# Appendix A

**Office of the Child and Youth Advocate**
PROVINCE OF NEWFOUNDLAND AND LABRADOR

May 17, 2005

Dr. Peter Markesteyn
758 Crescent Drive
Winnipeg, MB
R3T 1X2

Dear Dr. Markesteyn:

I am writing at this time to outline the powers I am delegating to you pursuant to Section 14 of the *Child and Youth Advocate Act ("Act")* to perform a review and investigation of the circumstances surrounding the death of Zachary Turner and provide me with a detailed account of your work and results:

1. You will have the right to information contained in Section 21 of the *Act* respecting the Zachary Turner death that is necessary for you to perform this review.

2. Upon notification of the deputy minister or administrative head you will have the right of entry to premises occupied by a department or agency that is connected with the review (Section 23 of the *Act*).

Pursuant to Section 13(1) of the *Act* you shall keep confidential all matters that come to your knowledge during the review.

In addition, no action will lie against you for anything you may do in the course of this review unless it is shown you have acted in bad faith (Section 26 of the *Act*) and you are prohibited from giving evidence in any judicial proceeding in respect of anything coming to your knowledge in the performance of your duties (Section 27 of the *Act*).

Finally, I would expect that you will meet with me to discuss the direction and progress of your review as requested.

If the terms of this delegation are acceptable to you, please advise in writing.

Sincerely,

James Igloliorte

James Igloliorte
Child and Youth Advocate

Suite 604, TD Place, 140 Water Street, St. John's, NL A1C 6H6
Tel: 709-753-3888 • Toll Free: 1-877-753-3888 • TTY: 709-753-4366 • Fax: 709-753-3988
Email: office@ChildAndYouthAdvocate.nl.ca • Web Site: www.ChildAndYouthAdvocate.nl.ca

# TURNER REVIEW / INVESTIGATION

**DR. PETER H. MARKESTEYN**
***Child and Youth Advocate's Delegate***

**DAVID C. DAY, Q.C.**
***Legal Counsel***

758 Crescent Dr., Winnipeg, MN R3T 1X2
(204) 475-7771 (Tel.) / (204) 452-4446 (Fax)
E-mail: peter_markesteyn@umanitoba.ca

600-140 Water St., St. John's, NL A1C 6H6
(709) 753-2545 (Tel.) / (709) 753-2266 (Fax)
E-mail: admin@lewisday.com

**September 15, 2006**

**By Courier - Confidential**

Darlene Neville
Child and Youth Advocate
Suite 604, TD Place
140 Water Street
St. John's, NL A1C 6H6

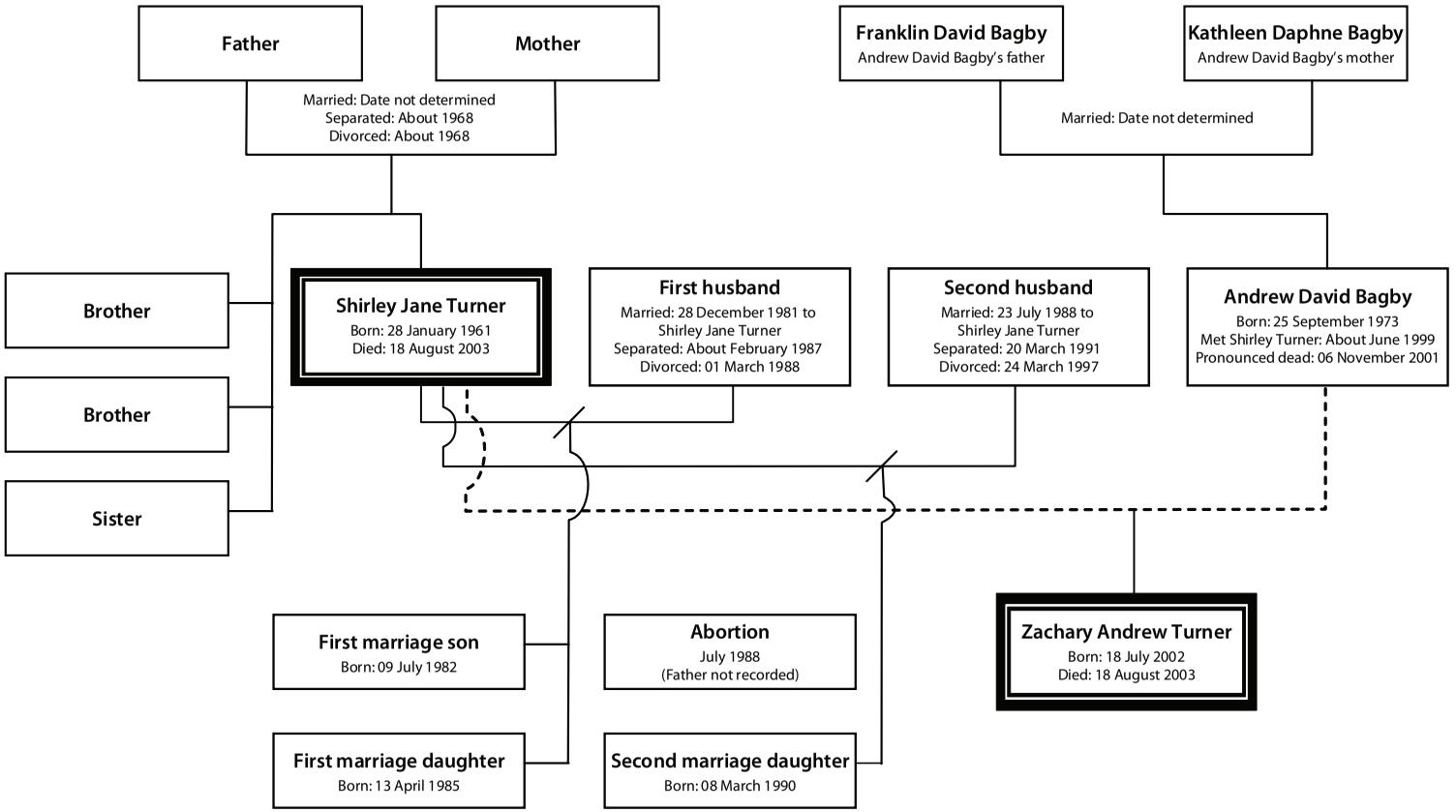
**Re: Turner Review and Investigation**

I transmit my Findings, as Delegate of the Child and Youth Advocate, resulting from my review and investigation into the circumstances of and surrounding the death of Zachary Turner in 2003; as requested by the Advocate's letter dated May 17, 2005, which appointed me the Advocate's Delegate under section 14(1) of the *Child and Youth Advocate Act.*

Faithfully yours,

**Dr. Peter H. Markesteyn**
758 Crescent Drive
Winnipeg, Manitoba R3T 1X2
Telephone: 1-204-475-7771
Fax: 1-204-452-4446

# Genealogy — Shirley Jane Turner



## *CHILD AND YOUTH ADVOCATE ACT*

SNL2001 CHAPTER C-12.01
(*in force: 13 May 2002; no amendments to 31 May 2006*)

AN ACT RESPECTING THE CHILD AND YOUTH ADVOCATE

*Analysis*

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

*Short title*

1. This Act may be cited as the Child and Youth Advocate Act.

2001 cC-12.01 s1

*Definitions*

2. In this Act

(a) "advocate" means the Child and Youth Advocate appointed under section 4 ;

(b) "agency of the government" means a board, commission, association, or other body of persons, whether incorporated or unincorporated, included in the Schedule;

(c) "child" means a person under the age of 16 years;

(d) "Commission of Internal Economy" means the commission established under the Internal Economy Commission Act;

(e) "department" means a department created under the Executive Council Act, or a branch of the executive government of the province;

(f) "service" means a service provided by a department or agency of the government to children and youth the principal objective of which is to benefit children and youth; and

(g) "youth" means a person who is 16 years of age but under 19 years of age and includes a youth

(i) in care or custody under the Child, Youth and Family Services Act,

(ii) on remand under the Criminal Code or the Young Offenders Act (Canada),

(iii) subject to a sentence under the Criminal Code, or

(iv) subject to a disposition under the Young Offenders Act (Canada),

who is under 21 years of age.

2001 cC-12.01 s2

*Office of Child and Youth Advocate established*

3. The Office of the Child and Youth Advocate is established

(a) to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;

(b) to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;

(c) to provide information and advice to the government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth; and

(d) generally, to act as an advocate of the rights and interests of children and youth.

2001 cC-12.01 s3

*Appointment of the Child and Youth Advocate*

4. (1) The Office of the Child and Youth Advocate shall be filled by the Lieutenant-Governor in Council on a resolution of the House of Assembly.

(2) Before appointing a person as the advocate under subsection (1), the Lieutenant-Governor in Council shall solicit applications for the position from the general public.

(3) Where

(a) the advocate is unable to perform his or her duties of office; or

(b) the office of the advocate is vacant,

the Lieutenant-Governor in Council shall appoint a person to act as the advocate in a temporary capacity.

2001 cC-12.01 s4

*Officer of House of Assembly*

5. (1) The advocate is an officer of the House of Assembly and is not eligible to be nominated for election to or to be elected as, or to sit as, a member of the House of Assembly.

(2) The advocate shall not hold another public office or carry on a trade, business or profession.

2001 cC-12.01 s5

*Term of office*

6. (1) Unless he or she sooner resigns, dies or is removed from office, the advocate shall hold office for 6 years from the date of his or her appointment, and he or she may be re-appointed for a second term of 6 years, but not for more than 2 terms of 6 years.

(2) The advocate may resign his or her office in writing addressed to the Speaker of the House of Assembly, or, where there is no Speaker or the Speaker is absent, to the Clerk of the House of Assembly.

2001 cC-12.01 s6

*Removal or suspension*

7. The Lieutenant-Governor in Council, on a resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting, may remove the advocate from office or suspend him or her because of an incapacity to act, or for neglect of duty, or for misconduct.

2001 cC-12.01 s7

*Suspension when House of Assembly not sitting*

8. (1) Where the House of Assembly is not in session, the Lieutenant-Governor in Council may suspend the advocate because of an incapacity to act, or for neglect of duty, or for misconduct proved to the satisfaction of the Lieutenant-Governor in Council, but the suspension shall not continue in force beyond the end of the next ensuing session of the House of Assembly.

(2) Where the advocate is suspended under subsection (1), the Lieutenant-Governor in Council shall appoint an acting advocate to hold office until the suspension has been dealt with in the House of Assembly.

2001 cC-12.01 s8

*Salary and pension*

9. (1) The advocate shall be paid a salary fixed by the Lieutenant-Governor in Council after consultation with the Commission of Internal Economy.

(2) The salary of the advocate shall not be reduced except on resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting.

(3) The advocate is subject to the Public Service Pensions Act, 1991 where he or she was subject to that Act prior to his or her appointment as advocate.

2001 cC-12.01 s9

*Expenses*

10. The advocate shall be paid the travelling and other expenses incurred by him or her in the performance of his or her duties that may be approved by the Commission of Internal Economy.

2001 cC-12.01 s10

*Advocate's staff*

11. (1) The advocate may, subject to the approval of the Commission of Internal Economy, and in the manner provided by the Public Service Commission Act, appoint those assistants and employees that the advocate considers necessary to enable him or her to carry out his or her functions under this Act.

(2) Persons employed under subsection (1) are members of the public service of the province.

2001 cC-12.01 s11

*Oath of office*

12. Before beginning to perform his or her duties, the advocate shall swear an oath or affirm before the Speaker of the House of Assembly or the Clerk of the House of Assembly that he or she shall faithfully and impartially perform the duties of his or her office.

2001 cC-12.01 s12

*Confidentiality of information*

13. (1) The advocate and every person employed under him or her shall keep confidential all matters that come to their knowledge in the exercise of their duties or functions under this Act.

(2) Notwithstanding subsection (1), the advocate may disclose in a report made by him or her under this Act those matters which he or she considers it necessary to disclose in order to establish grounds for his or her conclusions and recommendations.

(3) A report the advocate makes under this Act shall not disclose the name of or identifying information about a child or youth or a parent or guardian of the child or youth except and in conformity with the requirement of subsection 29 (2).

2001 cC-12.01 s13

*Delegation*

14. (1) The advocate may in writing delegate to another person his or her powers under this Act except the power to make a report under this Act.

(2) A person purporting to exercise the power of the advocate by virtue of the delegation under subsection (1) shall produce evidence of his or her authority to exercise that power when required to do so.

2001 cC-12.01 s14

*Powers and duties of the advocate*

15. (1) In carrying out the duties of his or her office, the advocate may

(a) receive and review a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate;

(b) advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them, whether or not a request or complaint is made to the advocate;

(c) where advocacy or mediation or another dispute resolution process has not resulted in an outcome the advocate believes is satisfactory, conduct an investigation on behalf of the child or youth or a group of them, whether or not a request or complaint is made to the advocate;

(d) initiate and participate in, or assist children and youth to initiate and participate in, case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services;

(e) meet with and interview children and youth;

(f) inform the public about the needs and rights of children and youth including about the office of the advocate; and

(g) make recommendations to the government, an agency of the government or communities about legislation, policies and practices respecting services to or the rights of children and youth.

(2) The advocate may not act as legal counsel.

2001 cC-12.01 s15

*Reference by Lieutenant-Governor in Council*

16. The Lieutenant-Governor in Council or a minister may refer to the advocate, for review, investigation and report by him or her, a matter relating to the interests and well-being of children and youth and the advocate shall,

(a) subject to a special direction of the Lieutenant-Governor in Council, investigate or review the matter referred to him or her to the extent that it is within his or her jurisdiction; and

(b) make a report to the Lieutenant-Governor in Council or minister that he or she considers appropriate.

2001 cC-12.01 s16

*Communication by child or youth*

17. (1) Where a child or youth in a facility, caregiver's home, group home or other home or place in which he or she is placed under an Act of the province, the Criminal Code or the Young Offenders Act (Canada), asks to communicate with the advocate, that request shall be forwarded to the advocate immediately by the person in charge of the place.

(2) Where a child or youth in a place referred to in subsection (1) writes a letter addressed to the advocate, the person in charge of the place shall forward the letter immediately, unopened, to the advocate.

(3) Every facility, caregiver's home, group home or other home or place in which a child is placed under an Act of the province, the Criminal Code or the Young Offenders Act (Canada), shall be given written information telling them about the office of the advocate, their right to bring

any grievance to the advocate, and how they may contact the advocate.

2001 cC-12.01 s17

*Refusal to investigate or review*

18. The advocate, in his or her discretion, may refuse to review or investigate or may cease to review or investigate a complaint where

(a) it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before the complaint is received by the advocate;

(b) in his or her opinion it is frivolous or vexatious or not made in good faith or concerns a trivial matter;

(c) the complainant does not have a sufficient personal interest in the subject matter of the complaint;

(d) in his or her opinion, upon a balance between the public interest and the person aggrieved, the complaint should not be investigated or the investigation should not be continued;

(e) in his or her opinion the circumstances of the complaint do not require investigation; or

(f) the law, or existing administrative procedure, provides a remedy adequate in the circumstances for the person aggrieved and, where the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for his or her failure to do so.

2001 cC-12.01 s18

*Report of refusal to investigate*

19. Where the advocate decides not to review or investigate or to cease reviewing or investigating a complaint, he or she shall inform the complainant, and other interested persons, of his or her decision and shall provide to them reasons for his or her decision.

2001 cC-12.01 s19

*Notice of investigation*

20. Before reviewing or investigating a complaint, or before conducting a review or an investigation of a department's or agency's services, the advocate shall inform the deputy minister or the administrative head of the department or agency of the government affected of his or her intention to conduct the review or investigation.

2001 cC-12.01 s20

*Right to information*

21. (1) The advocate has the right to information respecting children and youth that is

(a) in the custody or control of a department or agency of the government; and

(b) necessary to enable the advocate to perform his or her duties or exercise his or her powers under the Act,

except

(c) information that could reasonably be expected to reveal the identity of a person who has made a report under section 15 of the Child, Youth and Family Services Act; and

(d) information that is not permitted to be made public by section 26 of the Adoption of Children Act.

(2) A person who has custody or control of information to which the advocate is entitled under subsection (1) shall disclose the information to the advocate.

(3) This section applies despite another act or a claim of privilege, except a claim based on a solicitor-client relationship.

2001 cC-12.01 s21

*Defence for certain offences*

22. A person is not guilty of an offence against another Act by reason of his or her compliance with a request or requirement of the advocate to furnish information or produce a document, paper or thing, or by reason of answering a question in a review or an investigation conducted by the advocate.

2001 cC-12.01 s22

*Right of entry*

23. (1) For the purpose of this Act, the advocate may enter a premises occupied by a department or agency of the government in connection with a review or an investigation within his or her jurisdiction.

(2) Upon entering a premises under subsection (1), the advocate shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises.

2001 cC-12.01 s23

*Notice of proposed steps*

24. (1) Where, after conducting a review of a department's or an agency's services, or an investigation, the advocate makes a recommendation, he or she may request the department or agency of the government to whom the

recommendation is made to notify him or her within a specified time of the steps that it has taken or proposes to take to give effect to his or her recommendations.

(2) Where, within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the advocate to be adequate and appropriate, the advocate, in his or her discretion, after considering the comments made by or on behalf of the department or agency of the government affected, may report the matter, including a copy of the report containing the recommendations, to the Lieutenant-Governor in Council and may mention the report in the advocate's next annual report to the House of Assembly.

(3) A report made under subsection (2) shall include any comments made by or on behalf of the department or agency of the government upon the opinion or recommendation of the advocate.

2001 cC-12.01 s24

*Report to complainant*

25. Where the advocate conducts a review or an investigation on the basis of a complaint received by him or her, he or she shall report to the complainant, in the manner and at the time that he or she considers appropriate, the result of the investigation.

2001 cC-12.01 s25

*Proceedings against advocate prohibited*

26. An action does not lie against the advocate or against a person employed under the advocate for anything he or she may do or report or say in the course of the exercise or performance, or intended exercise or performance, of his or her functions and duties under this Act, unless it is shown he or she acted in bad faith.

2001 cC-12.01 s26

*Advocate not to be called as witness*

27. The advocate and a person employed under him or her shall not be called to give evidence in a court or in a proceeding of a judicial nature in respect of anything coming to his or her knowledge in the exercise or performance of his or her functions and duties under this Act.

2001 cC-12.01 s27

*Annual report to House of Assembly*

28. The advocate shall report annually to the House of Assembly through the Speaker on the exercise and performance of his or her functions and duties under this Act.

2001 cC-12.01 s28

*Publication of reports*

29. (1) In the interest of children and youth or in the public interest, or in the interest of a person, department or agency of the government, the advocate may publish reports relating generally to the exercise and performance of his or her functions and duties under this Act or to a particular case investigated by him or her, whether or not the matters to be dealt with in the report have been the subject of the report made to the House of Assembly under this Act.

(2) The advocate shall not include the name of a child or youth in a report he or she makes under subsection (1) unless he or she has first obtained the consent of the child or youth and his or her parent or guardian.

2001 cC-12.01 s29

*Regulations*

30. (1) The Commission of Internal Economy may make regulations

(a) for the guidance of the advocate in the exercise and performance of his or her functions and duties under this Act; and

(b) generally, to give effect to the purpose of this Act.

(2) Except where regulations respecting it are made under subsection (1), the advocate may determine his or her procedure.

2001 cC-12.01 s30

*Offence and penalty*

31. A person who

(a) obstructs, hinders, or resists the advocate or another person in the exercise or performance of his or her functions and duties under this Act;

(b) refuses or fails to comply with a lawful requirement of the advocate or another person under this Act; or

(c) makes a false statement to or misleads or attempts to mislead the advocate or another person in the exercise or performance of his or her functions and duties under this Act,

is guilty of an offence and liable, on summary conviction, to a fine of not more than $1,000 or to imprisonment for a term not exceeding 3 months, or to both.

2001 cC-12.01 s31

*Schedule*

32. (1) The Lieutenant-Governor in Council may, by order, add or remove a board, commission, association or other body of persons, whether incorporated or unincorporated, to or from the Schedule.

(2) An order made under subsection (1), is subordinate legislation for the purpose of the Statutes and Subordinate Legislation Act.

(3) Notwithstanding subsection (1), a board, commission, association or other body of persons, whether incorporated or unincorporated, shall not be removed from the Schedule unless the removal is recommended by the Commission of Internal Economy.

2001 cC-12.01 s32

*Consequential Amdt.*

33. Paragraph 19(f) of the Citizens' Representative Act is repealed and the following substituted:

(f) a matter falling within the office of the child and youth advocate under the Child and Youth Advocate Act.

2001 cC-12.01 s33

*Commencement*

34. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

2001 cC-12.01 s34

**Schedule**

Criminal Code Mental Disorder Review Board (section 672.38 Criminal Code)

A hospital board or authority incorporated under the Hospitals Act

A health and community services board incorporated under the Health and Community Services Act

Mental Health Review Board

Newfoundland and Labrador Legal Aid Commission

The Newfoundland & Labrador Housing Corporation

A board, commission or other body added to this Schedule by order of the Lieutenant-Governor in Council

2001 cC-12.01 Sch

## *CHILD, YOUTH AND FAMILY SERVICES ACT*

SNL1998 CHAPTER C-12.1
(*in force: 05 January 2000; as amended to 31 May 2006*)

Analysis for all sections, and text of sections 1-49; 62-66; 75-76

AN ACT RESPECTING CHILD, YOUTH AND FAMILY SERVICES

*Analysis*

PART IV
PROTECTIVE INTERVENTION

14. Definition of child in need of protective intervention
15. Duty to report
16. Determining the need for protective intervention
17. Interview of child
18. Director denied access to child
19. Location of child not disclosed
20. Order to produce record
21. Child who needs to be protected from contact with someone
22. Care in the home
23. Removal of child
24. Removal of youth in exceptional circumstances
25. Telewarrants
26. Notice of removal of child
27. Care of child after removal

PART V
COURT PROCEEDINGS

28. Where child is not removed
29. Where child has been removed
30. Presentation hearing
31. Plan for the child
32. Medical treatment
33. Presentation hearing
34. Protective intervention hearing
35. Financial responsibility
36. Time limits for temporary orders
37. Alternate dispute resolution or assessment
38. When time limits expire
39. Subsequent order
40. Bridging provision
41. Effect of temporary order
42. Effect of continuous order
43. When continuous order ends
44. Rescind continuous order
45. Transfer of custody or supervision between directors
46. Return of child at any time

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

*Short title*

1. This Act may be cited as the Child, Youth and Family Services Act.

1998 cC-12.1 s1

PART I
INTERPRETATION

*Interpretation*

2. (1) In this Act

(a) "board" means a regional community health board constituted under the Health and Community Services Act or a board constituted under the Hospitals Act to which responsibilities under this Act are delegated;

(b) "care" means the physical daily care and nurturing of a child;

(c) "caregiver" means a person with whom a child is placed for care with the approval of a director and who, by agreement with a director, has assumed responsibility for the care of the child but does not include a parent;

(d) "child" means a person actually or apparently under the age of 16 years;

(e) "custody" means the rights and responsibilities of a parent in respect of a child;

(f) "director" means the Director of Child, Youth and Family Services employed by a board;

(g) "judge" means a judge of the Unified Family Court or a Provincial Court judge;

(h) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(i) "parent of a child" means

(i) the custodial mother of a child,

(ii) the custodial father of a child,

(iii) (iii) a custodial step-parent,

(iv) a non-custodial parent who regularly exercises or attempts to exercise rights of access,

(v) a person to whom custody of a child has been Granted by a written agreement or by a judge, or

(vi) a person with whom a child resides, except a caregiver;

(j) "peace officer" means a member of the Royal Newfoundland Constabulary or a member of the Royal Canadian Mounted Police, and includes a person approved by the Attorney General to perform the duties of a peace officer;

(k) "presentation hearing" means an interim hearing at which a judge may give an interim or final order;

(l) "provincial director" means an employee of the government having the title of the Provincial Director of Child, Youth and Family Services;

(m) "qualified health practitioner" means a physician, a nurse or other person designated by the minister by class or profession as a qualified health practitioner;

(n) "social worker" means a person

(i) registered under the Social Workers Association Act, and

(ii) employed by a board,

and includes a person authorized by a director under subsection 4(2) to carry out duties under this Act; and

(o) "youth" means a person who is 16 years of age or over but under 18 years of age, and where an intervention, including an agreement under section 11, is provided to a youth, Part II applies to youth as well as to a child.

(2) Notwithstanding paragraph (1)(g), in the expanded service area as defined in the Unified Family Court Act "judge" means a Provincial Court judge.

(3) Notwithstanding the Unified Family Court Act, for the purpose of sections 23 and 25 in the judicial area as defined in the Unified Family Court Act, "judge" means a judge of the Unified Family Court or a Provincial Court judge.

1998 cC-12.1 s2; 1999 c22 s7; 2000 c7 s1

*Responsibilities of minister*

3. Where, as a result of a report of the provincial director, the minister believes that a director is not carrying out his or her duties and responsibilities in accordance with this Act or the policies established by the provincial director under paragraph 5(a), the minister may direct the board which employs the director to take remedial action or other action the minister considers appropriate, and the board shall comply with the minister's direction.

1998 cC-12.1 s3

*Director in a region*

4. (1) Each board shall appoint a director of child, youth and family services to exercise the powers and perform the duties given to a director under this Act.

(2) Where a social worker is not available, a director may authorize another person to perform the duties or exercise the powers of a social worker under this Act for the period

and subject to the conditions the director considers necessary.

1998 cC-12.1 s4

*Provincial director*

5. The Lieutenant-Governor in Council may appoint an employee of the government to be the provincial director who shall be responsible for

(a) establishing province-wide policies, programs and standards;

(b) monitoring, evaluation and research of the established policies, programs and standards;

(c) representing the province in interprovincial and territorial and other discussions and agreements;

(d) a province wide, computerized child, youth and family service information system; and

(e) advising and reporting to the minister on matters related to child, youth and family services.

1998 cC-12.1 s5

*Protection from liability*

6. A person is not liable for anything done or omitted to be done in good faith in the exercise or performance or intended exercise or performance of a power, duty or function conferred by or under this Act.

1998 cC-12.1 s6

PART II
PRINCIPLES

*General principles*

7. This Act shall be interpreted and administered in accordance with the following principles:

(a) the overriding and paramount consideration in any decision made under this Act shall be the best interests of the child;

(b) every child is entitled to be assured of personal Safety, health and well-being;

(c) the family is the basic unit of society responsible for the safety, health and well-being of the child;

(d) the community has a responsibility to support the safety, health and well-being of a child and may require assistance in fulfilling this responsibility;

(e) prevention activities are integral to the promotion of the safety, health and well-being of a child;

(f) kinship ties are integral to a child's self-development and growth and if a child's safety, health and well-being cannot be assured in the context of the family, the extended family shall be encouraged to care for the child provided that a director can be assured that the child's safety, health and well-being will not be at risk;

(g) the cultural heritage of a child shall be respected and connections with a child's cultural heritage shall be preserved; and

(h) in the absence of evidence to the contrary, there shall be a presumption that a child 12 years of age or over is capable of forming and expressing an opinion regarding his or her care and custody.

1998 cC-12.1 s7

*Child, youth and family service principles*

8. The following principles apply to the provision of services under this Act:

   (a) families shall be provided, to the extent possible, with services which support the safety, health and well-being of their children;

   (b) services shall be provided using the least intrusive means of intervention;

   (c) wherever possible, having regard to a child's age and level of development, the views and wishes of the child shall be sought and considered in providing services;

   (d) families shall be informed of the services which may be available to them to assist them in supporting a child's safety, health and well-being;

   (e) families shall be encouraged to participate in the identification, planning, provision and evaluation of services available to them; and

   (f) services shall be provided in a manner that acknowledges a child's overall needs for safety, health and well-being.

1998 cC-12.1 s8

*Best interests of child*

9. All relevant factors shall be considered in determining a child's best interests, including

   (a) the child's safety;

   (b) the child's developmental needs;

   (c) the child's cultural heritage;

(d) where possible, the child's views and wishes;

(e) the importance of stability and continuity in the child's care;

(f) the continuity of a child's relationship with his or her family, including siblings or others with whom the child has a significant relationship;

(g) the child's geographic and social environment;

(h) the child's supports outside the family, including child care and the school environment; and

(i) the effect upon the child of a delay in the disposition of a judicial or other proceeding with respect to the child.

1998 cC-12.1 s9

PART III
SERVICES AND AGREEMENTS

*Family services*

10. (1) A director or social worker may provide services to children, youth and families, and may enter into written agreements with respect to the services to be provided and the responsibilities of each party to an agreement.

(2) Where services are provided, they shall be provided in a manner which reflects the principles of this Act.

1998 cC-12.1 s10

*Youth care agreement*

11. (1) A director or social worker may make a written agreement for services with a youth who

(a) cannot in the opinion of the director or social worker remain with or be re-established in the youth's family, temporarily or permanently; or

(b) has no parent or other person willing or able to provide care to the youth.

(2) The initial term of an agreement shall not exceed 6 months but the agreement may be renewed for additional terms of up to 6 months each.

(3) An agreement under this section may be made, even if the youth is not or has not been in the care or custody of a director, but shall not continue beyond the youth's eighteenth birthday unless the young person has been in the care or custody of the director before his or her sixteenth birthday, in which case the agreement may be extended until his or her twenty-first birthday or school leaving, whichever event occurs first.

(4) Where a youth is provided with services, the cost of those services may be recovered by the board that provided them and an action or other proceeding for the recovery of the cost may be instituted in the name of the board.

(5) Before the agreement is signed, the director or social worker shall ensure that the effect of the agreement is explained to the youth.

1998 cC-12.1 s11; 2000 c7 s2

*Effect of agreement*

12. Where a director or social worker enters into an agreement with a youth under this Act, the agreement is binding on the youth and enforceable against him or her notwithstanding he or she is less than 19 years of age.

1998 cC-12.1 s12

*Alternate dispute resolution*

13. A director or social worker may use alternate dispute resolution mechanisms to resolve a conflict, including family group conferences, pre-trial settlement conferences and mediation.

1998 cC-12.1 s13

PART IV
PROTECTIVE INTERVENTION

*Definition of child in need of protective intervention*

14. A child is in need of protective intervention where the child

(a) is, or is at risk of being, physically harmed by the action or lack of appropriate action by the child's parent;

(b) is, or is at risk of being, sexually abused or exploited by the child's parent;

(c) is emotionally harmed by the parent's conduct;

(d) is, or is at risk of being, physically harmed by a person and the child's parent does not protect the child;

(e) is, or is at risk of being, sexually abused or exploited by a person and the child's parent does not protect the child;

(f) is being emotionally harmed by a person and the child's parent does not protect the child;

(g) is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;

(h) is abandoned;

(i) has no living parent or a parent is unavailable to care for the child and has not made adequate provision for the child's care;

(j) is living in a situation where there is violence; or

(k) is actually or apparently under 12 years of age and has

(i) been left without adequate supervision,

(ii) allegedly killed or seriously injured another person or has caused serious damage to another person's property, or

(iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation.

1998 cC-12.1 s14

*Duty to report*

15. (1) Where a person has information that a child is or may be in need of protective intervention, the person shall immediately report the matter to a director, social worker or a peace officer.

(2) Where a person makes a report under subsection (1), the person shall report all the information in his or her possession.

(3) Where a report is made to a peace officer under subsection (1), the peace officer shall, as soon as possible after receiving the report, inform a director or social worker.

(4) This section applies, notwithstanding the provisions of another Act, to a person referred to in subsection (5) who, in the course of his or her professional duties, has reasonable grounds to suspect that a child is or may be in need of protective intervention.

(5) Subsection (4) applies to every person who performs professional or official duties with respect to a child, including,

(a) a health care professional;

(b) a teacher, school principal, social worker, family counsellor, member of the clergy or religious leader, operator or employee of a child care service and a youth and recreation worker;

(c) a peace officer; and

(d) a solicitor.

(6) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.

(7) A person shall not interfere with or harass a person who gives information under this section.

(8) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

(9) Notwithstanding section 7 of the Provincial Offences Act, an information or complaint under this section may be laid or made within 3 years from the day when the matter of the information or complaint arose.

1998 cC-12.1 s15

*Determining the need for protective intervention*

16. (1) Upon receiving information that a child is or may be in need of protective intervention, a director or social worker shall assess the information to determine if there are reasonable grounds to believe that a child is in need of protective intervention.

(2) After the assessment, a director or social worker may

(a) determine that protective intervention is not required;

(b) offer support services to the child and family;

(c) refer the child and family to other resources; or

(d) investigate further the child's need for protective intervention.

1998 cC-12.1 s16

*Interview of child*

17. (1) A person who has custody of a child or a person who is entrusted with the care of a child shall permit the child to be visited and interviewed by a director or social worker, in private where in the opinion of the director or social worker it is appropriate to do so, at a place where the child is located.

(2) A director or social worker shall notify the parent of the interview before or after the interview takes place.

1998 cC-12.1 s17

*Director denied access to child*

18. (1) Where a director or social worker is denied access to a child where he or she believes that access to the child is

necessary to determine if the child needs protective intervention, the director or social worker may apply without notice to a judge for an order and the judge may grant an order

(a) that a person disclose the location of the child;

(b) requiring a person to allow the director or social worker or another person to interview or visually examine the child;

(c) authorizing the director or social worker to remove the child from the place where the child is located for an interview or medical examination; and

(d) authorizing a medical practitioner or other qualified health practitioner to examine the child.

(2) The judge may attach terms or conditions to an order under this section that the judge considers appropriate.

(3) Where a child is removed from the place where the child was located for an interview or medical examination, a director or social worker shall return the child to the parent or other person from whom the child was removed unless the director or social worker proceeds under section 23.

(4) At the request of a director or social worker, a peace officer shall assist in enforcing an order made under subsection (1).

1998 cC-12.1 s18

*Location of child not disclosed*

19. (1) Where a person does not comply with an order under section 18, a judge may issue a warrant for the person's arrest to bring him or her before the judge to explain why the order should not be enforced.

(2) Where a person referred to in subsection (1) appears before a judge and the judge believes that the person's reasons for being unable or unwilling to comply with the order are not valid, the judge may order that the person be imprisoned for 30 days or until the person complies with the order, whichever is the shorter period of time.

1998 cC-12.1 s19

*Order to produce record*

20. (1) On application by a director or social worker a judge may order a person to produce information that is written, photographed, recorded or stored by other means, or a certified copy of the record, for inspection by the director or social worker where

(a) there are reasonable grounds to believe that the information is necessary for determining whether a child needs protective intervention;

(b) there are reasonable grounds to believe that the person has possession or control of the information; and

(c) the person has neglected or refused, upon request of the director or social worker to produce the information.

(2) Not later than 2 days before the date set for hearing an application under subsection (1), notice of the time, date and place of the hearing shall be served on the person against whom the order is sought.

(3) Notwithstanding subsection (2), where a director or social worker believes on reasonable grounds that the information may be destroyed if notice is given, application may be made under subsection (1) without notice.

1998 cC-12.1 s20

*Child who needs to be protected from contact with someone*

21. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, a director or social worker may apply to a judge for an order to prohibit contact between the child and that person.

(2) The date set for hearing the application under subsection (1) shall be not later than 2 days after the application is made and notice of the hearing shall be served on the day the application is made.

(3) Notice of the time, date and place of the hearing shall be served on

(a) the person against whom the order is sought;

(b) the child, where 12 years of age or over; and

(c) a parent of the child.

(4) Where a judge is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the judge may do one or more of the following:

(a) prohibit the person against whom the order is sought for a period of up to 6 months from contacting or interfering with or trying to contact or interfere with the child or from entering a place where the child is located;

(b) prohibit the person against whom the order is sought for a period of up to 6 months from residing

with the child or entering premises where the child resides, including premises that the person owns or has a right to occupy;

(c) where the judge believes the person against whom the order is sought may not comply with an order under paragraph (a) or (b), order that person to

(i) enter into a recognizance, with or without sureties, in an amount the judge considers appropriate, or

(ii) report to a judge, or to a person named by the judge, for the period of time and at the times and places the judge directs; and

(d) impose those terms and conditions that the judge considers appropriate for implementing the order and protecting the child.

(5) Before an order to prohibit contact between a child and another person expires, a director or social worker or a person named in the order may apply to a judge and the judge may

(a) vary the order;

(b) rescind the order; or

(c) extend the term of the order for one period of up to 6 months.

(6) At the request of a director or social worker, a peace officer shall assist in enforcing an order made under subsection (4).

(7) An order made under this section may be made at any time, including before, at or after another hearing.

1998 cC-12.1 s21

*Care in the home*

22. (1) Where a director or social worker believes a child is without adequate supervision when premises are entered under this Act, the director or social worker may arrange for short term care in the home to be provided until other supervision considered adequate by the director or social worker is available for the child but the period of care shall not exceed 72 hours.

(2) Where services are provided under subsection (1), a person approved by the director or social worker may enter the premises where the child is located and care for the child.

(3) A director or social worker shall make all reasonable efforts to notify the child's parents of an action taken by the director or social worker under this section.

1998 cC-12.1 s22

*Removal of child*

23. (1) Where a director or social worker believes

(a) that a child is in need of protective intervention; and

(b) a less intrusive course of action is not available or will not adequately protect the child,

he or she shall obtain a warrant to remove a child.

(2) Where satisfied on the basis of a director's or social worker's sworn information that there are reasonable grounds to believe that

(a) a child is in need of protective intervention; and

(b) a less intrusive course of action is not available or will not adequately protect the child,

a judge may issue a warrant authorizing the director or social worker to enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child.

(3) Notwithstanding subsection (1), where a director or social worker has reasonable grounds to believe there would be an immediate risk to the child's health and safety if no action were taken during the time required to obtain a warrant, the director or social worker may enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child without a warrant.

(4) At the request of a director or social worker, a peace officer shall assist in enforcing a warrant issued under subsection (2), or if a warrant is not obtained, the peace officer shall assist a director or social worker under subsection (3).

(5) A warrant issued under subsection (2) need not describe the child by name or specify a particular premises.

(6) Notwithstanding subsection (1), a warrant is not required for the removal of a child where

(a) the child is in the care of a director under an agreement between the director and a parent of the child entered into under section 10, and the agreement expires or is repudiated by the parent, and the director or social worker believes the child is in need of protective intervention; or

(b) a parent of a child voluntarily places the child in the care of a director but refuses to enter into an agreement under section 10.

1998 cC-12.1 s24; 1999 c22 s7; 2000 c7 s3; 2001 c42 s5

*Removal of youth in exceptional circumstances*

24. (1) Where a director or social worker believes on reasonable grounds that

(a) a youth is in need of protective intervention as defined in section 14;

(b) a less intrusive course of action is not available or will not adequately protect the youth; and

(c) the director or social worker considers the circumstances to be of an exceptional nature,

the director or social worker may remove the youth.

(2) In case of the removal of a youth, the provisions of this Act that apply to the removal of a child, except section 36, apply as if the youth were a child.

1998 cC-12.1 s24

*Telewarrants*

25. (1) Where, in the opinion of a director or social worker it would not be practical to appear in person before a judge to apply for a warrant, the director or social worker may make the application by telephone or other means of telecommunication.

(2) Where the information on which an application for a warrant is submitted by telephone or other means of telecommunication, the information shall be given under oath or affirmation and the oath or affirmation may be administered by telephone or other means of telecommunication.

(3) The information submitted by telephone or other means of telecommunications shall include

(a) a statement of the circumstances that make it impracticable for the director or social worker to appear personally before a judge;

(b) a statement of the director's or social worker's grounds for believing that a child is in need of protective intervention and the identity of the child, if known; and

(c) a statement explaining that a less intrusive course of action is not available or will not adequately protect the child.

(4) The sworn information submitted by telephone or other means of telecommunication by a director or social worker shall specify the name of the person giving evidence, the facts ascertained and the manner and location in which the evidence was received, and a record of that information shall be filed by the judge with the clerk of the court over which the judge presides.

(5) Where a director or social worker removes a child under the authority of a warrant obtained under this section, the director or social worker shall provide the person from whom the child is removed with a facsimile of the warrant.

(6) In subsection (5), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

1998 cC-12.1 s25

*Notice of removal of child*

26. (1) Where a child is removed, with or without a warrant, from the care of a parent or other person, a director or social

worker shall serve written notice of the removal on the parent and the child, where the child is 12 years of age or over, within 24 hours of the removal stating the reason why the child was removed.

(2) A parent who is given a notice under subsection (1) shall be informed that he or she may be represented by legal counsel.

(3) [Rep. by 2000 c7 s4]

(4) [Rep. by 2000 c7 s4]

1998 cC-12.1 s26; 2000 c7 s4

*Care of child after removal*

27. (1) Where a child is removed under section 23, a director has interim care of the child until

(a) the child is returned under section 47 to the parent from whom the child was removed; or

(b) a judge makes an order at a presentation hearing under section 33.

(2) While a child is in a director's care, the director or a social worker may

(a) authorize a qualified health practitioner to examine the child; and

(b) consent to necessary routine health care for the child where the parent cannot be contacted if, in the opinion of a qualified health practitioner, the health care should be provided without delay.

(3) On consenting to health care for the child, a director or social worker shall notify the parent from whom the child was removed.

(4) Where a child is removed, while hospitalized, from his or her parent by a director or social worker, the chief executive officer of the hospital and the attending physician shall be advised of the child's removal and that the child's care is the responsibility of the director.

1998 cC-12.1 s27

*Where child is not removed*

28. (1) Where a director or social worker believes on reasonable grounds that

(a) a child is in need of protective intervention;

(b) the child's safety could be assured without removing the child with the provision of protective intervention services; and

(c) a parent of the child is unwilling to accept protective intervention services for the child,

the director or social worker shall file an application for an order of a judge that the child is in need of protective intervention and for a protective intervention hearing.

(2) A hearing under this section shall be held within 30 days of the filing of the application under subsection (1).

(3) Notice of the time and place of a hearing under this section shall be served not later than 3 days after the date for holding the hearing is obtained from the court on

(a) a parent of the child; and

(b) the child, where the child is 12 years of age or older.

(4) Where an application is made under this section, a judge may make an order under section 34.

1998 cC-12.1 s28

*Where child has been removed*

29. Where a child has been removed, the director or social worker shall within the next day after the removal of the child file an application for an order of a judge that the child is in need of protective intervention and for a protective intervention hearing which shall be held not later than 30 days after the child's removal.

1998 cC-12.1 s29

*Presentation hearing*

30. (1) Where a director or social worker applies for a protective intervention hearing, he or she shall at the same time be given a date for a presentation hearing, which shall be held not later than 10 days after the date on which the application is filed.

(2) Notice of the time and place of a protective intervention hearing and a presentation hearing shall be served not later than 3 days after the dates for holding the hearings are obtained on

(a) a parent of the child; and

(b) the child, where the child is 12 years of age or over.

(3) Information to be served with a notice shall include

(a) a copy of the originating application;

(b) a written report of the circumstances that led to the removal of the child; and

(c) the director's or social worker's plan for the child until the protective intervention hearing.

1998 cC-12.1 s30

*Plan for the child*

31. (1) Not later than 10 days prior to a protective intervention hearing, a director or social worker shall file with the court a written plan for the child and provide a copy to those persons to whom notice of the hearing has been given.

(2) Not later than 3 days before the protective intervention hearing those persons to whom a copy of a plan has been given under subsection (1) may respond to the plan and file an alternate written plan with the court and provide a copy to the director or social worker.

1998 cC-12.1 s31

*Medical treatment*

32. (1) Where a director or social worker believes a child to be in need of protective intervention because of his or her parent's refusal to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended by a qualified health practitioner for the child, the director or social worker may apply for an order of a judge authorizing the treatment.

(2) A parent of a child, and the child, where he or she is 12 years of age or over, shall be served with notice of the time and place of a hearing under this section which shall be held within one day after filing the application.

(3) A judge may

(a) hear the application at any time or place;

(b) receive evidence by telephone or other means of telecommunication; and

(c) administer an oath or affirmation by telephone or other means of telecommunication.

(4) Where a judge finds that a child needs protective intervention for a reason referred to in subsection (1), the judge may so declare and grant an order authorizing the treatment recommended by a qualified health practitioner.

(5) Where a child is treated under an order under this section, no liability attaches to the person treating the child by reason only that the parent of the child did not consent to the treatment.

1998 cC-12.1 s32; 2000 c7 s5

*Presentation hearing*

33. (1) A presentation hearing

(a) may be conducted by a judge in an informal manner; and

(b) shall be concluded within one day, unless extended by the judge.

(2) At the conclusion of a presentation hearing, a judge may

(a) dismiss the application for a protective intervention hearing;

(b) order that the child be returned to the parent under the supervision of a director or social worker until the conclusion of the protective intervention hearing;

(c) order that the child be placed in the care of a person other than the parent from whom the child was removed under the supervision of a director until the conclusion of the protective intervention hearing;

(d) order that the child remain in the care of a director until the conclusion of the protective intervention hearing; or

(e) make a declaration that the child is in need of protective intervention and make an order under subsection 34(2).

(3) A presentation hearing under this Act may be conducted by means of a teleconference.

(4) At a presentation hearing a judge may give the parties to the hearing directions with respect to those matters that are relevant at a protective intervention hearing.

(5) A judge may attach those conditions to an order made under subsection (2) that he or she considers appropriate.

(6) When a judge makes an order under this section, the judge may grant a parent, or a person significant to the child, access to the child.

1998 cC-12.1 s33

*Protective intervention hearing*

34. (1) At a protective intervention hearing a judge shall determine whether a child needs protective intervention.

(2) Where a judge finds that a child needs protective intervention, the judge shall so declare and order

(a) that the child be returned to or remain with the parent and under a director's supervision for a specified period of up to 6 months;

(b) that the child be placed in the custody of a person other than the parent from whom the child was removed, with the consent of the other person and

under a director's supervision, for a specified period in accordance with section 36;

(c) that the child be placed in the custody of a director on a temporary basis for a specified period in accordance with section 36; or

(d) that the child be placed in the continuous custody of a director.

(3) A judge may attach those conditions to an order made under subsection (2) that he or she considers appropriate.

(4) Where a judge makes an order under paragraph (2)(b), (c) or (d), the judge may grant a parent or a person significant to the child access to the child.

(5) Where the judge finds that the child does not need protective intervention, the judge shall so declare and order that the child remain with or be returned to the parent from whom the child was removed.

1998 cC-12.1 s34

*Financial responsibility*

35. (1) Where a child is committed temporarily or continuously to the custody of a director, upon application by a director or social worker, a judge may order that the obligation of the parents to provide support to the child shall continue subject to Part III of the Family Law Act .

(2) An order under subsection (1) shall be for the benefit of the board that is the employer of the director or social worker or some other person on the terms and conditions and for the period the judge considers appropriate.

1998 cC-12.1 s35

*Time limits for temporary orders*

36. (1) Where a judge grants a temporary order under paragraph 34(2)(b) or (c), the term of the order shall not exceed

(a) 3 months, if the child who is the subject of the order is under 5 years of age when the order is made;

(b) 4 months, if the child who is the subject of the order is 5 years of age or over but under 12 years of age when the order is made; and

(c) 6 months, if the child who is the subject of the order is 12 years of age or over when the order is made,

with a maximum of 3 orders in total during the child's life.

(2) Notwithstanding subsection (1), a fourth order may be granted if

(a) there are exceptional circumstances that in the opinion of the judge warrant exceeding the lifetime maximum of 3 orders; and

(b) the parent may reasonably be expected to resume the custody of the child within a reasonable period,

but a fourth order shall not exceed,

(c) 3 months if the child is under 5 years of age;

(d) 4 months if the child is 5 years of age or over but under 12 years of age; or

(e) 6 months if the child is 12 years of age or over,

when the fourth order is made.

2000 c7 s6

*Alternate dispute resolution or assessment*

37. (1) Notwithstanding section 36, a judge may adjourn a proceeding under this Act one or more times, for a total period of up to 3 months, to allow

(a) a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution to proceed; or

(b) where an assessment is considered necessary by a judge, director or social worker, an assessment to be completed.

(2) Where a proceeding is adjourned under subsection (1), a time limit applicable to the proceeding is suspended.

(3) Where, as a result of a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution, a written agreement is made, a director or social worker shall file the agreement with the court.

1998 cC-12.1 s37

*When time limits expire*

38. Where all of the time limits contained in section 36 have expired, a judge shall make one of the following orders:

(a) that the child be placed in the continuous custody of a director;

(b) that the child be placed in the custody of a person other than a parent, with the consent of that person; or

(c) that the child be returned to the parent from whom the child was removed.

1998 cC-12.1 s38

*Subsequent order*

39. (1) Before a supervision order or temporary order expires, a director or social worker may file an application with a judge for another order under paragraph 34(2)(a), (b), (c) or (d).

(2) An application filed under subsection (1) shall be accompanied with a copy of the director's or social worker's plan for the child.

(3) Notice of the time and place of a hearing with respect to an application under subsection (1) shall be served not later than 10 days prior to the hearing on

(a) a parent; and

(b) a child, where the child is 12 years of age or older.

(4) At least 3 days before the date set for a hearing those receiving notice may respond to the director's or social worker's plan and provide an alternate written plan to the judge with a copy to the director or social worker.

1998 cC-12.1 s39; 2000 c7 s7

*Bridging provision*

40. Where a child is in the custody of a director or another person under a temporary order and an application for another order is filed but not heard before the expiration of the temporary order, the child shall remain in the custody of the director or other person to whom custody was granted under the temporary order until the application is heard and decided.

2000 c7 s8

*Effect of temporary order*

41. (1) Where a director has been granted a temporary order under section 34, the director has custody of the child for the specified period and the director or a social worker has the right to make all decisions regarding the child during the specified period.

(2) A director or social worker shall not consent to medical treatment, other than to necessary medical treatment unless a parent consents or the director is granted an order under section 32.

(3) A director referred to in subsection (1) shall not consent to an adoption under the Adoption of Children Act without the consent of the parent from whom the child was removed.

2000 c7 s9

*Effect of continuous order*

42. (1) When an order for continuous custody is made under paragraph 34(2)(d), the director named in the order becomes the sole custodian of the child and the director may consent to the child's adoption in accordance with the Adoption of Children Act .

(1.1) The director or social worker may consent to the provision of medical treatment to the child.

(2) An order for continuous custody of a child does not affect the child’s rights respecting inheritance or succession to property.

(3) At least 30 days before consenting under the Adoption of Children Act to a child’s adoption, a director shall inform any person who under subsections 33(6) and 34(4) has been given access to the child of the director’s intention to consent to the adoption.

1998 cC-12.1 s42; 2000 c7 s10

*When continuous order ends*

43. An order for continuous custody ceases to have effect when

(a) the child reaches 16 years of age;

(b) the child marries; or

(c) the court rescinds the order.

1998 cC-12.1 s43

*Rescind continuous order*

44. (1) With the leave of a judge and

(a) where circumstances have changed significantly since the time an order for continuous custody was made; and

(b) where the child has not been placed for adoption

a party to a hearing at which the order was made may apply to the judge for the rescission of the order.

(2) Where a judge grants leave under subsection (1), notice of an application for a hearing shall be served not later than 10 days prior to the hearing on

(a) the director concerned;

(b) a parent;

(c) a child, where the child is 12 years of age or older; and

(d) another party who was present at the original hearing.

(3) The judge may grant an order to rescind an order for continuous custody, where he or she believes it is in the best interest of the child to do so.

1998 cC-12.1 s44

*Transfer of custody or supervision between directors*

45. (1) A director who has care, supervision or custody of a child may transfer care, supervision or custody to another director.

(2) Where the care, supervision or custody of a child is transferred by one director to another director,

(a) the other director has care, supervision or custody of the child with the same rights and responsibilities as the director who made the transfer; and

(b) the director who made the transfer ceases to have care, supervision or custody of the child.

(3) The transfer of supervision or custody is effective upon the filing of an amended order in the registry of the court which granted the original order.

1998 cC-12.1 s45

*Return of child at any time*

46. A child may be returned to the parent from whom the child was removed at any time where

(a) circumstances have changed so that the child in the opinion of a director or social worker no longer needs protective intervention; or

(b) the parent enters into an agreement that is considered by a director or social worker to be adequate to protect the child.

1998 cC-12.1 s46

*Child returned within 72 hours*

47. (1) Where a child is returned to the parent from whom the child was removed within 72 hours of removal, a director or social worker shall

(a) file a notice of discontinuance where an application has been made to a judge for a protective intervention hearing; and

(b) provide notice of the discontinuance of the application to the persons given notice of the application for a protective intervention hearing.

(2) A written explanation of the change of circumstances referred to in paragraph 46(a) or a copy of the agreement referred to in paragraph 46(b) shall be filed with the notice of discontinuance and provided to all persons receiving notice of the discontinuance.

(3) Where a child is returned to the parent from whom the child was removed within 72 hours of the removal, a director shall strike an interdisciplinary panel to review the action of removing and returning the child.

1998 cC-12.1 s47

*Child returned after 72 hours*

48. (1) Where a child is returned 72 hours or longer after having been removed but before the date set for a protective intervention hearing, a director or social worker shall

(a) seek leave of a judge to withdraw the application for a protective intervention hearing;

(b) serve notice of the intention to seek leave to withdraw the application to the persons previously

given notice of the application for a protective intervention hearing; and

(c) file with the court and provide to all persons receiving notice a written explanation of the circumstances referred to in paragraph 46(a) or a copy of the agreement referred to in paragraph 46(b).

(2) Where leave of a judge is sought under this section, the matter shall be heard no later than the date set for the protective intervention hearing and the judge may rescind an outstanding order made in relation to the child.

(3) Where leave of a judge is sought under this section, the matter may be heard by telephone, teleconference or other means of telecommunication.

1998 cC-12.1 s48; 2000 c7 s11

*Child returned after protective intervention hearing*

49. (1) Where a child is returned to the parent from whom the child was removed after a protective intervention hearing but before the expiration of a temporary order made under section 34, a director or social worker shall apply to a judge to rescind or vary an outstanding order made in relation to the child and shall

(a) not later than 10 days prior to the date set for a hearing, provide notice of the application

(i) to the parent, and

(ii) to the child, where the child is 12 years of age or older; and

(b) file with the court and provide to all persons receiving notice a written explanation of the circumstances referred to in paragraph 46(a) or a

copy of the agreement referred to in paragraph 46(b).

(2) Where an application is made under this section, the judge may rescind or vary an outstanding order made with respect to the child.

. . . .

PART VII
PLACEMENT OF CHILDREN

*Placement considerations*

62. (1) The placement of a child shall be conducted in a manner which is least disruptive to a child and recognizes the importance of placement with siblings and contact with family or other persons who are significant to the child.

(2) A director or social worker shall first consider placement of a child with a relative or person with whom the child has a significant relationship.

(3) Where a child is removed by a director or social worker from a custodial parent and the non-custodial parent is considered by the director or social worker to be suitable to provide care, the child may be placed with the non-custodial parent pending final determination of the application before the court.

(4) Where a child cannot be placed in accordance with subsection (2) or (3), the child may be placed with a caregiver.

1998 cC-12.1 s62

*Agreements*

63. (1) A director or social worker may make an agreement for services including financial support, with a person providing care to or entrusted with the care of a child.

(2) Where an agreement is made under subsection (1) with a non-custodial parent, the non-custodial parent is not entitled to financial support.

(3) A person who provides care under this Part shall be approved by a director or social worker.

1998 cC-12.1 s63

*Information re child's care*

64. (1) A director or social worker shall provide information relevant to the care of a child or a youth to a person providing care to or entrusted with the care of the child or youth.

(2) A director or social worker shall provide relevant information concerning the caregiver of a child or youth to the child or youth and the parent of the child or youth, but may withhold information where, in the opinion of the director or social worker, doing so is in the best interests of the child or youth.

2000 c7 s16

*Removal of child from caregiver*

65. A director or social worker may remove a child from the care of a caregiver with whom the director or social worker has placed the child, without notice, if necessary.

1998 cC-12.1 s65

*Counselling*

66. A child who is removed from a person caring for the child shall be entitled to counselling.

1998 cC-12.1 s66

. . . .

PART X
ACCOUNTABILITY PROVISIONS

*Minister's advisory committee*

75. (1) The minister shall establish an advisory committee whose function is to review every 2 years the operation of this Act and to report to the minister concerning its operation and stating whether, in its opinion, the principles and purpose of the Act are being achieved.

(2) The advisory committee shall be appointed by the minister and shall be composed of

(a) 2 persons who themselves or whose children are receiving or have received services under this Act or a predecessor Act;

(b) a representative from a board;

(c) a representative of the minister;

(d) a legal aid lawyer;

(e) 2 persons drawn from the cultural, racial or linguistic minority communities; and

(f) those other persons, not exceeding 3 in number, who the minister may determine.

(3) Appointments to the advisory committee shall be for 3 years and may be renewed.

(4) The members of the committee shall elect one of their number to serve as chairperson.

(5) The members of the committee shall serve without remuneration but may be reimbursed for expenses reasonably incurred in carrying out their duties on the committee.

(6) The minister shall present a copy of the committee's report to the House of Assembly not later than 30 days after receiving it and if the House of Assembly is not then sitting within 15 days of the beginning of the next sitting.

1998 cC-12.1 s75

*Custody review committees*

76. (1) Each board shall establish a review committee which shall review annually and report to the board's director on the care of all children in the continuous custody of the director.

(2) Each review committee shall be composed of

(a) a member of the board;

(b) a parent of a child who is receiving or has received services under this Act or a predecessor Act; and

(c) a member of each appropriate professional discipline employed by the board.

1998 cC-12.1 s76

September 8, 2003

[…]
Minister
Department of Health and Community Services
P.O. Box 8700
Confederation Building
St. John's, NL A1B 4J6

Dear Minister […]:

Attached please find a report detailing the involvement of Health & Community Services, St. John's Region with Dr. Shirley Turner and her children, […] and Zachary Turner as per your request. This report has been completed by […] (Social Worker) and […] (Program Supervisor), in consultation with […], Director of Child, Youth & Family Services and […], Manager of Public Health Nursing. This report contains sensitive information and it is our understanding that this report will not be made public.

Ms. […] and Ms. […], Director of Quality and Planning conducted a file review following the death of Dr. Turner and her son Zachary. Through this review and as evidenced in this detailed report, we have concluded that:

- The assessment that formed the basis of the intervention plan was in keeping with standard child protection practice;
- There was compliance with legislation, policy and standards, and
- That there was significant evidence to support the decision to leave Zachary in his mother's care as there were no indications that would have lead us to suspect or conclude that Dr. Turner was suicidal or that Zachary was at any risk of imminent harm.

This tragedy has had a significant impact on many people including Dr. Turner's older children and Mr. and Mrs. Bagby. Child, Youth & Family Services has already offered support and assistance to those closely involved. It is our intention to personally meet with Mr. and Mrs. Bagby

this week to hear their thoughts and concerns and to appropriately respond.

If you wish further information or clarification, please do not hesitate to contact me.

Respectfully submitted,

[…]
Chief Executive Officer

Attach.

**A Review of HCSSJR Involvement with Shirley and Zachary Turner and [...] [...]**

This report outlines the involvement of Health and Community Services. St. John's Region with Dr. Turner and her children [...] [...] (DOB.1990/03/08) and Zachary Turner (DOB.2002/07/18). It includes detailed information regarding the involvement of Child, Youth and Family Services as well as Public Health Nursing.

**Summary of Child, Youth and Family Services Involvement**

**Referrals, Assessment and Intervention Process**

On March 25, 2002 Dr. Shirley Turner called Child, Youth and Family Services (CYFS) to request information regarding custody issues since she was making arrangements to have her daughter, [...], return to live with her. Since the issues presented were related only to custody and access and Dr. Turner was responding appropriately as a parent, it was decided that CYFS involvement was not warranted at that time.

Child, Youth and Family Services began involvement with Shirley Turner and her family in response to a second referral made by Dr. Turner on April 10, 2002. Dr. Turner called CYFS requesting supportive services for both her and her 12-year-old daughter, [...], who had relocated to St. John's to live with her. Dr. Turner explained that it was a very stressful and emotional time for her due to the fact that she was facing possible extradition to the United States to face a charge that she murdered Andrew Bagby, the father of her unborn child. She also explained that she was dealing with custody-issues regarding [...] that were before Unified Family Court. Dr. Turner stated that she wanted to ensure that [...]'s emotional needs were being met during this time and that she needed help with this.

Dr. Turner expressed concern about [...]'s safety when in the care of her father and stepmother, [...], in Portland Creek, Newfoundland. [...], Assessment Social Worker in St. John's, began an investigation regarding alleged physical and emotional abuse of [...] by Mr. and Ms. [...]. Several contacts with the [...] family uncovered that they did at times use inappropriate discipline, including physical discipline. They explained that they had been frustrated by [...]'s behavior, including defiance and

verbal outbursts.

[...] completed an initial safety assessment regarding [...] [...] and her mother, Dr. Shirley Turner, given that it appeared that [...] would be remaining in her mother's care. This initial assessment was completed on April 16, 2002 and concluded that this child was in no immediate danger of harm while in the care of her mother.

An in-depth safety assessment was completed as well. This assessment was consistent with the standardized process and policy in child protection practice. It consisted of private interviews and telephone calls with [...] and Dr. Turner. Despite the stress associated with the custody matter involving [...] and the ongoing court hearings related to the murder charge, the family was observed to be functioning well. Dr. Turner was openly communicating with CYFS, she exhibited a positive attitude toward help and support. There were no signs of emotional/mental health issues that would lead CYFS to take a more intrusive approach with this family.

In cooperation with Dr. Turner, it was decided that CYFS would continue to provide services to the family especially since Dr. Turner was expecting a baby in July 2002. Services were put in place, such as counseling with the Family Services Program, and recreational services for [...] through the REAL program. In addition, Dr. Turner was meeting with her psychiatrist. [...], on a regular basis. She was receiving help for her level of anxiety. She also attended the "Healthy Baby Club" PreNatal Program during the latter part of her pregnancy. Dr. Turner stated that she made contact with Human Rights Association on several occasions prior to the birth of her baby to inquire about the rights of her unborn child if she were to be taken into secure custody.

**Contact with [...], Lawyer for Mr. and Mrs. Bagby**

On June 17, 2002, [...], Regional Director of CYFS, met with [...] at Ms. [...]'s request. Ms. [...] advised that Andrew Bagby's parents, Kate and David Bagby, had retained her as a family law lawyer. She indicated that Mr. and Mrs. Bagby had recently relocated from California to St. John's, NL as they were interested in obtaining custody or access to their unborn grandchild whose expected birth date was mid-July 2002. Ms. [...] stated that despite the Bagbys questioning the paternity of the baby (they

wondered whether their son, Andrew Bagby, was actually the father and they hoped that paternity testing would be done after the baby's birth) they still wished to pursue custody or access as soon as possible.

Ms. [...] reported that the Bagbys believed that Dr. Shirley Turner was guilty of murdering their son and they were therefore concerned for the safety of their grandchild. Ms. [...] also reported that Dr. Turner had not been a full time parent to her other three children and that there were rumors throughout the MUN medical school that she had periods of instability while she was attending medical school.

Ms. [...] informed Mrs. [...] of the Bagbys' desire to care for the baby if he was removed from his mother's care. She inquired about whether they would be considered as caregivers in the event of a removal. Mrs. [...] informed her that in any situation where a child is removed consideration was always given to relative placement as required by the CYFS Act.

Ms. [...] advised that she would contact Mrs. [...] once she had laid her information in Unified Family Court. She requested that no details regarding the Bagbys' intent to apply for custody be shared with Dr. Shirley Turner at that time. Mrs. [...] did not confirm CYFS involvement with Dr. Turner to Ms. [...] due to privacy and confidentiality rights and due to the fact that it was not deemed necessary as a protective intervention measure at that time.

**Continuation of Assessment**

Immediately following the meeting with Ms. [...] this information was shared with Ms. [...], Director of Child and Family Services, and [...], social worker. It was determined that the assessment of Dr. Turner's emotional state and parenting capacity would continue. As a means of ongoing assessment, [...] had contact with several professionals who were involved with Dr. Turner.

[...] of the Royal Newfoundland Constabulary informed [...] that there was no evidence that Dr. Turner had abused any children previously. He was not aware of any mental health diagnosis however he was of the opinion that she could harm herself or the unborn child if she was at risk of losing the child.

[...], therapist at the Family Services Program, reported that [...] was attending counseling regularly and appeared to be a well-adjusted child who was coping well with the significant stress facing her and her family. [...], guidance counselor at [...]'s school, did not voice any concerns about [...]'s well being and described her as "excelling academically". [...] was also aware of the presence of other supports for this family. In fact a close friend of Dr. Turner made contact with [...] to ensure that ongoing support was provided to the family.

Prior to the birth of her baby, Dr. Turner had several discussions with [...] regarding the care of both [...] and her unborn child in the event that she was extradited to the United States. Dr. Turner's pan for [...] was that she would return to live with her father in Portland Creek. However, she stated that she did not have a family member or close friend who was able to care for her baby. She did not wish to have her baby placed in the care of the paternal grandparents, Kate and David Bagby. She provided the following reasons: that Kate and David Bagby denied that Andrew Bagby was the father of the baby; that Kate Bagby had threatened her life on one occasion and; that the Bagbys hated her and it would not be good for the baby to be exposed to this. Dr. Turner felt it would be in her baby's best interest to be placed in a foster home if she was forced to go into secure custody while awaiting an appeal or extradition to the United States.

[...] had several consultations with [...], Regional Director of Child, Youth and Family Services, and [...], Director of Child and Family Services, regarding the plan for Dr. Turner's baby if she was extradited to the United States. Dr. Turner also had several conversations with [...], Provincial Director of Child, Youth and Family Services, regarding the provision of short-term foster care for Zachary if she was placed in custody.

It was agreed that CYFS could enter into a Voluntary Care Agreement with Shirley Turner if necessary. Her preferences regarding placement options would be taken into consideration. This decision was based on the understanding that the care would be short-term and that a more permanent plan based on the best interest of the child, including consideration of placement with the paternal grandparents, would have to be made when more information regarding Dr. Turner's future became available. [...] shared this information with Dr. Turner and also advised

her of the role of Unified Family court with respect to custody issues.

On July 18, 2002, Dr. Turner gave birth to Zachary Andrew Turner. On July 19, 2002 Kate and David Bagby filed an application with the Unified Family Court for custody and access to Zachary. They also requested an order for DNA testing and an order that the baby not be removed from the jurisdiction. The latter order was granted immediately, while the other matters were set over to August 6, 2002. A tentative agreement was also reached that the Bagbys could have supervised visitation at Unified Family Court.

During this time Dr. Turner expressed fear to her social work that she would lose custody of her newborn child. She also expressed that the media coverage of her circumstances was causing her increased anxiety. Upon returning home from the hospital, CYFS recognized the increased stress that was placed on Dr. Turner. As a result increased social work monitoring and support was provided. A total of five home visits and nine telephone contacts were made between July 22, 2002 and August 30. 2002. Home support services through Health and Educational Services were also implemented for a four-week period. The goal of this service was to help Dr. Turner with the care of Zachary and also to aid in the ongoing assessment of the family's situation. The home support workers, who worked 3-4 hours/[...] with the family, did not report any concerns about Dr. Turner's emotional well being or parenting abilities.

**Transfer to long-term Protection**

In August 2002, [...] transferred the family's file to social worker [...]. A Family Services Plan signed by both social workers and Dr. Turner, outlined two reasons for CYFS involvement:

1. to provide supportive service to both Dr Turner and her family as they continued to deal with the emotional stress of the ongoing extradition hearings;

2. to explore arrangements for the care of Zachary should Dr. Turner be held in custody.

In the Family Services Plan, Dr. Turner agreed to continue with family counseling through Family Services Program, as well as to maintain

contact with other supports such as her psychiatrist and her friends. CYFS agreed to advocate for Dr. Turner in areas that she identified as stressful, such as her financial situation with the Department of Human Resources and Employment.

Ms. [...] began regular telephone contact and home visits in August 2002. During the period between August 2002 and August 2003 there were a total of 33 home visits to Dr. Turner, [...] and Zachary. In addition, there were numerous telephone calls to the family and collateral contacts with others involved with the family. These contacts included the public health [...], the family's counselor at Family Services Program and the Office of the Child And Youth Advocate. Additionally, Ms. [...] made regular contact with other family members, such as [...]'s father and Dr. Turner's older son. She also had several contacts with friends of Dr. Turner who were providing her with ongoing support.

The focus of intervention with Dr. Turner and her family was to provide ongoing assessment and support during the various court hearings involving Dr. Turner. Following Zachary's birth. Dr. Turner began breastfeeding and attended the Breastfeeding Support Group through Health and Community Services - St. John's Region. In recognition of the importance of breastfeeding, in September 2002, CYFS made arrangements and provided funding for babysitting for Zachary in an adjacent room to the courtroom to allow Dr. Turner to breastfeed Zachary periodically during the court hearing. CYFS also provided Dr. Turner with a bus pass each month in order to allow her to travel safely with Zachary in bad weather to her various appointments and regular check-ins at the Royal Newfoundland Constabulary. Counseling for Dr. Turner and [...] continued at the Family Services Program. [...] was also provided with a bus pass in order to allow her to travel to these appointments.

In October 2002, Dr. Turner requested that CYFS arrange a caregiver for Zachary in the case that she would be taken into secure custody following the judge's decision on extradition. Dr. Turner expressed that she wanted to enter into a Voluntary Care Agreement with CYFS to provide care for Zachary. She believed this would be for a short period of time while she may be in custody awaiting an appeal and/or bond hearing. On October 16, 2002, Ms. [...] attended a meeting with Dr. Turner, Zachary, [...] and caregiver, [...]. This meeting was held in Ms. [...]'s home and Dr. Turner took the opportunity to explain her legal circumstances to Ms. [...] and

give her information on the care needed for Zachary.

In the weeks following this meeting, however, Dr. Turner began to re-consider her decision to place Zachary with a caregiver as opposed to his paternal grandparents, Kate and David Bagby. Ms. [...] had several conversations with Dr. Turner about what would be in the best interest of Zachary. Dr. Turner expressed her concern that the Bagbys would try to leave the province with Zachary if they had him in their care. During this time, access for the Bagbys through Unified Family Court had recently increased from one supervised visit per week to two visits each week at the home of Dr. Turner. Dr. Turner expressed that her trust in the Bagbys was increasing and that they had been very generous and helpful in providing needed items for Zachary, such as diapers and a crib. On November 13, 2002 Dr. Turner and her lawyer reached an agreement with Kate and David Bagby which would allow the Bagbys to care for Zachary in the event that Dr. Turner was taken into custody for extradition. Dr. Turner explained that her older son, [...], would provide short-term care for [...] until she was released on appeal and/or bond, or [...] would return to Portland Creek to live with her father and stepmother.

On November 14, 2002 Dr. Turner was taken into custody at the Clarenville Women's Correctional Facility following a decision by the judge that she was to be extradited to the United States. Dr. Turner voluntarily placed Zachary into the care of his paternal grandparents. [...] remained in the family home under the care of her older brother until December when she returned to live with her father. Ms. [...] maintained contact with [...] through home visits during this time. Ms. [...] also had telephone contact with Dr. Turner while she was in custody. Telephone contact with Dr. Turner's lawyer, [...], confirmed that the agreement made between Dr. Turner and the Bagbys regarding the care of Zachary did not make reference to the involvement of CYFS. Dr. Turner stated that she had no concerns regarding Zachary's safety and well-being while he was in the care of his grandparents. During this period Dr. Turner continued to have parental visits with both children and there were no concerns reported by Correctional Services during this period of incarceration.

On January 10. 2003 Dr. Turner was released from secure custody while waiting for an appeal hearing. The Bagbys returned Zachary to her care and she maintained a high level of contact with them. Dr. Turner

described her relationship with the Bagbys at this time as supportive and she described how the Bagbys would visit and baby-sit Zachary frequently. She also stated that the Bagbys provided her with groceries and baby supplies regularly and that they spent a lot of time together. She stated that the Bagbys often gave her rides to her many appointments and this was very helpful to her. In February 2003 Dr. Turner asked Ms. [...] for help in finding a counselor who could mediate some of the complicated and emotional issues between her and the Bagbys which would allow them to better meet the needs of Zachary as he became older and more aware of family dynamics. Ms. [...] made a referral to [...] at Unified Family Court, however. Dr. Turner later advised that the Bagbys were making arrangements for them to see counselor. [...], at Aspens and Oaks. Dr. Turner stated that she felt this counseling would be very beneficial for the family.

In April 2003 Dr. Turner appeared to be experiencing an increase in stress. [...], who had been residing with her father from December 2002 to April 2003 returned to live with her mother. There were some incidents in which Dr. Turner felt that [...] was being rude and defiant. In addition, Dr. Turner also reported that there had been a "breakdown' in her relationship with the Bagbys. She attributed this breakdown to her recent discovery that the Bagbys were still intending to testify against her in the murder trial. She stated that she felt betrayed by the Bagbys since their testimony would be a lie. She also stated that the Bagbys had changed their minds about going to counseling with [...]. Dr. Turner and the Bagbys continued to have frequent contact following this, but Dr. Turner expressed that she could not trust them as fully as she did before.

Despite the fact that Dr. Turner was experiencing some difficulties in her relationship with [...] and the Bagbys, she was observed to be providing quality care for Zachary. She also took appropriate steps to improve her relationship with [...] by engaging in counseling with [...], therapist at the Family Services Program. There was no evidence of impaired functioning.

**Contact Between CYFS and Mr. and Mrs. Bagby**

Given that Dr. Turner and Mr. and Mrs. Bagby were successful in maintaining an amicable relationship and were demonstrating an ability to make decisions that were considered to be in the best interest of

Zachary, Child, Youth and Family Services did not see it as necessary to become involved in their relationship. However, on May 6, 2003 Ms. [...] met David and Kate Bagby on an attempted home visit to Dr. Turner. The Bagbys were babysitting Zachary in his home while Dr. Turner was out. Ms. [...] had a brief discussion with the Bagbys about Zachary's growth and development. Ms. [...] explained her role as social worker and gave her name and telephone number to the Bagbys with an invitation to call if they had any questions or concerns. The Bagbys did not make any contact with Ms. [...] following this visit.

**Continuation of Intervention**

In May 2003 Dr. Turner advised that, through her lawyer, [...], she had agreed that should she be placed in custody, the Bagbys would once again care for Zachary. She also informed that the Bagbys continued to have regular access visits with Zachary.

On June 4, 2003, Dr. Turner called Ms. [...] asking for immediate help since she had lost control with [...] during an argument and slapped her in the face. Ms. [...] made a visit to the family on this [...] and spent several hours discussing the problems that Dr. Turner and [...] had been experiencing and what could be done to prevent this type of incident from occurring again. Dr. Turner expressed that she was feeling an increase in stress and she regretted having hurt [...] in this way. Dr. Turner and [...] received the support of a close family friend in this situation and were also continuing in counseling with [...].

Upon the request of Dr. Turner, in July 2003, Ms. [...] made a referral to the Janeway Family Centre for counseling. The purpose of this referral was to provide Dr. Turner with an opportunity to further discuss and plan for Zachary's long-term care if she was placed in custody. On July 30, 2003 Dr. Turner and Zachary attended the first session with counselors, [...] and [...]. Dr. Turner later described this session as very beneficial and she had agreed to attend further counseling sessions. She stated that she also asked the Bagbys to become a part of this counseling with her, but that they had not agreed to it.

On August 5, 2003 Ms. [...] made a final home visit to Dr. Turner prior to going on annual leave. Dr. Turner and the family had recently moved into a Newfoundland and Labrador Housing Unit at 18 Brophy Place. [...]

gave Ms. [...] a tour of the family's new home. [...] observed that four safety gates had been put into place and all of the family's belongings appeared to have been unpacked and organized. Dr. Turner spoke about many things, including: her counseling session at the Janeway Family Centre; her plan to have the CBS Network show "48 Hours" come to visit her in late August 2003 to interview for a documentary; and the decision to either have [...] start school in St. John's in September or return to live with her father. Zachary was walking around and playing in the living room during the visit. At this time Dr. Turner presented as functioning well and obviously making future plans. There was no indication of changes in her behavior, physical condition, thoughts or feelings. There were no signs of depression.

**Public Health Nursing Involvement**

Following Zachary's birth a referral was made to Public Health Nursing for follow-up as per normal protocol following all births. The referral indicated that Dr. Turner was experiencing anxiety as a result of current events happening in her life. It also referenced a period of depression that she experienced in 1998 as well as the fact that she was currently taking an anti-anxiety drug as necessary. This referral caused the Public Health nursing program to give Dr. Turner a high priority.

The public health nursing chart indicates that between July 23, 2002 and August 28, 2002 while this family was in receipt of short-term Healthy Beginnings follow up five contacts were documented. The first being a telephone visit followed by two home visits with two subsequent telephone contacts. During this time Dr. Turner and Zachary were also seen in two occasions in Breast-feeding support groups. Following a six-week period the child was transferred to the long-term Healthy Beginning program for further follow up. From August 30, 2002 to August 11, 2003, there were a total of 17 public health contacts with Dr. Turner. This included 7 home visits, 2 clinic visits and 8 telephone contacts. Public health [...]s also administered the Denver Development Assessment Tool with Zachary on 4 occasions and no substantial concerns were noted as a result of these assessments.
There was on-going collaboration between the social workers and the public health [...]s who had involvement with this family. Relevant information was shared between these service providers in order to monitor the known concerns and to provide support. Further, on one

occasion the social worker and [...] completed a joint home visit.

**Events Following the Report that Dr. Turner and Zachary Were Missing**

On August 18, 2003, at approximately 6 p.m., CYFS became aware through a television news broadcast that Dr. Shirley Turner and Zachary had been missing since the previous evening. Dr. Turner's vehicle had been located in Kelligrews, NL. This information was relayed to [...], on-call social worker, for the purpose of contacting the Royal Newfoundland Constabulary (RNC) to obtain further information. At approximately 7:20pm, Constable Case of the RNC advised that Dr. Turner and Zachary had been located and they were both deceased. At approximately 8:30pm. the RNC reported that [...] had been located in the care of her father in Portland Creek, NL.

On August 19, 2003 Constable [...] of the RNC advised CYFS that the autopsy reports concluded that the cause of death for Dr. Turner and Zachary was drowning. He stated that the matter was determined to be a homicide-suicide.

Constable [...] further advised that [...], Dr. Turners' Psychiatrist, was interviewed and stated that there was no evidence that Dr. Turner was suicidal or homicidal. Constable [...] advised that CYFS could now make contact with [...] and with Dr. Turner's older son, [...] He also reported that Mr. and Mrs. Bagby were overwhelmingly distraught over this tragedy and he advised that he would be informing them of the availability of support services through Victim Services. Constable [...] was advised that Health and Community Services was also available to provide support to Mr. and Mrs. Bagby. It was agreed that he would inform them of this.

CYFS made contact with Mr. [...], [...]'s father, regarding support to [...] and subsequently made a referral to Health and Community Services, Western Region for follow up with them. Contact was also made with older son to determine if CYFS could assist him in this tragic event.

**Information Made Available to CYFS Following the Deaths of Dr. Turner and Zachary**

Following the deaths of Dr. Turner and Zachary, CYFS became aware of further information regarding Dr. Turner's history and recent events in her life. Through the media, CYFS learned that Dr. Turner had made a previous suicide attempt while residing in the U.S.A.

On August 19, 2003 Constable [...] of the RNC informed [...], Regional Director of CYFS, that he had received a phone call from a man approximately one-week prior who felt that Dr. Turner was harassing him. According to Constable [...], this man alleged that he had dated Dr. Turner several times after meeting her in a bar downtown approximately six weeks before, and when he tried to end the relationship, she made repeated attempts to resist this. Constable [...] further explained that this man alleged that he had logged over 100 phone calls that Dr. Turner had made to him and that she told him that she was pregnant with his child. Constable [...] stated that this man reported that at no time did she make any threats to harm him, herself or Zachary. Constable [...] stated that the autopsy report concluded that Dr. Turner was not pregnant at the time of her death. The information regarding this alleged relationship was not known to CYFS prior to this conversation with Constable [...].

**Conclusion**

In summary. HCSSJR was involved with this family for a sixteen-month period from April 10, 2002 to August 11. 2003. CYFS social worker contact during this period consisted of 57 telephone contacts and 34 home visits. Social worker, [...] had on-going clinical consultation with her supervisor, […] in order to ensure sound decision making and critical thinking were applied to the case. Additionally, public health nursing had a total of 17 contacts. This means that not including the involvement of our Family Services counseling program, the organization had a total of 108 recorded contacts with Dr. Turner. The professional assessment and on-going intervention plan was reflective of the client's strengths and needs. The primary focus throughout this time was protection of Zachary and [...] and the assurance of their safety and well-being.

While Dr. Turner was charged with murder, she always maintained her innocence. Notwithstanding this CYFS always considered the likelihood that Dr. Turner was guilty of this offense and factored this into the assessment of potential risk for her children. Despite this there was no

evidence of hostile, violent or threatening behavior toward herself or others during our involvement. The risk of imminent harm to Zachary and [...] while in their mother's care was considered to be minimized because of all the other safety factors-that were evident. These safety factors included the fact that:

- she was socially well connected and not isolated;
- she was receptive and cooperative with ,and fully availed of, professional help and;
- she demonstrated an ability to formulate sound judgments and decisions respecting the care of her children.

Additionally, to our knowledge, Dr. Turner met all requirements of her bail conditions. While there were never any observed concerns regarding Zachary's care or well-being and despite the fact that Dr. Turner appeared to be appropriately managing her stress, HCSSJR maintained vigilance in monitoring this situation due to the serious violent crime that she was alleged to have committed.

With respect to her parenting, Dr. Turner was observed to have a significant bond with [...] and Zachary. She had in-depth knowledge of child development including issues related to attachment. It was the view of the social worker and the public health [...] that Dr. Turner's care of her children, Zachary in particular, was in keeping with high quality childcare standards. The public health [...] did not note any concerns regarding Dr. Turner's parenting abilities.

With regards to Dr. Turner's mental health, she continued to attend appointments with her Psychiatrist, [...], and appeared to be coping well as she was observed to be hopeful, continuously engaged in positive planning and making appropriate decisions despite the stressors in her life. The usual warning signs of suicide were not evident in that she never made any threats; she did not appear to be pre-occupied with death and: there were no changes in her behavior, physical condition, thoughts or feelings prior to this tragic event.

In conclusion it is important to note that CYFS did not receive any referrals concerning Dr. Turner's parenting abilities, behavior or mental

health aside from the concerns expressed by [...] on June 17, 2002. Furthermore, CYFS was not involved in the custody and access matters being heard through Unified Family Court.

September 8, 2003

Ms. [...]
Executive Director
Health & Community Services
St. John's Region
P.O. Box 13122
St. John's, NL
A1B 4A4

Dear Ms. […]:

Attached please find a report detailing the involvement of Health & Community Services, St. John's Region with Dr. Shirley Turner and her children, [...] and Zachary. This report has been requested by Honorable Gerald Smith, Minister of Health and Community Services.

I, along with Ms. […], Director of Quality and Planning conducted a file review following the death of Dr. Turner and her son Zachary. Through this review we have concluded that:

- The assessment that formed the basis of the intervention plan was in keeping with standard child protection practice;

- There was compliance with legislation, policy and standards, and

- That there was significant evidence to support the decision to leave Zachary in his mothers care as there were no indications that would have lead us to suspect or conclude that Dr. Turner was suicidal or that Zachary was at any risk of imminent harm.

This tragedy has had a significant impact on many people including Dr. Turner's older children and Mr. and Mrs. Bagby. CYFS has already offered support and assistance to those closely involved. It is our intention to personally meet with Mr. and Mrs. Bagby this week to hear their thoughts and concerns and to appropriately respond.
Respectfully submitted,

[...]
Director,
Child, Youth & Family Service & Adoptions
Health & Community Services, St. John's Region

**Introduction**

This report is prepared for submission to the Honorable […], Minister, Department of Health and Community Services. It outlines the involvement of Health and Community Services, St. John's Region with Dr. Turner and her children [...] [...] (DOB.1990/03/08) and Zachary Turner (DOB. 2002/07/18). It includes detailed information regarding the involvement of Child, Youth and Family Services as well as Public Health Nursing.

**Summary of Child, Youth and Family Services Involvement**

**Referrals, Assessment and Intervention Process**

On March 25, 2002 Dr. Shirley Turner called Child, Youth and Family Services (CYFS) to request information regarding custody issues since she was making arrangements to have her daughter, [...], return to live with her. Since the issues presented were related only to custody and access and Dr. Turner was responding appropriately as a parent, it was decided that CYFS involvement was not warranted at that time.

Child, Youth and Family Services began involvement with Shirley Turner and her family in response to a second referral made by Dr. Turner on April 10, 2002. Dr. Turner called CYFS requesting supportive services for both her and her daughter, [...], who had relocated to St. John's to live with her. Dr. Turner explained that it was a very stressful and emotional time for her due to the fact that she was facing possible extradition to the United States to face a charge that she murdered Andrew Bagby, the father of her unborn child. She also explained that she was dealing with custody issues regarding [...] that were before Unified Family Court. Dr. Turner stated that she wanted to ensure that [...]'s emotional needs were being met during this time and she that she needed help with this.

Dr. Turner expressed concern about [...]'s safety when in the care of her father and stepmother, [...], in Portland Creek, Newfoundland. [...], Assessment Social Worker in St. John's, began an investigation regarding alleged physical and emotional abuse of [...] by Mr. and Ms. [...]. Several contacts with the [...] family uncovered that they did at times use inappropriate discipline, including physical discipline. They explained

that they had been frustrated by [...]'s behavior, including defiance and verbal outbursts.

[...] completed an initial safety assessment regarding [...] [...] and her mother given that it appeared that [...] would be remaining in her mother's care. This initial assessment was completed on April 16, 2002 and concluded that this child was in no immediate danger of harm while in the care of her mother.

An in-depth safety assessment was completed as well. This assessment was consistent with the standardized process and policy in child protection practice. It consisted of private interviews and telephone calls with [...], Dr. Turner, and her older son [...] Despite the stress associated with the custody matter involving [...] and the ongoing court hearings related to the murder charge the family was observed to be functioning well. Dr. Turner was openly communicating with CYFS; she exhibited a positive attitude toward help and support and there were no signs of emotional/ mental health issues that would lead CYFS to take a more intrusive approach with this family.

In cooperation with Dr. Turner, it was decided that CYFS would continue to provide services to the family especially since Dr. Turner was expecting a baby in July 2002. Services were put into place, such as counseling with the Family Services Program, and recreational services for [...] through the REAL program. In addition, Dr. Turner was meeting with her psychiatrist, [...], on a regular basis and receiving help with her level of anxiety. She also attended the "Healthy Beginnings" Pre-Natal Program during the latter part of her pregnancy. Dr. Turner made contact with Human Rights Commission on several occasions prior to the birth of her baby to inquire about the rights of her unborn child if she were to be taken into secure custody.

**Contact with [...]. Lawyer for Mr. and Mrs. Bagby**

On June 17, 2002, [...], Regional Director of CYFS, met with [...] at Ms. [...]'s request. Ms. [...] advised that Andrew Bagby's parents, Kate and David Bagby, had retained her as a family law lawyer. She indicated that Mr. and Mrs. Bagby had recently relocated from California to St. John's, NL- as they were interested in obtaining custody or access to their unborn grandchild whose expected birth date was mid-July 2002. Ms. [...] stated

that despite the Bagbys questioning the paternity of the baby (they wondered whether their son, Andrew Bagby, was actually the father and they hoped that paternity testing would be done after the baby's birth) they still wished to pursue custody or assess as soon as possible.

Ms. [...] reported that the Bagbys believed that Dr. Shirley Turner was guilty of murdering their son and that they were therefore concerned for the safety of their grandchild. Ms. [...] also reported the fact that Dr. Turner had not been a full time parent to her other three children and that there were rumors throughout the MUN medical school that she had periods of instability while she was attending medical school, as further evidence of the Bagby's concerns.

Ms. [...] informed Mrs. [...] of the Bagbys' desire to care for the baby if he was removed from his mother's care. She inquired about whether they would be considered as caregivers in the event of a removal. Mrs. [...] informed her that in any situation where a child is removed that consideration was always given to relative placement as required by the CYFS Act.

Ms. [...] advised that she would contact Mrs. [...] once she had laid her information in Unified Family Court. She requested that no details regarding the Bagbys' intent to apply for custody be shared with Dr. Shirley Turner at that time. Mrs. [...] did not confirm CYFS involvement with Dr. Turner to Ms. [...] due to privacy and confidentiality rights and due to the fact that it was not deemed necessary as a protective intervention measure at that time.

**Continuation of Assessment**

Immediately following the meeting with Ms. [...] this information was shared with Ms. [...], Director of Child and Family Services, and [...], social worker. It was determined that the assessment of Dr. Turner's emotional state and parenting capacity would continue. As a means of ongoing assessment, [...] had contact with several professionals who were involved with Dr. Turner.

[...] of the Royal Newfoundland Constabulary informed [...] that there was no evidence that Dr. Turner had abused any children previously. He was not aware of any mental health diagnosis however he was of the

opinion that she could harm herself or the unborn child if she was at risk of losing the child.

[...], therapist at the Family Services Program, reported that [...] was attending counseling regularly and appeared to be a well-adjusted child who was coping well with the significant stress facing her and her family. [...], guidance counselor at [...]'s school, did not voice any concerns about [...]'s well being and described her as "excelling academically". [...] was also aware of the presence other supports for this family. In fact a close friend of Dr. Turner made contact with [...] to ensure that ongoing support was provided to the family.

Prior to the birth of her baby, Dr. Turner had several discussions with [...] regarding the care of both [...] and her unborn child in the event that she was extradited to the United States. Dr. Turner's plan for [...] was that she would return to live with her father in Portland Creek. However, she stated that she did not have a family member or close friend who was able to care for her baby. She did not wish to have her baby placed in the care of the paternal grandparents, Kate and David Bagby. She provided the following reasons: that Kate and David Bagby denied that Andrew Bagby was the father of the baby; that Kate Bagby had threatened her life on one occasion and; that the Bagbys hated her and it would not be good for the baby to be exposed to this. Dr. Turner felt it would be in her baby's best interest to be placed in a foster home if she was forced to go into secure custody while awaiting an appeal or extradition to the United States.

[...] had several consultations with [...], Regional Director of Child, Youth and Family Services, and [...], Director of Child and Family Services, regarding the plan for Dr. Turner's baby if she was extradited to the United States. Dr. Turner also had several conversations with [...], Provincial Director of Child, Youth and Family Services, regarding the provision of short-term foster care for Zachary if she was placed in custody.

It was agreed that CYFS could enter into a Voluntary Care Agreement with Shirley Turner if necessary and that her preferences regarding placement options would be taken into consideration. This decision was based on the understanding that the care would be short-term and that a more permanent plan based on the best interest of the child, including

consideration of placement with the paternal grandparents, would have to be made when more information regarding Dr. Turner's future became available. [...] shared this information with Dr. Turner and also advised her of the role of Unified Family court with respect to custody issues.

On July 18, 2002, Dr. Turner gave birth to Zachary Andrew Turner. On July 19, 2002 Kate and David Bagby filed an application for custody and access of Zachary, as well as a request for an order for DNA testing and an order that the baby not be removed from the jurisdiction. The latter order was granted immediately, while the other matters were set over to August 6, 2002. A tentative agreement was also reached that the Bagbys could have supervised visitation at Unified Family Court. Dr. Turner expressed fear of losing custody of her newborn child and she also expressed that the media coverage of her circumstances was causing her increased anxiety. Upon returning home from the hospital, CYFS recognized the increased stress that was placed on Dr. Turner. As a result increased social work monitoring and support was provided. A total of five home visits and nine telephone contacts were made between July 22, 2002 and August 30, 2003. Home support services through Health and Educational Services were also implemented for a four-week period. The goal of this service was to help Dr. Turner with the care of Zachary and also to aid in the ongoing assessment of the family's situation. The home support workers, who worked 3-4 hours/[...] with the family, did not report any concerns about Dr. Turner's emotional well being or parenting abilities.

**Transfer to long-term Protection**

In August 2002, [...] transferred the family's file to social worker [...]. A Family Services Plan, signed by both social workers and Dr. Turner, outlined two reasons for CYFS involvement: firstly, to provide supportive service to both Dr. Turner and her family as they continued to deal with the emotional stress of the ongoing extradition hearings; and secondly, to explore arrangements for the care of Zachary should Dr. Turner be held in custody.

In the Family Services Plan, Dr. Turner agreed to continue with family counseling through Family Services Program, as well as to maintain contact with other supports such as her psychiatrist and her friends. CYFS agreed to advocate for Dr. Turner in areas that she identified as

stressful, such as her financial situation with the Department of Human Resources and Employment.

Ms. [...] began regular telephone contact and home visits in August 2003. During the period between August 2002 and August 2003 there were a total of 28 home visits to Dr. Turner, [...] and Zachary. In addition, there were numerous telephone calls to the family and collateral contacts with others involved with the family. These contacts included the community health [...], the family's counselor at Family Services Program and the Office of the Child and Youth Advocate. Additionally, Ms. [...] made regular contact with other family members, such as [...]'s father and Dr. Turner's older children. She also had several contacts with friends of Dr. Turner who were providing her with ongoing support.

The focus of intervention with Dr. Turner and her family was to provide ongoing assessment and support during the various court hearings involving Dr. Turner. Following Zachary's birth, Dr. Turner began breastfeeding and attended the Breastfeeding Support Group through Health and Community Services - St. John's Region. In recognition of the importance of breastfeeding, in September 2002, CYFS made arrangements and provided funding for babysitting for Zachary in an adjacent room to the courtroom to allow Dr. Turner to breastfeed Zachary periodically during the court hearing. CYFS also provided Dr. Turner with a bus pass each month in order to allow her to travel safely with Zachary in bad weather to her various appointments and regular check-ins at the Royal Newfoundland Constabulary. Counseling for Dr. Turner and [...] continued at the Family Services Program and [...] was also provided with a bus pass in order to allow her to travel to these appointments.

In October 2002, Dr. Turner requested that CYFS arrange a caregiver for Zachary in the case that she would be taken into secure custody following the judge's decision on extradition. Dr. Turner expressed that she wanted to enter into a Voluntary Care Agreement with CYFS to provide care for Zachary for what she believed would be a short period of time that she may be in custody awaiting an appeal and/or bond hearing. On October 16, 2003, Ms. [...] attended a meeting with Dr. Turner, Zachary, [...] and caregiver, [...]. This meeting was held in Ms. [...]'s home and Dr. Turner took the opportunity to explain her legal circumstances to Ms. [...] and give her information on the care needed for Zachary.

In the weeks following this meeting, however, Dr. Turner began to re-consider her decision to place Zachary with a caregiver as opposed to his paternal grandparents, Kate and David Bagby. Ms. [...] had several conversations with Dr. Turner about what would be in the best interest of Zachary and Dr. Turner expressed her concern that the Bagbys would try to leave the province with Zachary if they had him in their care. During this time, access for the Bagbys through Unified Family Court had recently increased from one supervised visit per week to two visits each week at the home of Dr. Turner. Dr. Turner expressed that her trust in the Bagbys was increasing and that they had been very generous and helpful in providing needed items for Zachary, such as diapers and a crib. On November 13, 2002 Dr. Turner and her lawyer reached an agreement with Kate and David Bagby which would allow the Bagbys to care for Zachary in the event that Dr. Turner was taken into custody for extradition. Dr. Turner explained that her older son, [...], would provide short-term care for [...] until she was released on appeal and/or bond, or [...] would return to Portland Creek to live with her father and step-mother.

On November 14, 2002 Dr. Turner was taken into custody at the Clarenville Women's Correctional Facility following a decision by the judge that she was to be extradited to the United States. Dr. Turner voluntarily placed Zachary into the care of his paternal grandparents and [...] remained in the family home under the care of her older brother until December when she returned to live with her father. Ms. [...] maintained contact with [...] through home visits during this time and she had telephone contact with Dr. Turner while she was in custody. Telephone contact with Dr. Turner's lawyer, [...], confirmed that the agreement made between Dr. Turner and the Bagbys regarding the care of Zachary did not make reference to the involvement of CYFS. Dr. Turner stated that she had no concerns regarding Zachary's safety and well being while he was in the care of his grandparents.

On January 10, 2003 Dr. Turner was released from secure custody while waiting for an appeal hearing. The Bagby's returned Zachary to her care and she maintained a high level of contact with them. Dr. Turner described her relationship with the Bagbys at this time as supportive and she described how the Bagbys would visit and baby-sit Zachary frequently. She also stated that the Bagbys provided her with groceries

and baby supplies regularly and that they spent a lot of time together. She stated that the Bagbys often gave her rides to her many appointments and this was very helpful to her. In February 2003 Dr. Turner asked Ms. [...] for help in finding a counselor who could mediate some of the complicated and emotional issues between her and the Bagbys which would allow them to better meet the needs of Zachary as he became older and more aware of family dynamics. Ms. [...] made a referral to [...] at Unified Family Court, however, Dr. Turner later advised that the Bagbys were making arrangements for them to see counselor, [...], at Aspens and Oaks. Dr. Turner stated that she felt this counseling would be very beneficial for the family.

In April 2003 Dr. Turner appeared to be experiencing an increase in stress. [...], who had been residing with her father from December 2002 to April 2003 returned to live with her mother. There were some incidents in which Dr. Turner felt that [...] was being rude and defiant. In addition, Dr. Turner also reported that there had been a "break-down" in her relationship with the Bagbys. She attributed this breakdown to her recent discovery that the Bagbys were still intending to testify against her in the murder trial. She stated that she felt betrayed by the Bagbys since their testimony would be a lie. She also stated that the Bagbys had changed their minds about going to counseling with [...]. Dr. Turner and the Bagbys continued to have frequent contact following this, but Dr. Turner expressed that she could not trust them as fully as she did before.

Despite the fact that Dr. Turner was experiencing some difficulties in her relationship with [...] and the Bagby's she was observed to be providing quality care for Zachary. She also took appropriate steps to improve her relationship with [...] by including herself in counseling with [...], therapist at the Family Services Program. There was no evidence impaired functioning.

**Contact Between CYFS and Mr. and Mrs. Bagby**

Given that Dr. Turner and Mr. and Mrs. Bagby were successful in maintaining an amicable relationship and were demonstrating an ability to make decisions that were considered to be in the best interest of Zachary, did not see it as necessary to become involved in their relationship. However, on May 6, 2003 Ms. [...] met David and Kate Bagby on an attempted home visit to Dr. Turner. The Bagbys were

babysitting Zachary in his home while Dr. Turner was out and Ms. [...] had a brief discussion with the Bagbys about Zachary's growth and development. Ms. [...] explained her role as social worker to the Bagbys and gave her name and telephone number to them with an invitation to call if they had any questions or concerns. The Bagbys did not make any contact with Ms. [...] following this visit.

**Continuation of Intervention**

In May 2003 Dr. Turner stated that she, through her lawyer, [...] agreed that should she be placed in custody that the Bagbys would once again care for Zachary. She also informed that the Bagby's continued to have regular access visits with Zachary.

On June 4, 2003, Dr. Turner called Ms. [...] asking for immediate help since she had lost control with [...] during an argument and slapped her in the face. Ms. [...] made a visit to the family on this [...] and spent several hours discussing the problems that Dr. Turner and [...] had been experiencing and what could be done to prevent this type of incident from occurring again. Dr. Turner expressed that she was feeling an increase in stress and she regretted having hurt [...] in this way. Dr. Turner and [...] received the support of a close family friend in this situation and were also continuing in counseling with [...].

Upon the request of Dr. Turner, in July 2003, Ms. [...] made a referral to the Janeway Family Centre for counseling. The purpose of this referral was to provide Dr. Turner with an opportunity to further discuss and plan for Zachary's long-term care if she placed in custody. On July 30, 2003 Dr. Turner and Zachary attended the first session with counselors, [...] and [...]. Dr. Turner later described this session as very beneficial and she had agreed to attend further counseling sessions. She stated that she also asked the Bagbys to become a part of this counseling with her, but that they had not agreed to it.

On August 5, 2003 Ms. [...] made a final home visit to Dr. Turner prior to going on annual leave. Dr. Turner and the family had recently moved into a Newfoundland and Labrador Housing Unit at 18 Brophy Place. [...] gave Ms. [...] a tour of the family's new home and Ms. [...] observed that four safety gates had been put into place and all of the family's belongings appeared to have been unpacked and organized. Dr. Turner

spoke about many things, including: her counseling session at the Janeway Family Centre; her plan to have the CBS Network show "48 Hours" come to visit her in late August, 2003 to interview her for a documentary; and the decision to either have [...] start school in St. John's in September or return to live with her father. Zachary was walking around and playing in the living room during the visit. At this time Dr. Turner presented as functioning well and obviously making future plans. There was no indication of changes in her behavior, physical condition, thoughts or feelings.

**Events Following the Report that Dr. Turner and Zachary Were Missing**

On August 18, 2003, at approximately 6 p.m., CYFS became aware through a television news broadcast that Dr. Shirley Turner and Zachary had been missing since the previous evening. Dr. Turner's vehicle had been located in Kelligrews, NL. This information was relayed to [...], on-call social worker, for the purpose of contacting the Royal Newfoundland Constabulary (RNC) to obtain further information. At approximately 7:20pm, Constable Case of the RNC advised that Dr. Turner and Zachary had been located and they were both deceased. At approximately 8:30pm, the RNC reported that [...] had been located in the care of her father in Portland Creek, NL.

On August 19, 2003 Constable [...] of the RNC advised CYFS that the autopsy reports concluded that the cause of death for Dr. Turner and Zachary was drowning. He stated that the matter was determined to be a homicide-suicide.

Constable [...] further advised that [...] was interviewed and stated that there was no evidence that Dr. Turner was suicidal or homicidal.

Constable [...] advised that CYFS could now make contact with [...] and with Dr. Turner's older son, [...] He also reported that Mr. and Mrs. Bagby were overwhelmingly distraught over this tragedy and he advised that he would be informing them of the availability of support services through Victim Services. Constable [...] was advised that Health and Community Services was also available to provide support to Mr. and Mrs. Bagby and it was agreed that he would inform them of this.

CYFS made contact with Mr. [...], [...]'s father, regarding support to [...] and subsequently made a referral to Health and Community Services, Western Region for follow up with them. Contact was also made with older son to determine if CYFS could assist him this tragic event.

**Information Made Available to CYFS Following the Deaths of Dr. Turner and Zachary**

Following the deaths of Dr. Turner and Zachary, CYFS became aware of further information regarding Dr. Turner's history and recent events in her life. Through the media, CYFS learned that Dr. Turner had made a previous suicide attempt while residing in the U.S.A.

On August 19, 2003 Constable [...] of the RNC informed [...], Regional Director of CYFS, that he had received a phone call from a man approximately one week prior who felt that he was being harassed by Dr. Turner. According to Constable [...], this man alleged that he had dated Dr. Turner several times after meeting her in a bar downtown approximately six weeks before, and when he tried to end the relationship, she made repeated attempts to resist this. Constable [...] further explained that this man alleged that he had logged over 100 phone calls that Dr. Turner had made to him and that she told him that she was pregnant with his child. Constable [...] stated that this man reported that at no time did she make any threats to harm him, herself or Zachary. Constable [...] stated that the autopsy report concluded that Dr. Turner was not pregnant at the time of her death. The information regarding this alleged relationship was not known to CYFS prior to this conversation with Constable [...].

**Conclusion**

In summary, CYFS involvement with this family spanned approximately a sixteen-month period. The professional assessment and on-going intervention plan was reflective of her strengths and needs. The primary focus throughout this time was protection of Zachary and [...] and the assurance of their safety and well being. While Dr. Turner was charged with a very serious and violent crime she always maintained her innocence. Notwithstanding this CYFS always considered the likelihood that Dr. Turner was guilty of this offense and factored this into the assessment of potential risk for her children. Despite this there was no

evidence of hostility, violent or threatening behavior toward her or others during our involvement. The risk of imminent harm to Zachary and [...] while in their mother's care was considered to be minimized because of all the other safety factors that were evident. These safety factors included the fact that she was socially well connected and not isolated; she was receptive and cooperative with and fully availed of professional help and; she demonstrated an ability to formulate sound judgments and decisions respecting the care of her children.

With respect to her parenting, Dr. Turner was observed to have a significant bond with [...] and Zachary. She had in-depth knowledge of child development including issues related to attachment. It was the view of the social worker and the public health [...] that Dr. Turner's care of her children, Zachary in particular, was in keeping with high quality childcare standards.

With regards to Dr. Turner's mental health, she continued to attend appointments with her Psychiatrist, [...], she appeared to be coping well in that she was observed to be hopeful, continuously engaged in positive planning and making appropriate decisions despite the stressors in her life. The usual warning signs of suicide were not evident in that she never made any threats; she did not appear to be pre-occupied with death and; there were no changes in her behavior, physical condition, thoughts or feelings prior to this tragic event.

It should be noted that CYFS did not receive any referrals concerning Dr. Turner's parenting abilities, behavior or mental health aside from the concerns expressed by [...] on June 17, 2002. Furthermore, CYFS was not involved in the custody and access matters being heard through Unified Family Court.

---

**IN THE MATTER OF**
**the *Child and Youth Advocate Act*,**
**Statutes of Newfoundland and Labrador**
**2001, chapter C-12.01 ("the Act").**

**AND IN THE MATTER OF**
**the review and investigation,**
**respecting the matter of Zachary**
**Turner who died 18 August 2003**
**near St. John's NL, by Dr.**
**Peter H. Markesteyn on authority of**
**delegation from the Child and Youth**
**Advocate under Section 14(1) of the Act.**

**STATEMENT OF INTEREST**

I, **PETER H. MARKESTEYN, M.D., F.C.A.P.,** of 758 Crescent Drive, in the City of Winnipeg, Province of Manitoba, retired Professor of Forensic Pathology at the University of Manitoba, retired Chief Medical Examiner of the Province of Manitoba, and a licensed physician to practice medicine in the Province of Manitoba, **STATE THAT**:

**1.** From September 1970 to November 1976 I was employed by the Government of Newfoundland and Labrador as the forensic pathologist and Chief of Autopsy Services at The General Hospital in St. John's, Newfoundland.

**2.** From February 1974 to November 1976, as a result of appointment by the Province of Newfoundland and Labrador, I

was forensic pathologist to the Province as the Chief Medical Examiner (Designate).

**3.** From 1970 to 1976 I was actively involved in the drafting of what was later to be, *The Fatalities Investigations Act* of Newfoundland, with the assistance of officials of the Department of Justice which included Mr. Lloyd Wicks who, at that time, was employed by the Department of Justice.

**4.** I was actively involved in the design and construction of the present facility of the Chief Medical Examiner at Memorial University of Newfoundland as a Clinical Associate to the University's Faculty of Medicine. One person presently employed by the Medical Examiner's Office was hired by me.

**5.** From 1989 to 1991 I was contracted by the Government of Canada, Child Maltreatment Division, as a consultant to establish guidelines for the investigation of death in children. I was engaged in discussions at conferences during that period with all Child Advocates, Chief Medical Examiners and Chief Coroners in Canada.

**6.** I have no personal interest (other than the establishment and maintenance of standards for child death investigations on a national basis), in the operation of the Office of the Chief Medical Examiner in Newfoundland and Labrador.

**7.** I have been consulted by both lawyers practicing criminal law and law enforcement personnel in the Province of Newfoundland and Labrador to give opinions that, on occasion, but not always, were contrary to those offered by the current Chief Medical Examiner for the Province, Dr. Simon Avis, and by Dr. Charles Hutton, now formerly a medical examiner in the Office of the Chief Medical Examiner, and have, on occasion, testified to such in the courts in Newfoundland and Labrador.

**8.** In this statement of interest, I understand a conflict of interest to mean any circumstance that affects, or would be likely to affect, adversely, my judgment in the conduct of this Review and Investigation or in making recommendations in my Findings with regard to the Review and Investigation with respect to Dr. Shirley Turner and Zachary Turner.

**DATED** at St. John's, Newfoundland and Labrador, this 31st day of May 2006.

PETER H. MARKESTEYN, M.D., F.C.A.P.

**IN THE MATTER OF**
**the *Child and Youth Advocate Act*,**
**Statutes of Newfoundland and Labrador**
**2001, chapter C-12.01 ("the Act").**

**AND IN THE MATTER OF**
**the Review and Investigation,**
**respecting the matter of Zachary**
**Turner who died 18 August 2003**
**near St. John's NL, by**
**Dr. Peter H. Markesteyn on authority of**
**delegation from the Child and Youth**
**Advocate under Section 14(1) of the Act.**

## STATEMENT OF INTEREST

I, **DAVID C. DAY, Q.C.**, of Suite 600, TD Place, 140 Water Street, in the City of St. John's, Province of Newfoundland and Labrador, a Solicitor of the Supreme Court of Newfoundland and Labrador and a member of the Law Society of Newfoundland and Labrador since 28 February 1968 and invested as Queen's Counsel on 03 June 1980, **STATE THAT:**

**1.** From 17 May 2005 to 31 May 2006 I acted as legal counsel to Dr. Peter H. Markesteyn in his capacity as Delegate of the Child and Youth Advocate for Newfoundland and Labrador, with respect to

his Review and Investigation into the circumstances of and surrounding the death, on 18 August 2003, of Zachary Turner ("Review and Investigation").

**2.** I make this Statement of Interest for the purpose of stating whether, while acting as Dr. Peter H. Markesteyn's legal counsel, with respect to the Review and Investigation, any circumstances existed that either placed me, or had potential for placing me, in a conflict of interest, or that were capable of creating the perception that I was in a conflict of interest.

**3.** Based on every reasonable inquiry, and reflection, by me, I am not aware of any circumstances, in acting as legal counsel for Dr. Peter H. Markesteyn with respect to the Review and Investigation, that either placed me, or had potential for placing me, in a conflict of interest, or that were capable of creating the perception that I was in a conflict of interest.

**4.** Although not impacting my position stated in paragraph 3, I disclose the following for the purpose of being completely transparent:

**(a)** **(i)** From 1974 to 1994 (both inclusive), I taught some of the witnesses interviewed by the Review and Investigation in a credit course known as "Law for Social Workers" and likesuch, at the School of Social Work, Memorial University of Newfoundland, St. John's campus; **(ii)** in and prior to 1989, I spoke at educational seminars and dinner functions attended by some of the witnesses interviewed by the Review and Investigation; **(iii)** from 1981 to 1983, I acted as legal counsel for a person who participated in a limited manner in some events subject to the Review and Investigation who was not interviewed by the Review and Investigation (other than to exchange correspondence with the Review and Investigation) and who, due to illness, had no material role in the events examined by the Review and Investigation; and **(iv)** in or about 1999, I gave to the Government of Newfoundland

advice on a draft of the proposed *Child, Youth and Family Services Act.*

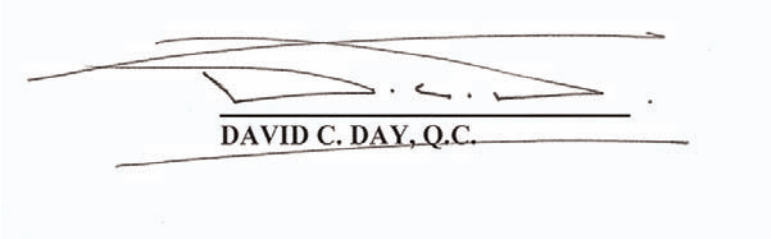
**(b)** Other than one 'date', in 1964, with one of the social workers who provided services (from 2002 to 2003) to Zachary Turner, son of Shirley Jane Turner, and other than a brief social relationship, in 1985, with one of the social workers who provided services (in 1993) to […] and […], son and daughter, respectively, of Shirley Jane Turner, I have never had any personal or business relationship with anyone involved in the Review and Investigation.

**(c)** I have never been related, by consanguinity or affinity, to anyone involved in the Review and Investigation.

**5.** In this Statement Of Interest, I understand a "conflict of interest" to mean any circumstance that affects, or would be likely to affect, adversely, my judgment, advice or loyalty as legal counsel to Dr. Peter H. Markesteyn, in his capacity as Delegate of the

Child and Youth Advocate, with respect to his conduct of the Review and Investigation.

**DATED** at St. John's, Newfoundland and Labrador, this 31st day of May 2006.



**Risk Assessment**

Risk assessment in child welfare work can be described as an activity intended to predict the probability of future harm to a child. The ability to undertake risk assessments in child protection work is assumed to be part of the skill set of line workers and supervisors due to its potential to prevent injury or death to children. It is accepted in the field of child welfare and in society at large that preventing harm to a child is one of the desired goals of service. It is also generally accepted that, unless there are compelling reasons to believe otherwise, children are best cared for within their own families.

At times, workers face difficult decisions in attempting to meet what may be perceived as competing goals; safeguarding children and preserving family unity. The ability to estimate the probability and severity of future harm is useful in such situations. "There has been a perennial tension between researchers and practitioners in all areas of the human services concerning the appropriate method of judging risk: clinicians assert that it is essential that skilled professionals assess the unique characteristics of individual clients and researchers argue for statistical methods as the basic procedure. To the extent that this is a rationally solvable problem, the evidence seems to be on the side of the researchers."[1] Cash (2001) states, "Risk assessment instruments are not a panacea for decision making in child welfare. Decisions should optimally be made through a combination of both empirical evidence (science) and practice wisdom (art), as one without the other in incomplete. The synergy created by the art and science of risk assessment provides for a more holistic and effective assessment."[2]

An issue facing the consumer of risk assessment research (or instruments) in recent years is best described by Morton (2003) as "the

[1] Reid, J.G., Sigurdson, E., Christianson-Wood, J. and Wright, A. (1995). *Basic issues concerning the assessment of risk in child welfare work.* Winnipeg, MB: University of Manitoba. p.5.
[2] Cash, S.J. (2001). *Risk Assessment in child welfare; the art and the science.* Children and Youth Services Review, Vol. 23, No. 11, pp.811-830.

risk wars"[3] in which the supporters of consensus based models and actuarial models debate the validity and reliability of these two kinds of risk assessment systems. In his commentary, Morton takes exception to claims by Rycus and Hughes (2003) that the "war" is over and actuarial models won. He points out that there are prediction issues inherent to actuarial systems concerning the severity of future harm. "The published information on actuarial models only links their classifications to recurrence of any type without regard to actual harm or the severity of such harm. This means that a recurrence of educational neglect has exactly the same weight as immersion burns in selecting classification criteria." (p.1) The difficulties are obvious if attempting to predict harm is a part of a process in developing appropriate plans to keep children safe. Morton goes on to point out that one actuarial risk scale incorporates a consensus based safety assessment, strengths/needs assessment, risk reassessment and safety reassessment. (p.1) He also takes issue with Rycus and Hughes characterizing safety assessments as evaluating only the presence of recent or current maltreatment.[4] Morton goes on to state "Sometimes the threat of serious harm is not near, but is escalating toward the safety threshold. This is emerging danger. Failure to recognize this emerging danger has been a factor in several child fatality cases." (2) Morton concludes that estimating serious harm and severity of harm "fall back to clinical judgments" while acknowledging that research is needed to validate safety criteria in conjunction with better training of workers to improve the reliability of judgments. (2)

The "risk wars" of recent years have resulted in a number of academic articles, some research based and others examining the theory of risk assessment. These articles attempt to assist the practitioners of child protection work and the supervisors and managers of child protection

[3] Morton, T.D. (2003). Commentary: The Risk Wars. Child Welfare Institute, Duluth, Georgia.
[4] Rycus, J.S. and Hughes, R.C. (2003). *Issues in risk assessment in child protective services*. North American Resource Center for Child Welfare, Columbus, Ohio, pp.17-18.

agencies in finding the right tools for the job. A series of three articles[5,6,7] provides insight into the difficulties inherent in the research process. Baumann et al (2005[b]) assert in their response to Johnson (2005), "The field of child welfare does not at present know under what conditions actuarial models might prove to be equal to or superior to clinical judgment, or even what types of models would be needed that incorporate the best features of both. Furthermore, data from the field of violence risk assessment suggests that there are ways to incorporate clinical judgment into our models that may be helpful." Clearly, the availability of an 'ultimate' instrument or system is some time into the future. What matters is that researchers and practitioners continue to work developing systems that are both valid and reliable.

Ontario, British Columbia, New Brunswick as well as Newfoundland and Labrador have employed adaptations of the New York Risk Model. The risk assessment instrument in use at the time Shirley Turner became involved with the Department of Child, Youth and Family Services was based on this model, although it was adapted for use in Canada. Section 02-04-04 of the Newfoundland and Labrador Department of Social Services' Child Protection Services manual described the origin of the instrument. The revised instrument of 2003 closely resembles the earlier version and the adaptations are referenced to work in Ontario, British Columbia and New Brunswick on their own adapted instruments. Ontario's model, known as the Ontario Risk Assessment Model (ORAM) was selected and developed in response to recommendations linked to a number of deaths of children investigated by the Office of the Chief

[5] Baumann, D., Law, J.R., Sheets, J., Reid, G. and Graham, J.C. (2005). *Evaluating the effectiveness of actuarial risk assessment models.* Children and Youth Services Review, 27, pp.465-490.

[6]) Johnson, W. (2005). *The risk assessment wars: A commentary response to "Evaluating the effectiveness of actuarial risk assessment models."* Children and Youth Services Review. Article in Press. Downloaded February 8, 2006 at www.sciencedirect.com.

[7] Baumann, D., Law, J.R., Sheets, J., Reid, G. and Graham, J.C. (2005[b]). *Remarks concerning the importance of evaluating actuarial risk assessment models: A rejoinder to Will Johnson.* Children and Youth Services Review. Article in Press. Downloaded February 8, 2006 at www.sciencedirect.com.

Coroner.[8] The Ministry of Community and Social Services cooperated with the Ontario Association of Children's Aid Societies (OACAS) in the search for and implementation of an instrument. The risk assessment model was comprised of an Eligibility Spectrum, a Safety Assessment tool and a Risk Assessment tool. The Safety and Risk Assessment tools were adaptations of the New York risk assessment tool.[9] The implementation of the ORAM was evaluated in an OACAS Journal article which described the tool as a "work in progress."[10] Further consideration of the ORAM is found in Leslie and O'Connor's 2002 article on the "products" of the tool. They identified as one of a number of concerns that there had been no formal, province-wide evaluation of the tool's impact on practice, despite a proposal that one be done. Other concerns focused on consistently higher ratings of risk throughout the life of a case from intake to closure and the implication of a potential loss of sensitivity over time.[11]

Given the origins of the ORAM and the instrument in use at the present time in Newfoundland and Labrador, it is not unreasonable to suspect that there may be similar issues of validity and reliability in the Risk Management System's safety and risk assessment tools. A 2004 information sheet indicated that a validation study of the ORAM was underway at the University of Toronto's site of the Centre of Excellence for Child Welfare in addition to other work on establishing an evidence-based model for risk assessment in child welfare.[12] A search of the Centre's website at the time in February 2006 did not provide information on the progress of the ORAM initiative.

---

[8] Report on Inquests into the Deaths of Children Receiving Services from a Children's Aid Society. 1998.

[9] Trocmé, N., Mertins-Kirkwood, B., MacFadden, R., Alaggia, R. and Goodman, D. (1999). *Final Report Ontario Risk Assessment Model, Phase 1: Implementation and training.* Ministry of Community and Social Services, Children's Services Branch, Government of Ontario.

[10] Tuyl, Corrie (2000). *Evaluation of the implementation of the Risk Assessment Model for child protection in Ontario.* OACAS Journal, April 2000, Vol. 44.

[11] Leslie, B. and O'Connor, B. (2002). *What are the products of the Ontario Risk Assessment tool?* OACAS Journal, December 2002, Vol. 46, p.5.

[12] Knoke, D. and Trocmé, N. (2004). *Risk assessment in child welfare.* Centre of Excellence for Child Welfare. 2004-#18E.

Information available on the University of Toronto's website suggests that a new instrument will supersede the ORAM in the future, and that a review of existing risk assessment tools through research conducted in the Faculty of Social Work will be of value in this process.

> One of the most crucial and challenging tasks in social services work involves making intervention decisions in child protective services cases. Such decisions must be anchored by the timely, reliable assessment of whether parents will reabuse their children. While there is evidence to suggest that actuarial or empirical scales are better able to predict maltreatment recurrence than unassisted clinicians, there is little agreement as to which actuarial tool is best. Further, the range of factors used to construct instruments that predict maltreatment recurrence has not been systematically reviewed for predictive capacity across contexts and child developmental stage.
>
> The project will compile a set of risk factors that predict maltreatment recurrence across studies and age groups, and will systematically compare the validity of risk assessment tools that have been used in the field. This work comes at a critical juncture for Ontario's Ministry of Children and Youth Services, which is currently developing and will be implementing a new risk assessment tool over the next few years. Similarly, the review can assist other jurisdictions facing similar needs (across Canada and internationally) and aspiring to improve their decision-making capacity.[13]

The Principal Investigator will be Professor Aron Shlonsky of the Faculty of Social Work, University of Toronto and Dr. James Barber.[14]

Demonstrating the probability of harm to a child's well-being can be done by means of assessing the risk to the child based on factors that have

[13] Website at http://www.socialwork.utoronto.ca/fsw/fswsupport/institute/child_syst1.html, accessed February 7, 2006.

[14] Dr. Barber resigned as Dean at the University of Toronto's Faculty of Social Work December 31, 2005.

been found to have predictive value. Prediction of future harm can be done in two ways; through actuarial models or through clinical models also known as consensus models. The Department had a risk assessment instrument in use at the time Dr. Turner was receiving service from the Department.

When an organization or a government department charged with the protection of children receives a report that a child is in need of protective services, it is necessary to determine if abuse has taken place or will take place if the situation remains unchanged. The former task comprises substantiation while the latter involves prediction; both rely on data gathered during the course of an investigation or an assessment. When maltreatment is substantiated, the organization will attempt to predict the probability of recurrence if the child is left in an unchanged situation. If the child is in a situation that suggests to the referral source that there is *potential* for maltreatment, the task then becomes predicting the probability that maltreatment will occur without knowing that adult's potential for child maltreatment. This is a task fraught with difficulties, both from a theoretical and practice perspective, and from a legal perspective. Section 14 of *The Child, Youth and Family Services Act* does define a child in need of protective intervention as one "at risk of" physical or sexual abuse or of sexual exploitation. This places a greater predictive burden on workers in Newfoundland and Labrador as they are required to estimate the possibility of an initial incident of maltreatment.

The field of risk assessment in child welfare has seen the development of instruments intended to predict recurrence of maltreatment.[15] An accepted tenet of prediction is that it is easier to predict a recurrence than to predict an initial occurrence. In practical terms, predicting whether a person will survive a fall into the deep end of a swimming pool

[15] Risk management systems are used in some organizations to direct case planning, develop comprehensive assessments and select interventions. There are complications inherent in utilizing instruments designed solely for risk assessment for these other purposes. A risk management system is intended to address these issues.

is an easier task if it is known that the person in question has the ability to swim in deep water. People known to have maltreated children pose a less onerous predictive task to a child welfare service than predicting whether a person not known to have mistreated a child will do so in the near future.

A related task in child welfare prediction is determining whether being the perpetrator of violence against an adult results in a greater probability that this individual will mistreat a child. At a practice level, this involves determining if perpetrators of violence pose a threat to children in their care. For example, is there increased risk to the children in the home if the parent begins a relationship with an adult known to have a history of violence involving an adult? Is it dangerous for a child to remain with a parent who has assaulted or killed the other parent? Not surprisingly, this is a question that elicits a high level of emotion and substantial feedback if the public becomes aware that children are in the care of such a parent. There is an even greater outcry if the children are subsequently injured or killed by the adult. Child abuse homicides are statistically rare events and it can be argued that this subset comprises still fewer cases.

On the question of child maltreatment by persons known to or believed to have assaulted or killed a spouse, prediction instruments (The Department's current instrument included) rate "severe family violence" as a risk element of high concern and of useful predictive ability. "This factor, in combination with other factors, is highly correlated with the likelihood of future child maltreatment. Any history of family violence should be included in the analysis of overall risks for future harm. "**Household membership** can include adults in the household, as well as siblings and any other individuals who may be included in the family constellation, regardless of residence. This would include an individual

with a history of violent acts who may be in and out of the home over a period of time"[16] [emphasis in original].

The 1993 version in use at the time Shirley Turner killed Zachary and herself includes "Domestic Violence" as one of the components of "Family Influence" to be assessed, including "Repeated or serious physical violence or substantial risk of serious physical violence in the household" as the descriptor for the most highly rated element of family violence.[17] This clearly is less encompassing than the 2003 version. However, the 1993 version includes "any additional areas of risk/family functioning not found within the five influences"[18] for consideration in an integrated and cohesive analysis of risk assessment. If severe family violence was sufficiently well enough known as a factor in the prediction of risk for child maltreatment to be included in the revised September 2003 model, it can be argued that it should have been known to the Department and its staff as a component of risk assessment in practice during the spring and summer of 2003. The inference that must be drawn in the Turner case is that the Department did not believe that Shirley Turner could have killed Andrew Bagby, despite the charges against her. Otherwise, the incident would have required contemplation as 'severe family violence' or the previously described "any additional areas of areas of risk/family functioning not found within the five influences," although the requirements of Section 14 of the Act do not specifically contemplate a parent who could kill the other parent, then return to live with the children in apparent harmony. Instead Section 14(j) refers to living in a situation where there **is** violence.

Canadian homicide data covering 1997 to 2002 reveals that one quarter of family homicides involved a family member who had a previous history of family violence. Of this number, 30 percent were men and 15

[16] 2003 Risk Management System, Child, Youth and Family Services, Family Influence, Section 6.44.
[17] Risk Assessment in Child Protective Services. 1993 Training Manual for Newfoundland and Labrador Department of Social Services, p.74.
[18] Ibid., p.81

percent were women. Most persons accused of the homicide of an infant do not have a criminal record; of the 28 percent who do, one-half had a history of violence but none had a history of a previous homicide.[19] Information from New York City's Child Fatality Review indicates that there was a history of domestic violence in 70 percent of homes in which a child homicide occurred.[20]

The situation involving Shirley Turner and her children required a risk assessment designed to contemplate the probability that a woman accused of the first degree homicide of the father of one of her children would injure any or all of her children. Both the 1993 instrument and the 2003 version allow for this consideration *in general terms and as an incident of family violence.* However, the policies on using the risk assessment instruments require an incident of child maltreatment as a 'trigger' to begin assessing risk. Until Shirley Turner slapped […] across the face, the Department had no marker incident to use as the 'trigger' for its risk assessment using the instruments provided for that purpose.[21] Interviews with Department staff indicated that Dr. Turner's calling to 'confess' about what she had done to […] kept the case, in their view, within the confines of voluntary family service.

In the interviews conducted with staff, […] indicated that, at the time Shirley Turner was receiving service, policies and procedures of the Department concerning risk assessment covered only child sexual abuse cases, that safety assessments were done at intake and risk

[19] Canadian Centre for Justice Statistics (2004). *Family Violence in Canada; A Statistical Profile*. p.51. Website accessed January 28, 2006 at http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/85-224-XIE2004000.pdf

[20] New York State Office for the Prevention of Domestic Violence (1998). *Model Domestic Violence Policy for Counties.* Website accessed January 28, 2006 http://www.opdv.state.ny.us/coordination/model_policy/index.html

[21] The issue of s.14 of the Act including being "at risk of" maltreatment as a condition for a child being in need of protection is somewhat confusing when the conditions governing the instruments' use are considered. The Risk Management System (5.1-5.2) is clear that being in need of protective intervention may be sufficient to require risk assessment even if an allegation of maltreatment is not verified.

assessment was 'an informal tool.' The policy manual of the Department of Social Services is clear in Section 02-04-03 that the risk management process involved an assessment of risk related to recurrences of physical, sexual and emotional abuse in addition to neglect. The Department provided a tool for its staff through both the training manual provided by IPCA in 1993 and the materials included in the Child Welfare Program Standards, Section 02-04-03.

The current standard contained in the Risk Management System, Section 6.1, requires the completion of a Risk Assessment, using the instrument provided, within 30 days of the determination that a child is in need of protective intervention, at predetermined intervals, at "critical points in the case" and "when a new report is screened in on an active case." Based on these requirements, a risk assessment would have been required after the slapping incident **if** the Turner case had been categorized as a child protection case. It would also have been required in a child protection case after Shirley Turner went to jail and left […] living alone in the family apartment with inadequate supervision by her half-brother and a neighbour. The circumstances under which rent and living expenses were paid by the Government of Newfoundland and Labrador when the home was occupied solely by a 12-year old remain unclear. As a situation of risk, it is difficult to contemplate that a mandated child welfare organization would see this as a suitable arrangement for child. The explanation provided was that the Department saw Dr. Turner's arrangement for 'supervision' by […] and the neighbour as meeting its criteria for appropriate planning.

In considering the issue of vulnerability with respect to Dr. Turner's two minor children, Zachary was at the greater risk of harm by virtue of his age and the lack of a protective adult with the ability to intervene on his behalf. He had grandparents, David and Katherine Bagby, but they had no ability in law to remove him from Dr. Turner's care without facing penalties for doing so. If his father had been alive, Dr. Bagby could have taken Zachary if he believed that the child would be safer or healthier in his care as both parents had an equal claim to Zachary. […] had a

father whose protective inclinations were evident in the Department's contacts with him. These were complicated (or hampered) by Dr. Turner having a custody order in her favour.[22] She did not assert a claim for custody of any minor children once she graduated, leaving Mr. […] with sole responsibility for […]'s maintenance and care. At the time that Dr. Turner was living in Newfoundland and facing extradition to the United States, […] was the only one of the three eldest children still dependent on a parent's care.

The risk management system (RMS) in use prior to the deaths of Zachary and Shirley Turner was adopted by the then Department of Social Services effective October 8, 1993.[23] The introduction of the RMS was accomplished through the Institute for the Prevention of Child Abuse (IPCA) with a two-day training session and the provision of a handbook titled "Risk Assessment in Child Protective Services." The handbook introduces risk management as necessary to ensure that key child protection decisions are given careful consideration, that such decisions are structured, consistent and objective to ensure that that the quality of child protection service is enhanced through improved decision making. The result would be a reduction in the recurrence of child abuse and neglect in addition to improving accountability and reducing liability.[24] The handbook's introduction is clear that decreasing risk to the child welfare *system* is one of the benefits of risk management, in addition to protecting children. Case examples are provided to support the argument that child welfare systems can expect to be held liable if children are not protected when an organization is involved. The Child Welfare Program Standards in effect at that time and still in effect when

[22] Dr. Turner was successful in gaining an order of sole custody of […] despite her prolonged absence from her daughter's life. This appears to be related to Dr. Turner's advising the court of her allegation that Mr. and Mrs. […] had physically abused […].
[23] Newfoundland and Labrador Department of Social Services, Child Welfare Program Manual, Child Protection Services.
[24] Risk Assessment in Child Protective Services, Institute for the Prevention of Child Abuse, Toronto, ON., p.5.

Shirley and Zachary Turner died,[25] reflected the content of the 1993 RMS manual. A revised Risk Management System was developed and training provided to 'the regions' in September of 2003. As of June 13, 2005, the Regional Integrated Health Authorities were still in the process of implementing this new system.[26]

The IPCA originating manual addresses the issue of liability in some detail. The issue of supervision as a source of potential liability is introduced under "Supervisors' Areas of Vulnerability." (p. 17) These include:

1. No systematic supervision;
2. Failure to review and approve major social worker's decisions;
3. Failure to catch social workers' errors;
4. Makes a negligent assessment and gives this to social worker;
5. Failure to ensure or review recording;
6. Failure to review service plan;
7. Failure to teach agency policies and procedures.

The system of risk management in use during the Department's involvement with Shirley Turner included, as does the current system, a list of Risk Decision points. The 1993 model had ten Risk Decision points while the current system has nine. A comparison of the two lists illustrates the shift to what the government has termed family centered services.

| **1993 Risk Decision Points** | **2003 Risk Decision Points** |
|---|---|
| 1. To investigate or not to investigate | 1. Should the child protection reports be accepted for investigation? |
| 2. The priority of initial response | 2. What is the response time? |
| 3. Initial safety assessment | 3. Is the child safe now? |

[25] The issue of two sets of standards apparently used at the same time

[26] Letter dated June 13, 2005 from Ms […], Provincial Director, Child, Youth and Family Services to Mr. David Day, Lewis Day Solicitors.

4. Verification of allegations
5. Assessing risk of future harm
6. Determining the level of services required
7. Whether to pursue court action
8. Should the child be removed from the caregiver(s)?
9. Should the child be returned to the caregiver(s)
10. To close or not to close the case

4. Are the child protection concerns verified?
5. Is the child in need of protective intervention?
6. Is the child at risk of future harm?
7. What is the family centered action plan?
8. Has the family centered action plan been reviewed/revised?
9. Should the case be closed?

The 2003 RMS is "adapted from the New York Risk Assessment System" and adaptations of the same system are in use in New Brunswick, Ontario and British Columbia.[27] The manual asserts that it has "the highest coverage of both abuse and neglect factors which have been supported by predictive validity studies," as referenced to Arnold J. Love (1997) *Eligibility and risk assessment project: Final report*, Ontario, Canada (p.3).[28] The question of whether an adaptation of any instrument retains the validity and reliability of the original instrument has been discussed in the literature on risk assessment research. Any adaptation requires its own testing to ensure that the instrument remains both reliable and valid. Knoke and Trocmé (2005) view the delays in conducting evaluation research of instruments used in the field as an

[27] Undated letter to "Participant" from Ms. […], accompanying the 2003 Risk Management System.
[28] The issue of the predictive validity of this instrument is best illustrated by Ontario's decision to replace it with an actuarial instrument. The basis for Dr. Love's claim could not be located in the research surveyed by the reviewers.

issue in ensuring the validity and reliability of risk assessment instruments.[29]

The 2003 Risk Management System is intended to provide workers with a means of assessing risk, managing risk and providing child protection service to families in Newfoundland and Labrador while honouring the province's commitment to family centered, strengths-based services.[30] It is described as a "broader concept than risk assessment"[31] and involves activities commonly falling under the rubric of "case management." In reality, the manual is a 'how to' for providing protection services, organized under the headings of Risk Decisions 1 through 9.

A review of the Risk Decisions listed in the Risk Management System (RMS) Manual includes as the first Risk Decision "Should the Child Protection Report Be Accepted for Investigation?" This is an issue of risk management in that a child could experience further maltreatment if appropriate service is not provided. It is accomplished by considering the child protection report and any subsequent investigation against the applicable statutes containing protection criteria[32] and service delivery requirements, in addition to the Department's policies concerning the delivery of service. The list of information to be collected is comprehensive and would allow workers to make an initial decision around case selection as it focuses on the incident prompting the report and the family's functioning including issues of violence, parenting practices, substance use/abuse, the family's relationship to the community and information about the alleged offender in addition to information about the child victim. The worker is also required to query

---

[29] Knoke, D. and Trocmé, N. (2005). *Reviewing the evidence on assessing risk for child abuse and neglect.* Brief Treatment and Crisis Intervention, 2005; 5:310-327.
[30] Risk Management System, Child Youth and Family Services, Government of Newfoundland and Labrador, Department of Health and Community Services, September 2003, p.4.
[31] Ibid., p.7.
[32] Section 14 of The Child, Youth and Family Services Act as described on p. 6 of the RSM Manual.

the reporter about family strengths and protective factors, and to consider a judgment of the reporter's motivation and credibility while keeping in mind that valid reports may be made by people with a questionable agenda. The worker then checks for previous child welfare involvement and, if appropriate, for police involvement. Only after this rather extensive data collection is done, does the worker consider if the report meets the legal criteria for investigation. If it does, the section provides further direction for continuing the intake investigation.

The province's move toward a family preservation based child welfare service is evident in the addition of "Family Strengths/Protective Factors" in the first section of the RMS process, labeled Risk Decision #1 in the 2003 version and "Initial Screening of Reports of Children in Need of Protection" in the 1993 version. The first question on 'protective factors' in the 2003 version, "Are there times when this circumstance occurred and the family was able to cope?" is disturbing when "circumstance" is replaced by "child abuse." The whole point of a child welfare system is to ensure that children are not abused or neglected or, that if they have been, that it is not repeated. By describing child maltreatment as a "circumstance" and asking if the family has been able to "cope" in the past, the inference is that reports should be made only when families cannot "cope" with child maltreatment. This effectively attempts to disguise child maltreatment as something other than abuse or neglect while suggesting that there is an inherent value in ensuring that such incidents do not come to the attention of the appropriate authorities.

Historically, families have 'coped' with sexual abuse by denying the child's complaint or blaming the child if the abuse was witnessed. Families may cope with physical abuse and emotional abuse in the same way. Rather than asking about coping, the question is whether the family has been able to **protect** the child in the past. This would include actions such as reporting maltreatment to the authorities, compelling the perpetrator to leave the home, preventing further access to the child or to other children in the family, seeking treatment or support for the child and seeking service to help the family heal. In the event of a report of

child neglect, the question to ascertain protective factors should focus on whether there had been times in the past when the quality of care had deteriorated. If this happened, what events had occurred to improve the care of the child to an acceptable level?

The issue of **who** is being served may seem a fine point in considering the management and assessment of risk, but it coloured the service provided to Shirley Turner and her children and definitely impacted on any considerations of risk.[33] The focus of service, for the most part, was Dr. Turner - her feelings, her coping abilities and various practical issues related to being on a limited income. The fact that she had approached the Department for 'family services' as a voluntary client resulted in a kind of "tunnel vision" whenever events or facts appeared to depart from the Department's view of Dr. Turner as a person seeking help through a family crisis.

If there were difficulties with […] - who essentially was abandoned by her mother when Shirley Turner entered medical school and later left the country - it was […] who saw a counselor and heard from the worker that her mother was under a lot of stress. Zachary's physical development was tracked by public health - almost obsessively - in his early months but the focus again was on how Dr. Turner was coping. In considering that a mother under a great deal of stress might harm her children, the Department's concern was justified. Its view of Dr. Turner as someone experiencing stress due to the pressures of attending court and facing extradition do not include, from the records reviewed, any systematic consideration of the possibility that Dr. Turner had committed an act of extreme violence against Dr. Bagby. While the interviews with Department staff indicated that this was an ongoing issue of assessing risk, it is largely absent from the files reviewed. Instead, the Department adopted a position of "innocent until proven guilty" which is admirable for a court but too narrowly focused for a child welfare organization charged

[33] The file contained no record of an assessment of risk concerning Zachary or […] despite assertions in the interviews of Department staff that such assessments were ongoing.

with protecting children from harm. This requires a more proactive approach involving the assessment of the caregiver's potential to harm a child.

The file contained little evidence that the possibility of Shirley Turner murdering Andrew Bagby and being convicted of that crime was contemplated - how would this impact family centered service delivery? Asking Mr. […] to move to St. John's prior to Christmas 2002 while Dr. Turner was incarcerated is an example of the Department's focus on Dr. Turner as she wanted […] to remain in the family's apartment in St. John's. […]'s history with her father was largely overlooked, although the Department did launch a child abuse investigation when Dr. Turner reported in 2002 that […] had been slapped on the thigh by her stepmother.[34] […] had a home with her father who had been her primary caregiver since 1996. Mr. […] had a wife and stepchildren and a life some distance from St. John's, yet the Department urged him to move to St. John's to accommodate Dr. Turner's period of incarceration. This allowed 12-year old […] to dictate where she would live and resulted in […] living alone in the family apartment until just before Christmas. The Department accepted 'supervision' by a half-brother who did not live in the same building and courtesy supervision by neighbours in the building as sufficient for a 12-year old whose mother was incarcerated.

Surprisingly, the Department did not question Dr. Turner's abrupt re-entry into her children's lives in 2002, nor did it question whose needs were met when Dr. Turner interrupted […]'s education through moves between the two parental homes. The plan to place Zachary with […] and the use of […], who was fully occupied with work and university, to supervise […] when she was left alone in the family home, did not cause the Department to consider whether these plans were in the best interests of Dr. Turner's children or whether they were intended, for the most part, to meet Dr. Turner's needs. While these considerations are

[34] This should be contrasted with the Department's failure to investigate Dr. Turner's admission that she had slapped […] across the face, twice, for talking back to her. The response was to counsel […] about her mother's stress.

not typically the focus of a risk assessment related to child abuse or neglect, they would be addressed in a thorough family assessment. The file material reviewed recorded no systematic contemplation of risk or any family assessment.

The two risk instruments' similarity continues, for the most part, through the opening of a case for further service. The 2003 instrument has additional elaboration of some points and additional material on the question of statutes as there was a change to *The Child, Youth and Family Services Act* from the former *Child Welfare Act*. The 1993 manual appears to be an adaptation of a generic version as there are references to the procedures of "your agency" in addition to material specific to Newfoundland.

Risk Decision #2, in both versions (labeled as Module IV in the 1993 version), deals with assigning priorities for investigation of the report. The descriptors for these situations in both versions are clear and would provide a worker with helpful direction in most cases. Both versions include the same indicators for "Serious Lack of Supervision."

Interestingly, the situation in which […] found herself when Dr. Turner was incarcerated is covered in this section and would require same day follow-up for a child who is "permitted to come and go from parental authority as they please, with the parents being unaware of their children's whereabouts" and "children who are left on their own for long periods of time." […]'s comments made it clear that she did <u>not</u> have in-home supervision, that she was essentially living alone in the family home and that her brother was not actively involved in her day-to-day life during this period. Dr. Turner had no way of ensuring her daughter's safety under these conditions and certainly would not have known where […] was at any given time. The family phone being disconnected placed […] at additional risk as she had no way of obtaining adult assistance unless she went out to find someone. How she survived in terms of meals, laundry, pocket money, school attendance and so on, was not of

sufficient concern to the Department that inquiries were made and the results recorded.

The lowest priority in both versions is assigned to persons requesting voluntary service, including voluntary placement of children. However, Priority #5 "No Risk - Family Services Request" contains an assumption that is erroneous; that parents who are seeking assistance, i.e., 'voluntary clients,' pose no current risk to the child. Examples of why service is being sought include "counseling/support services, behavioural concerns, adoption or voluntary placement [and] family services." Parents who wish to place a child in care may be seeking help due to their inability to tolerate their child any longer or may be in situations where one child in the family is endangering others. The Turner case exemplifies the danger inherent in treating a voluntary family services request as representing no risk to the children. If the work required in Risk Decision #1 (2003) is done to an acceptable standard, the family's service priority would be rated based on what the worker has learned and assessed about the family situation rather than whether they voluntarily approached the Organization for service. Knowing that a request for voluntary family service is a "no danger" priority would, the reviewer believes, impact on the quality and quantity of information gathered in Risk Decision #1. It allows a system with workload constraints to take a shortcut and avoid a lengthy information gathering and recording process. Unfortunately, it lays a foundation for not looking beyond the surface of what is presented.

Serious or severe family violence is a #2 priority in both versions; the 2003 version assigns it a same day response. This would, of necessity, include the murder of one parent by another. Both versions contain similar definitions of the conditions associated with differing priority levels, with the addition of intoxication and impairment to the point of incapacity in the 2003 version.

Priority #3 includes physical injuries that are not life threatening or dangerous. The 2003 version is more specific in including injuries to the

face - such as a “hand print” and minor bruising to the buttocks. These require a 48-hour response in the 2003 version. The descriptors of Emotional Harm are more detailed in the 2003 version and reflect the greater understanding of the effects of emotional abuse or deprivation on children. The descriptors of Moderate Family Violence in the 2003 version also reflect current research on the effects of family violence. Priority #4 in the 2003 version expands on the brief descriptors in the 1993 version.

In the 1993 version of the RMS, Module V, Initial Safety Assessment, corresponds to Risk Decision #3 in the 2003 version. The 2003 version includes the applicable Standard. The 13 Safety Factors to assist in the assessment are the same in both versions.

The 1993 version requires that a Safety Decision be made assisted by the worker’s professional judgment and in consultation with the supervisor. The effect of any ongoing intervention is considered in making the decision. Risk Decision #3 (2003), “Is the Child Safe Now?” requires a face-to-face meeting with the child in question including an interview if it is “developmentally appropriate.” (3.1) The activity at this stage “does not assess the likelihood of future harm.” This seems an overly fine point - if the child’s situation is unsafe during the length of the investigation (which can only be estimated); this **is** a risk assessment of future harm. The behaviours labeled “safety factors” in both versions are used to determine whether a child would be **“in immediate danger of serious harm”**, i.e., unsafe, if any of these conditions existed. This **is** a risk assessment, albeit one with a focus on the immediate future.

This “Risk Decision” in the 2003 version would be crucial in determining a plan that would address the identified risk. The family is involved in crafting the plan to reduce the risk. It is clearly stated that the first options considered must be the least intrusive and those that would “empower and strengthen the child’s family to provide this protection.” The worker is provided with a list of interventions intended to ensure the child’s safety during the investigation. The worker is also required to

consider whether the condition of risk "is very likely to occur in the immediate future," that is, to assess the likelihood of future harm.

The issue of one parent perpetrating violence against the other parent is **not** included on the list of safety (risk) factors unless one uses "1. Parents' behaviour is violent or out of control." Being charged with first degree homicide and held for extradition to face the charges suggests that there is at least a **possibility** that Dr. Turner had been, at some point, seriously violent or out of control. However, she arguably was not "out of control" at the moment of intake. How could the Department be sure that the conditions would not arise again, resulting in another incident of violent, out of control behaviour? In the interests of any child in this situation, it might be wise to provide guidance to workers as to whether a charge of murder against the sole caregiving parent warrants more protective action than was provided to Zachary Turner. If the Department had been safety planning, as required in both the safety standards, it would have been in the unusual position of safety planning with a person charged with the offense (murder) that made her a potential threat to the child's safety! Instead, the Department provided "support" and "family services" to Dr. Turner as a voluntary client.

Allowing Dr. Turner to remain a recipient of voluntary family services appears to have closed down real consideration of the possibility of harm to […] and Zachary. Although the Department asserted that the assessment of risk was ongoing, the file records bear little evidence of this activity. When […] was struck across the face, the response was to set up counseling appointments which only […] attended. There was no call to Dr. Turner's psychiatrist to alert him that she was showing signs of having difficulty coping with all the stressors in her life. Dr. Turner had given the Department permission to communicate with Dr. Doucet and it is of concern that the Department failed to avail itself of the opportunity to gain professional insight into her capacity for violence and her ability to tolerate stress. The response that the Department was waiting for Dr. Doucet to call if there was any reason for concern did not take into consideration that the Department's ultimate responsibility was to ensure

the safety of Dr. Turner's children, maintaining them in her care only if that did not compromise their safety. Without being proactive in contacting Dr. Doucet, the Department chose to ignore a potentially valuable source of professional opinion. If a call was made and no response received, the duty rested on the Department to pursue the contact.

Risk Decision #4 (2003), "Are the Child Protection Concerns Verified?" in the 2003 version requires substantiation of the child protection concerns/allegation and involves the social worker making a decision based on the evidence and on "the balance of probabilities."(4.2) The 1993 version includes a similar statement for Risk Decision Point #4. This again raises the issue of whether a charge of murder against the sole caregiving parent constitutes a child protection concern. This Risk Decision point deals with the substantiation of maltreatment of the child and provides detailed guidance on the steps involved in this stage of the risk management process. In the copy provided to the reviewer in 2005, Form 14-856 Verification Decision was blank except for "This form is currently being revised and will be sent out for insertion in your manual."

Making decisions based on a 'balance of probabilities" refers to a legal test for civil matters rather than a validated means of risk assessment; there is no definition of the test. The "balance of probabilities" requirement provides no basis for calculating risk as there is no science adequate to the task at this time.[35]

Risk Decision #5 (2003), "Is the Child in Need of Protective Intervention?" is a case management decision based on the events leading to the report. It assists workers in determining which actions are appropriate once the decisions have been made in #3 and #4. If the child is determined to be in need of protective intervention, the social worker is directed to the Standards Manual and to the section titled "Child in Need of Protective Intervention."

[35] Personal communication, Dr. Grant Reid, February 23, 2006.

In the 1993 version, Modules 6 and 7 address Risk Assessment with Module 6 providing introductory information concerning risk assessment as a process. The model used in Newfoundland in 1993 is described as having a clinical base (consensus based system) as opposed to an "empirical" system where the cause and effect nature of factors has been established through research. These are known as "actuarial instruments" as they use statistical procedures to identify and weigh factors that predict future maltreatment.[36] As the 2003 version is an adaptation of other models based on the New York State Risk Assessment Tool, it remains a consensus based model.

Risk Decision #6 (2003), "Is the Child at Risk of Future Harm?" **directly** addresses the issue of risk. The worker has 30 days to complete the risk assessment - as the issue of risk has already been addressed under the "safety factors" section - this is not an unreasonable timeline and assumes that there has been ongoing investigation and assessment. There is a requirement to complete the risk assessment quarterly and "at critical points in the case." The definition of risk is "the likelihood that a child will be maltreated in the future." The assessment of risk is intended to "support the social worker's clinical judgment regarding the prediction of future harm to a child." The worker is also warned that "Risk Assessment is not a process which deals with negative issues only" and is also reminded that the family's perceptions of particular issues, whether they are seen as stressors or supports, must be taken into consideration. For example, are regular visits by a grandparent a stressor or a support? The section includes the "Rationale for Using Risk Assessment Instruments" followed by the "Limitations in Using Risk Assessment Instruments." The section on limitations warns that "All current Risk Assessment instruments have several limitations" but does not explain the limitations of the model adapted for use in Newfoundland and Labrador. This would have been a useful piece of information for workers using the tool - knowing where and why it might fail would

[36] Rycus, J.S. and Hughes, R.C. (2003). *Issues in risk assessment in child protective services: policy white paper.* Columbus OH. North American Resource Centre for Child Welfare, Centre for Child Welfare Policy.

enable the Department to make additional efforts to protect a child. Potential sources of error are listed but without explanation or definition. This is surprising as one of the manual's most notable differences from the 1993 version is that it provides more elaborations and explanations.

**An examination of the actual instrument and a comparison between the 2003 and the 1993 versions in the policy manuals reveals that they are, in most respects, the same instrument.** There are minor changes; the 1993 version allows only one child to be rated per form while the 2003 version permits up to four children's vulnerability to be assessed. The section titled "Family Influence" in both versions has a subsection on Family Violence and rates most highly "repeated or serious physical violence or substantial risk of serious physical violence in household." Under "Ability to Cope with Stress," the second highest rating is assigned to "prolonged crisis strains coping skills." The situation facing Dr. Turner could have been scored using these two items. She was charged with murdering Zachary's father and was fighting extradition to face those charges. This raises an interesting point about the Department's attitude toward the charges facing Dr. Turner. There was a surprising lack of concern in the file material reviewed about the possibility that Dr. Turner could be a murderer. The prevailing attitude seemed to be that the murder of Andrew Bagby happened somewhere else and didn't require the Department to give it serious consideration in its case planning. This raises the question of what the Department would have considered a real or valid charge that warranted consideration as an element of risk.

The section titled "Intervention Influence" in the 1993 instrument contained two items, "Caregiver's Motivation" and "Caregiver's Cooperation with Intervention." In the 2003 version, this has been changed to "Parents' Response to Identified Needs;" the indicators are similar with the 2003 version measuring what the parents are doing versus the more subjective assessment of motivation in 1993. Both versions have an item rating the parents' cooperation with interventions according to the degree and willingness of participation. Neither seems

to take into account that parents could appear uncooperative if they maintained their innocence and were prepared to deal with the Department's case management decisions in court.

The 2003 form contains three sections requiring explanations for selecting certain risk ratings and including information not otherwise covered in the instrument. Section 3 has six component parts while Section 4 requires an overall risk rating for each child. Section 5 is an explanatory section around risk rating assigned at case closing. The amount of recording required in these sections suggests that this instrument is unlikely to be fully utilized due to the time required to gather the information from other parts of the RMS or the file.

Risk Decision #7 (2003), "What is the Family Centered Action Plan?" and #8 "Has the Family Centered Action Plan Been Reviewed/Revised?" are decision points about risk management, intervention and monitoring. Risk Decision #9, "Should the Case Be Closed?" addresses the issue of outcome evaluation; has the service provided addressed the goals set by the Department to ensure that the child is no longer at risk of maltreatment if service is discontinued? This is a decision involving an assessment by comparing the family's functioning to that at case opening. This corresponds to the 9th and 10th decision points in the 1993 model.

The 2003 RMS includes three Appendices that provide addition information on methods of information gathering (Appendix A); Risk/Safety Factors (Appendix B); and Family Dynamics in Child Maltreatment (Appendix C). Appendix D includes information on protective factors drawn from a 1993 article from Pecora and England.[37] There is no indication of whether these protective factors have been validated through research or if some are of greater predictive value than others.

[37] Pecora, P. and England, D. (1993). *Multicultural guidelines for assessing family strengths and risk factors in child protection services.* Washington Risk Assessment Project, Washington.

**CONCLUSIONS**

The death of a child at the hands of his mother is a tragedy. When there was a charge against the mother at that same time for killing the child's father, questions necessarily arise about the quality of risk assessment and risk management by the child welfare organization mandated to protect the child. In the case of Zachary Turner, it was difficult to ascertain from a review of the Department's child welfare files if there was in fact any systematic consideration of risk. The Department's risk assessment system is a consensus based system that has been used since 1993, with relatively minor changes in 2003 when there was a realigning of the provincial child welfare system to a family centered focus, i.e., family preservation. Similar tools with the same origins are in use in Ontario, New Brunswick and British Columbia. Information from Ontario suggests that there is a pressing need to conduct outcome and impact evaluation research to ensure that the instrument continues to fulfill the task for which it was adapted.[38] As Newfoundland has used this tool for over 12 years without evaluating its validity or reliability, the time has come to ensure that it does indeed measure what it is believed to measure. Information from Ontario about its impending abandonment of the ORAM suggests that it may be necessary to contemplate changing to an instrument known to have greater predictive validity and reliability.

The circumstances around Dr. Turner's involvement with Child, Youth and Family Services were unusual and posed a challenge to the Department in thinking about risk. Dr. Turner was not, as far as was known, a perpetrator of severe physical child abuse although she had physical confrontations with her daughters, […] and […]. The Department was not aware of the incident involving […] but it did learn (from Dr. Turner) about […] being slapped across the face twice. The

[38] Leslie, Bruce and O'Connor, Brian. (2002). *What are the products of the Ontario Risk Assessment Tool?* OACAS Journal, December 2002, vol. 46. pp.2-9.

Department knew that Dr. Turner was facing extradition to the United States on a charge of first degree homicide for killing Andrew Bagby, Zachary's father. The files are clear that Dr. Turner's stress levels were recognized as having the ability to compromise the care she provided for Zachary. Consequently, the Department provided an in-home support service for a number of weeks after Zachary's birth although there is little written material covering observations of Dr. Turner's parenting. There is no suggestion that the Department had any concerns about the physical care Zachary received from his mother. What is much less clear is whether there was reason to be concerned about his mother's emotional and mental state; particularly in the months leading up to the extradition hearing and after the decision was made to extradite her.

In examining the files of Child, Youth and Family Services, it becomes apparent that Child, Youth and Family Services failed to take advantage of information sources available for consultation on potential danger to Zachary. Dr. Turner proved surprisingly cooperative about allowing the Department to have access to her psychiatrist, Dr. Doucet. Inexplicably, the Department failed to avail itself of that opportunity. This was unfortunate for two reasons. The first and most obvious was that the Department did not learn if there was any reason to be concerned about Dr. Turner's mental status. Information of this type would have been an important contribution to a risk assessment concerning Zachary. The second reason was that the Department lost an opportunity to make its reporting needs known and to find out if Dr. Doucet was prepared to report if there were concerns about Dr. Turner's functioning in the community. Inexplicably, the Department did not seek out Dr. Doucet for consultation when Shirley Turner slapped […] across the face, despite its concern that her level of stress was impacting on her ability to parent. This would have been a helpful piece of information for a psychiatrist monitoring his patient's stress level. The Department's unwillingness to pursue Dr. Doucet and its passivity in expecting Dr. Doucet to reach out if there were "concerns" is a serious shortcoming in the protection Child, Youth and Family Services owed […] and Zachary.

There was some sharing of information by the police, including an assessment from a member of the Royal Newfoundland Constabulary that it was possible that Shirley Turner would harm herself and Zachary. Department staff did follow up on this comment but dismissed it as the officer in question could not offer sufficient substantiation to interest the Department in accepting this 'field assessment' for serious consideration. This field assessment, which would have been based on the officer's understanding of risk factors **or** case information not able to be shared, proved to be accurate. The Department did have access to information from the public health system and the education system. Child, Youth and Family Services did not seek out information on the murder that Dr. Turner was charged with committing. While it is not the role of the child welfare service to judge guilt or innocence, the charges were sufficiently serious that consideration of their validity would have a major impact on any assessment of risk. As there was no attempt to seek this information, it is difficult to know if Child, Youth and Family Services would have received what was needed. However, an attempt would have constituted good practice. A fall-back position would have been to seek an assessment of Dr. Turner's mental status including her potential for violence. While such assessments are not perfect, it would have been good practice to have sought one.

Interestingly, there was no record of any in-depth discussions with Shirley Turner about her history with Andrew Bagby. As the question of whether or not the Department believed that Shirley Turner had committed a serious act of violence was crucial in assessing and managing risk, this oversight is of concern. Neither the 2003 nor the 1993 instrument required the Department to have knowledge of criminal convictions for violence, indicating that substantiation did not require a conviction or even criminal charges. Yet, the Department seemed somewhat uninterested in Dr. Turner's potential for violence although it was appropriately interested in how the stress of facing extradition was impacting on her ability to parent. Surprisingly, there appeared to be no recorded consideration that there might be a link between these two conditions; that Dr. Turner could harm someone if sufficiently stressed.

The Department was appropriately concerned that she was depressed, but not sufficiently concerned to speak with her psychiatrist to determine if depression had the potential to lead Shirley Turner to suicide or homicide.

In treating the case as a 'family services' case, Child, Youth and Family Services failed to undertake any of the detailed assessment tasks falling both within its 1993 and 2003 risk management requirements. By offering herself as a voluntary client, Dr. Turner effectively 'turned off' the Department's child protection services. Despite evidence that Dr. Turner had the potential to mistreat a child (e.g., slapping […]), the case was not reclassified for child protection services. This was a serious shortcoming, particularly when the charges against Dr. Turner are considered. The 1993 risk management requirements include an ongoing assessment of "changes in the family that may put the child at increased risk of harm, or that may reduce the existing harm to a child."[39]

The decision to extradite Dr. Turner qualifies as a "change" in the family and one with a substantial impact as it would remove Dr. Turner from her children for a lengthy period, even if she were to be acquitted of the charges facing her. The Department has indicated that there was an 'ongoing' risk assessment of the case, although the files do not record these activities. If there was an 'ongoing' assessment of risk, how could the decision to extradite Dr. Turner not be seen as a crisis in the family requiring a reassessment of risk? Zachary would be left without parents and […] would lose her mother - again. Despite this, the Department did not move forward to ensure the safety and well-being of the children, particularly Zachary.

The information available indicates that the Province's "family centered service" was, in the Turner case, a "parent centered service" as the Department made extraordinary efforts to accommodate Dr. Turner. In contrast, Mr. […], who had been […]'s caregiver her entire life and her

[39] Department of Social Services, Child Welfare Program Standards, Child Protection Services, Ref. 02-04-01.

primary caregiver for the previous five or six years, received little consideration. It can be argued that a family centered service would have ensured that the bond between father and daughter remained strong, particularly if there was a possibility that the child's mother might be unavailable for some time in the future. This same perspective extends to Zachary's grandparents. In the event that Dr. Turner was extradited and tried in the United States, his grandparents were a logical choice as alternate caregivers. They had relocated to St. John's to establish a relationship with their grandson and had been able to spend time with him only when Dr. Turner allowed them access. There was no indication in the files reviewed that there were any concerns about the Bagbys' care of Zachary. Even Dr. Turner's complaints about them were more about her fears that they would usurp her place or malign her; she did not complain that their care of Zachary placed him at risk of harm. The Department's risk management system, both the 1993 and 2003 versions, would have considered the involvement of Mr. […] and Mr. and Mrs. Bagby as positive elements in managing risk as the two minor children remaining in Dr. Turner's care had close family members willing to ensure their well-being if Dr. Turner could not.

The tragedy of the death of Zachary Turner is that there was some recognition of potential for a negative outcome in the service provided by the Department of Child, Youth and Family Services. Most of this focused on the effect that the stress of facing extradition to the United States could have on Shirley Turner and any subsequent impact on her parenting. There was a disturbing lack of protective action on behalf of Zachary whose mother was charged with murdering his father.

It is recommended that Newfoundland and Labrador put in place a system of interdisciplinary review of child abuse fatalities, severe non-accidental injuries, domestic violence fatalities and severe injuries, and youth suicide review. The benefits of such reviews have an established history in the United States and in those provinces employing interdisciplinary reviews as a means of understanding the etiology and prevention of such events. Such review teams also foster closer

cooperation and information sharing between the stakeholders. Stakeholders include, but are not limited to, the Chief Medical Examiner, Royal Newfoundland Constabulary, Royal Canadian Mounted Police, Department of Justice (federal and provincial), child welfare and public health agencies, education, Children's Advocate and regulatory agencies for those professions providing services to children and families, including doctors, nurses and social workers.

Although Canada does not have a national association of such teams, there is a well-established association in the United States through the National Centre on Child Fatality Review that also deals with domestic violence and suicide review. Additional information is available at www.ican-ncfr.org. Canada does have membership on the International Advisory Council for the National Centre on Child Fatality Review. The Public Health Agency of Canada through its Health Promotion Branch is involved in monitoring the existing child fatality review processes in Canada.

It is recommended that training in risk management and risk assessment employ the Turner case as a teaching case with emphasis on implementing a broader view of assessing and managing risk.

The 2003 Risk Management System adequately covers the role of severe domestic violence as a risk factor to consider in child protection cases. It is necessary that training reflect this wider view. The Turner case should be used a teaching case for several reasons:

- The alleged perpetrator of severe family violence was a woman;
- The alleged incident of severe family violence did not happen within Newfoundland and Labrador;
- The case was initially received as a voluntary services case and not reclassified in light of the serious allegation of family violence or when there was a substantiated incident of child maltreatment.

The Turner case serves as a reminder that the failure to maintain a broad view of a case can have a tragic outcome.

It is recommended that research on the validity and reliability of the Risk Assessment instrument for Child, Youth and Family Services be undertaken to ensure that the instrument is accurately measuring what is it designed to measure. It is further recommended that consideration be given to communicating with other provinces using instruments with similar origins to determine if there is the opportunity for joint evaluation research.

The origin of Newfoundland and Labrador's 1993 and 2003 systems is a consensus-based model from New York State. Ontario began a research process concerning its instrument which is also based on New York State's risk assessment instrument for child welfare services. Information cited elsewhere in this section indicates that Ontario will be searching for a different instrument for use in its child protection service. Newfoundland has been using its system for 12 years without evaluating validity or reliability. Given the high cost to families of false positives and false negatives, such research is overdue. An additional factor is that the systems in use in Canada are described as adaptations of the New York model. Any existing evaluation research on the New York model would be of limited utility, depending on the amount of adaptation that was done to suit the Canadian child welfare environment.

It is recommended that the Risk Management System be evaluated to determine if the priority rating of voluntary service requests as having "No Risk" with respect to potential harm is valid. Such arbitrary ratings have the potential for constricted thinking about family assessment, family dynamics and emerging danger.

It is further recommended that a process be made explicit for assessing at what point a voluntary services case becomes a child protection case with reference to the provisions of Section 14 of the Act. All recipients of voluntary family services should be advised that, if conditions warrant, the Department will move into providing protective services to the children involved. The barriers in place at the time of the death of Zachary Turner were viewed as somehow insurmountable in

reclassifying a case. This view is not supported when the conditions under which a child is in need of protection are considered. These conflicting views suggest that more education is needed to support workers' efforts toward protecting children while strengthening families and to avoid similar deaths in the future.