

# **Allegation Handbook**

## **Legal Defence Fund**

**United Foster Parents  
of Canada Corporation**



**May 19 2010**

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## 1.0 Legal Defence Fund

### 4.4 1.1 Purpose

The Legal Defence Fund allows members to obtain legal advice and/or legal services to defend against allegations of wrong doing. Foster children, biological parents, community members and Children's Aid Societies, (CAS) have made allegations of abuse. Allegations have resulted in criminal prosecution. Mental, physical or sexual abuses have been the basis of the allegations. These allegations are not limited to the Foster Parents. Their immediate family members (living in the home), relations and/or care givers and/or babysitters as they provide foster care can also be the subject of allegations of abuse.

#### Coverage

The Legal Defence Fund, (Fund) is accessible by current and retired members, of United Foster Parents of Canada Corporation (UFPCC) who contribute or have contributed to the Fund. The Fund augments insurance coverage provided by Children's Aid Societies, (CAS).

CAS funds are available in the event of prosecution and/or civil suits arising from the care of CAS foster children. The Cowan Group (the CAS Insurance Carrier) covers any criminal charges that are incurred by Foster Parents, however only the Foster parents are covered. Cowan will reimburse expenses as incurred, after you have been charged, to cover an ongoing case up to \$100,000 per occurrence and \$500,000 for all cases in one year. The insurance covers CAS employees, Board Members, Foster Parents and Volunteers. Cowan also covers civil cases with the exception of sexual charges.

The Legal Defence Fund provides access to financial aid on behalf of a Member if charges are laid or appears likely to be laid or if a member needs a Lawyer's presence at an initial police interview. The fund also provides financial assistance for advice, emotional support and counselling where required.

The Cowan Group does not cover biological/adopted children, babysitters or other care givers in a foster parent's home. Cowan does not cover pre-charge advice from a lawyer nor will they provide any funds in a civil suit where there is a sexual charge. If you appeal a sexual case and are found innocent Cowan still does not cover costs. The Legal Defence Fund covers all of the above.

## 2.0 Allegation Prevention

### 4.5 What is an Allegation?

An Allegation is a statement or suggestion made by an individual about another person with respect to abusive behaviour as defined under the Child and Family Services Act.

### 4.6 Reasons for Abuse Allegations

- Actual abuse has occurred.
- 
- Language is misinterpreted.
- 
- Memories are confused with the present.
- 
- Body language is misinterpreted.
- 
- The child/youth wants to break the placement and may not tell the truth.

**4.7 Definition of Abuse**

<b>Types of Abuse</b>	<b>Definition / Examples</b>
<b>Abusive Physical Punishment</b>	<p>Generally unacceptable or inappropriate modes of physical punishment.</p> <p>Use of generally acceptable modes of physical punishment, which are overdone, prolonged unduly or if excessive force is used.</p>
<b>Abusive Physical Punishment</b>	<p>Examples: beating, shaking, slapping or whipping, hitting with a fist, kicking, biting, twisting, dropping, bludgeoning, burning, scalding, poisoning, suffocating, using weapons.</p>
<b>Sexual Abuse Allegations</b>	<p>Allegations come from inappropriate: boundary issues, language, bedroom issues, touching, looking, hugging, clothes issues, gestures, games or physical activities.</p>
<b>Psychological/Emotional Abuse</b>	<p>Symptoms of emotional abuse may include: anxiety; depression; withdrawal; self destructive or aggressive behaviour; delayed development.</p>

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For foster parents, if any of their actions or failure to act cause some of the above symptoms there may be reasonable grounds for an allegation of abuse. The abuse would typically involve sustained actions by the foster parent, notwithstanding that many children in care exhibit some of these descriptors as they come into care.

## 4.8 Prevention

The best and surest way to protect your self from allegations is to limit the circumstances in which allegations may occur. Develop your own practices and follow them.

The following suggestions and guidelines may help in preventing Allegations. The information comes from safeguarding Courses developed by the Canadian Foster Families Association (CFFA) and from the Foster Parent Society of Ontario, FPSO Booklet 2004; Safe Guarding Children & Foster Families

- A. Participate in any training that is available on working with children and youth who have been physically,emotionally or sexually abused. It is important that both parents participate in the training sessions, not just one.
  
- B. Obtain all applicable information you can on a child prior to placement. This includes copies of all reviews that pertain to your child. If your worker does not give you the information, then ask for it. Should a worker be unwilling to give you the information, ask their supervisor.

Pre-placement information is necessary to enable you to adequately assess your home's ability to foster this child at this time. When a child first comes into care this information may not be available but it should be provided on a timely basis.

Refer to Appendix A, (page 18) for the data that should be included in the pre-placement information.

- C. Keep a daily log of significant events that occur in your house. Keeping daily records allows you to review situations, provides your child's social worker with additional information that can help in decision-making, maintains a record of accidents, fights or disagreements and allows you to maintain a record of how you handled these situations. Recording should include both positive and negative situations that your children have encountered each day. Your log should also keep a list of all people who visit you during a given day. Encourage your child to keep his/her own daily log or journal. Keep in mind that you still must report any significant incidents.

Refer to Appendix B, (page 20) for the data that should be included in the daily logs.

NOTE: Try to be as professional as possible when writing them and take advantage of any training. Daily logs are subpoenaed.

### **When in Doubt, Do Not Leave it Out!**

- D. Build and maintain a support system. As a foster family you need better support systems than most people do. You have many additional pressures caused by the problems of the children you may have, disrupted family dynamics and difficulties that may arise in dealing with the social worker or the child welfare agency/department.
- E. Obtain a copy of your agency/department's procedures for handling allegations of abuse, particularly those related to foster care.
- F. Open communication is important. Make sure that you keep your social worker informed of significant events such as all illness, self-injury, or injuries due to fights or falls. Report any changing dynamics in the foster family to your worker. For examples: illness of one foster parent or behaviour changes in the foster child. If your foster child has a problem, let the child's social worker know as soon as possible. Make sure you keep a record in your daily log of what you talked about with your worker (times, days, topics, etc.). Check to see that your worker correctly interpreted what you said. Keep a copy of all annual assessments and documentation pertaining to your home.
- G. Have house rules for everyone particularly when dealing with foster children who are sexually aware or have been sexually abused. These rules should include privacy, night dress, etc. Each child should have a copy of these rules to keep.

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- H.** Do not leave your children or other children alone without an appropriate and authorized adult present. Make sure you know your agency/department's regulation on who constitutes an authorized adult. Try to have a third person with you when transporting a child.
  
- I.** Make sure you have an up-to-date list of your foster family association's emergency contact people.

### 3.0 Society Mandate

When a child makes an allegation, the Society has no choice but to initiate an investigation. The first concern is the safety of the child or all the children in the home. Under these circumstances the Society has to assess and evaluate the situation. They will question the other children in the home, including any biological children. You may not know that an investigation is on going, this is dependant on the nature of the allegation. The Society usually has to inform you that an investigation is underway but at their discretion, usually within 48 hours. Some Societies will inform you immediately if an investigation is underway. Know your Society's policies and procedures.

There have been a number of changes in the Societies' investigation procedures as a result of the Child Welfare Transition Initiative. The Differential Response Model is one of the components that will directly affect investigations of foster parents. The changes were initiated to assist foster parents through the difficult stresses involved in an investigation.

The Society has the right to enter your home to remove the children and possibly your biological children if it believes that the children are at imminent risk. The Society may come to interview you. You will likely have signed a Service Contract, in which you have agreed to co-operate with the Society.

We strongly recommended that you have an advocate present in all interviews with the Society. If your FPA and Society have initiated an advocate system, use the services of the advocate. If there is no advocate you should either call the LDF representative for your area or have a third party present (friend, another foster parent or a lawyer).

We recommend you take notes and even tape record the conversation. If the Society staff shows up at your door unannounced, ask them why they are there. If you find out that you are under investigation and the Society wants to interview you then you may cooperate with them. It may be that they need your input to resolve a situation. However, ask them the nature of the investigation. If they will not tell you then you need to protect yourself. The Society will interview you separately from your partner.

### **Process used by CAS when an allegation occurs**

Intake receives a phone call indicating an abuse has occurred.

Abuse can be physical, emotional, sexual, other

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The call can come from: A Society worker; a foster parent; a child; a relative; a neighbour; someone in the public; a biological parent; a police officer; a teacher; a minister.

Intake phones an intake worker who then calls a supervisor. A decision is made as to the response time either 24 hours or 7 days.

The child's resource worker is called and the FPA advocate **should** be contacted as well.

Intake worker interviews the primary participants.

Information gathering and fact finding by CAS can include interviewing other children in the home including biological children, past children in the home, teachers, anyone who may have input in the case.

The foster parents, depending on the nature of the complaint, are interviewed separately.

At this point, an outcome meeting is held by the CAS. Any children's worker who knows the family, the resource worker, his/her supervisor, intake worker, his/her supervisor, the advocate and a manager are present at the meeting.

A judgment call is made as to the type, severity and extent of the abuse.

If the trigger line has been reached, the police are called. The CAS contacts the police. This action by CAS changes the nature of the allegation and the interviewing procedure since criminal charges may be forthcoming. The police will interview the child with the CAS worker present to reduce the number of interviews for the child. At this point the police set the schedule.

The interview with the foster parents and the advocate is an attempt to discover the practices in the home. The intake worker usually does not know the family and while this has its pros and cons, a third party view may be less biased.

Questions include: supervision of children; how issues are resolved; how discipline is handled; who administers discipline; who does what routines; who baby sits; who is in control of the house etc.

A picture of how the house operates is elicited from both foster parents and children.

Each CAS has policies on how they deal with an allegation. As well, they will provide the foster parents with support.

The thrust of this Handbook is to deal with possible criminal charges.

**Be very careful what you say.**

**Remember you do not have to surrender your Rights as a Citizen of Canada.**

**If the Society will not tell you the nature of the investigation your need to cooperate diminishes.**

**Section 4 explains your rights.**

## 4.0 Your Rights

### 4.9 Rights Under Law

Even though you may have signed a Service Agreement to co-operate with Police and CAS in the event of an allegation, this **DOES NOT** remove your Rights under the Canadian Charter of Rights & Freedoms. Refer to Section 4.5 on page 10 for a description of your rights under the Charter of Rights.

**You have the Right to Counsel – Use It** - Do not talk to a Police Officer without first obtaining *sound* Legal Advice.

**You have the Right to Remain Silent – Use It** - Do not answer questions about the investigation without first speaking to a Lawyer of YOUR choice. You will be required to give the Police basic information about yourself, such as your name, address & Date of Birth.

**On the advice of our criminal lawyers**, if you find yourself in a police station and you are being interviewed by the police be aware that in **most cases** to date where a foster parent was asked to come to the station to ‘clear up’ a situation the foster parent was charged.

The police must enter into evidence your entire statement.

More damaging however, is the fact that if you explain your side of the case and it is inculpatory, the police and the crown attorney will use that information against you as they now know what your defence will be.

**There is no upside to a police interview for a foster parent.**

**We cannot stress enough to remain silent no matter what interviewing techniques the police use.**

#### 4.10 Police Entry to Your Home

On May 22nd, 1997, the Supreme Court of Canada delivered its decision on *R. v. Feeney*. The Court ruled that, as a general rule, police required a warrant to enter a private dwelling to arrest someone. The decision overturned existing case law that did not require the police to obtain a warrant to enter if the arresting officer had reasonable grounds to arrest someone and, prior to entering, indicated his or her presence, authority and reason for entry. The Supreme Court of Canada found that, according to the Charter, the privacy rights of Canadians were not adequately protected when a warrant was not obtained.

#### 4.11 Entering Without a Warrant

The bill allows peace officers to enter a private dwelling without a warrant in "exigent" or pressing circumstances where it is not feasible to obtain one. These include, but are not limited to, situations where:

- There is a reasonable suspicion that entry is necessary to prevent imminent bodily harm or death to anyone.
- There are reasonable grounds to believe that entry is necessary to prevent imminent loss or destruction of evidence.

#### 4.12 Search & Seizure

If you are arrested, you will be searched and possibly the immediate area around you. You may be strip searched if you are charged and held for a Show Cause Hearing. There are limited circumstances where you will be strip searched, especially given the type of allegations that foster parents could be charged with. Case Law has determined this as justifiable and necessary.

- The Police do not have the right to enter and search your home (under normal circumstances) without a warrant. The Police **do have the right** to seize items in plain view, if they pertain to a criminal offence; *this is why you do not invite them into your home.*

**4.13 4.5 Charter of Rights**

Life, liberty and security of person	7. Everyone has the right to life, liberty and security of person and the right not to be deprived thereof in accordance with the principals of fundamental justice
Search or seizure	8. Everyone has the right to be secure against unreasonable search or seizure
Detention or imprisonment	9. Everyone has the right not to be arbitrarily detained or imprisoned.
Arrest or detention	10. Everyone has the right on arrest or detention: a) to be informed promptly of the reasons therefore: b) to retain and instruct counsel without delay and to be informed of that right: and <i>opus</i> and to be released if the detention is not lawful: c) to have the validity of the detention determined by way of habeas corpus

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Proceedings in criminal and penal matters	<p>11. Any person charged with an offence has the right:</p> <ul style="list-style-type: none"><li>a) to be informed without reasonable delay of the specific offence;</li><li>b) to be tried within a reasonable time;</li><li>c) not to be compelled to be a witness in proceedings against that person in respect of the offence;</li><li>d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;</li><li>e) not to be denied reasonable bail without just cause;</li><li>f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;</li><li>g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the General principals of law recognized by the community of Nations;</li><li>h) if finally, acquitted of the offence not to be tried for it again and if finally found guilty and punished for the offence, not to be tried or punished for it again; and if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.</li></ul>
Treatment or punishment	<p>12. Everyone has the right not to be subjected to any cruel and unusual punishment.</p>
Self-incrimination	<p>13. A witness who testifies in any proceeding has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of any contradictory evidence.</p>
Interpreter	<p>14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.</p>

## 5.0 Police Position

**If the Society shows up at your door with the Police and they want to question you, you need to protect yourself.**

If the Police feel an offence has been committed, they are interviewing you with the object of getting a conviction. If the Police become involved or they approach you directly you need to take a number of other steps.

### **REMAIN CALM !**

#### 4.14 5.1 Protecting Yourself

##### 5.1.1 Initial Steps to Take

1. The Police require a warrant to enter your home to arrest you. Do not invite them in or step outside.
2. There is an expectation that all citizens will co-operate with the Police. There is a very fine line between co-operation and self incrimination.
3. Ask why they are there. Your need to co-operate diminishes if they do not tell you.
4. Only go to the police station if you are arrested. If possible make arrangements to meet them at the station, at home or at your lawyer's office at their convenience. **Do not go on a Friday**, a bail hearing will not be held until Monday.
5. Remember the Police may try to use deception to obtain a confession from you.
6. You have the Right to Consult a Lawyer – Use It. **Only use Duty Counsel if your counsel is not available and you have no other option.**

## 5.1.2 Further Steps to Take

It is important for you to keep a number of issues in mind if you discover that you are under investigation. If the Society and the police show up at your door:

- **Do Not** make any statements to the Society or Police.
- 
- Contact your lawyer.
- 
- Contact the LDF Representative for your FPA.
- 
- Do not panic; if you are innocent most allegations are quickly resolved.

## 5.1.3 If you are arrested

- **Do not admit to anything.**
- Do not discuss the matter without seeking legal counsel.
- Explain to the Society why you will not be making any statement until after speaking to your Lawyer.
- Begin a Diary; enter actual events and be specific, date and details. Leave subjective things out of it, “got up this morning feeling depressed”.
- Once you are accused, many professionals believe that you are guilty and you must be aware of this dynamic (guilty until proven innocent and then suspect).

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- Be prepared to be placed under a microscope; both the Defence and Crown will do this to you.
  
- **Do not** make any attempt to contact the child. This is usually our first reactions, “If I could just talk to him/her, I could clear this up.”
  
- Prepare for immediate rejection by people around you. There is a chance that the Media will become involved.
  
- Prepare for frequent absences from home and work for such things as interviews or Court.
  
- Accept that the allegation may take a couple of years to resolve.

## 6.0 Interviews

### How to conduct yourself in an interview?

#### 6.1 Society Interview

- Agree to the interview in a place of your choosing, Home/Society.
- Have a Communicator/Peer support person present.
- Find out the nature of the investigation. If the Society does not give you this information your need to cooperate diminishes or ends.
- In an initial interview you deem the situation is very serious you may wish to terminate the interview until you can gather up your own facts or talk to a lawyer.
- The Society cannot search your home.
- The Police require a Search Warrant to search your home.
- Be aware of the language you use and how you say things. Take the time to frame your answer carefully.
- Do not admit to a particular action – even as a possibility. For example, “Is it possible you brushed up against the child as you stood up?” Remain silent do not fill the silence with any comment-wait for the interviewer to redirect.
- Provide a copy of your notes if requested. Do not surrender your original notes. Do not use a computer to keep your notes – as the Police will seize it.

#### 4.15 Police Interview

If you find yourself in a Police Station without assistance and the Police want to interview you here are a few things that you can do.

- Ask to speak to your lawyer.
- You may say to any question, “I need to discuss that with my lawyer”.
- You have the right to remain silent.
- Ask that the interview be video taped. In many cases today this is automatic.
- Ask for an Audio taped interview.
- Ask for pen and paper and write down everything said. Take your time – Your Freedom may depend on it.

#### 6.3 Role of the Courts

The Criminal Court will make a finding of guilt if the offence is proven **beyond a reasonable doubt**. If there is reasonable doubt, they will make a finding of not guilty.

You can be sued civilly after being acquitted of an offence. A civil suit requires a lower standard of proof by probabilities.

## 7.0 Contact the Legal Defence Fund

1. Phone your FPA president or one of your local Communicators/Advocates
2. Phone your Local LDF Director or the President of the LDF. Refer to Appendix C on page 23 for the LDF contact information.

### 4.16 Contact the Society

If the police charge you the Societies insurance does cover you. You need to inform the Society that you need to access their insurance fund.

Contact the Supervisor of your Resource Team. The Society may help you with things like Emergency Relief, babysitting and other forms of assistance (possibly financial).

### 4.17 Contact a Lawyer

- As a member of the LDF you are entitled to a one hour free consultation with a Lawyer.
- To contact the LDF lawyer call your local director.
- Phone your own Lawyer, you will need the services of a criminal lawyer. The LDF will cover the cost of talking to a lawyer and provide a retainer if necessary.
- The LDF has a number of very successful criminal lawyers on retainer.
- We are attempting to establish Regional Criminal Lawyers on retainer for each part of the Province.
- Your Lawyer is there to protect your Rights – Use one.

## Appendix A: Pre-placement Information

If you prepare your own list of pre-placement information you might want to consider the following questions or areas:

1. Name
2. Age
3. Cultural Background
4. Complete Medical History
5. Last Address
6. Parents Name(s) and Address
7. Family Dynamics
8. Complete School Background
9. Siblings and their status, as well as, their birthdays
10. Have parents displayed anger and to what degree
11. History of family abuse including the mechanism of abuse. For Example: beaten with a belt, pornography, etc.)
12. Is child sexually active and if so to what extent
13. Any history of drug/alcohol abuse
14. Prior placement history - can I contact previous foster parents?
15. Why is the child being moved or taken into care?
16. Type of care (voluntary or ward)?
17. Behaviour problems (e.g. fire setting etc.)

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18. Has this child ever made allegations of abuse/neglect against anyone? If yes, who and what was the outcome of the allegation(s)
19. Encounters with the law/outstanding court
20. Legal proceedings pending with parents
21. Will foster parents be asked to testify in court?
22. Will there be family visits - supervised/unsupervised
23. Is there a family member or family friend whom this child can contact?
24. How is this child likely to affect my family dynamics?
25. Child's strengths
26. Hobbies, recreation, clubs, special interests, pets, likes/dislikes, etc.
27. How can a foster home best meet the needs of this child?
28. Special physical provisions required, for example: crib, car seat, diapers, ramp for physically challenged, plastic bed cover ' for bed wetter, etc)
29. What are the familiar routines for this child, likes and etc.

## Appendix B – Daily Logs

It is important that you have some general idea about what and how you should record. Some general ideas are:

- Never write the same thing twice [Don't be redundant].
- Never put the information in more than one place.
- Always put it in the order by date (year, month, etc.) in which it was discovered.
- Any information that is potentially relevant to the future of the child in any way should be included.
- Don't leave out even the most trifling details
- If it cannot possibly ever make any difference to the future of the child in any way, leave it out.
- If the information is possibly relevant but of questionable reliability, make it clear that there are questions of reliability, and identify them as clearly as possible.
- Qualify questionable facts or opinion by quoting their source, identifying any dispute of the facts, and let the reader decide for him/herself whether or not to believe the information/opinion.
- Be explicit and without interpretation, just the facts
- Identify every reliable witness and piece of corroborative evidence.

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Here are some specific examples of content which should be included in the daily logs:

1. Include all persons in the home, scheduled staff members, strangers or alternate caregivers visiting and/or working. Indicate any absences or change in plans, where a schedule shows a person supposed to be working but actually didn't (other than foster parent).
2. Note departures from the regular schedule. Children away or otherwise out of the home except for regularly scheduled school or recreational outings
3. All visitors interacting with children.
4. Any relief arrangements should include private arrangements foster parents make on their own. Note: the CAS should be pre-approve any of these arrangements.
5. Any changes (confirmed or suspected) in a child's health.
6. Any changes (confirmed or suspected) in a child's behaviour.
7. All modifications in medication (prescribed or not, that includes any errors).
8. Medical or dental appointments.
9. Damage or modifications to the child's physical environment (prescribed or not) which could affect their safety, behaviour or quality of life.

- 10.** Injuries sustained, either by accident or by self-injury. Include any difficult to explain circumstance and where witnessed, their origin. Try to record the incident from the point of view of an outside observer who might suspect poor care, negligence, malpractice or abuse. Investigated any unexplained cases, follow the accepted procedures for reporting serious occurrences.

Examples of injuries include: bruises, scratches, wounds, sores, bumps, infections, headaches etc.

- 11.** Outside agencies or professionals contacted for advice (physicians, poison control, etc.). Include the time of contact, person's name and telephone number and advice given as close to verbatim as possible.

- 12.** Statements regarding actions to rectify a possible emergency or safety hazard (First Aid given, boarding up of a broken window, etc.)

- 13.** Any event meeting the definition of a Serious Occurrence as outlined in Policy and Procedures. Follow the Policy and Procedure manual's advice in this regard, (your own agency/department policy).

- 14.** Any information or complaint that has a serious potential impact on residents or on the organization as a whole, (including a foster parent).

- 15.** Any other event, information or circumstance that potentially threatens the well-being of your home or organization.

- 16.** Think in terms of Murphy's Law: What can happen, will happen! Record information that is truthful and keep a "Murphy" from coming true!

## Appendix C – LDF Contacts

### LDF Executive

#### President

Jim Mallon                      Belleville- Hastings County  
(613) 395 - 3923 Home  
(613) 395 - 5855 LDF Business Phone  
(613) 849 - 6236 Cell  
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### Directors:

Anne Dafoe	-	Belleville Hasting
Ron Slatter	-	Prince Edward County
John Roesner	-	London Middlesex
Bradley Smith	-	Brockville Leeds & Grenville
	-	Napanee Lennox & Addington
Scott Munroe	-	Ottawa Carleton
Jim Sawkins	-	Simcoe
Tony Morrow	-	Lanark
Cindy Persaud	-	Peel
Sara Hay	-	Muskoka
John McMann	-	Windsor
Joy Cole	-	FPSO Representative
Cheryl Wood	-	Woodstock
Tammy Lynn Boelher	-	Hamilton Catholic
Linda Langdon	-	Hamilton Public
Anne Newell	-	Northumberland
Larry Sheard	-	Grey County
Janet Smiaris	-	St. Thomas
Gina Houle	-	Sudbury
Wally Scheurer	-	Peterborough
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