take place.

The reasons for infrequent visits given by the Society include the distance of foster homes from the City, pressure of workers' time and the non-availability of volunteer drivers.

Recommendations

- 10.1 Clear visiting policies must be established by the Society to ensure that the natural rights of both parents and children are maintained. Especially when the ultimate plan is to reunite parents and their children ongoing contact is critical. The policy must recognize the needs of each type of situation, age of children involved and the legal status of the children in care.
- 10.2 An examination of the differential mileage rates between staff and volunteer drivers should be undertaken to ensure that volunteers are adequately reimbursed for their transportation costs. This may lead to more volunteer drivers being available. If this does not produce results,

- 10.3 Examine the possibility of a "paid driver" who would be paid a retainer and mileage to transport children and clients as necessary.

Board

There have been frequent references made to the function of the Board in the past several weeks. Some of these relate to the Board-Management-Staff communications, others to the actual operation of the Society itself.

I would like to make several brief comments and recommendations.

1. Executive Committee

To ensure the efficient operation of the Board of Directors the Child Welfare Act provides for the establishment of an Executive Committee, the composition of which is prescribed in the Act. The Executive Committee provides for continuity between Board meetings and deals with items in detail not usually possible in meetings of the total Board.

It is also an important support vehicle for the Local Director and senior staff in the ongoing operation of the Society's functions.

Recommendation

I would recommend that a functioning Executive Committee be established by the Board of Directors in order to facilitate the Society's work.

2. Services Committee

As outlined in the Handbook for Board Members published by the Ontario Association of Children's Aid Societies, a Services Committee is an essential part of a Children's Aid Society's operation if the Board is to be kept informed of the service demands and complexities of the Society, and to assist the Board and senior staff in all matters related to the service problems of the Society.

Recommendation

That an active Services Committee be established, in order to assist the Board, its Executive and senior staff in examining the service policies of the Society and their implications.

3. Administration

1. Security

All agency files and records, both ongoing and closed, are stored in a Vault on the main floor of the agency's building. The Vault also includes a bulletin board for staff notices and the workers' message centre.

All agency staff have the combination to the Vault. The Vault is left open all day and there is unrestricted access to the Vault and thus to its contents.

Every staff member also has keys to the front door of the building.

I believe that this open access to files and documents without any monitoring violates the principles of confidentiality and privacy, and is not good practice.

Recommendation

That the matter of file storage and Vault access be examined in order to develop a more appropriate policy than presently exists.

This might possibly mean some structural changes or some additional locked storage cabinets located elsewhere in the building.

Harry Zwerver.

April 11th, 1978.

HZ/dwm

SCHEDULE 2-W

Summary of Popen case by William Lovatt
in Minutes of Meeting, Board of Directors,
Children's Aid Society, Sarnia
December 15, 1977

A special meeting of the Board of Directors of the Children's Aid Society of the City of Sarnia and County of Lambton was convened at the request of the President, Mr. Dave Allen, to discuss the Popen case. The meeting was held in the Board Room of the Children's Aid Society building, 740 N. Christina Street, Sarnia, Ontario, on Thursday, December 15, 1977 at 7:30 p.m.

Present: Mr. Dave Allen, Mr. John McPhedran, Mr. Tim Lester, Mr. R. Doyle, Mrs. Val Adamson, Mr. H. Douglas, Mr. R. Large, Mr. R. Provencher, Mr. Al Bromwish, Mrs. M. Wood, Ald. M. Brown, Mr. T. Dzialowski, Mrs. A. Schertzer, Warden T. Steadman, Mr. K. Conroy, Mr. M. Armstrong.

Regrets: Mr. G. Shafley, Mr. W. Higgins, Mrs. P. Lichty, Mrs. S. Milway, Mrs. A. Notte.

C.A.S. Staff Members in attendance included Mr. R. Kissling, Mrs. Stella Tamminen, Miss J. Payne, Mrs. Mabel Harvey, Mrs. Kathy Mitchell, Mr. Harold Carter, Mrs. E. McMillin, Mrs. A. Dick, Mrs. E. Van Der Jagt, Mrs. Beth Murray, Mrs. Valerie Jenken, Mrs. Dorothy Myers.

The President, Mrs.(sic) Allen, opened the meeting on the subject of the Kim Popen case and asked Mr. Lovatt, the Local Director, to review the salient points of the case history as presented in a written summary form to every Board Member who was present.

Mr. Lovatt stressed the following points in a summary of the Popen case to clarify a number of items.

1. June 1975, there was insufficient evidence to warrant intervention on the Society's

first contact with the Popens. The referral was anonymous and the mother had a plausible reason for the very faint and old marks on the child, Kim Popen. The parents denied any abuse and refused the services of the Children's Aid society and Lambton Health Unit. The Police accepted a watching brief.

2. On Aug. 31, 1975, a call to St. Joseph's Hospital made the C.A.S. aware of previous injuries to the child and therefore the child came into care.
3. Sept. 8, 1975 to February 25, 1976, there were a series of court adjournments during which time the C.A.S. were cautioned not to talk with the child's parents on the grounds that such contact was prejudicial to the defence's case.
4. Mr. Popen accepted full responsibility for the injury received in August, 1975 by Kim Popen since he was drunk at the time, and the mother, Mrs. Popen, was absolved from any guilt. No conviction was registered against Mrs. Popen.
5. Since August, 1975 considerable evidence had accumulated on Mr. Popen's behaviour. He had ceased to drink and also attended Alcoholics Anonymous.
6. On instructions from the Court, Mr. Popen was examined by a psychiatrist. The forthcoming reports were positive and concluded as follows "In summary then, if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey or the Public Health Nurse might set up, and Parents Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future."
7. Lambton Health Unit nurse and probation office have confirmed that nothing was observed which led them to suspect abuse. The probation officer visited on August 11,

1976 and saw only a sore lip. Mrs. Popen informed that she had seen the Doctor for this on the previous Friday.

8. At the time when the decision was made to return Kim home on May 27, 1976, we had the following information on file:
 - a. Parents wanted Kim back and their lawyer would fight for the child's return.
 - b. Both parents had attended the P.E.T. course and the supervisor of the course had commented favourably on their participation.
 - c. The parents had cooperated in every way with C.A.S. and the Probation Officer.
 - d. Mr. Popen had stopped drinking and attended Alcoholics Anonymous.
 - e. Kim would be returned to her parents at the Aug. 4, 1976 Court Hearing because of lack of evidence to refute this action from taking place.
 - f. C.A.S. could have returned the child before the new baby was born and reintegrate the family by the time of the child's birth with the willing cooperation of both parents or could hold off until August 4, 1976 Court hearing which would have terminated the wardship.
 - g. The C.A.S. made the decision to return the child to its natural parents based on all the best evidence available at the time, That decision proved to have unfortunate consequences.

Mr. Lovatt, the Local Director, made recommendations to the Board of the Children's Aid to assist in preventing any recurrence of the Popen tragedy. They were as follows:

- a. That a formal reporting system in cases of child abuse be established between the C.A.S., Lambton Health Unit, and the Probation Services.
- b. In cases of child abuse, the children can no longer be returned to parents without Court involvement.
- c. That we require Medical examination and report every two weeks where C.A.S. has supervision of "at risk" child. Failure to do so should compel a return to Court.

A discussion then ensued on the typewritten review of the entire Kim Popen file provided to all Board members. Mr. Lovatt and Mrs. Harvey answered questions raised by Board and C.A.S. staff members on discrepancies between the newspaper reports on the Popen case and the written summation of the C.A.S. file.

A suggestion for board consideration was then introduced by the President, Mr. Dave Allen, on the establishment of an impartial board of inquiry composed of three professional social workers selected by the executive committee of the O.A.C.A.S. Their job would be a thorough(sic) examination of all facts pertaining to the Popen case. The impartial inquiry of three social workers would then be asked to render an opinion on corrective measures that will help the Agency to prevent the recurrence of any such tragedy in the future.

The formal motion of adoption was moved by Ald. M. Brown and seconded by Mr. R. Provencher that

"a three person board be selected by O.A.C.A.S. executive committee to review the case in question and attempt to complete such a study within one month that will bring forth any recommendations they wish to make for future operations of this Children's Aid Society."

After a brief discussion on its terms of reference in reporting to the Board of this Society and the financing of this impartial enquiry the

motion received the unanimous consent of the Board members present.

Mr. Allen then asked for and received a motion to adjourn the special meeting.

Respectfully submitted

John McPhedran
Pro Tem Secretary

SCHEDULE 2-X

Report for Child Welfare Branch
Ministry of Community and Social Services
Prepared by the Children's Aid Society, Sarnia
December 8, 1977

POPEN, Annals Ambrose, known as "Karie" aged 38 years.

POPEN, Angela(sic) Jennifer, aged 18 years.

CHILDREN: Kim Anne Marie born January 11, 1975
Karie Junior born July 6, 1976.

FAMILY
BACKGROUND

The parents were both born in Jamaica. Mr. Popen had been in Canada, with his family for some years. Mrs. Popen came to Canada in 1973 following her marriage. We were told in 1975 that she was nineteen. It is now apparent that she is only now 18, which would mean that she was married at 14 years of age, and a mother at 15 or 16. Further information regarding the mother's background will be given below.

REFERRAL
JUNE 1/75

Detective Gander, Sarnia Police Department, came to the office requesting the worker's assistance in investigating an anonymous call made to the police the night before. There was a question of possible abuse to the child Kim.

A worker, Mrs. Sandy Saul, and a volunteer Mrs. Win Hoad, R.N., accompanied the officer. They located the child at the home of an aunt, Mrs. Cecil Popen, as the parents were in the process of moving from one home to another and she was caring temporarily for the child. She pointed out marks on the child which were stated to be about two weeks old and were very

faint, and would not have been noticed if she had not pointed them out. The child had a cut on her tongue and lip which were said by the aunt to be caused by the mother forcing the child to eat. While the worker was present, the mother appeared, grabbed the child and attempted to leave but was stopped by the officer. Mr. Popen came in during this time. The mother's handling of the child was noted as the child appeared upset as she prepared to feed her. Services of Children's Aid Society and the Lambton Health Unit nurse were refused by the parents. The mother was defensive and hostile, the father quiet and meek. Both declared the child received good care and denied any possibility of abuse.

The case was not assigned but a follow up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary.

AUGUST 31/75
REFERRAL

Constable Wyville, City Police, called requesting a worker to come to St. Joseph's Hospital where the child Kim was presently admitted. Mrs. A. Dick immediately went to the hospital. Abuse was strongly suspected by staff doctors and police. The mother was there trying to have the child released. Mr. Popen had been sent for by her to verify her story that eight month old Kim had pulled herself up out of the crib, onto the dresser where she fell and was found by the mother on the floor.

Mr. Popen repeatedly declared that no one is taking his child away from him and that he did not mistreat her. He finally realized his wife had come to the hospital to get the child against what he'd told her. At this time it was learned that the child had a

(broken, chipped) bone in the elbow. The parents reluctantly agreed to non-ward care while treatment of the child was provided and police(sic) investigations were in progress. See medical reports attached.

It was also learned that there was a previous seemingly unclarified situation regarding this child. At two months of age, the child was in hospital for a fractured, upper arm and the explanation given at that time was that "the child fell out of the walker" with the sitter being blamed for the abuse, and the sitter now having returned to Jamaica. It was later learned also, that the child Kim, had been observed (with a black eye) at a shopping centre and a report had been made to the family doctor, Dr. Jumean. The mother no longer wished to have Dr. Jumean involved. The mother said that Kim has climbed out of the crib and fallen, and that Kim can sit, crawl and pull herself up over and out of the crib at the present time.

It was also learned that Mrs. Popen had taken Kim to the Sarnia General Hospital where she saw Dr. Haig. According to her, he requested her to come back the next day for x-rays. Instead of waiting, she had taken the child to St. Joseph's Hospital where the child had been admitted at 1:30 a.m. on August 31.

The case was open to H.R. Carter.

SEPT. 5/75
CHILD INTO
CARE

Kim was taken into care and placed in a foster home. Worker assigned was Mrs. M. Kirby. *See report on child care attached.

*Not included in Exhibit filed.

COURT
ACTION

Initial court hearing was set for September 8. There were adjournments in this case to October 29, 1975, then again to January 19, 1976 and February 25, 1976 in Family Court.

Criminal charges were laid by the Police under the Child Welfare Act and these hearings were held in Family Court on October 30, 1975, adjourned to November 13, 1975 and adjourned to January 19, 1976 and to February 23, 1976. There was difficulty in getting an agreement about the hearing of the two cases before the Family Court with our position being that the Wardship Hearing should be separate and that of the legal representative for the family, that the two cases should be heard together. The disposition of the criminal charges were made on February 23, when Mr. Popen pleaded guilty. Sentencing regarding this was made on March 29, 1976 in order that Mr. Popen have psychiatric assessment.

On February 25, 1976 the Society received six months Society Wardship and both parents were advised to co-operate with the agency and to attend any courses on parenting that were suggested to them by C.A.S. Since the parents were requesting more visitation, it was also pointed out that future visits of Kim to them, would continue to be under the supervision of C.A.S.

FEB. 27/76 to
MARCH 29/76

The case was transferred to Mrs. Lo. It was felt that a younger, female worker would have better opportunity of working with this mother who was resistant to Mr. Carter's efforts to help her.

It is to be pointed out that Mr. Carter had difficulty in talking with this family, partly because the lawyer for the family did not wish us to

"quiz them" during the period of adjournment of the hearings. Permission was requested from the lawyer's office for the two home visits which were made January 6, and February 20, 1976. The observations of the worker were that Mrs. Popen lies a good deal and is also a young, inexperienced mother. Mrs. Popen did state that she had a 7 month old child who died in Jamaica. This has never been verified and there is real question as to whether this child ever existed. Mr. Popen had admitted drinking problems and little or no knowledge of child raising.

Further information as to the family background was given. Mr. Popen's large family resides in Sarnia, with there being a great deal of coming and going between the family members. Mrs. Popen, on the other hand, was rather isolated and stated that she was not liked by her husband's family or extended family.

Home visits to both the first home at 287 Devine St., later at 220 S. Mitton St. found that the apartment was clean, neat and sufficiently equipped to handle a child. The young couple in the apartment in the home at 220 S. Mitton were friends of the Popen's and Mrs. Popen had a good relationship with them.

There was question as to whether or not Mrs. Popen was pregnant until it became obvious that she was. She spoke of having blackouts on two occasions and it was found out, when this was mentioned in Mr. Popen's presence, that he was not aware of this and there was again question as to whether Mrs. Popen was lying. Support was given to Mr. Popen in having the psychiatric assessment and to become involved in A.A. and to work with the Probation Officer. Also,

arrangements were being made to have the Popens enroll in the Parent Education course which was being planned.

From February 27, to July 6, the worker Mrs. Lo, visited the Popen home on a weekly basis and consulted with the supervisor following each visit. In general, she developed a good working relationship with the Popens. She observed that Mrs. Popen attempted to change her story from time to time but became increasingly open and co-operative throughout this period.

Mr. Popen was attending A.A. and was also working. Visits were made during the day when the worker could speak with Mrs. Popen alone and were also made in the evening when both parents could be present.

MARCH 29/76

Mr. Popen was in court for sentencing and again pleaded guilty to the charge of neglecting to protect his child. The psychiatric assessment was provided for the court and it indicated that Mr. Popen was not in need of psychiatric treatment. He was also involved with A.A. and with the involvement with the agency being effective, Mr. Popen was put on probation and sentence was suspended for one year. Violation of the probation would be six months to one year in jail.

DISCUSSIONS
WITH THE
PARENTS
APRIL-JULY/76

Mrs. Popen shared material with the worker about her family in Jamaica which apparently was a rather deprived background with the father having left the home and the mother having left the home for a time, with Mrs. Popen and the grandmother taking care of the children. She showed the worker a picture of a child that she said that she had and who was being raised by her grandmother.

The marital relationship improved. The parents were talking together more and they reported that her relationship with his family was also improving. The growth and development of the child was discussed at considerable length as were child training methods.

In April 1976, it was decided to arrange for Kim to start home visits. It was felt that it would take some time to re-integrate the child into the family and the series of visits were set, initially for 1 1/2 to 2 hours, with the worker being present. The parents were at first uneasy about the worker being there, then became more comfortable with it. It was felt that they had gained from the discussions of growth and development and methods of discipline.

CONFERENCE

A conference was held by the child care worker, the family service worker, and the two supervisors, in which the progress of the case was completely reviewed and all information pooled and the decision made that the child would be returned home prior to the birth of the expected child so we would have a period of observation of the parents' handling of the child prior to the birth of this second child. It was felt important that the family have a period alone with Kim before the baby was born. Kim was regressing from the regular visits and it was decided to limit the visits for a month and return the child home on May 27.

Following the child's return home, she was carefully observed by the worker who would, on many visits, have the child on her lap. Kim was usually dressed in sleeveless tops and shorts or occasionally in a short-sleeved dress. The only bruise noted during

this time was on one finger. This was stated to be from Kim's putting something in an electric outlet. Following this, on the worker's advice, the parents got covers for the outlets and put them on any outlet the child could reach. The use of the ointment for the labial fold ulcers was continued as long as necessary. The worker also gave the family her home phone number in case they needed it but not calls were received.

P.E.T. COURSE
APRIL -
MAY/76

During this time, the Popens were also enrolled in the Parent Effectiveness Training course which was given at the Agency by a qualified P.E.T. teacher. They attended all but one of the sessions and discussed the sessions with the worker, apparently getting a good deal out of this. Neither parent has much education and they worked out a system whereby one would help the other in doing the necessary excercises(sic) in the course. It was reported to the agency by the leader at the end of the course, that they had been active participants and very helpful in the discussion that had taken place. They were not spelled out to the leader as abusive parents and he was indeed surprised to learn at a later date, that indeed they were.

JULY 6/76
to
AUG. 11/76

Mrs. Popen gave birth to Karie Junior Popen. Adequate plans were made for Kim's care during confinement.

Regular visits to the home were continued following the birth of the child on a twice weekly basis by the Family Service worker. The overall situation was good. Kim's behaviour was within normal limit and the Popen's were pleased with her and with themselves. They did experience the same reactions of Kim as the foster mother did, in that she would have

good days and bad days, and they were able to cope with the situation. The child was also teething but the mother was able to comfort her and handle her very well.

A Lambton Health Unit nurse was involved with the family following the birth of the second child. Nothing unusual was noted and the child was in good condition when brought into the Society's care.

Towards the end of July there was discussion about continuation of wardship pro and con with the Popens. It was discussed with the Popens that we felt they were making good progress and this was reviewed with them from the point of view of their increased competence in helping the child through their greater understanding of a child's needs. Karie was doing very well and their relationship had improved considerably. Following this however, the worker noted the mother was becoming more distant and more cool and became somewhat apprehensive that we would not be able to go into the home on a voluntary basis once the wardship terminated. In conference with the supervisor, it was decided that we would request a supervisory order in order to ensure that we could continue going into the home and counselling with the family.

A court date was arranged for August 4, 1976 but it was known that it would be necessary to adjourn the case. They had been served with Notices of Hearing on July 27. The parents said they understood why we would need a supervisory order and felt it was alright with them. On August 4, the worker visited the home and informed them of the new date for the court. Kim was observed as sitting beside her mother quietly watching t.v. On

August 11, 1976 the worker was notified that the child had died and she was requested by Sarnia Police to go to the Sarnia General Hospital to identify the child.

On August 12, the worker talked with the family on a home visit and was informed that the child had fallen from the patio.

At this time, the case was being investigated by the Sarnia Police Department and it was no longer possible to talk with the family.

On August 13, the supervisor with the help of the police, took the second child, Karie, into the care of the Society. As of December 1977, the child is still in the care of the Society. The parents had been convicted of manslaughter and the Society has a date of January 12, 1978 at which they will request Crown Wardship on the child Karie Junior Popen.

The father particularly has visited with the baby at the agency during this time and the mother has also visited on occasion when she has been in the city and not at the St. Thomas Ontario Hospital. All visits have been carefully monitored.

SCHEDULE 2-Y

Contentious Issue Report
Re: Death of Child Kim Anne Marie Popen
prepared by Child Welfare Branch,
Ministry of Community and Social Services
dated December 12, 1977

Issue Title:

Death of Child
Kim, Anne, Marie Popen b. January 11, 1975.
Died; August 11, 1976.

Issue Description:

On June 17, 1975, the Children's Aid Society of the Lambton County received a complaint that Kim Popen was allegedly ill treated by her parents. The Society and the Police Department investigated but could not ascertain that the child was physically abused. However, it was observed that there was some faded marks on the child's body. At that point the Society decided to open the case and provide service on protection basis.

On August 31, 1975 the St. Joseph Hospital in Sarnia reported that Kim was admitted with fractures and bruises. The Doctors in the Hospital examined the child and came to the conclusion that this was a possible battered child syndrome. X-rays revealed that Kim previously had a broken arm which was healed. The Society confronted the parents and they agreed that the child needed protection. Kim was admitted into the care of the Society on August 31, 1975, and placed in a foster home where she remained until May 27, 1976. In the meantime the Police laid charges against the parents. There were several Court Hearings and adjournments, and on February 25, 1976, the Society was granted 6 months Society Wardship. At the same Court Hearing Mr. Popen was found guilty of child abuse and was put on one year's probation. The Court, also ordered that both parents take a Parent Effective Training Course and Mr. Popen would join A.A.

During this period of time the Society visited the family on a weekly basis and found them to be very co-operative and willing to attempt to

improve their family relationships. Mr. Popen stopped drinking and attained steady employment. However, Mrs. Popen got pregnant again and gave birth to a baby boy in July of 1976.

At the end of May 1976, the Society agreed that Kim would be returned to her parents before the new baby was born in order to provide a period of readjustment.

After Kim was returned home the Society made regular visits and the time they saw the child was 7 days before her death and there was no evidence of neglect. Before Society Wardship for Kim was due for review the parents became somewhat withdrawn and less co-operative. Therefore, the Society was planning to ask the Court for a one-year supervision order, but the case was not brought before the Court as Kim died a few days prior to the Court Hearing.

On August 11, 1976, Kim Popen, 19 months old was brought to the Sarnia General Hospital where she died shortly after her arrival. The Police were informed and the parents were subsequently charged with manslaughter. Two days after Kim's death their second child Karie, 2 months old was taken into the care of the Society and made a Society Ward. Further, review of Society Wardship will take place in January of 1978.

Proposed Response:

Both parents have been found guilty of manslaughter and are presently in custody. They will be sentenced on December 21, 1977.

When Society Wardship for Karie, born July, 1976, is reviewed in January, 1978, the Society is planning to ask for Crown Wardship.

The Staff of the Child Welfare Branch are discussing with the Societies the present policy and procedures regarding protection of children in their own home while under supervision of the Children's Aid Society.

UPDATE - FEBRUARY 17, 1978

On December 22, 1977, Mrs. Jennifer Popen, eighteen, was sentenced to seven years to be served in a Psychiatric Hospital in St. Thomas. Mr. Annal(sic) Popen, 38, received a one year sentence to be served in jail. An appeal has been launched by Mr. Popen.

The Board of Directors of the Children's Aid Society of the County of Lambton at their meeting on December 15, 1977, passed a motion to request that a review committee of three social workers be appointed to review this case in detail. Such a committee was appointed and an investigation conducted on January 25, 26, and 27, 1978, in Sarnia.

The committee was headed by Mrs. Margaret Farina, Deputy Director of the Ontario Association of Children's Aid Societies. Other members were: Mr. Bruce Heath, Field Consultant, Child Welfare Branch of my Ministry and Mr. Arnie Petersen, Director of Resource Services for the Family and Children's Services of London and Middlesex.

SCHEDULE 2-Z

Comparison of 1977/78 budgets for Children's Aid Society, Sarni
 prepared by William Lovatt, November, 1977 and February, 1978;
 Ministry, January, 1978; McCabe and Zwerver, June, 1978

Exhibit #	139	140	109	110
Category of Expenditure	Lovatt Budget Nov./77 \$	Ministry Letter Jan./78 \$	Lovatt Budget Feb./78 \$	McCabe-Zwerve Budget June/78 \$
Salaries	412,000	336,486	387,000	408,975
Employee Benefits	41,200	40,378	42,000	49,077
Building Occupancy	30,000	30,000	30,000	32,500
Office Expenses	18,000	18,000	18,000	21,965
Training, Education and Conference	1,800	1,800	1,800	3,000
Promotion and Publicity	1,000	1,000	1,000	1,000
Purchased Services (non-medical)	12,000	9,540	12,000	23,070
Travel	30,000	24,518	26,000	30,000
Boarding Rate Payments	295,000	286,907	280,000	300,138
Health and Allied Services	6,000	6,000	6,000	8,500
Food Services	-	-	-	-
Clients' Personal Needs	31,000	25,173	28,000	30,014
Emergency Assistance	-	-	-	500
Miscellaneous Expenditure	3,500	3,500	3,500	3,500
Total Expenditures	881,500	724,802	835,300	912,239
Expenditure Recoveries	25,000	23,500	23,500	23,500
Net Expenditures	856,500	701,302	811,800	888,739
Allocation of Administration Net Program Expenditures	856,500	701,302	811,800	888,739
Income Allocation	35,000	35,000	35,000	35,000
Capital Costs	-	-	-	-
Non-recurring Costs	-	-	-	-
TOTAL	821,500	666,302	776,800	853,739

SCHEDULE 3-A

Involvement of Police or Crown Attorney from Guidelines for Practice and Procedure in Handling Cases of Child Abuse by O.A.C.A.S. dated July, 1976

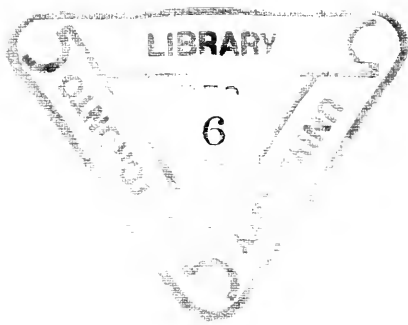
Although local situations vary, it is usual that the police or the Crown Attorney are notified in the following circumstances:

1. Where a child has died.
2. Where serious injury has occurred, e.g. loss of limb or organ or damage to the head. In general, this would include those serious injuries at the extreme end of the physical abuse continuum.
3. Cases of sexual abuse.
4. Where injuries are perpetrated by non-family members, e.g. babysitters, casual boyfriends, etc.
5. Where abuse is non-specific, i.e. where the whole family, including all the children and the spouse are at risk and protection is required.
6. Where child abuse is repetitious.
7. Where the worker may require police protection. (Sec.41). C.W.A.

It should be remembered that when the Crown Attorney or the police are involved, charges may be laid by them, and the social worker may be called upon to give evidence. As in other instances, this evidence should be factual rather than opinion, and for that reason, notes should be taken which can be used in court.

When a situation is referred to the police, the CAS continues to remain active and to use this referral in the way that court is often used - that is to focus the problem and to highlight for the parent the severity of the situation. Such involvement by authority should make it clear to parents that society in general will not tolerate their behaviour. The CAS's continued involvement should be supportive

to the parents and should indicate to them the readiness of the society to help them to meet their responsibilities.



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