

PATHWAYS IN A FOREST

Indigenous Guidance on
Prevention-Based Child Welfare

September 2019



PATHWAYS IN A FOREST: Indigenous Guidance on Prevention-Based Child Welfare

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This report is an outcome of a year-long law reform project by West Coast LEAF in collaboration with the Fraser Region Aboriginal Friendship Centre (FRAFCA), Lii Michif Otipemisiwak Children and Family Services (LMO), and Tillicum Lelum Friendship Centre called *Putting Families First: Shifting the Child Protection System*.



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The views expressed by the project participants for this report are their own. Any errors, however, are West Coast LEAF's.

This report is for the purposes of education and discussion only. It is not intended to give you legal advice about your particular situation. Because each person's case is different, you may need to get help from a lawyer or advocate.



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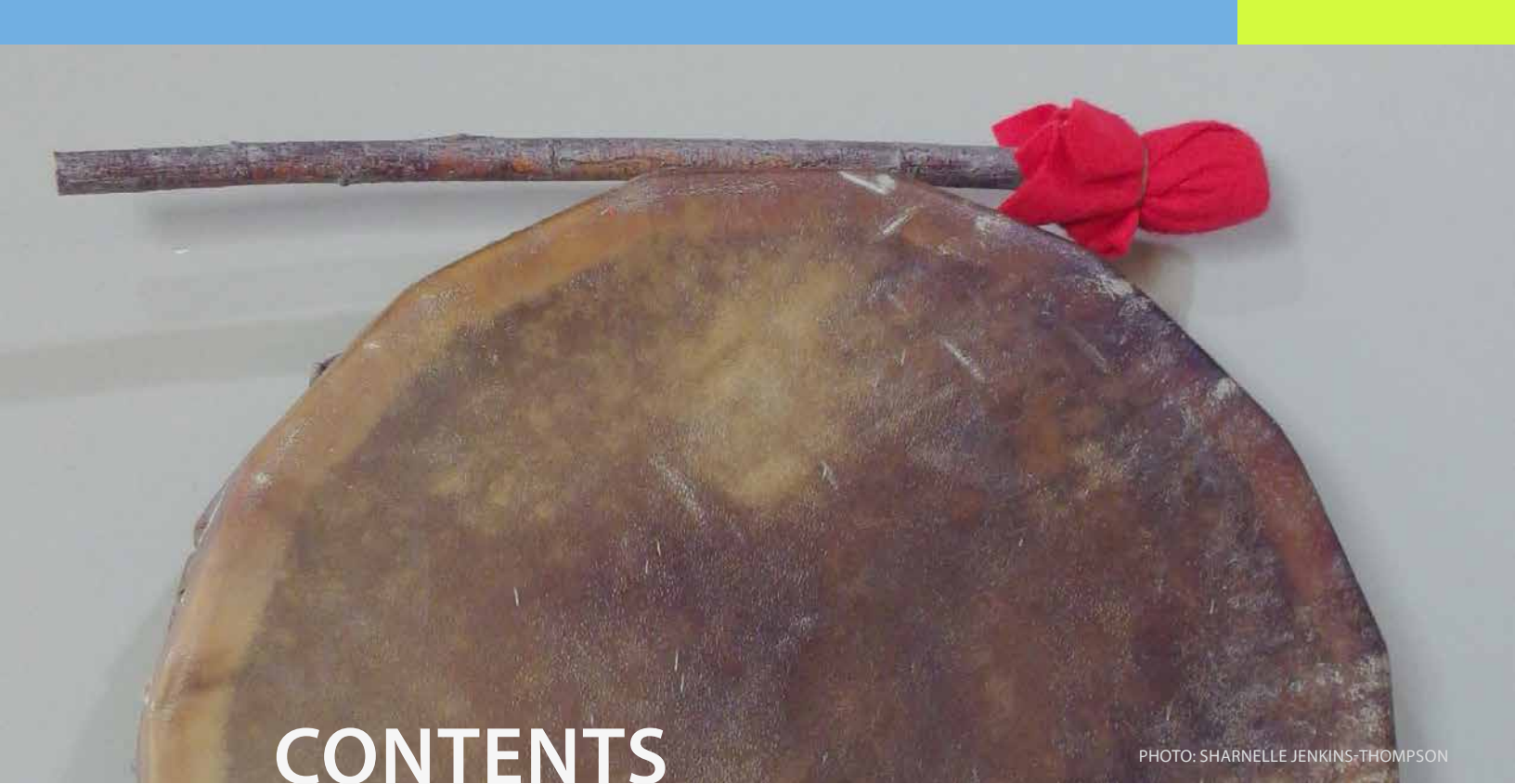
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PHOTO: SHARNELLE JENKINS-THOMPSON

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PHOTO: SHARNELLE JENKINS-THOMPSON

Executive summary

Many Indigenous families continue to experience the child welfare system in the same way their ancestors have: as one that breaks up families and communities under the guise of protecting Indigenous children.

THE CURRENT CHILD WELFARE SYSTEM is sometimes referred to as “The Millennium Scoop” because of the devastatingly high rates of Indigenous children who continue to be taken into government care. Though efforts have been made in recent years to improve the ability of the current system to support Indigenous families to remain together, the reality is that many Indigenous families continue to experience the child welfare system in the same way their ancestors have: as one that breaks up families and communities under the guise of protecting Indigenous children.

In this report, we set out the experiences of 64 parents who have had engagement with the child welfare system. Their stories and expertise provide a wealth of knowledge about the strengths and weaknesses of current prevention-based efforts and programs. Their experiences demonstrate that, despite the Ministry for Children and Family Development’s (MCFD) emphasis on improving prevention-based services for Indigenous families, long-standing apprehension-focused practices continue to permeate the system.

The stories we heard echo the disparity between practice and policy that has been noted in numerous reports. For example, in *When Talk Trumped Service: A Decade of Lost Opportunity for Aboriginal Children and Youth in BC*, the Representative for Children and Youth found that, though MCFD had made broad statements in support of improving the state of the child welfare system in BC by supporting families and working more collaboratively with communities, government efforts had not led to much concrete change in service delivery or outcomes for children and families. In this report, we have identified three broad underlying factors that are undermining the full realization of prevention-based efforts:

- **Ongoing cyclical colonialism:** Many participants felt that the foundational beliefs and practices that existed in the residential school system and the Sixties Scoop continue to exist in the current child welfare system. They expressed concern that the current child welfare system is ill-equipped to address intergenerational trauma, systemic racism and marginalization, and disparities in the social determinants of health for Indigenous peoples.

- **Gaps in supports and services:** Despite the emphasis on improving prevention-based efforts in the child welfare system, participants felt that there were significant gaps in the types of services that their families needed. Where services were available, there were systemic and individual barriers to accessing them.
- **A lack of accountability:** Project participants expressed frustration over the lack of accountability from social workers and how this led to vast discrepancies in social work practice and undermined prevention-based efforts. The lack of accountability that is built into the current child welfare system impacts the relationship Indigenous families and social workers develop. This leads to a top-down approach in which social workers can dictate terms to parents rather than a relationship-centred approach that fosters trust and collaboration.

While there remains much work ahead for the child welfare system to be able to shift its focus from apprehending children to supporting families and communities, there are also clear pathways in the forest. The parents who participated in our project shared with us various experiences of positive supports and ideas for a way forward. We highlight some of these programs and efforts throughout our report. We also identify three themes that underlie these promising practices:

- **Indigenous approaches to child welfare:** Programs that were grounded in Indigenous child-raising knowledge were identified by parents as some of the most effective prevention-based programs. Indigenous Nations have long had rich child-raising practices and many communities have been undertaking efforts to revitalize and restore this knowledge. Support for these efforts was identified by project participants as a positive step forward.
- **Community-based supports:** Localized, integrated, and wrap-around community-based programs and services were identified by almost all parents as the most effective form of prevention-based programming. Project participants felt that the local community was best placed to understand the family's needs, mobilize resources, and develop creative, out-of-the-box solutions.
- **Self-determination:** The parents who participated in our project felt that the future of a prevention-based child welfare system for Indigenous peoples must be rooted in self-determination. Participants firmly believed that Indigenous Nations and communities should have full authority over all decisions that impact their children.

The voices of Indigenous parents demonstrate that the child welfare system remains in need of a transformative shift and the way forward is grounded in Indigenous knowledge, driven by community-based programs, and designed to support self-determination for all Indigenous peoples.

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Introductions and intentions

PHOTO: JEREMY ALLOUCHE/UNSPLASH

WEST COAST LEAF

West Coast LEAF is dedicated to using the law as a strategy to work towards an equal and just society for all women and people who experience gender-based discrimination. In collaboration with community, West Coast LEAF uses litigation, law reform, and public legal education to create social change. While we are focused on issues in BC, we also take action in matters of national significance that are important to the equality and human rights of people in BC.

We aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and the right to parent. This project builds on work we have done around the right to parent. Our 2016 report, *High Stakes: The impacts of child care on the human rights of women and children*, analyzed the consequences of BC's inadequate child care system on the human rights of women and children, highlighting the increased likelihood of child apprehensions when high-quality, culturally appropriate, and affordable child care is out of reach for families.

As a result of that report, in 2017, we undertook research aimed at documenting the implications of rights violations stemming from the current state of child care in the province on Indigenous¹ women and children, particularly as it relates to (over)involvement in the child protection system. This internal report highlighted the experiences of Indigenous women, summarized our research findings, and set out potential strategies to address systemic failures. Throughout this work, it was apparent that the failure to provide prevention supports often results in the undermining of women's dignity and fundamental rights.

Our intentions in coming to this project were to assess whether the Ministry of Child and Family Development (MCFD) is meeting its obligations under section 2(c) of the *Child, Family and Community Service Act (CFCSA)*¹ in providing the necessary supports to families to ensure that parents are able to exercise their right to parent and that children's best interests are met. Section 2(c) of the *CFCSA* reads: "if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided."

However, this original intention has broadened as a result of the community engagement that we have undertaken. Through speaking with Indigenous leaders, families, Elders, and child welfare advocates, we have broadened our understanding of what it means to transform and re-envision the current child welfare system from one rooted in colonial interventionist practices to one that can effectively support Indigenous

¹ We use the word "Indigenous" as an inclusive term to refer to peoples whose presence on this land predates that of colonizing populations. We make exceptions to the use of this term in the report when citing text that has used alternative terminology for the purpose of maintaining consistency with the original source. We recognize that there is a vast diversity of Indigenous peoples on this land and attempt to reflect that diversity by, wherever possible, referencing specific Nations and groups in the examples throughout this report.

families and communities. Accordingly, our aim in writing this report is to uplift and amplify the wisdom and expertise of those who contributed to this project and the many others who have been doing this challenging work.

THE PROJECT TEAM²

The project team includes Elba Bendo, project lead, Sharnelle Jenkins-Thompson, Isabelle Busby and Emily Beierl. The team thanks all of our colleagues who supported us in our efforts to do this work in a good way.

ELBA BENDO (she/her/hers) is a settler-immigrant born in Durres, Albania. Elba moved to Turtle Island when she was 10 years old and spent much of her life in Toronto on Treaty 13 territory, the traditional land of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples. She is the Director of Law Reform at West Coast LEAF and was responsible for leading the project and drafting the report. Her intention in participating in this project has been to learn about the child welfare system from the perspectives of Indigenous families. She is grateful to the families that participated in this project for teaching her some of the many ways this system could be doing things differently.

SHARNELLE JENKINS-THOMPSON (she/her/hers) is a proud mixed woman who is Métis-Cree from Saskatchewan through her father and Welsh and Jewish through her immigrant, settler mother. She is the Manager of Community Outreach at West Coast LEAF and was responsible for developing the project relations, developing the community engagement process, and sections of the report writing. Her intention in participating in this project was to amplify the work of Indigenous communities at the front lines of challenging the child welfare system in BC and to centre the lived experiences and wisdom of Indigenous families in this work. Hiy-hiy and diolch (thank you).

ISABELLE BUSBY (she/her/hers) is a settler of Jewish and European ancestry born in Vancouver on the unceded lands of the Musqueam, Squamish, and Tsleil-Waututh nations. She was the 2018–2019 Articling Student at West Coast LEAF and was responsible for research, writing, and community engagement support. Her intention in participating in this project has been to listen to Indigenous parents and communities and support their advocacy.

EMILY BEIERL (she/her/hers) is a settler born in Ottawa on the traditional unceded territory of the Algonquin Anishinabe Nation. She is currently a law student and spends the school year living and learning on traditional Anishinaabe and Haudenosaunee Territory. She was a summer legal intern at West Coast LEAF and was responsible for supporting in the research and writing of the report. Her intention in participating in this project was to listen to Indigenous families and communities and honour their knowledge and lived experience.

2 The project team is sharing who they are, their role and their intentions for the project following the guidance and teachings of Indigenous scholars. This practice is advocated for researchers to engage in because the “location of self in writing and research is integral to issues of accountability and the location from which we study, write and participate in knowledge.” See Kathy Absolon & Cam Willett, “Aboriginal research: Berry Picking and Hunting in the 21st Century” (2004) 1:1 First Peoples Child & Family Review at 5.

Through speaking with Indigenous leaders, families, Elders, and child welfare advocates, we have broadened our understanding of what it means to transform and re-envision the current child welfare system from one rooted in colonial interventionist practices to one that can effectively support Indigenous families and communities.



PART 2

Methodology

PHOTO: HEATHER SHEVLIN/UNSPLASH

In acknowledging the legacy and continuing harm to Indigenous peoples in Canada directly caused by research, the colonial legal system, and the child welfare system, we recognized the importance of walking with humility in this work.

COMMUNITY ENGAGEMENT

“What does it mean to do research with Indigenous communities as a feminist legal organization?” This was a foundational question for the West Coast LEAF project team as we embarked on the path of joining the communities and Nations that have been challenging, reforming, envisioning, and reclaiming the child welfare system in what we commonly refer to as the province of BC.

In acknowledging the legacy and continuing harm to Indigenous peoples in Canada directly caused by research,² the colonial legal system,³ and the child welfare system,⁴ we recognized the importance of walking with humility in this work. In developing our process for the project, we strived to centre relationality.

We understand relationality in working with Indigenous peoples to extend beyond interpersonal relationships between individuals. For many Indigenous peoples, relationality includes family and community but can also include relationships with land and non-human kin, ancestors, generations not yet born, and spiritual relationships — for some considered to be relationship with the Creator.⁵ As Opaskwayak Cree researcher Shawn Wilson shares, this also includes an understanding that rather than “being *in* relationship with other people or things, we *are* the relationships that we hold and are part of.”⁶

In an effort to put the principle of relationality into practice, we developed three community engagement processes to guide our work and support us in ensuring accountability for this project. The three community engagement processes are: a project advisory, storytelling circles with families impacted by the child welfare system, and front-line service provider surveys.

THE PROJECT ADVISORY

The Project Advisory has been instrumental by guiding the project from providing feedback on our process, developing research questions, reviewing documents, and building bridges and connections, to welcoming us into their organizations to work with their communities.

In total, we met five times over this year-long project. The members of the Advisory had diverse experiences and roles within the child welfare system, including as social workers, lawyers, family advocates, representatives of friendship centres, and delegated Aboriginal agencies (DAAs).

Thank you, Joanne, Frances, Carol, Colleen, Inga, and Debbie for your wisdom, reflections, energy, and spirit. We are incredibly inspired by your relentless work on this journey to advocate for Indigenous children, families, communities, and Nations.

STORYTELLING CIRCLES WITH FAMILIES

The lived experience and expertise of Indigenous families that have had engagement with the child welfare system formed the core of our work. Through their generous sharing, we were able to develop our understanding of the system and what changes they felt would make a difference to their families and communities.

We collaborated with three communities:

- Families, Elders and staff at Tillicum Lelum Friendship centre, located on the unceded Snuneymuxw First Nation territory in Nanaimo;
- Families (including foster parents) and Elders at Lii Michif Otipemisiwak (LMO), located on unceded Secwepemc (Shuswap) territory in Kamloops; and
- Families (including foster parents), doulas, and an Elder at Fraser Region Aboriginal Friendship Centre Association (FRAFCA) located on the unceded land of the Fraser Salish People in Surrey.

In arranging storytelling circles, we provided each organization with invitations that welcomed any parent and/or caregiver who had a history of engagement with MCFD who wanted to be part of a conversation about prevention and the child welfare system. Staff at each organization shared our invitations with potential project participants. The majority of the participants identified as Indigenous or as being a parent to an Indigenous child.

In each community we met a total of three times and, while each meeting was adapted to follow the protocols of each organization and to meet the distinct needs of each community, meetings generally followed the same overall process, including schedule, logistics and supports (see Appendix 1 for a community visit outline).

The three-meeting process was modelled on the work of Indigenous scholars Dr. Shelly Johnson, Mukwa Musayett, of Saulteaux Nation, and Dr. Cyndy Baskin, of Mi'kmaq and Celtic Nations, who is of the Fish Clan. Dr. Johnson's dissertation, *"I screamed internally for a long time": Traumatized urban Indigenous children in Canadian child protection and education systems,*⁷ was a foundational piece in guiding our community-engagement process. This work helped us understand the importance of meeting with families and staff at least three times.

In the first meeting, we shared our intentions, explained our project, answered questions, and sought consent. In the second meeting, we engaged in the storytelling circle conversation where families shared their stories and expertise. We returned to each community a third time to share what we had heard during the storytelling circles in an effort to ensure that we had accurately captured and interpreted the community feedback. In this third meeting we also assessed and developed potential recommendations that would come out of this project. We also explained how collected stories were going to be kept and cared for going forward. We provided honorariums to participants for the second and third meetings.

Dr. Baskin's work on storytelling circles, in *"Storytelling Circles: Reflections of Aboriginal Protocols in Research,"*⁸ informed the process of our second meetings. We aimed to create a space where everyone could share their expertise, reflect on what was being shared, and to come together to learn from one another about Indigenous families' experiences with the child welfare system in BC. We understood sitting in circle

We thank, from the bottoms of our hearts, the 64 participants who met with us throughout the project. Thank you for your stories and insight.

in many Indigenous spaces as a representation of “equality and the ongoing cycle of life.”⁹

Through the storytelling circles we could hold space for the pain and anger that is woven into these experiences.¹⁰ By working with local Elders to follow protocol and Indigenous healing practices, we could begin to learn how to hold the stories that were being shared.¹¹ The circles were guided by way of open-ended questions, but participants were invited to share whatever they felt was most important to them in each circle round (see Appendix 1).

We thank, from the bottoms of our hearts, the 64 participants from Tillicum Lelum Friendship Centre, Lii Michif Otipemisiwak, and Fraser Region Aboriginal Friendship Centre Association who met with us throughout the project. Thank you for your stories and insight. Thank you for allowing us to hold your babies in our arms and for sharing photos of the children of whom you spoke. We are forever changed by your resilience, medicine, generosity, tears, and hope. We carry your stories and words with us with great care and recognize our accountability to them from here forwards.

FRONT-LINE SERVICE PROVIDER SURVEYS

The child welfare system in BC is complex and experienced differently throughout the province. What may work for one urban area, may not be relevant or may even hinder efforts in a remote village. Similarly, supports that work for a First Nation may be ineffective for the Métis community in BC.

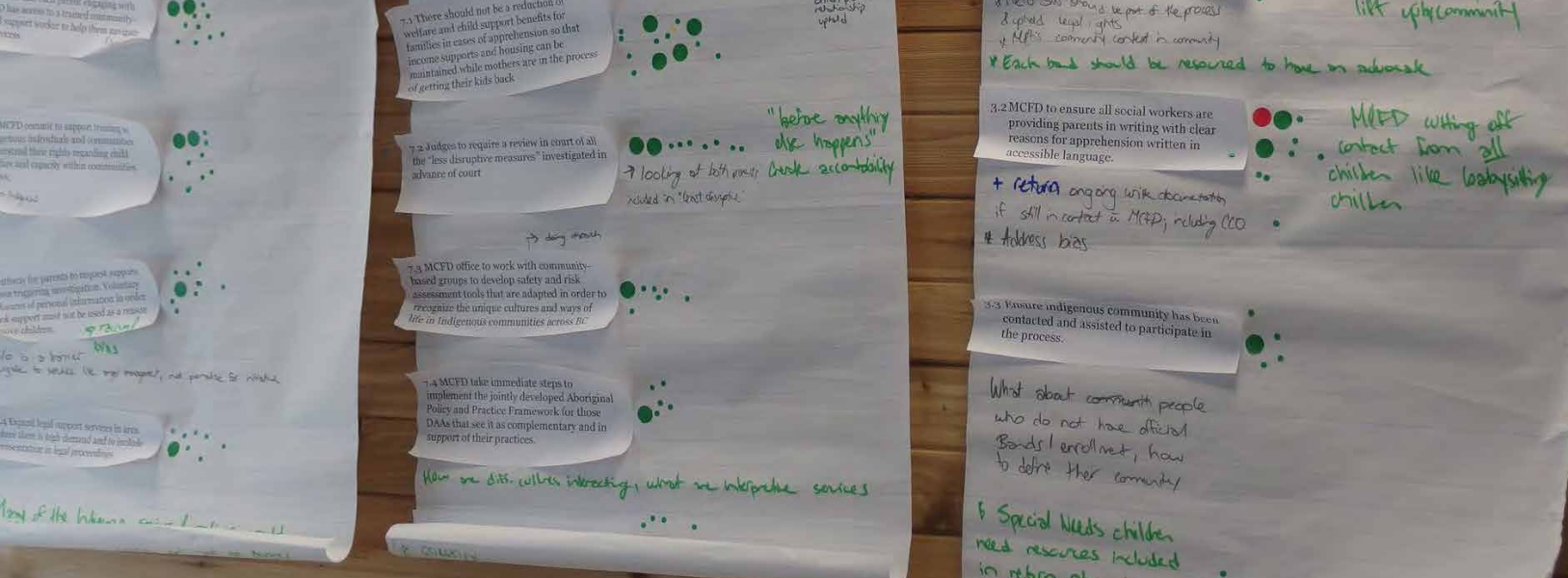
With this in mind, our third method of engagement involved reaching out to organizations and DAAs from across the province to learn more about their services for Indigenous families and their relationships with MCFD. We also asked them about the types of prevention supports they felt families needed and the barriers to being able to secure these supports for the families with whom they worked. This was done through an online survey (see Appendix 2).

In total, eight organizations and/or Nations participated from the Lower Mainland and Vancouver Island. We were not able to engage with groups located in the Interior or Northern BC through the survey process. This gap highlights the importance of West Coast LEAF working to establish trusting and collaborative relationships in these regions moving forward.

We went back to each service provider who had completed the survey and sought their feedback regarding the recommendations that were compiled in collaboration with storytelling circle participants at the third meeting. We compiled the recommendations into a secondary survey in which we sought insight from the eight organizations about each recommendation’s importance, potential impact, and relevance to their community. A \$25 honorarium was provided for each survey completed.

Thank you to all the people who participated in our surveys. Your insights were invaluable to this project.

Any information that might identify participants who did not consent to being acknowledged in the report has been omitted. When quoting participants, we have used their exact words with only light edits for clarity and brevity. We indicate these edits by ellipses and square brackets.



FOUNDATIONAL SECONDARY RESOURCES

In addition to the expertise of Indigenous parents, youth, Elders, and service providers, our report relies heavily on the work of many Indigenous scholars and activists who have been advocating for change in the child welfare system for decades. While we cite many of these pieces of work, the following reports can be considered the foundational secondary resources that have grounded this project:

Reports by the Representative for Children and Youth (RCY) (2006–present)

The RCY was created in 2006 following much advocacy by Indigenous activists who were calling for an independent oversight of government on its provision of designated services for children and youth. In the years since, the RCY has released numerous reports detailing the systemic failures of the child welfare system in BC and their impact on Indigenous children. Many of these reports have informed the organization, research, and findings of our project.

*Honouring the Truth, Reconciling for the Future, Final Report of the Truth and Reconciliation Commission (2015)*¹²

Indigenous activists, survivors and family members, have been fighting since the 1970s through advocacy and court action to have the history of residential schools and its ongoing impact recorded and remedied.¹³ Their activism led to the creation of the Truth and Reconciliation Commission (TRC), which was created through the Indian Residential Schools Settlement Agreement. This agreement settled a class action law suit between the Canadian government, churches, and Indigenous survivors of the residential school system.

The TRC was mandated to uncover the truth of the residential school system. The TRC's Final Report, *Honouring the Truth, Reconciling for the Future*,¹⁴ found that the residential school system was the central element of "a conscious policy of cultural genocide,"¹⁵ which sought to "cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada."¹⁶ We rely on the breadth of information provided in the final report in understanding the ongoing impact of the residential school system on Indigenous children and families in BC.

3 The Truth and Reconciliation Commission (TRC) defined genocide as follows: "Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next. In its dealing with Aboriginal people, Canada did all these things." (*Ibid* at 1).

Indigenous Resilience, Connectedness and Reunification — From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia, Final Report of Special Advisor Grand Chief Ed John (2016)

In September 2015, Grand Chief Ed John was appointed Special Advisor to the government of BC. He was tasked with providing advice on addressing the overrepresentation of Indigenous children in care in BC. The report summarizes Grand Chief Ed John's engagement with Indigenous communities throughout BC over a 14-month period. Grand Chief Ed John identifies 10 areas in need of focus and makes 85 recommendations for reform. We rely heavily on his work, including by assessing the government's implementation of the recommendations made therein that relate to prevention.

Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside (2019)

In 2019, a groundbreaking report made headlines across BC for shifting the research lens away "from pathologizing poverty to illuminating and amplifying resistance to colonialism" in the Downtown Eastside of Vancouver (DTES), one of the most heavily researched neighborhoods in Canada. The report was prepared in collaboration with 113 Indigenous survivors of violence and 15 non-Indigenous women who are "friends or street families of Indigenous women who are missing, have overdosed, or died from violence in the DTES." The report contains 200 urgent recommendations developed by participants. In addition to the breadth of expertise that forms part of this report, the methodology has inspired us to unlearn our own ways of doing research.

Reclaiming Power and Place, the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019)

In June 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry) released its final report. The report was the culmination of years of activism by Indigenous women, girls, 2SLGBTQQIA people, family members, and allies who fought for truth for their loved ones. More than 2,380 people participated in the National Inquiry. The report conclusively confirmed what many have known for a long time:

The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit, Metis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.¹⁶

In preparing this report we have sought to ensure that, wherever possible, we are not duplicating work that already exists. For example, we do not provide an overview of the child welfare system in BC because it has already been set out in numerous reports, including in *Indigenous Resilience, Connectedness and Reunification — From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia, Final Report of Special Advisor Grand Chief Ed John*.

We also make an effort to not duplicate recommendations made in previous reports unless they are directly relevant to what we heard during the community-engagement process. Recommendations that have been made in previous reports and emphasized throughout the community-engagement process appear here in coloured boxes. In these boxes we provide information on the steps MCFD has taken since the recommendation was made and some of what remains to be done to fulfill the recommendation.



PART 3

Eight principles and practices of Indigenous child welfare

PHOTO: CARLOS BLANCO/UNSPLASH

SINCE TIME IMMEMORIAL, Indigenous Nations of Turtle Island (North America) have had unique practices, values, approaches, and knowledge around raising healthy and thriving children and youth. In coming to this project, we acknowledge these practices and the strength and resilience of Indigenous families, communities, and Nations who are practicing and revitalizing this knowledge.

The efforts to practice and revitalize Indigenous approaches to child welfare are an essential part of the child welfare story and framework in BC. They act as a reminder that there is no pan-Indigenous approach to child welfare and that each Nation and community needs to be able to forge their own path. The participants in our project shared with us that the practicing and revitalization of these approaches gave them hope for the future. One participant shared words of courage with the storytelling circle:

There is hope because there are changes happening. The changes are not happening fast enough, I will agree with that. They are happening. Don't not believe it. Don't let your heart get hardened so bad that you don't feel or see the hope or the light anymore. Because it is really, truly there. [...] We are changing things. — Storytelling circle participant

While these approaches differ, there are some shared principles and practices that are at the core of how Indigenous communities understand child welfare. Based on conversations with project participants, research by Indigenous experts, and guidance from our advisory committee, we identified the following eight values as being central to Indigenous views around child welfare: decolonization, wholism, trauma-informed approaches, family-centred approaches, relationship-centred approaches, cultural safety, harm reduction, and self-determination.

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DECOLONIZATION

Bringing tradition home and protocols of the sacred circle that empowers families to make decisions for their children have been a good foundation for our work. — Service provider

Decolonizing approaches for working with Indigenous families and communities are grounded in historical understandings of ongoing colonial and structural violence. These approaches seek to recognize how historical harm continues to impact Indigenous people and how relationships between Indigenous people and the land continue to be disrupted.¹⁷ This approach carries an explicit mandate to work towards dismantling colonial structures and achieving justice, self-determination, and sovereignty for Indigenous people.¹⁸

Through the work of Indigenous leaders, Elders, and activists, an important movement of revitalizing and restoring traditional knowledge for child-raising by Nations and communities has developed. This involves culturally specific interventions, programs, services, and approaches to supporting Indigenous families.

WHOLISM¹⁹

For our family, the [dancing] troupe has been quite healing for intergenerational trauma, to get back to our roots and anything associated with culture. [...] Sports or arts or culture can be really healing for families[.] — Storytelling circle participant

Wholism is a concept that can be described as a process of engaging and acknowledging all aspects and dimensions of a person and family.²⁰ In some Indigenous Nations and communities this is described through the teachings of the Medicine Wheel, which has four parts: mental, physical, spiritual, and psychological. All four parts must be in balance with one another to achieve wellness.²¹ Through a wholistic lens, health is a state of well-being, not simply the absence of illness or poor social outcomes.



NA GAN TS'I'STK GRANDMOTHERS' GROUP OF LAX KW'ALAAMS

The Na gantsi'istk Grandmothers' Group is made up of matriarchs of the nine tribes of Lax kw'alaams of the Tsimshian Nation on the northwest coast of BC. Grounded in the Touchstones of Hope approach, this group has organized around traditional matrilineal teachings.

The goal of the Grandmothers' Group is to look at the supports available for children and their families to ensure the safety and well-being of the child and family. They advocate for collaborative and holistic processes. They do their work through events that welcome children back into community, care packages and regular check-ins with children in care.

The Lax kw'alaams Grandmothers describe their work as being “here to support children and families, to work with our children and youth, to encourage them to complete their education, to take pride in who and what they are and where they come from, to teach them about their culture, who they belong to — their Nation, tribe, crest, clan, family — to help work towards and build self-care plans and safety plans so that our children — and parents as well — feel safe. We are here to be mentors, role models, helpers, and teachers.”

For more information visit: nifcs.org/grandmothers-group

In a child welfare context, a wholistic approach to supporting families and children can provide an important shift from helping children survive to helping families thrive. It can also expand what constitutes prevention for Indigenous Nations and communities.

TRAUMA-INFORMED PRACTICES

You need to go to the root of it. Why do people use? They use because something bad happened. Something bad happened to their Mum, to their Mum's Mum and down the line. And that is what I think is most important. People are just dancing around that in a big way. — Storytelling circle participant

Trauma-Informed Practice (TIP) has been gaining traction in child welfare. A TIP approach is described as being “more about the overall essence of the approach, or way of being in the relationship, than a specific treatment strategy or method.”²² Four key principles guide TIP: trauma awareness; an emphasis on safety and trustworthiness; opportunities for choice, collaboration and connection; skill building and being strength-based.²³

Indigenous scholars, such as Natalie Clark and Sandrina de Finney, have raised caution about the Western conception of trauma as an individual health problem. They argue that this conceptualization of trauma can mistakenly justify separating Indigenous children from their communities.²⁴ Their analysis demonstrates the importance of these principles and practices being developed by and for Indigenous families, communities, and Nations for their unique knowledge, needs and strengths.

FAMILY-CENTRED PRACTICES

Can you not rally the family together? [...] The family are the expert on their family, can they not have the opportunity to come up with a plan if you are concerned, to have supported visits so this infant and mom can bond? — Storytelling circle participant

Family-centred practices recognize the importance of working collaboratively with parents and other caregivers (such as grandparents, aunts, older siblings, cousins, and so on). These practices identify the family as the expert in anything that impacts them. Family-centered practices place value on supporting families to maintain a sense of dignity and hope and working with each family’s unique circumstances regardless of their complexity including substance use, poverty, and family violence.²⁵

It is important to note that these practices must be rooted in Indigenous conceptions of family and kinship, which differ from Western conceptions. For Indigenous people:

Extended family lineages form the core of Indigenous peoples’ identities and are expressed across the generations in diverse, culturally specific ways. Family relationships are understood within networks of reciprocal responsibilities formed between Indigenous peoples and their non-human/animal kin, the land and waters that comprise their territories and the spirit world which forms their cosmology.²⁶

Family-centred practices recognize the importance of working collaboratively with parents and other caregivers (such as grandparents, aunts, older siblings, cousins, and so on). These practices identify the family as the expert in anything that impacts them.

RELATIONSHIP-CENTRED APPROACHES

One social worker came into my life and she was amazing hands down. [...] She wanted to understand where everything was all coming from. She was the first person that finally sat me down and said, “Hey, I’m not here to put so many thoughts in your mind or make you feel a certain way. I’m here to ask you, ‘How are you and what do you need?’” And that to me, I don’t know where I would be to this day, without someone sincerely asking those questions. — Storytelling circle participant

A relationship-centred approach between parents, caregivers, and workers, including social workers,⁴ is essential in improving outcomes of engagement with the child welfare system for Indigenous families.²⁷ It focuses on building genuine, transparent, and approachable collaborative relationships to support families.²⁸

CULTURAL SAFETY

For social workers to be in a community they need to understand what a community has gone through. I feel like that’s number one for figuring out steps toward healing. — Storytelling circle participant

Cultural safety is an approach that was introduced by Irihapeti Ramsden, a Maori nurse in Aotearoa, New Zealand, for use in the healthcare system. Over time, this approach has been embraced by other sectors, including child welfare.

Putting cultural safety into practice means recognizing that historical, economic, and social contexts, coupled with structural and interpersonal power imbalances, shape people’s outcomes and experiences with systems like the child welfare system.²⁹ For Indigenous peoples, this means naming and recognizing the past and present role of colonialism.



TE LALEM – SPECIALIZED RESOURCE HOME

Snowoyelh is part of the community services department of the Sts’ailes Nation.

Te Lalem (meaning “the house”) is one of three programs offered by the Snowoyelh department. It is a specialized residential resource to keep families together while parents learn to safely care for their children. te

Lalem is a family healing and growth program that operates 24-hours a day, 7 day a week.

Residents learn traditional parenting and basic life skills. They also participate in Sts’ailes cultural community events as part of their healing and growth. Residents and their families work collaboratively with staff and their social worker to develop and implement individualized safety and support plans.

For more information visit: stsailles.com/te-lalem

⁴ Throughout this report we use the term “social worker” to refer to those that have a Bachelor’s degree in social work. We also use the term “social worker” to refer to all child protection workers employed by MCFD regardless of their educational background. We use this term in this context to maintain consistency with the terminology used by Storytelling Circle Participants who referred to MCFD employees as “social workers”.

Cultural safety also requires the people who hold positions of power in these systems to actively reflect and challenge the “largely unconscious and unspoken, assumptions of power held”³⁰ in their roles, including the policies and culture of their institutions and systems. The outcome of safety is not determined or defined by those inside the institutions but by those accessing the services or supports.

HARM REDUCTION

Programs need to be based on a harm reduction model of care, and support women who relapse on substances to remain with their children while they work on stabilizing in their recovery. These programs need to be less punitive, i.e., not discharge a client when a relapse happens. — Service provider

Harm reduction is an approach shaped by Indigenous wisdom and knowledge. Harm reduction has been largely connected to substance use and sexual health and the role of safe injection sites, condom distribution, and needle exchange programs.³¹ The principles of harm reduction seek to recognize the harms people are experiencing, facilitate opportunities to meet people where they are, and work within a context of dignity and compassion for all people.³²

There is a growing conversation around how an Indigenous harm reduction approach can reduce the harms of colonialism.³³ The aim of this approach is to weave together Indigenous models of policy-making, programming, and practices that are wholistic, inclusive, innovative, and evidence based.³⁴

Harm reduction in child welfare may require social workers to consider a range of options that could diminish instead of increase harm for families. This would include potential harms caused by the proposed intervention itself, such as removing a child from their parents and community.³⁵

SELF-DETERMINATION

Services to Indigenous communities need to be delivered by the community in their own way, jurisdiction over child safety and well-being must be in the hands of the community itself. — Service provider

Self-determination in the context of Indigenous child welfare can be understood as efforts and approaches aimed at realizing the full return of authority over child welfare to Indigenous communities and Nations. This is rooted in the understanding that Indigenous peoples are in the best position to make decisions that impact Indigenous children, youth, families, and communities.³⁶ Self-determination means Indigenous Nations and communities are at the forefront of the development of child welfare laws, policies, research, and practice for their communities.³⁷ It also means that Indigenous peoples have the final decision-making authority over all decisions impacting their children. We expand on self-determination and the child welfare system in Part 10 of this report.

These approaches provide a basis for some of the work that Indigenous organizations are doing to change the child welfare system and some guidance on how Indigenous approaches to child welfare depart from the colonial child welfare model.³⁸ In this report we rely on these eight principles to guide our understanding of the overrepresentation of Indigenous children in care and the types of reforms needed to change the course of the child welfare system for Indigenous families.

We also pull out examples of programs and services that apply these approaches throughout the report as a way to draw attention to the types of supports that are working for Indigenous peoples. The need to share these efforts was emphasized during the community-engagement process. Participants explained that community-led solutions and programs gave them hope for the future.

Understanding the overrepresentation of Indigenous children in care

PHOTO: SHLOMO SHALEV/UNSPLASH

It is expected that one in five Indigenous children will come into contact with the child protection system at some stage in their childhood.

[...] [M]y parents are great people. My dad stopped drinking when he was about 55 and he's almost 70 now and he's probably the best person I've ever met because he's the one talking to people that live on the streets and going to the [shelter] and serving soup and all out of his own heart. And he never wanted or asked for anything and he gives more than anyone I met.

There were lots of things he did that I didn't understand. But I got to know his dad, my grandpa, and he suffered a lot of trauma as a child, and he grew up on the farm, and he was beaten a lot, so that trauma that his dad carried from his family it kind of just went intergenerational and because my dad is Métis he just didn't know where he fit at the time. We're Métis, we didn't want to say we were Métis so he just said he was Cree, or, but he looked Aboriginal so I found he suffered with his identity and if I were to change anything, I don't know if I'd change anything. — Storytelling circle participant

IN BC, INDIGENOUS CHILDREN are 15 times more likely to enter government care than their non-Indigenous counterparts.³⁹ As of 2018, there were 6,698 children and youth in care in BC, of whom 4,252 were Indigenous.⁴⁰ An additional 668 youth between the ages of 16-18 years old were receiving residential services from MCFD through a Youth Agreement, of whom 290 are Indigenous.⁴¹

In other words, despite comprising less than 10% of the child population,⁴² Indigenous children make up approximately 63% of children in care and 43.4% of youth receiving MCFD residential services.⁴³ This means that *one in five* Indigenous children will come into contact with the child protection system at some stage in their childhood.⁴⁴

The types of risk factors that are cited by social workers to justify the removal of an Indigenous child from the family home can directly be mapped onto the disparities in the social determinants of health.⁴⁵ The correlation between social determinants of health and rates of apprehension of children is well documented.⁴⁶ Research overwhelmingly shows that children from families that are experiencing disparities in social determinants of health, such as low income, inadequate housing, food insecurity, and health concerns, are significantly more likely to be apprehended for reasons related to perceived neglect.⁴⁷

Accordingly, the overrepresentation of Indigenous children in care can be largely attributed to the fact that the current child welfare prevention framework is ill-equipped to address the disparities in the social determinants of health for Indigenous people. Truly shifting the child protection system from apprehension to prevention requires the BC government to work with Indigenous communities and across government ministries to address the disparities in the social determinants of health for Indigenous peoples. An effective preventative framework must address all levels of health determinants for the individual, family, and community.

INDIGENOUS WORLDVIEWS AND APPROACHES TO THE SOCIAL DETERMINANTS OF HEALTH

Indigenous worldviews and experiences of the social determinants of health vary considerably among communities.⁴⁸ However, there are some common determinants of health that underpin many Indigenous knowledge frameworks.⁴⁹ Indigenous scholars Dr. Charlotte Loppie and Dr. Jeannine Carriere have developed the Indigenous Equity Framework of Relational Environments (IEFRE) framework as a tool for understanding social determinants of health. The IEFRE uses the visual metaphor of a tree to describe the three different environments impacting social determinants of health for Indigenous people:

1. The **root environment** can be understood as the roots of the tree. These are the broad systemic determinants that shape health equity. They include the historical foundations upon which current health factors have evolved. For Indigenous peoples the most critical root of health is colonization.⁵⁰ We found this mirrored in what parents understood as the underlying factor that placed their children at risk of apprehension: “ongoing cyclical colonialism.”
2. The **core environment** can be understood as the trunk of a tree. The core environment includes health factors related to engagement with people’s communities, institutions, and systems. Indigenous peoples face disparities in the core environment of health related to barriers to accessing supports, cultural continuity, and relationship with land. The core environment mirrors a theme identified in our community consultation which we refer to as “gaps in services and supports.”
3. The **stem environment** includes one’s physical and social context, which influence health in the most obvious and direct ways. Indigenous peoples face intersecting disparities in their stem



environment of health, such as poverty, violence, and disability, including substance use. Parents who participated in our project were very aware of the factors that directly contributed to their increased likelihood of engagement with the child welfare system. The stem environment mirrors a theme identified in our community consultation which we refer to as “factors of exposure.”

We rely on the IEFRE framework to guide our understanding of the overrepresentation of Indigenous children in care because we consider it to be reflective of Indigenous frameworks of well-being and in line with what we heard in community. We also believe that writing about overrepresentation through the IEFRE framework aligns with the eight principles and practices of Indigenous child welfare set out in Part 3.

Lastly, we write about overrepresentation through this lens in order to frame prevention programming broadly. The IEFRE framework allowed us to expand our understanding of prevention and child welfare beyond the current Western approach. This is because we understand an effective prevention-focused child welfare system as one that is able to effectively address disparities in all health environments — root, core and stem — for the individual, family, community, and Nation.

THE ROOT ENVIRONMENT: ONGOING CYCLICAL COLONIALISM

Colonization, both as an historical process and a contemporary structure, is widely recognized as the main root determinant of health for Indigenous peoples. The process of colonization and the resultant colonial policies, institutions, and structures that persist to the present day, underpin the experiences of Indigenous families and communities with the contemporary child welfare system.⁵¹ Parents identified it as a cyclical and ongoing process that continues to perpetuate harm on their children, families, and communities.

There are many of our children that have been taken away ... there's a lot of separation, a lot of loss and grief amongst our communities. — Storytelling circle participant

I was born in care. Um, all my kids were born in care. This is the first pregnancy that I don't have a social worker. My oldest is going to be 15 so that's a long time. My file just closed in November, so that's, like, recently. I'm 31 now. So I've had my file open since my birth, to being a mom, being taken into care, to my oldest daughter put into care. — Storytelling circle participant

Residential schools

For the purpose of understanding the overrepresentation of Indigenous children in care, perhaps the most devastating⁵² phase of colonization was the industrial-level scheme of mandatory,⁵³ state-sponsored church-run residential schools. The impacts of residential schools continue to be widely felt by Indigenous families engaging with the child welfare system.⁵⁴

The Truth and Reconciliation Commission's (TRC) Final Report, *Honouring the Truth, Reconciling for the Future*,⁵⁵ found that the residential school system was the central element of “a conscious policy of cultural genocide,”⁵⁶ which sought to “cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.”⁵⁷

Residential schools separated thousands of children from their families, destroying family and community ties. Children living in residential schools were banned from engaging in Indigenous spiritual practices and speaking their languages.⁵⁸ Instead, Indigenous children were forced to speak English and practice within the Christian religion.⁵⁹

Schools were drastically underfunded and overcrowded. For example, in 1915 at the Coqualeetza Institute in Chilliwack there were only two teachers responsible for 120 students.⁶⁰ Most of the buildings where students lived and studied were poorly built and maintained, and students suffered from malnutrition, tuberculosis

and other diseases due to the lack of sanitary facilities, food, and medical attention.⁶¹ Métis children were often used as labourers in the schools, which received no federal funding for the education and care of Métis children.⁶²

A lack of regulation and general reluctance to investigate maltreatment led to widespread abuse, from neglect to sexual abuse.⁶³ It is estimated that approximately 50% of the children who attended residential schools died from preventable causes often related to the poor conditions of the schools and the ill-treatment by staff.⁶⁴

The Sixties Scoop

The state's policies of assimilation continued with the transfer of jurisdiction and funding by the federal government to the provinces to enforce child welfare laws on reserve.⁶⁵ The TRC defines the shift as "simply a transferring of children from one form of institution, the residential school, to another, the child-welfare agency."⁶⁶ This period, colloquially termed the Sixties Scoop, saw a dramatic increase in the apprehension of Indigenous children under the guise of child protection.

In BC, child welfare authorities apprehended 67% of the Indigenous child population between the 1950s and 80s.⁶⁷ More than 11,000 First Nations children were adopted during this time,⁶⁸ with the vast majority being adopted by non-Indigenous parents and many children being sent to the United States.⁶⁹ In Manitoba alone, it is estimated that approximately 70–80% of Métis and First Nations children were adopted into non-Indigenous homes.⁷⁰ The increase in the rates of apprehension was a consequence of funding structures that prioritized apprehension over prevention, failures of agencies to engage with Indigenous communities, paternalistic assessments of caregiver neglect, and a lack of regard for Indigenous cultures and nationhood.⁷¹

The link between colonialism and the modern-day child welfare system

Numerous reports have highlighted the connection between the cycles of perceived neglect that place Indigenous families at risk of intervention by MCFD, frequently referred to as the "Millennium Scoop", and the intergenerational trauma that was fueled by the residential school system and the Sixties Scoop, and continues through the current child welfare system.⁷² As the TRC stated:

Today, the effects of the residential school experience and the Sixties Scoop have adversely affected parenting skills and the success of many Aboriginal families. These factors, combined with prejudicial attitudes toward Aboriginal parenting skills and a tendency to see Aboriginal poverty as a symptom of neglect, rather than as a consequence of failed government policies, have resulted in grossly disproportionate rates of child apprehension among Aboriginal people.⁷³

It is clear from these reports that the effects of colonialism cannot be parceled out and dealt with in isolation but they must form the basis of a preventative framework. It is also clear that parents see knowledge and understanding about the effects of colonialism as a critical step toward shifting the child welfare paradigm from apprehension to prevention.

It is clear that parents see knowledge and understanding about the effects of colonialism as a critical step toward shifting the child welfare paradigm from apprehension to prevention.

I feel like what social workers need to know is that these vicious cycles that continue, they're really hard to break, period, like, just they are, there's been so many things that have happened in history, that just is heavy on the heart, when it comes to your feelings and your loved ones, and what I want social workers to know is that, with all the pressures that are put on them, and everything, I just ask them to not be desensitized to the people they're dealing with, to acknowledge that there is pain, there's hurt, and there's raw emotions that really need to be dealt with. — Storytelling circle participant

THE STEM OF THE TREE: FACTORS OF EXPOSURE

In understanding what parents were experiencing in their most immediate environment, we identified what we termed “factors of exposure.” These include poverty, family violence, and disability — including substance use. Parents understood these factors to be those that flagged them for investigation and placed them at a greater risk of having their children apprehended.

Poverty

Systemic inequality caused by colonial policies from residential schools to the Sixties Scoop to the ongoing discrimination in the Indian Act has resulted in poverty being one of the key structural factors that lead to the overrepresentation of Indigenous children in care. Through policies like those codified in the Indian Act, the colonial powers limited the abilities of Indigenous peoples to provide for themselves by displacing entire communities, disrupting and restricting traditional economies,⁷⁴ perpetuating intergenerational trauma,⁷⁵ and forcing economic dependency on the Crown.⁷⁶ Policies of social and economic marginalization continue in legislation and practice today through displacement linked to resource extraction,⁷⁷ limits on Indigenous use of traditional land,⁷⁸ and discrimination in education,⁷⁹ employment,⁸⁰ and access to equity.⁸¹

As a result, Indigenous people today experience the highest levels of poverty with one in four Indigenous people living in poverty and 40% of Indigenous children living in poverty.⁸² These numbers mirror the socio-economic position of Aboriginal families in contact with the child protection system who are twice as likely to have their primary source of income be from social assistance, employment insurance or other benefits, than non-Aboriginal families.⁸³



CHILD AND YOUTH MENTAL HEALTH PROGRAM

The L, KI, L – Child and Youth Mental Health Program from the Hulitan Family and Community Services provides counseling and support to Indigenous children and youth aged 0-19 and their families presenting with a variety of mental health challenges including complex trauma.

The program maintains a focus on healing that incorporates both culturally relevant and mainstream interventions. The program aims to facilitate an increased awareness and understanding of colonization and the intergenerational impacts of residential schools. The purpose of the program is to improve the mental health and overall wellbeing of the child and the child's support system.

For more information visit: hulitan.ca/programs/

The socio-economic impact of colonization has been particularly severe on Indigenous women, Two-Spirit, gender non-binary, and gender-diverse people. Poverty among Indigenous women is twice the rate of that of non-Indigenous women with 36% of Indigenous women living in poverty.⁸⁴ Indigenous Two-Spirit and transgender people experience some of the deepest levels of poverty across the country with a Manitoba-based study finding that 48% of Aboriginal Two-Spirit and transgender participants had pre-tax annual incomes less than \$10,000.⁸⁵

Poverty and neglect

Provincially, 72.2% of all court orders cite neglect as a factor mandating protection.⁸⁶ Neglect is by far the most common reason recorded for the removal of all children from their family home. Indigenous children are more likely than non-Indigenous children to be removed from their homes because of perceived caregiver neglect.⁸⁷ Approximately 75% of Indigenous children and youth are put in care because of perceived neglect, compared to 67% for non-Indigenous children and youth.⁸⁸ Of the 75% of children in care due to “neglect,” 46.4% are in care because a parent was found to be “unable/unwilling to care” for them.

There is a strong connection between poverty and “neglect.” The *First Nations Canadian Incidence Study on Reported Child Abuse and Neglect* (FNCIS-2008) provides some indication of the factors that amount to neglect.⁸⁹ The FNCIS shows that physical neglect, defined as the failure to provide for the child adequately, was identified as a primary form of substantiated neglect in 35% of risk assessment investigations.⁹⁰ Physical neglect often encompasses factors relating to poverty including a caregiver’s ability to provide an adequate level of nutrition, a safe and hygienic home, and adequate clothing.⁹¹

Parents that participated in this study were acutely aware of the way that their socio-economic status exposed their children to the risk of apprehension:

And poverty is just a huge issue right and that just seems to be the ministry’s take on safety issues but everyone is experiencing poverty so, again, we need to be addressing that not taking kids away from their families. — Storytelling circle participant

Often, yeah, neglect is something that comes up as a primary concern for a lot of families and I think for neglect it’s a matter of having access to the right resources; a lot of single parents don’t have the resources they need. It’s not that they want to commit the offence they’re being called out for but it’s a matter of a lack of resources. — Storytelling circle participant

Gender-based violence

There is currently an epidemic of violence against Indigenous women, girls, Two-Spirit, gender non-binary, and gender-diverse people in BC. The levels of violence experienced by these groups can be attributed to the fact that gender-based violence disproportionately impacts people experiencing gender-based marginalization.⁹² However, the risk of violence is increased for people that face intersecting forms of marginalization. The rates of violence experienced by Indigenous people who are women, girls, Two-Spirit, gender non-binary, and gender-diverse can also be attributed to the impact that colonization has had on the well-being of Indigenous communities.

By imposing European gender roles and devaluing the role of women and Two-Spirit people in Indigenous societies, colonization paved the way for the current epidemic of violence.⁹³ The residential school system has especially contributed to the cycle of violence in Indigenous communities through the disruption of family, community, relationship to land, cultural teachings, and the transmission of traditional knowledge and practices around gender and sexuality. It has also perpetuated a legacy of intergenerational trauma that continues to impact the lives of Indigenous people today.

Violence against Indigenous women, girls, Two-Spirit, gender-non binary, and gender-diverse people is directly linked to the overrepresentation of Indigenous children in care.

According to a report by the Royal Canadian Mounted Police (RCMP), Indigenous women in Canada are six times more likely than non-Indigenous women to be murdered.⁹⁴ More than half of these homicides were committed by family members (53%). While this number is lower than the rates of homicide committed by family members of non-Indigenous women (60%), family violence continues to account for a significant portion of the violence experienced by Indigenous women in Canada.⁹⁵

The National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry) estimates that the rates of violence could be much higher. According to the National Inquiry, Indigenous women and girls are 12 times more likely to be murdered or missing than non-Indigenous women in Canada and 16 times more likely to be murdered or missing than Caucasian women.⁹⁶

Rates of violence are particularly high for Two-Spirit, gender non-binary and gender-diverse people. It is reported that one in five trans people experience physical or sexual assault related to their identity. Similarly, one study found that 73% of Indigenous, Two-Spirit, and gender-diverse people had experienced some form of violence related to their gender-identity in their lifetime.⁹⁷ Approximately 30% of LGBTQ2SIA+ peoples experience violence in intimate partner relationships.⁹⁸

Gender-based violence, Indigenous mothers, Two-Spirit, gender non-binary, and gender-diverse parents, and the child welfare system

Violence against Indigenous women, girls, Two-Spirit, gender-non binary, and gender-diverse people is directly linked to the overrepresentation of Indigenous children in care. First Nations children are 4.7 times more likely to be deemed to have experienced maltreatment through “exposure to intimate partner violence” than non-Aboriginal children.⁹⁹ Social workers identified domestic violence as a risk factor for First Nations female caregivers in 43% of investigations, compared to 30% of investigations involving non-Aboriginal female caregivers.¹⁰⁰

The experience of family violence also indirectly impacts the likelihood of engagement with the child welfare system because poverty and poverty-related risk factors are exacerbated by family violence. Family violence can impact a parent’s economic security in a number of ways. Family violence is costly for the survivor who has to miss work to seek support and counselling following the abuse.¹⁰¹ Research also indicates that family violence is one of the main reasons that lead women into situations of housing insecurity. In one study, 78% of the women living in Canadian shelters reported that they were living in the shelter because they were fleeing abuse.¹⁰² Another study found that 38% of the women who participated in the study reported becoming homeless immediately after separating from their partners.¹⁰³ In turn, homelessness or inadequate housing is often considered to be a factor justifying the apprehension of a child from their caregiver. One mother explained her experience of losing her children following family violence:

[My] children were [placed] in temporary care because I didn’t have anywhere else to live at that time because of an abusive ex [...]— **Storytelling circle participant**

Indigenous fathers

Several storytelling circle participants acknowledged having complex relationships with their co-parents, especially where family violence was involved. Many mothers felt that the family violence they experienced was rooted in colonial violence and that the contributions and strengths of Indigenous fathers have been undermined by the colonial system. This is echoed in research by Jessica Ball:

*Indigenous fathers are arguably the most socially excluded population of fathers around the world. Colonial government interventions disrupted Indigenous families and communities and, along with ongoing social inequities, created unique challenges for Indigenous fathers. Removal of children from family care and of families from traditional territories, along with high rates of incarceration of Indigenous men, have produced a fissure in the sociocultural transmission of father roles across generations and created monumental challenges for Indigenous fathers' positive and sustained involvement with their children.*¹⁰⁴

Participants in our project also felt that Indigenous fathers were labelled and discriminated against by the child welfare system. This is supported by research that indicates that there is significant discrimination against Indigenous fathers, including stereotyping that casts Indigenous fathers as “dead-beats” or indifferent towards their children.¹⁰⁵ Furthermore, there is a lack of research, resources, and supports for engaging Indigenous fathers. Indigenous fathers are rarely engaged in their child’s school, health clinics, and recreation programs. In fact, only 50% of Indigenous children are expected to grow up with their fathers living in the family home.¹⁰⁶

The high rates of absence of Indigenous fathers from the family home is linked to the overrepresentation of Indigenous children in care. The 2008 FNCIS found that lone-caregiver families accounted for 47% of the First Nations families investigated by social workers, as compared to 38% of non-Aboriginal families.¹⁰⁷ In BC, 80% of lone-caregiver families are headed by women; 42% of these families live in poverty.¹⁰⁸ In addition to the shortage in financial resources, lone-caregiver families have been found to face greater challenges than multi-caregiver families in meeting standards of care set by social workers including providing safe home environments and adequate food and clothing.¹⁰⁹ These families are also more likely to need child care and respite care that is often unavailable, especially for those living in remote or rural communities.¹¹⁰ One mother told us that many mothers would not need to have their children apprehended if there were supports for Indigenous fathers:

A lot of us women, I really believe a lot of us wouldn't be sitting here crying if we had help for the men, too. Proper help for the men, too, we wouldn't be sitting here crying about abuse half the time. Our children, our young boys wouldn't grow up to mimic the behaviour and start to abuse us when the men are gone. We can't call a helpline or whatever and say our kids are beating us. For real. That happens. There's nothing in place for that. A lot of these little boys are seeing what the fathers have done and are beating their mothers and sisters. — Storytelling circle participant

Circle participants also expressed concerns that unless these gaps for Indigenous fathers are addressed, the high rates of apprehensions related to family violence are likely to continue. One mother explained her hope for there to be more resources to help her baby’s father parent their child:

My baby's dad is a loving father, he's a really amazing father. He's, you know, he wants to be there for the baby, and he's going through so many hoops for that in his situation. I find a lot of times, like, families are judged without knowing the family. You know, like, rehabilitation as far as that goes for men, is very scarce and there's not a lot out there for them. — Storytelling circle participant

Disability

Parents with disabilities face higher rates of state involvement in their lives due to assumptions about their ability to care for their children and a lack of supports and services.¹¹¹ Despite research showing that, if supported, persons with cognitive impairments can acquire and retain parenting skills, there are often inadequate support services provided to enable these parents to provide for their children.¹¹²

Parents with cognitive impairments are vastly overrepresented in cases open for investigations of child maltreatment, with biological mothers making up 72.1% of these cases.¹¹³ In one study, almost one third of cases that resulted in a court application involved a parent with a cognitive impairment, even though in most cases the maltreatment was not substantiated.¹¹⁴

The risk of having children apprehended because of disability is compounded for Indigenous mothers. Indigenous women are three times more likely to have a physical or mental disability than non-Indigenous women.¹¹⁵ Additionally, Indigenous women, Two-Spirit, gender non-binary, and gender-diverse parents who do not conform to Western, middle-class, heteronormative expectations about parenthood are negatively stereotyped and often viewed as poor parents.¹¹⁶ Their experiences are compounded in situations where they are facing family violence. One mother who identified as having a disability shared with us the story of how she lost her child following family violence:

They gave me a parental capacity assessment, which was really hard because I didn't have support at all because of how I was raised and because of who I am. They took my daughter because I was in an abusive relationship and they understood that it was my fault. ... I was so scared to leave him. I was a first-time mom. I didn't have my mom to help me. I didn't have my dad there to help me. I had nobody that could take her. — Storytelling circle participant

Parents with disabilities are also more vulnerable to being involved in the child protection system because of intersecting forms of marginalization such as poverty, violence, and discrimination. In a review of 40 child protection trial judgements where the mother had a cognitive impairment, the child was removed in 39 of the cases and all 40 involved poverty and economic disadvantage.¹¹⁷ One project participant shared with us how intersecting forms of marginalization led to her father losing all of his children to the child welfare system:

My past and present experience with the ministry was that my dad had all of his children apprehended. I'm a twin. Me and my twin brother were put in separate homes. So that has totally ruined the dynamic of our family and our relationships with each other because this all happened when we were young it was out of our control. My dad fought for 15 years for us and he was told he had no say. There was prejudice. This was all in 1986. He was [a] single, black, and handicapped father of four children so he got it from all sides. So when you're a single dad, you're handicapped, you have four children and no supports. There's that and nothing else. That was my experience [...] — Storytelling circle participant

One of the most devastating stories we heard from participants who identified as having a disability was that they were forced to choose between their children. Participants told us that social workers would tell them that they could keep one child if they would agree to put the other(s) in care. We heard this story in two of the three community-based organizations we visited from three participants. Another participant also shared with us that her mother had given her up in order to keep her baby sister:

I was put into care when I was 12. They did the same thing [as had been shared by the previous participant], told my mom that her learning disability wasn't enough to parent two children and that she had to choose between me and my newborn baby sister. My mom gave me up because, well, because I was older and it wouldn't be long for me. So she put me in there. [...] I started acting out [...] I started running away. I would run home to where my mom was. [...] so they said to her she had to leave the province if she wanted to keep my sister. So she left and they left me in care. — Storytelling circle participant

Substance use

Studies on the impact of colonization on Indigenous communities have shown that the health impacts of historical trauma include “depression and self-destructive behavior, substance abuse, identification with the ancestral pain, fixation to trauma, somatic symptoms, anxiety, guilt, and chronic bereavement.”¹¹⁸ Furthermore, there is clear evidence of a link between a history of violence and women’s substance abuse.¹¹⁹ Not only are the rates of use associated with historical trauma, but the severity of the impact of use is exacerbated due to the shortcomings in the availability and accessibility of culturally safe health care programming available to Indigenous peoples.¹²⁰

Child apprehension due to a caregiver’s substance use creates a cycle of trauma that increases the likelihood of engagement with the child protection system. The 2008 FNCIS study found that alcohol abuse was recorded as a caregiver risk factor in 49% of investigations for First Nations female caregivers as compared to 8% for non-Aboriginal female caregivers, and 47% for First Nations male caregivers as compared to 17% for non-Aboriginal male caregivers.

In turn, the removal of children from their families further entrenches the parent in substance use. This is due to the trauma that is caused by the removal and the lack of supports offered to parents during this difficult time in their lives.¹²¹ Parents that relapse are also fearful of opening up to the Ministry about their addictions and getting the support they need in order to have their children returned.¹²² Many parents shared heartbreaking stories of how having their children removed undermined their health behaviours, causing them to relapse.

History in care

Parents with a history of contact with the child welfare system are more likely to face continued involvement with the system and are at greater risk of having their children apprehended. Parents who have previously been in care themselves are more closely scrutinized and face greater state intrusion on their right to parent. MCFD treats a history of contact as a factor that should be considered in the course of an investigation of child maltreatment.¹²³ The 2008 FNCIS found that 13% of First Nations investigations involved concerns of a woman primary caregiver’s history of living in foster care/group homes as compared to 5% of non-Indigenous investigations.¹²⁴ For primary caregivers who are men, these numbers were 8% for First Nations investigations and 4% for non-Indigenous investigations.¹²⁵ A staff member shared with us their experience of working with parents who had been in government care:

I think the Ministry needs to review their policies and procedures and update them because a lot of it is not congruent. Again, it’s unfair. It seems like a lot of young people I have worked with that had contact with the Ministry and have had young children are on the radar just because they have grown up in care. Again, that’s not fair. — Storytelling Project Participant

A history of contact with MCFD also leaves parents vulnerable to engaging in negative behaviours as these parents are more likely to have been disconnected from their communities and supports. Adults who were in foster care as children

Many parents shared heartbreaking stories of how having their children removed undermined their health behaviours, causing them to relapse.

Indigenous children are especially vulnerable in care because when they are removed from their families they are also removed from their community and culture and face greater risks of being placed in culturally unsafe homes.

are more likely to be involved with the criminal justice system, experience homelessness, and struggle with their mental health.¹²⁶ These outcomes are related to the experiences that parents had as children in care. Children placed in care have lower education, health, and overall well-being outcomes than the general population.¹²⁷ In 2003, findings by the National Youth in Care Network showed that the experience of children in care had not improved over a 30-year period despite significant changes in the child welfare system.¹²⁸

Indigenous children are especially vulnerable in care because when they are removed from their families they are also removed from their community and culture and face greater risks of being placed in culturally unsafe homes.¹²⁹ Indigenous girls are disproportionately more likely to experience sexual violence while in care, making up more than 60% of the children and youth who report sexual violence in government care.¹³⁰ Parents who participated in our project shared with us devastating stories of their experiences in care, including experiences of sexual abuse:

They put me in a level five staff home. I moved multiple times. I stayed in hotels and, um, they had males in there, two, and one of the male [staff] actually slept with me when I was 16 years old. And it really [messed] me up. — Storytelling circle participant

Parenting and incarceration

A history of contact with the criminal justice system is another factor that exposes parents to an increased risk of child apprehension. Not only does engagement with the criminal justice system pose a significant disruption in the parent-child relationship, it also compounds other factors that can result in a child being apprehended including poverty, substance use, engagement in future criminal activity, and violence.¹³¹ Furthermore, social workers are directed to consider a caregiver's criminal record in their assessment of the caregiver's ability to care for the child. While there are important reasons for identifying a caregiver's criminal record, many parents shared with us the feeling that social workers focused on their past lives without giving due consideration to the way that the parent had transformed their life.

Mothers are especially vulnerable to losing custody of their children when incarcerated. In Canada, around 66% of incarcerated women are mothers.¹³² Indigenous mothers are disproportionately affected by incarceration and are overrepresented in the criminal justice system and in correctional facilities. While the general rate of incarceration for adults is declining, the rate of incarceration for Aboriginal people is increasing. Aboriginal women accounted for 43% of custody admissions in 2016/2017 despite making up around 4% of the general population.¹³³

The majority of incarcerated women are sentenced to short provincial sentences that are not long enough for them to access meaningful programs or receive treatment, but are long enough for them to lose custody of their children, lose their employment, and lose their place of residence, making it harder, if not impossible, for them to regain custody of their children once released.¹³⁴ Additionally, even where mother-baby programs do exist, Indigenous mothers are more likely to be separated from their children as these programs are often inaccessible to them.¹³⁵

Furthermore, unlike incarcerated fathers, mothers usually do not have a partner in the community who is willing and able to look after their children. Around 90% of children with incarcerated fathers continue to live with their mothers, while only 17% of children with incarcerated mothers live with a relative other than their grandparents, such as their father. The majority of children with incarcerated mothers live with their maternal grandparents.¹³⁶ The remaining 25% live in a non-family environment, such as foster care.¹³⁷

Sex work

As indicated by research in Vancouver's Downtown Eastside with sex workers who are parents, this population of parents face "multiple and intersecting forms of marginalization, including poverty, homelessness, substance use, lack of social supports, and violence from clients and intimate partners, that may place them at an increased risk of having their children apprehended."¹³⁸ The project found that 39% of research participants had had a child apprehended by child welfare, with sex workers who work outdoors/in public and sex workers who use injection drugs significantly more likely to have their children apprehended.¹³⁹ These findings echo assumptions that parents involved in sex work inherently place their children at increased risk for sexual harm or exploitation.¹⁴⁰

Sex workers who work outdoors/in public spaces may face increased risks of being identified and reported to child welfare. Coupling this with systemic factors of poverty, violence, and reduced access to social supports, the likelihood of children being apprehended by child welfare is incredibly high for this population. Furthermore, *Criminal Code* provisions introduced by the *Protection of Communities and Exploited Persons Act (PCEPA)*¹⁴¹ often force parents who engage in sex workers to avoid central areas where social services are offered for fear of being reported and/or criminalized.¹⁴²

THE CORE ENVIRONMENT: GAPS IN SUPPORTS AND SERVICES

Barriers to accessing services and preventative programming

A factor impacting the wellness of the core environment for Indigenous peoples is barriers to accessing services and programming. Indigenous peoples face significant barriers in accessing culturally safe, quality, and timely education and health care services.¹⁴³ The barriers to accessing services are interconnected and driven by historical and ongoing colonial policies. These services often are also based on Western models that do little to rebuild extended family, community, and non-human relations or address the cultural needs of families.

Indigenous women, Two-Spirit, gender non-binary, and gender-diverse people face added barriers to accessing services.¹⁴⁴ For Two-Spirit people, the lack of supports and negative experiences with the health care system have been found to erode trust in institutions and reduce the rates of engagement.¹⁴⁵ These experiences tend to compound mental health issues and have even been linked to increased rates of suicide and substance use.¹⁴⁶ One study in the Downtown Eastside of Vancouver (DTES) summarized some of the barriers that women in the DTES face in accessing mental health services:

*Many women in the DTES are unable to access mainstream mental health services for a variety of reasons — for example: complex referral systems are difficult to navigate without a strong advocate, problems with securing transportation to distant clinics, or finding services where they will not experience stigma or discrimination based on their socioeconomic status, drug use or involvement in sex work. Mental health services provided in the DTES are notoriously overtaxed, and many women describe feelings of frustration, despair and desperation arising from their search for help. For many women, this difficulty in accessing help serves to compound the initial mental health concerns.*¹⁴⁷



There is a strong connection between the lack of support services and the reasons that place children at risk of being removed by social workers. For example, many parents who needed culturally safe treatment for substance use or mental health support to cope with intergenerational trauma explained the lack of availability of adequate services. They spoke of the difficulty they had locating suitable programming, the prohibitive cost of many programs, the distance between their home and the service provider, and the lack of culturally safe programming that they could access in a timely manner and for long periods of time. Parents and front-line workers also spoke about the disparity between the type of programming mandated by social workers and that which was identified by the parent as helpful:

For me, what I've seen is not the value in Indigenous organizations or bands, the services they provide. I've heard, too, that families say, "I've done these parenting classes," but they're not the right ones. [MCFD] has their own expectation of what programs [families] should be going to and they're not there for them, for the families. — Storytelling circle participant

Cultural continuity

Another key factor of health for Indigenous peoples is cultural continuity. Cultural continuity is described as "the degree of social and cultural cohesion within a community."¹⁴⁸ Groundbreaking research by Michael J. Chandler and Christopher Lalonde revealed that rates of suicide among First Nations people in BC were strongly linked to cultural connectivity.¹⁴⁹ The study identified six markers of cultural continuity that corresponded with the suicide rates in each community: enjoyment of self-governance; control over traditional land; control over the provision of education and health care services; control of police and fire services; and the existence of cultural facilities.¹⁵⁰ Parents who participated in our project similarly pointed to the harm that can be caused by cultural disconnection and, in turn, the ways that culture can save lives:

My path was pretty rough. It led to adoption for me into a family but what that meant is that I didn't get to know where I came from I didn't get to know my traditions. I didn't get to really know where I came from. I had so many questions when I got older as a youth. That was really hard to deal with.

As early as 10, 11, I started asking questions. To be in the system you have an issue with identity and I think that's a huge thing that plays into who you become, um, I also had a running away problem. I still wanted to go look for mom and dad even though I got hurt so many times.

Just so many questions unanswered [...] why did I have to be put in the system? Where are these really important people that are supposed to love me? It led me to feeling like the black sheep of my own community. So I fought the system because I started to grow hate in my heart, I started to get into trouble because I went looking for where I fit in and what could I do. — Storytelling circle participant

Relationship to land

Finally, for Indigenous peoples, a key determinant of health is environmental stewardship and relationship to the land, with research showing that strong ties with and stewardship of traditional land supports community and individual health.¹⁵¹ Connection to land was identified as a key determinant of health by Indigenous representatives from Canada who attended the 2007 International Symposium on the Social Determinants of Indigenous Health hosted by the World Health Organization:

*Indigenous peoples' connection to the land not only distinguishes them ecologically and geographically, but a connection to the land also makes them spiritually unique. Aboriginal peoples are tied to the land and it is tied to them. These timeless and imbricated relationships with the land distinguish Indigenous peoples from others around the globe. These relationships are the essence of the individual and collective identities of Indigenous peoples.*¹⁵²

Many Indigenous leaders, activists, and scholars assert that the process of revitalizing child-rearing practices, kinship and family networks, and traditional child welfare practices is directly tied to the process of rebuilding connection to the land.¹⁵³ Community researcher Dr. Sandrina de Finney notes:

*[V]ital connections with land have been compromised. As Indigenous communities were removed from their homelands to make land and resources accessible to white settlers, communities were also dismembered and dispirited from the places that hold their knowledge and worldviews. Land is a central factor in shaping resilience. Nothing else holds Indigenous cultures and ways of life in the way that land holds them. Indigenous languages, spirituality, and social formations are irrevocably tied to specific North American ecologies that cannot be simply transported onto other places without being severely jeopardised.*¹⁵⁴

Despite this well-documented connection between Indigenous well-being and land, colonial policies aimed at dispossessing Indigenous peoples of their land continue to be present across Canada. In fact, many scholars have noted that Canada's economy has developed in such a way that it is reliant on the removal of Indigenous peoples from their land.¹⁵⁵ Policies of dispossession and displacement have been widely identified as a root cause of the ongoing trauma experienced by many Indigenous peoples.¹⁵⁶ These policies undermine the well-being of Indigenous families. A shift in the child welfare system must recognize that the fostering of "transgenerational kinship networks, in relationship with ancestors, lands, and all our relations" is essential to the well-being of Indigenous families.¹⁵⁷



MAXXINE WRIGHT COMMUNITY HEALTH CENTRE

Developed by the Atira Resource Centre, the Maxxine Wright Community Health Centre, provides "one-stop shop" supports to women who are pregnant or who have very young children and who are impacted by substance use or violence.

Women do not need to have their children in their care to be eligible provided that they have an ongoing relationship with the child.

Participants in the project spoke highly of this "one-stop shop" model of service provision.

For more information visit: atira.bc.ca/what-we-do/program/maxxine-wright-community-health-centre/

The legal context: Assessing the child welfare legislation from a rights-based framework

PHOTO: RUBEN MARQUES/UNSPLASH

Viewing child welfare work through a comprehensive rights-based lens provides a concrete framework for assessing whether children are, in fact, receiving the treatment to which they are entitled.

THE CHILD WELFARE SYSTEM IS OFTEN THOUGHT of as the set of laws, policies, actions, and programs that are aimed at protecting children from harm.¹⁵⁸ In fact, a significant component of the work done by those working in the child welfare system is focused on enforcing the right of the child to be protected from abuse, neglect, or harm. This understanding of the system has been affirmed in the courts who have found that the child welfare system is, at its core, meant to provide children with “solutions for unsatisfactory home situations.”¹⁵⁹

The right of the child to be protected from harm and the corresponding duty on the state to ensure that children are protected from harm are essential elements of a child welfare system.¹⁶⁰ However, we understand the aim of the child welfare system to be the protection of *all* the rights of the child. We base our definition on the fundamental principle that human rights are indivisible. This means that they cannot be placed in a hierarchy.¹⁶¹ Instead, “[t]he fulfilment of one right often depends, wholly or in part, upon the fulfilment of others.”¹⁶² In turn, the “[d]enial of one right invariably impedes enjoyment of other rights.”¹⁶³

Accordingly, the child welfare system should be understood as the system that protects the rights of the child in their entirety. The work of protecting the rights of the child may require an assessment of the child’s safety. It may require that the child’s family receive financial and other supports to care for the child. It may also require the state to dedicate resources to improve outcomes for specific groups of children. A rights-based approach to child welfare would recognize all of these elements of the child welfare system as conferring rights to children and duties on the state.

The participants in our project indicated that the Ministry may not be viewing their duty as extending beyond the enforcement of the child’s right to be protected from harm. Project participants expressed concern that the child’s right to grow up in their family and community was regularly violated because prevention supports were lacking. They expressed concern that their children were apprehended even when there were less intrusive means available to the social worker. They also expressed concern that culturally inappropriate assessments of a child’s safety and well-being supersede other fundamental human rights of Indigenous children. Viewing child welfare work through a comprehensive rights-based lens provides a concrete framework for assessing whether children are, in fact, receiving the treatment to which they are entitled.

Here, we set out some of the rights of the child that are triggered in child protection work. We outline the sources of international and constitutional law that set out the rights of children and demonstrate that a strong legal argument can be made that parents and children have the right to receive preventative support services prior to the child being apprehended by the state. We then assess the provincial legislative framework. We find that, while the governing law does include many important principles of a rights-based framework, it also falls short of creating a pathway for the full realization of children's rights.

THE RIGHTS OF CHILDREN AND PARENTS IN INTERNATIONAL LAW

Children's rights are set out in domestic and international law. Domestically, children's rights are enshrined in the *Charter of Rights and Freedoms*¹⁶⁴ (*Charter*), human rights legislation, and other laws that address specific aspects of the child's life. Internationally, children's rights are set out in international human rights instruments including the United Nations Convention on the Rights of the Child (Convention on the Rights of the Child).¹⁶⁵ In the case of Indigenous children, children's rights are also set out in the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁶⁶

Whereas domestic law is legally binding on the government, international law will only become binding on the state once it is adopted into domestic law.¹⁶⁷ However, the rights set out in international law have been relied on by the courts to interpret the language of domestic laws.¹⁶⁸ The Supreme Court of Canada has found that the principles of procedural fairness mandate decision-makers to consider international law principles.¹⁶⁹ In *First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, the Canadian Human Rights Tribunal (CHRT) found that Canada has obligations under international and domestic law to uphold the best interest of children and additional obligations towards Indigenous children pursuant to UNDRIP.¹⁷⁰

THE RIGHT TO FAMILY IN INTERNATIONAL LAW & THE OBLIGATION TO PROVIDE MATERIAL SUPPORTS

International law recognizes the importance that family⁵ relationships play in the development and well-being of children. The Convention on the Rights of the Child identifies the family as the 'fundamental group of society and the natural environment for the growth and well-being of all its members.'¹⁷¹ It also recognizes that children have the right to "know and be cared for by their parents."¹⁷²

The recognition of the family as the natural environment for the development of children is also set out in the Universal Declaration of Human Rights,¹⁷³ the International Covenant on Civil and Political Rights,¹⁷⁴ and the International Covenant on Economic, Social and Cultural Rights.¹⁷⁵ Because of widespread state practice and judicial opinion, some international commentators have noted the early stages of development of a customary norm against family separation.⁶

5 The Committee on the Rights of the Child has applied a broad definition to the term 'family', stating that the term 'family' "refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests. [...] The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children." The Committee on the Rights of the Child, in General Comment No. 7, Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, September 20, 2006, fortieth session paras 15 and 19.

6 Customary international law binds all states and is made up of two elements: state practice and *opinion juris*. *Opinion juris* can be understood as the belief that certain conduct is required or prohibited by international law. *Opinion juris* can be assessed based on the content of treaties and other international instruments, court decisions, declaration, and comments by international bodies. Lea Brilmayer, "Family Separation as a Violation of International Law" 76 at 230.

The right of children to grow up within their families is critical to the realization of many other rights enshrined in the Convention on the Rights of the Child.¹⁷⁶ Namely, it recognizes that the preservation of children's identity is deeply connected with their family relationships.¹⁷⁷ The premise of this article is that children's personalities and identities are intertwined with their abilities to create close ties with their families, particularly their biological families.¹⁷⁸ The Universal Declaration of Human Rights similarly recognizes the right to privacy and the right to maintain family ties.¹⁷⁹

THE LIMITS ON THE RIGHTS TO FAMILY: FAMILY SEPARATION IN INTERNATIONAL LAW

The right of children to live within a family and the protections offered to the family unit are not absolute. States are authorized to undertake special measures of protection including the placement of children in care where it is deemed necessary to do so in the best interests of the child.¹⁸⁰ The international human rights regime, however, does not regard the removal of children from their families lightly. It places a high threshold on the use of alternative measures to meet the best interests of the child in cases of family separation.¹⁸¹ John Tobin explains the obligation on states as follows:

*This is an exceptionally onerous test which requires a state to demonstrate on the basis of all the available evidence that the separation of the child is necessary to secure his or her best interests (the rational connection test) and that no other measure to achieve this aim is reasonably available (the minimal impairment principle) — it must only be considered after all other reasonably available alternatives to separation have been exhausted.*¹⁸²

Additionally, the state's conduct, governed by the Convention as well as other international norms including those identified in the United Nations Guidelines for the Alternative Care of Children, must not be arbitrary, must be in line with the law, must pursue a legitimate objective, and be found necessary in a democratic society.¹⁸³ The principle of legality as it is applied in the context of family separation requires the existence of adequate laws and regulation and the strict application of the laws by the decision maker.¹⁸⁴ The laws and regulations must be "objective, reasonable and predictable" and must whenever possible reduce the likelihood of arbitrariness.

While a certain degree of deference to state authority may be built into the legislation, the laws must not allow for stereotypes and prejudicial conceptions of what constitutes an "unsafe situation" for the child to form part of the practice of apprehension.¹⁸⁵ In fact, states have an obligation to "eliminate all norms and practices that are discriminatory" or that can result in discriminatory treatment.¹⁸⁶ Both in legislation and in practice, there should be strict adherence to principles of due process including timeliness and written notice that includes the grounds for the removal.¹⁸⁷

THE STATE'S POSITIVE OBLIGATION TO PROVIDE SUPPORTS PRIOR TO APPREHENSION

Several international instruments recognize that states may be obligated to provide preventative support services to ensure the fulfillment of the right of children to live with their families.¹⁸⁸ Under the Convention on the Rights of the Child, states are obligated to provide families with necessary protections and assistance so that parents can fulfill their caregiving duties.¹⁸⁹ The Convention recognizes that supports may be essential to fulfillment of the rights enshrined therein and instructs states to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities."¹⁹⁰ It also requires states to take appropriate measures to ensure that all children have an adequate standard of living by providing "material

assistance and support programmes, particularly with regard to nutrition, clothing and housing.”¹⁹¹

The state’s positive obligations include: adopting an adequate legal framework for child welfare; social policies and programs to support families; and amending institutional structures and practices towards the development of the family unit.¹⁹² International law commentators have noted that while the state has some discretion in how it meets its obligation to support families to remain together, this discretion is limited by two important caveats:

*First, that the measures adopted are actually effective in contributing to recognition of the principle of common responsibilities [of the state and the parents for the upbringing and development of the child] and second, that they are consistent with the other provisions under the Convention and indeed international law. In light of article 4, the relevant measures must also extend to appropriate legislative, administrative, social, and educational measures — a point which has been stressed by the [Committee on the Rights of the Child].*¹⁹³

The Committee on the Rights of the Child has set out minimum “legislative, administrative, and other measures” that states shall take to meet the obligations in the Convention on the Rights of the Child to protect the rights of children and youth, particularly the right to protect the family unit through positive measures.¹⁹⁴ These standards include the state’s obligation to fulfill economic, social, and cultural rights to the “maximum extent of their available resources.”¹⁹⁵ Canada has a significantly higher responsibility to realize this right than most other countries due to its economic standing.

The Committee on the Rights of the Child has also noted that states must ensure that the rights set out in the Convention are fulfilled without discrimination, which requires them to proactively “identify individual children and groups of children the recognition and realization of whose rights may demand special measures.”¹⁹⁶ It has also identified the obligation of states to develop a national plan of action that goes “beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children.”¹⁹⁷

The UN Guidelines for the Alternative Care of Children also provide extensive recommendations for states in the enforcement of their obligations in international human rights law including by recommending that states provide social policies and programs aimed at strengthening families’ abilities to care for their children:

*States should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have a relationship with both parents. These policies should address the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, inter alia, the right to birth registration, and access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse, and substance abuse.*¹⁹⁸

Several international instruments recognize that states may be obligated to provide preventative support services to ensure the fulfillment of the right of children to live with their families.

THE STATE'S POSITIVE OBLIGATION TO PREVENT AND ADDRESS FAMILY VIOLENCE

States have specific positive obligations to prevent violence against children and are required to adopt preventative measures particularly where data demonstrates that certain groups of children and families are at heightened risk of experiencing violence. This obligation is codified in article 19 of the Convention on the Rights of the Child which mandates states to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of” violence and neglect.¹⁹⁹ The obligation to protect children against violence may require “the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.”²⁰⁰

A report of the Independent Expert for the United Nations study on violence against children found that, in order for states to meet their obligations to prevent violence against children, they should develop or enhance programming that supports caregivers in their child-rearing roles including by investing in health care, education, and social services. The Independent Expert recommended that states prioritize prevention by addressing the underlying factors that perpetuate violence:

*States should allocate adequate resources to address risk factors and prevent violence before it occurs. Policies and programmes should address immediate risk factors, such as a lack of parent-child attachment, family breakdown, abuse of alcohol or drugs, and access to firearms. In line with the Millennium Development Goals, attention should be focused on economic and social policies that address poverty, gender and other forms of inequality, income gaps, unemployment, urban overcrowding, and other factors which undermine society.*²⁰¹

The state also has a positive obligation to exercise due diligence to prevent, investigate, prosecute gender-based violence and compensate survivors that arise from its obligations to end discrimination against women. The articles of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) confer a responsibility on states to provide appropriate “protective and supportive services” to survivors of gender-based violence.²⁰² The CEDAW Committee has found on numerous occasions that states have violated the anti-discrimination provision when they have failed to provide adequate support services.²⁰³

THE INDIVIDUAL AND COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES UNDER THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Indigenous parents, children, communities, and Nations have additional rights to receive preventative support services to enable them to care for their children. The preamble of UNDRIP states that Indigenous families and communities “share the responsibility for the upbringing, training, education and well-being of their children.” Article 21 places an obligation on states to take “effective measures and, where appropriate, special measures to ensure continuing improvement” of the socio-economic conditions of Indigenous communities including “in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.”²⁰⁴ These special measures must also “address the right to self-determination, the right to maintain distinct cultural identities and the right to maintain relationships with traditional lands.”²⁰⁵

Not only does UNDRIP enshrine the right of Indigenous peoples “not to be subjected to forced assimilation or destruction of their culture” but it also obligates states to “provide effective mechanisms for prevention of, and redress of, among other forms of assimilation, [a]ny form of forced population transfer which has the aim or effect of violating or undermining any of their rights.”²⁰⁶ The International Labour Organization Convention No. 169, the Inter-American Court of Human Rights and the United Nations treaty bodies have

also recognized the obligation on states to enact special measures “intended to remedy past discrimination or to correct contemporary inequalities.”²⁰⁷ Given the unequivocal finding in numerous reports and inquiries that the residential school system was a project of forced assimilation, the federal and provincial governments must fully redress all past and ongoing harms caused by the residential school system, including its impact on family and community well-being.

UNDRIP also mandates states to adopt special measures to support Indigenous children in their enjoyment of the right to their identity.²⁰⁸ However, in adopting such measures, states must pay attention to “the collective nature of indigenous children’s enjoyment of their cultures and the need to include indigenous peoples in decisions about the best interests of indigenous children, including the need for cultural sensitivity.”²⁰⁹ In fact, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions* emphasizes the significance of collective rights and the obligation on states to advance the collective rights of Indigenous peoples alongside individual rights:

*Given the collective character inherent in indigenous cultures, individual rights are not always adequate to give full expression to indigenous peoples’ rights. The rights contained in the Declaration seek to protect, in addition to individual rights, the collective rights of indigenous peoples because recognition of such rights is necessary to ensure the continuing existence, development and well-being of indigenous peoples as distinct peoples.*²¹⁰

The state has additional obligations vis-à-vis Indigenous women, Two-Spirit, gender non-binary, gender-diverse, and gender non-confirming people under the Declaration. UNDRIP places positive obligations on states to “take the appropriate measures,”²¹¹ including providing financial and technical support,²¹² to ensure that every Indigenous person has the right to “life, physical and mental integrity, liberty and security of the person”²¹³ and the right to live free of discrimination,²¹⁴ including in accessing social services.²¹⁵ UNDRIP emphasizes the obligations on states to ensure that Indigenous women “enjoy the full protection and guarantees against all forms of violence and discrimination.”²¹⁶

CONSTITUTIONAL LAW PROTECTIONS

THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

Under the Canadian *Charter*, state interference with the family may engage parents’ and children’s rights to life, liberty, and security of the person as enshrined in section 7.²¹⁷ The right to security of the person includes one’s physical safety, but it also includes psychological security. In *New Brunswick (Minister of Health and Community Services) v G (J)*, the Supreme Court of Canada (SCC) recognized that “state removal of a child from parental custody ... constitutes a serious interference with the psychological integrity of the parent.”²¹⁸ The state’s act of removing children may also engage parents’ liberty interest, by depriving them of the right to raise their children as they see fit and to make decisions on their children’s behalf.²¹⁹

Children have the same rights as their parents under section 7. Their right to security of the person is similarly engaged when apprehension occurs. The SCC has held that for a person’s right to security of the person to be triggered, the “state action must have a serious and profound effect on a person’s psychological integrity.”²²⁰ Clearly, a child who is removed from their family and home experiences “greater than ordinary stress or anxiety” when assessed objectively.²²¹ Apprehension disconnects children from their communities and restricts their ability to form meaningful relationships with their families. This is especially so for Indigenous children who often lose connection with their culture.

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The apprehension of children, particularly of Indigenous girls and Two-Spirit, gender non-binary, and gender-diverse children, also engages children's right to life as the state is taking an action that increases their risk of death. The SCC has stated that "the right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly."²²² For instance, the National Inquiry into Missing and Murdered Indigenous Women and Girls elaborated in its recent report on the connection between placement in foster care and systemic risk factors that make Indigenous women and girls more vulnerable to being disappeared and murdered.²²³

Under the *Charter*, any limitation that the state places on one's rights to life, liberty, and security of the person must be done in accordance with principles of fundamental justice. The courts have recognized four general principles of fundamental justice that a law or government action cannot violate: laws and state conduct cannot be vague, arbitrary, overbroad, or grossly disproportionate. Even if the law or state conduct does not offend principles of fundamental justice, the state must nevertheless justify how it approaches child apprehension where section 7 rights are engaged for parents and/or for children. Thus, the state's approach to child apprehension must be used to address a pressing and significant problem, it must be rationally connected to the law's objective and must not be more intrusive than is necessary to achieve the goal.

There is some data that suggests that the very act of apprehension may be found to be arbitrary even in the most extreme situations of neglect. For this to be the case, the apprehension would not further the objective of protecting children even in the most severe scenarios.²²⁴ This was the finding in a study based out of Illinois that compared children who were placed in state care with children who were investigated for abuse and neglect but remained in their family's care. The study found that the children who were at the margin of placement but remained at home had better long-term outcomes.²²⁵ One Florida-based psychologist with more than 20 years of experience working with children explained "[t]hat [the] instability just damages your mental health so severely ... [t]here are children who would be better off staying in an abusive family than in foster care."²²⁶ Similarly, one BC judge found that even "the best of foster care is not always better than a sub-par home with a natural parent."²²⁷

This reality is particularly pronounced for Indigenous families and communities. In fact, noting the harm done by the current child welfare system, the Truth and Reconciliation Commission found that, "[w]ithout action to reduce the number of Aboriginal children taken from their families, the child welfare system itself will take the place of residential schools in doing damage to them."²²⁸ Grand Chief Ed John wrote in his report on Indigenous child welfare in BC that "[o]nce placed in care, whether Indigenous or non-Indigenous, studies repeatedly conclude that children can expect poorer outcomes in education, health and general well-being than those of the general youth population. In other words, the vulnerabilities of Indigenous children are compounded the moment they enter the child welfare system."²²⁹ Accordingly, an argument could be made that in most cases of apprehension of Indigenous children the state's conduct may be arbitrary because the outcomes of the apprehension are not rationally connected to the objective of protecting children from harm.

Regardless of whether apprehension in and of itself is arbitrary given its negative impact on children, the current approach to child protection likely does not accord with the principle of fundamental justice that laws and government action not be overly broad. The government may be challenged in justifying its child protection framework because apprehension is more intrusive than is required for the state to meet its purported objectives with the child protection regime. Where state actors tear families apart prior to providing adequate supports, the state is advancing the objective of protecting children through means that are wider and more intrusive than is necessary.²³⁰ The provision of support services prior to apprehension is an example of a less intrusive approach that the state regularly fails to apply when pursuing its objective to protect children from harm. In *First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, the CHRT found that child welfare services should be “prevention oriented rather than removal orientated” and should be deemed “essential services.”²³¹

EQUALITY RIGHTS

When the state apprehends children without first providing adequate supports and services, they also infringe parents’ and children’s equality rights under section 15 of the *Charter*.²³² Section 15 states that the law and state action, including the unintended consequences arising from the effect of the law when applied to the real-life context of families, cannot have a discriminatory impact on specific groups of parents or children.

The state’s current apprehension policy and practice disadvantages members of the following historically marginalized groups of people: Indigenous parents and children; women and gender-diverse parents; and parents and children with disabilities. Each of these groups of people — especially people who have more than one of these characteristics — is vastly overrepresented in their interactions with the child welfare system. Furthermore, families experiencing intersecting forms of marginalization are increasingly more adversely impacted by the current child welfare system. Some of the factors that account for this overrepresentation include:

1. Indigenous parents, particularly mothers, Two-Spirit, gender non-binary, and gender-diverse parents are more likely to be involved with the child welfare system due to intergenerational trauma, including the legacies of residential schools and the Sixties Scoop, and the perpetuation of this trauma through the current child welfare system. Direct discrimination against Indigenous parents can be seen in safety assessments by social workers.
2. Indigenous parents and children also experience discrimination in the current child welfare system due to discrepancies in funding for Indigenous communities as compared to non-Indigenous communities.²³³ Indigenous people also receive less public service money due to jurisdictional disputes, inconsistencies in service delivery across the province, and contextual factors including the cost of travel from rural communities.²³⁴ This means that Indigenous families are more likely to be separated because of shortages of culturally safe, adequate, and accessible programming.
3. Poverty is one of the key reasons that families are separated, and Indigenous peoples, women, gender-diverse, Two-Spirit, and people with disabilities experience some of the highest rates of poverty in BC and across Canada.²³⁵ Parents who face intersecting forms of marginalization experience some of the highest rates of poverty.²³⁶ Apprehension without financial supports including supports in accessing safe, affordable and adequate housing, perpetuates the cycle of poverty and disadvantage experienced by members of these groups.
4. Gender stereotypes around family responsibilities mean that women are far more likely to be caring for children and therefore automatically more likely to be involved with the child welfare system.²³⁷ In BC, 80% of lone-parent families are headed by women.²³⁸ Women lone-parent families

are particularly vulnerable to poverty, with 42% of these families living in poverty.²³⁹ Women are also more likely to be kinship caregivers, with senior women doing the majority of formal and informal kinship care arrangements in BC.²⁴⁰

5. Women, Two-Spirit, gender non-binary, and gender-diverse people are also disproportionately impacted by the system's failure to provide supports prior to apprehension in cases of family violence. Because women are both more likely to experience poverty and more likely to experience violence, they are more likely to have their children apprehended because they are trapped in a violent living situation.⁷ In turn, they are often held responsible for their children being exposed to family violence even when they are the non-abusive partner.²⁴¹ These risks are compounded for Indigenous women, Two-Spirit, gender non-binary, and gender-diverse people due to the impact of colonization on the epidemic of violence against Indigenous women, girls, Two Spirit, gender non-binary, and gender-diverse people. Additionally, Eurocentric ideas of parenting, especially motherhood, result in stereotypes about the ability of Indigenous women to parent their children. When Indigenous women do not conform to Western norms surrounding motherhood, they are labeled "bad mothers," increasing the likelihood that their children will be apprehended.²⁴²
6. Parents with disabilities are greatly overrepresented in child protection matters. Parents with cognitive impairments represent 10% of open child maltreatment cases while making up only 1-3% of the general population.²⁴³ Mothers with a mental health diagnosis are three times more likely to be involved in this system than mothers without this kind of diagnosis.²⁴⁴ In the majority of these investigations, there was no evidence found of child maltreatment.²⁴⁵ Negative stereotypes about parents with disabilities, in addition to the high poverty levels experienced by this population, increase scrutiny and state interference with their families. Furthermore, scarcities in programs and financial supports are vastly more likely to impact parents and children with disabilities, directly resulting in increased rates of apprehension.

BILL C-92, AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

Bill C-92, An Act respecting First Nations, Inuit and Métis Children, youth and families (Bill C-92), is a federal bill that received approval on June 21, 2019. It is binding on both the federal and provincial governments.²⁴⁶ The legislation sets the minimum standards for the provision of child welfare services to Indigenous children and families across Canada.²⁴⁷ This means that provincial legislation must at minimum meet the standards set out in *Bill C-92* to continue to apply to Indigenous children. On the other hand, the provincial legislation continues to apply if it provides an equal or higher benefit than the federal legislation.²⁴⁸

Bill C-92 confirms that Canada is committed to implementing UNDRIP as well as the Convention on the Rights of the Child,²⁴⁹ which, as discussed above, place positive obligations on states to provide prevention services prior to separating families. In fact, one of the legislation's three purposes is to "contribute to the implementation" of UNDRIP.²⁵⁰ The legislation also recognizes the impact that colonial policies have had on Indigenous peoples, and particularly on Indigenous women and girls,²⁵¹ and explicitly identifies the "importance of supporting Indigenous women and girls in overcoming their historical disadvantage."²⁵²

⁷ In child protection proceedings, 30% of non-Indigenous women and 43% of Indigenous women had their experience with domestic violence included as a risk factor. See Vandna Sinha et al, *Kiskisik Awasisak: Remember the Children Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2011) at xiii.

Bill C-92 also recognizes the “ongoing call for funding for child and family services that is predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities”.²⁵³ It gives priority to the provision of preventative care services over other child and family services²⁵⁴ and requires service providers to demonstrate that they made “reasonable efforts” to ensure the child can continue to reside with a parent or other member of the child’s family.²⁵⁵ The legislation also provides for prenatal preventative care services to be given priority over other services “in order to prevent the apprehension of the child at the time of the child’s birth.”²⁵⁶

Bill C-92 also recognizes that there is a need for a substantive equality lens to be applied to the interpretation and administration of child welfare legislation.²⁵⁷ The legislation codifies Jordan’s Principle, stating, “in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.”²⁵⁸ It also explicitly prohibits the apprehension of children on the basis of the child’s “socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider.”²⁵⁹

These are important additions that go somewhat beyond what is required in the provincial legislative framework. However, a significant shortfall of the legislation is that there is no explicit commitment to an equitable and sufficient funding framework. There is also no accountability mechanism where Nations, communities, and families can expeditiously seek enforcement of the commitments made in the legislation. Therefore, the impact that *Bill C-92* will have on the lives of Indigenous children will depend on the type and amount of funding that will accompany the legislation and how broadly the legislation will be interpreted by decision-makers.²⁶⁰

AN ANALYSIS OF THE CHILD WELFARE LEGISLATION IN BC

The *Child, Family and Community Services Act (CFCSA)* is the legislation that governs the child welfare system in BC. The *CFCSA* is seen as a “complete code,”²⁶¹ which is meant to provide a “comprehensive framework for the protection of children” in BC.²⁶² Viewed through this lens, it should, in theory, offer a framework for the government to provide comprehensive prevention services to children, families, and communities. While the legislative framework does incorporate some elements of prevention and recognizes the need to support families in staying together, it arguably falls far short of what is required under international and constitutional law.

In this section we highlight four concerns with the legislative framework that undermine prevention:

- I. There is an emphasis in the legislative language and framework on the need to protect the child’s safety and well-being over other rights of the child.
- II. The legislation does not contain language that outlaws the apprehension of children based solely on the ground of poverty or disability.
- III. The legislative framework is limited in its ability to support prevention-based efforts. The legislation gives little consideration to the spectrum of prevention supports that are required to address the disparities in the social determinants of health for Indigenous families. It also does not go far enough in creating a positive and measurable obligation on the state to provide prevention-based supports prior to apprehension.
- IV. The obligation on MCFD to consider less disruptive measures prior to taking children into care lacks clarity and accountability. In practice, this creates a power imbalance between parents and social workers that undermines prevention efforts.

While it is difficult to assess how these legislative short-fallings trickle down into practice and, conversely, the impact legislative changes would have without considerable financial investments to realize these changes, what is clear is that the current laws support a risk-averse, crisis-based, and unaccountable system. These aspects of the child welfare system undermine parents' and children's rights, and maintain the current system in apprehension mode.

THE BEST INTEREST OF THE CHILD PRINCIPLE AND THE LEGISLATIVE EMPHASIS ON THE CHILD'S SAFETY

The best interest of the child is internationally and domestically recognized as the primary consideration that must be given to all actions concerning children.²⁶³ The role of the best interest principle in child welfare legislation is to direct decision-makers to prioritize the best interests of the child above all other factors.

Most child welfare legislation will identify the child's best interest as the paramount consideration guiding all state action. However, despite this broad reliance on the principle of the best interests of the child, the definition and list of factors that must be considered in assessing what is in the best interest of the child diverges between jurisdictions.

The *CFCSA* states that where there is a mention of the best interests of the child in the legislation, decision-makers must consider *all* the factors relevant to what is in a child's best interest, including the child's safety and development, the continuity of care, the quality of the child's relationship with the parent, and the child's heritage.²⁶⁴ For Indigenous children, the best interests of the child assessment must also include the significance of the child being able to practice their culture and participate in their community.²⁶⁵

In addition to the definition of the best interests of the child, the *CFCSA* provides a list of guiding principles to help administer the law. These principles identify the "safety and well-being of children" as the paramount consideration governing the interpretation and administration of the *CFCSA*.²⁶⁶ The principles go on to identify other factors that should guide the law's interpretation including that the "family is the preferred environment for the care and upbringing of children"²⁶⁷ and that Indigenous children have the right to belong to their communities.²⁶⁸

If we apply a rights-based analysis to the language around the best interest of the child, what becomes clear is that the language of the *CFCSA* may be insufficient in ensuring that the rights of Indigenous children are enforced in child protection cases. For instance, international law mandates a definition of the best interests of the child principle that allows decision-makers to balance "*all* the elements necessary to make a decision in a specific situation for a *specific individual child or group of children*."²⁶⁹ The Committee on the Rights of the Child has noted that there is no hierarchy of children's rights²⁷⁰ and that the aim of the best interests of the child principle is to ensure the wholistic development of the child through the full and effective realization of all the rights enumerated in international human rights law.²⁷¹ It has explained that the best interest of the child must focus on realizing the "holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity."²⁷² It has also stated that the best interests of the child must be assessed through the lens of the short-, medium- and long-term impact state action may have on children's development over time.²⁷³

A hierarchy of rights

As a result of the paramountcy that the child's safety and well-being is granted in the *CFCSA*, the provincial framework may be violating the right of the child, which establishes that all their interests are considered and weighted equally by decision-makers. Instead, the law may be giving rise to a hierarchy of elements for decision-makers to consider, with the child's safety and well-being trumping other important rights of the child.

The priority given to the child's safety and well-being over other factors that may make up the child's best interest has been confirmed in the case law. The courts have repeatedly held that the child's safety and entitlement to be protected from harm trump other competing considerations.²⁷⁴ For example, the BC Supreme Court has explicitly stated that the remainder of the guiding principles in the *CFCSA* "are all subservient to [the promotion of the child's safety and well-being]."²⁷⁵

The prioritization of the child's safety and well-being is problematic for a number of reasons. First, as set out above, research is beginning to show that the harm caused from removal can often exceed the harm caused in unsatisfactory home situations.²⁷⁶ This is not a factor supporting abolition of the child welfare system but one that suggests that the system is limited in its ability to assess the types of harms experienced by children. One project participant who had interacted with the child welfare system as a youth, and later as a parent, explained how the assessment of the best interests of the child had failed her and her siblings:

MCFD is meant to be there for the best interests of the child. Was what happened to me for the best interests of the child? Now I have all this trauma and all this undealt with stuff just because I was a ward of the government. And then I pass it on to my kids because I was parented by the government, so I had no one to care for me, so then how do I pass that on to my kids? Then my kids act out because I don't know how to handle this and that because I was never given coping tool,s and then they are digging in my life and saying you're doing this wrong and that wrong. ...

[T]his is what's in the best interest of the children: to be with their mom with their dad, with their twins or siblings. I have no relationship with my family. My mom is dead, my dad is dead, and my brother now suffers from addictions and my sister is in Vancouver's East Hastings. That's my family, so, you know.

— **Storytelling circle participant**

Second, the legislative language builds on a child welfare system that is already hardwired to remove Indigenous children from their homes.²⁷⁷ The child welfare system in BC has its roots in the colonial child protection system that has perpetuated significant harm against Indigenous families under the pretext of promoting the best interests of Indigenous children.²⁷⁸ Furthermore, assessments of what is in Indigenous children's best interests often occur across racialized lines where predominantly white social workers and judges are assessing predominantly Indigenous and racialized families. These decisions are also made in contexts where there are shortages in culturally safe, accessible, and adequate prevention-based programs and supports.



AYAS MEN MEN CHILD AND FAMILY SERVICES

Ayas Men Men Child and Family Services has developed the Nexwniwitway Family Circle Program: Alternative Resolution for Child Protection, a voluntary alternative process to family court.

The program's goal is to re-introduce, re-learn, and reinstate Squamish ways as a regular part of service delivery to Squamish children and families.

The program's objective is to provide families from the Nation who are engaging with MCFD, with a voluntary alternative for planning for the future care of their children.

For more information visit: squamish.net/government/departments/service-delivery/ayas-men-men-child-and-family-services/

Because the legislative, historical, and socio-economic context in which they are made, assessments of the best interests of the child are likely to be short-termed, Euro-centric, and risk-averse.²⁷⁹ The emphasis on the child's safety and well-being only serves to preserve a risk-averse approach that has the potential of flattening what should be a complex and nuanced assessment of what is in a child's best interest. In telling the story of a Māori family's experiences with the child welfare system in New Zealand, Māori scholar Shayne Walker identifies the interests of Indigenous children that are often at odds with the state's understanding of child welfare:

The child in the story above, or her siblings, could have been subject to one or more of those economic and societal efficiencies. In this construction, her Maori identity could have been weighed as less important than the need to remove her from a risk-laden environment. The rights of the child to birth family, identity and ethnic or racial belonging are relegated in favour of the right of a child to have a stable and caring family in which no harm is perpetrated on the child. The "best interests" of the child are decided by people outside the immediate family using information and understandings that emanate from the expert positioning of professionals, their theoretical understandings and policy and agency imperatives.²⁸⁰

Third, the legislation's emphasis on the child's safety and well-being is of concern because it conflicts with the new federal minimum standard set out in *Bill C-92*. In *Bill C-92* the primary factors decision-makers are directed to consider in assessing what is in a child's best interest are the child's "physical, emotional and psychological safety, security and well-being"; the value of the child maintaining a relationship with their parents and the Indigenous community; and the importance of maintaining the child's connection to their culture.²⁸¹ This is a significant shift for a colonial child welfare system that has regularly valued social worker assessments of the child's safety above cultural continuity for Indigenous children. It is essential that the provincial law is amended to reflect this important policy change.

A limited list of factors for decision-makers to consider

In order to ensure that children's rights are given full consideration, the best interests of the child principle should include factors that promote the entirety of the children's rights including the child's right to remain with their family. As set out above, children have the right to not be deprived of their family life unless the state can show that there was a rational connection between the child's best interest and the apprehension. The state must also show that there was no possible way to support the family in staying together. The best interests of the child test should reflect these rights.

In order to ensure that the state's conduct is rationally connected to the child's best interest, the legislation should direct decision-makers to weigh the benefits and harms that can be caused by the apprehension and placement of children in care. As an example, the Nova Scotia *Children and Family Services Act (CFSA)*²⁸² directs social workers to consider the harm that apprehension may cause to the child. It also directs decision-makers to weigh the harms of placing a child in care against those of allowing the child to remain with their family.²⁸³ Project participants identified the weighing of these two harms as a key element of assessing the best interests of the child:

From the social worker's perspective everything is black and white. There's no "How can we be there for you? How can we help you?" It's just rip the kids away and ask questions later. From my perspective of being in care, I was put in a foster home where I was seen as a number and my foster mom used to beat me. They've taken me from a home that is unsafe and put me in a home that is even more unsafe. And ripped all of my brothers and sisters away from me. ... My dad fought for 15 years. He got letters of apology but we were never returned. Because I was in care, my mother in care, my child, does this just follow? When does the nightmare end? — Storytelling circle participant

Lastly, in order to ensure that decision-makers turn their mind to prevention-based programming early on in a child protection investigation, the factors that may weigh in favour of a child being apprehended should be assessed with reference to the supports and services that families can be offered. In other words, factors related to the child's safety and well-being should be assessed as if prevention-based supports have been provided to the family.

As an example, the Alberta *Child, Youth and Family Enhancement Act (CYFEA)*, provides that the best interests of the child assessment requires decision makers to provide children who have been exposed to family violence any intervention service that "supports family members and prevents the need to remove the child from the custody of an abused family member."²⁸⁴ This is a key framing of some of the programming needed to address family violence in the case of the child welfare system and is the approach that many Indigenous community-based family service organizations effectively employ to keep families together. We recommend that similar language is included in the definition of the best interests of the child principle that directs decision-makers to turn their mind to prevention-based supports in assessing the right of the child to be protected from harm.

THE LEGISLATIVE SILENCE ON DISCRIMINATORY NORMS

As noted above, international and constitutional law place a burden on states to ensure that laws and state conduct do not reinforce, perpetuate, or exacerbate discrimination. While states have considerable deference in how they develop child welfare policies, they are bound by the legal obligation to ensure that laws and policies do not allow for deference in decision making to be applied in a discriminatory way. In the context of the child welfare system, the state has a specific obligation to ensure that family separation does not occur due to reasons related exclusively to poverty or disability.

Poverty

The Inter-American Court of Human Rights (IACHR) has expressly noted that poverty and other forms of social exclusion cannot justify the removal of a child from their family.²⁸⁵ The IACHR has expressed concern over the use of the best interests of the child principle to discriminate against parents on grounds such as poverty, disability, and sexual orientation.²⁸⁶

In addition to the recent federal legislation, several provincial jurisdictions have also explicitly prohibited the removal of children for poverty-related reasons. For example, the guiding principles of the Manitoba *CFSA* state that "decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status."²⁸⁷ The legislation specifically prohibits removal of a child "only by reason of their parent or guardian ... lacking the same or similar economic and social advantages as others in Manitoba society."²⁸⁸

The Nova Scotia's *CFSA* recognizes that "social services are essential to prevent or alleviate the social and related economic problems of individuals and families."²⁸⁹ It also designates the duty to the Ministry to "work with other community and social services to prevent, alleviate and remedy the personal, social and economic conditions that might place children and families at risk."²⁹⁰

In order to ensure that children's rights are given full consideration, the best interests of the child principle should include factors that promote the entirety of the children's rights including the child's right to remain with their family.

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Disability

The onus on the state to establish the necessity of apprehension is elevated in cases where the parents or child have a disability. The United Nations Convention on the Rights of Persons with Disabilities places a positive obligation on states to eliminate all forms of discrimination against people with disabilities in all aspects of family life.²⁹¹ It also expressly prohibits family separation on the ground of disability alone²⁹² and places obligations on states to support parents and children with disabilities in the performance of their child-rearing duties.²⁹³

The *CFCSA* provides for some prevention-based and financial supports to be provided to parents raising children with special needs.²⁹⁴ However, the legislation does not address discrimination against parents with disabilities by prohibiting apprehensions on the ground of disability alone, including for caregivers who are engaging in programming to address the impact of their substance use on their ability to care for their children. The legislation is also silent on prevention-based supports for caregivers with disabilities.

Bill C-92 is the first legislation in Canada that expressly prohibits apprehensions based solely on the state of the parent's health. As set out above, this language now forms the minimum standard in BC, as well. However, it is important that the provincial legislation encourages compliance by reflecting this important prohibition. The legislation should go even further to broadly define the term "a parent's health" as encompassing substance use because it is unclear whether courts will apply this interpretation to the new language in *Bill C-92*.

THE ABSENCE OF A ROBUST LEGISLATIVE FRAMEWORK TO SUPPORT PREVENTION-BASED SERVICES

Prevention-based services in the context of child abuse and neglect can be understood as "activities that seek to reduce or deter the incidences of child maltreatment and to promote healthy families and healthy communities."²⁹⁵ Prevention services should be provided on a continuum throughout the family's life cycle so as "to reduce the risks and/or improve the resiliency of children, families and communities."²⁹⁶ The First Nations Child and Family Caring Society advocates for a public health framework centred on prevention, which consists of primary, secondary, and tertiary prevention services.²⁹⁷

- **Primary prevention** programs are directed at the general population and include family strengthening programs that increase the ability of families to access resources and services, parent education programs, and public awareness campaigns.
- **Secondary prevention** programs are directed at families where the chances of maltreatment occurring is identified as being higher than the average population. These include home visiting programs, respite care, family resources centres that offer resources and referrals to low-income families, and parent support groups.
- **Tertiary prevention** programs are directed at families that have already had experiences of abuse or maltreatment. These include around the clock mental health support and support services for children who have been impacted by violence.²⁹⁸

In reviewing the BC *CFCSA*, it becomes evident that the legislative framework focuses on crisis-based supports with few pathways for families to voluntarily access long-term and primary prevention supports. The legislation pays little attention to primary prevention programming, which means that many of the programs and services that can positively impact the social determinants of health for Indigenous people are not linked to a comprehensive legislative framework. Rather, it is up to the Ministry to benevolently fund prevention services, leading to vast disparities in the types and accessibility of services across the province.

Primary prevention supports

The first reference of the ability of the Ministry to provide primary prevention services is set out in part seven of the *CFCSA*, which states that directors may “establish services to assist communities to strengthen their ability to care for and protect their children.”²⁹⁹ There is no mention of the Ministry’s obligation to monitor the accessibility and adequacy of family strengthening programming across the province or to develop plans of action to implement early interventions. Thus, while the Ministry does in fact take on the responsibility of funding various community-based programming, there is little legislative context.

In other provincial legislative frameworks the functions of the Ministry are spelled out at the beginning of the legislation and focus heavily on prevention-based supports. Both the Manitoba *CFSA*³⁰⁰ and the Nova Scotia *CFSA*³⁰¹ set out the agency’s functions at the beginning of the legislation. The list of functions is almost evenly split, with more than half focusing on prevention. These include working with community and social services to alleviate and remedy the socio-economic conditions that place families at risk.

Secondary and tertiary prevention supports

Secondary and tertiary prevention supports, those that are aimed at supporting families that are at risk of engagement with the child protection system, are first mentioned in the guiding principles of the *CFCSA* which state that the “family is the preferred environment for the care and upbringing of children” and that “if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided.”³⁰²

The supports envisioned by the legislation may include services for children, counselling, in-home support, respite care, parenting programs, and services to support children who have witnessed violence.³⁰³ The legislation also explicitly envisions the provision of financial supports through voluntary agreements for families raising children with special needs³⁰⁴ and kinship caregivers.³⁰⁵



ABORIGINAL INFANT DEVELOPMENT PROGRAMS

There are 49 Aboriginal Infant Development Programs (AIDPs) and they are offered in communities across BC, both on and off reserve.

The AIDPs offer a combination of home visiting, outreach and group programming for Indigenous families with young children from 0 to 6 years of age.

Evaluations of the AIDP model have found that AIDPs demonstrate a strong model of culturally safe, early childhood programming rooted in a relationship-centred practice.

For more information visit: aidp.bc.ca



PHOTO: SHARNELLE JENKINS-THOMPSON

While there is a somewhat greater emphasis on secondary and tertiary prevention supports in the legislation, there are significant limits to the viability of these types of supports. First, the provision requiring that the Ministry provide supports to enable families to stay together is found in the guiding principles of the CFCSA rather than as a provision in and of itself. This means that the provision does not explicitly confer a positive obligation on the Ministry to provide supports. Section 2(c) also does not contain a measurement by which to assess whether the Ministry has met its obligation to provide supports to keep families together.

An effective legislative framework should create measurable positive obligations on the Ministry to provide both types of prevention supports. The Nova Scotia CFSA places an obligation on the Minister to “take reasonable measures” to provide services that “are necessary to promote the principle of using the least intrusive means of intervention.”³⁰⁶ The list of services is significantly more comprehensive and includes services aimed at improving the family’s financial situation, housing situation, child care, and homemaking skills.³⁰⁷



MICHIF MENTORSHIP PROGRAM

The Michif Mentorship program developed by Lii Michif Otipemisiwak Family & Community Services (LMO) reaches out to Métis children, youth, and families who may feel “culturally invisible” or disconnected from their unique history, heritage, and culture.

The program’s goal is to expand LMOs circle of care to include the broader Métis community. The program aims to help participants find a greater sense of belonging, purpose, and strength through community-wide events. Additionally, Michif Mentors provide one-to-one support to children, youth, and families.

For information: lmofcs.ca

However, the most effective legislative language can be found in the United States *Indian Child Welfare Act*, which requires judges to be satisfied that “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”³⁰⁸

The lack of an ongoing positive obligation on MCFD to provide prevention supports means that there is no viable avenue for parents to argue that their right and their children’s right to have supports offered to them prior to family separation was violated due to shortages in prevention programming.

Furthermore, the lack of a measurable positive obligation to provide prevention supports directly undermines any efforts by social workers to identify less disruptive measures to placing children in care. In 2009, Pivot Legal Society asked child protection workers formerly employed with MCFD to complete a survey about their experiences implementing the less disruptive measures obligation in child protection cases. One social worker explained the tension between the positive obligation to take less disruptive measures and the availability of programs:

*Looking for less disruptive measures is a very important concept in B.C.’s child welfare legislation. It is grounded in the understanding that by and large children do not do well when they are placed in government care. The principle is rendered meaningless if resources are not put in place to ensure both that support services that could prevent the removal of children from families are available and that social workers have the time to create plans for families that keep them safe and avoid placing children in the foster care system.*³⁰⁹

Therefore, while the guiding principles of the legislation state that available supports should be provided to enable families to stay together, the provisions setting out pathways for prevention supports are unenforceable, time constrained, and form a fairly insignificant portion of the legislation. When compared to the international standard, constitutional obligations, or legislation in other Canadian jurisdictions, it becomes clear that the prevention framework set out in the *CFCSA* falls far short.

2016: BC, MCFD, DAAs and the federal government to work collaboratively to adopt an Indigenous child welfare policy based on prevention, connectedness, reconciliation, and resiliency



STEPS TAKEN:

- **2018:** MCFD identified working with Indigenous partners and communities on new approaches to funding, jurisdiction, and governance as a strategy to reduce the number of Indigenous children and youth in care
- **2018:** MCFD committed to improving their current approach to funding prevention through working closely with the Government of Canada and Indigenous communities

REMAINING:

- BC, MCFD, DAAs, and the federal government to work collaboratively to develop a comprehensive Indigenous child welfare policy that includes an improved funding structure, the availability of adequate and effective primary, secondary, and tertiary prevention-based programs, and clear indicators and outcomes to ensure compliance

A LACK OF ACCOUNTABILITY AROUND A SOCIAL WORKER'S OBLIGATION TO IDENTIFY LESS DISRUPTIVE MEASURES

The obligation on the Ministry to consider less disruptive measures prior to apprehension is one of the most significant prevention-based mechanisms in the *CFCSA*. While the legislation and the supporting regulation and policies require social workers to consider less disruptive measures, the framework is insufficient in upholding the standard of care that is owed to children and families.

The *CFCSA* requires the director to consider less disruptive measures when agreeing to sign a voluntary care agreement with a parent for the transfer of care of the child³¹⁰ and prior to removing a child without a court order³¹¹. The MCFD policy manual further mandates that “unless a child or youth is in immediate danger, all measures less disruptive than removal for protecting the child or youth must be fully explored.”³¹²

In some respects, the language of the legislation regarding less disruptive measures is strong. Notably, the legislation creates a positive obligation on the director to ensure that “no other less disruptive measures” are available to protect the child.³¹³ However, the legislation provides little guidance about the realization of this significant preventative measure, leaving it up to able counsel and knowledgeable judges to hold directors accountable at presentation and protection hearings. This allows for a vastly inconsistent application of what is a legislated positive obligation on the government.³¹⁴

There are a number of ways in which the less disruptive measures provisions of the legislation can be improved to enable consistency in practice. First, the *CFCSA* should provide for an order of preference of placements akin to that set out in *Bill C-92* to ensure that provincial law is in line with the federal minimum standard. *Bill C-92* states that children should ideally remain with their parents; however, where it is not possible to keep families together, priority should be given to placing children with an adult rather than in government care. It also provides a priority list of adults that should be considered beginning with a family member, a member from their Indigenous community, or an adult from another Indigenous community.³¹⁵ While MCFD policy³¹⁶ does direct social workers to identify out-of-care placements in a particular order of priority, Indigenous leaders, including the members of the Working Committee on Native Child Welfare in Alberta, have called for priority placement guidelines to be embedded into legislation to ensure greater application by social workers.³¹⁷

Second, the *CFCSA* must include more explicit language around the obligation of the director to actively continue to consider less disruptive measures in between hearing dates. The legislation does say that “the director may return the child to the parent entitled to custody if ... a less disruptive means of protecting the child becomes available,”³¹⁸ and courts have interpreted this provision as conferring an ongoing positive obligation on the director to “establish that she has been active and diligent in attempting to find other alternatives to removing a child.”³¹⁹ However, there is significant inconsistency in how the Ministry and the courts understand this provision. One mother expressed her frustration with the Ministry’s continued delay to go to court and their response when she asked them why they could not return her daughter between court dates:

I've had overnights with my daughter for months now, since December, since I completed everything. All the programs they've asked. So I asked for an extra overnight at the beginning of the month and they said that they can't make that decision before court, but they've made that type of decision before court before, so why can't they make it now? Why now that I've finished everything can't things move any further?— Storytelling circle participant

In *British Columbia (Director of Family & Child Services) v G. (A.)*³²⁰, the child was apprehended from her mother and kept in care despite the father and the child’s aunt, each of whom had some history with the Ministry, having shown interest in fostering the child immediately following the apprehension. The court, “having heard about the positive involvement of the father, the interest and involvement of the aunt, and



the demonstrated willingness and cooperative attitude of the mother toward improvement of her parenting skills,” found that the removal was unjustified.³²¹

In another case, the court was satisfied with the steps the Ministry had taken to assess whether there were less disruptive measures available. It accepted the Ministry’s explanation that it did not reach out to extended family members because of their previous engagement with the Ministry and the fact that they had not come forward to express an interest in caring for the children.³²² The Ministry told the court that it would have assessed suitability if and when extended family members had come forward.

In fact, a shocking 29% of respondents in the 2009 Pivot study indicated that they could “always” or “usually” fully explore options for less disruptive prior to removal. The concern was most pronounced among Aboriginal service providers, with 63% indicating that there were “rarely or “never” adequate prevention services.³²³ Only 7.1% of respondents said that they always had “the resources, time and support to fully explore options for less disruptive measures before removal of a child.”³²⁴

These examples indicate a need for there to be an explicit legal obligation on the Ministry to actively consider placing the child with extended family members or returning the child to the parent. The federal standard, as set out in *Bill C-92*, requires that a reassessment of available alternative placements is “conducted on an ongoing basis.”³²⁵ The Yellowhead Institute, a First Nation-led research centre, has noted that the federal language does not go far enough in ensuring that decision makers will be proactive in searching for less disruptive options.³²⁶ In turn, it recommends that Canadian legislation mimic the language of the US *Indian Child Welfare Act*, which requires evidence that social workers have made “active efforts” that “proved unsuccessful.”³²⁷

There should also be a requirement that the Ministry respond to alternative proposals by parents, Nations, and community-based organizations that support the parent. The Yellowhead Institute recommends that the legislation include “affidavit evidence from the Indigenous group that there is no available placement.”³²⁸ Most cases where there is a dispute over whether less disruptive measures could be put in place are complicated and require the extended family and community to support the parent. While the MCFD policy manual does set out a list of alternative measures social workers should consider prior to apprehension,³²⁹ this list is insufficient when applied to complicated cases where parents require social workers and community-based supports to think outside the box and to rally around the family.

In the precedent setting case of *LS v British Columbia (Director of Child, Family and Community Services)*,³³⁰ MCFD had apprehended a newborn from their mother immediately after birth despite the Huu-ay-aht First

Nation having proposed less disruptive measures from the start. The court noted the Ministry's complete failure to respond to these viable alternatives and their inconsistent reasons for the removal.

Since the removal date the petitioners have continually sought the return of V.S. to L.S. or alternatively less disruptive parenting and access arrangements so as to not disrupt L.S.'s ability to breastfeed and bond with her baby. They have provided the director with plans including MCFD approved homes at which L.S. and her baby can reside, lists of culturally appropriate supports provided by the Huu-ay-aht First Nations ("HFN") and USMA, the Delegated Aboriginal Agency, daily home visits from HFN family support workers, qualified parenting support — basically, plans for as much supervision as is seen fit. The HFN is supportive of L.S. and is willing to provide whatever support is needed.³³¹

In *Director v LDS and CCC*, the director removed a newborn from her mother who was living in Port Alberni, and placed the child with the paternal grandmother, in Courtenay.³³² This was done despite the First Nation maintaining that they would provide appropriate services and support for the mother. The director failed to respond to the alternatives proposed by the mother and the Nation and instead argued that she had met the obligation in the *CFCSA* because the child had remained out of government care. The court found that rejecting or refusing to consider these alternatives is not an answer. The director must consider "least disruptive means" from the child's perspective and not merely choose an option most convenient to MCFD.³³³

This is arguably the biggest drawback to the current framework around less disruptive measures, especially as it impacts Indigenous families. Indigenous community-based organizations and advocates have shown tremendous commitment and resilience in supporting their families throughout the stages of parenting. There are numerous examples of how communities have rallied together to create safety plans and support systems to prevent separation and enable parenting. However, they are rarely engaged by MCFD prior to apprehension. The service providers that participated in our program expressed frustration with the fact that MCFD was reluctant to engage them.

I think preventative programs are everything, but if someone doesn't see that what they're doing is a problem then you can't fix what you don't think is not working. And I work with a program [...] and we have tried and tried to reach out to the Ministry to encourage at the investigation stage even to have referrals coming to us. And the majority of the referrals are coming from the family services division of the Ministry, which is generally a long-term service for families that have often already had children removed. They've been trying to do what they're told to do, jumping through the hoops, but then the children are not at home. And often at the investigation stage [it's the] first time there has been a report and ample opportunity to provide support and be preventative, and we're still not getting referrals at



HUU-AY-AHT PROTECTED SUPPORT WORKERS

In 2017, the Huu-ay-aht Nation created Protection Support Worker positions. The role of Protection Support Workers is to work proactively to engage families prior to a child protection concern arising.

Protection Support Workers work collaborative to provide wrap-around services for Huu-ay-aht citizens by liaising with child welfare services, developing local family safe homes for children and youth, attending case management and family planning meetings, and providing around the clock support.

For more information visit: huyuayht.org/social-services-project/

that stage. And in my opinion, that's even too late, but at least it's better than waiting for a tragedy to happen and children are traumatized, and families are traumatized. — Storytelling circle participant

What has made good experiences with social workers [is] communication, [it']s a big one. In so many of the situations we've been working with, for their entire pregnancy, that's 9 months of work this family has been doing with us, and then when an issue arises the social worker never bothers to contact us, then there's an investigation happening and everyone is caught off guard. We don't have a voice in vouching for that family and the work they've been doing. When things have gone well, it's the social workers that acknowledge the work they've been doing throughout their pregnancy [and] there's lots of preventative work that's put in place so they can address concerns. Then there's a round-the-table discussion about: "What is a safety plan?"; "How are we going to put supports in place so that they are visible?"; so that's been the number one positive experience. When a social worker keeps us in the loop in a way that we can collaboratively work towards supporting the family. — Storytelling circle participant

Lastly, the legislation should provide direction to courts in assessing whether the least disruptive measures have been considered, attempted, and subsequently turned down by the caregivers. Although many courts have recognized that they have the obligation to review the director's assessment of less disruptive measures, the lack of a legislated requirement to do so results in inconsistency in the court's analysis. Furthermore, courts grant a high level of deference to directors that is not often in line with what is in the best interests of the child. As an example, the Nova Scotia CFSA explicitly states that judges "shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family" have been attempted, refused by the parent, or would be inadequate to protect the child.

The Nova Scotia CFSA goes on to require the court to consider whether it is possible to place the child in the care of a "relative, neighbor or other member of the child's community or extended family" and, in the case of an Aboriginal child, to assess whether it is "possible to place the child within the child's community."³³⁴ This is a particularly useful duty to place on the court because, as set out above, social workers often lack the resources and time to comprehensively canvass alternative placements for children. There is also significant prejudice and stereotyping that occurs when children's extended family has had interactions with the Ministry or the criminal justice system. The reluctance of social workers to see the growth that a caregiver has made came up in each community dialogue, with parents feeling like it was their past, and not their present, that was considered:

But, too often I've seen and heard expressions, verbalizations that reinforce that a family member continues to be seen in the lens of the person who they were rather than the person who they have become. Again, if you see someone through and are reminding them of the actions they took in one point in their life and unable to recognize all the work that's been done and change in person they've become, it's so frequent I see that. I brought people to a Ministry meeting and family member gets constant battering of their history and very little praise for the work they've done. — Storytelling circle participant

Indigenous community-based organizations and advocates have shown tremendous commitment and resilience in supporting their families throughout the stages of parenting.

Discrepancies in the delivery of child welfare services

PHOTO: ARNOLD DOGELIS/UNSPLASH

Across the board, participants felt that the standards of practice varied between regions and even between social workers working in one office.

THE LACK OF A CLEAR PROVINCE-WIDE POLICY and strategic plan for child welfare service delivery to Indigenous families³³⁵ leads to vast discrepancies in the practice approaches and standards of social workers across the province. Participants in our project expressed frustration over the lack of consistency of practice by social workers. Many noted significant divergences between the practice of DAA workers and MCFD workers. Across the board, participants felt that the standards of practice varied between regions and even between social workers working in one office.

INCONSISTENCIES IN SOCIAL WORKER PRACTICE STANDARDS

There are vast discrepancies in the practice standards of social workers across the province. As a front-line support worker explained, there are inconsistencies in how different families are treated and, sometimes, even in the way that one family is treated by different social workers:

Some of the families that I've worked with over the years come from small towns. So I've worked in [five towns]. In the small towns, I hear about the different social work practices. I think, "Why has this family gotten this when they've done that?" But another family says, "Look, my child was removed and I've done all this work and they keep moving the goal posts." And then they keep changing, so that frustration, the differences with social work practices. And each family might have three or four workers.

The other part of when social workers change is that the social worker needs to get to know that family again so they kind of, that family gets delayed in reunification because that social workers says I want to get to know this family and see what they can do but in the meantime the family has spent 12 months doing stuff so it just puts it off that much more, so instead of reading the file they rely on the families to fill them in. The families retell their stories and try to relay the information. So, I find this delays things even further. Or the social worker wants the families to do even more programs. It kind of duplicates the

programs the family may have already done in one way or another. I also find [that] the local social workers refer to programs [...] and [they don't] always work for our families, like the times when it's offered. — **Storytelling circle participant**

The reasons for the discrepancies in practice standards have been explored by numerous reports³³⁶ and are well known to MCFD. First and foremost, staffing issues, including challenges with recruitment and retention, heavy caseloads, and high levels of absences, many related to burn out, result in regular violations of provincial practice standards.³³⁷ A 2015 report by the BC Government and Service Employees' Union, *Closing the Circle*, identified workload issues as the primary factor impacting the ability of DAA social workers to perform their duties.³³⁸

Staffing shortages and heavy workloads also result in inadequate clinical supervision by team leaders, which can mean that overworked and, at times inexperienced, social workers are often making difficult decisions without consulting team leads.³³⁹ Social worker performance is further undermined by a lack of sufficient and accessible training for social workers. The RCY has found that many workers servicing rural and remote BC communities have difficulties accessing training that is available in the Lower Mainland. It also found that DAAs reported a lack of culturally sensitive training and a failure to adapt training to the needs of each Nation and community.³⁴⁰

2015: MCFD commit to take immediate steps to recruit and retain Indigenous social workers, frontline staff, and Indigenous individuals for leadership positions within MCFD



STEPS TAKEN:

- **2016:** MCFD identified increasing Aboriginal staff for positions across the Ministry as a strategy for improving and strengthening services to Aboriginal children, youth, and families
- **2018:** MCFD identified recruiting and retaining social workers and front line staff, including Indigenous staff, as a strategy to improve the Ministry's programs and services and initiated the development of the Indigenous Identities, Rights and Culture training for Ministry staff, in part to support the recruitment and retention of Indigenous staff

REMAINING:

- MCFD should collaborate with Indigenous peoples to create a formal plan for recruitment and retention of Indigenous MCFD staff, with clear principles, goals, milestones, and timelines
- MCFD must review hiring and human resource policies to remove barriers for Indigenous applicants and make workplaces safe for Indigenous employees
- MCFD should consider the creation of specialized, equitably-resourced, Indigenous-specific teams as recommended by Jane Rousseau in *Struggling toward Indigenous representation and service improvement within the BC Ministry of Children and Family Development*
- MCFD must ensure that efforts are embedded at all organizational levels including by training supervisors, providing opportunities for Indigenous managers, and promoting the involvement of Indigenous employees in strategic planning and practice development



PHOTO: JORDAN CONWAY/UNSPLASH

Meanwhile, performance standards are inadequately monitored and remedied. The RCY has noted a lack of a comprehensive program management and accountability framework that includes sufficient data collection, measurable outcomes, and an accountability mechanism for addressing identified deficits.³⁴¹ It also noted that, while MCFD has taken significant steps in the area of quality assurance to improve processes, it has failed to address the quality of service delivery including effective supervision and support for social workers. In its 2015 report, the RCY recommended that “MCFD develop better tracking of Local Service Area and team performance and outcomes related to quality and timeliness of services to children and youth.”³⁴²

Research published by Discourse Media in 2019 noted continued failures by MCFD to meet its own performance standards. The collaborative media project, titled *Spotlight: Child Welfare*, reviewed MCFD’s Child Welfare Practice Audits from 2014 to 2018 and found that the Ministry regularly gave itself “a failing grade on nearly 40 per cent of its critical performance measures.”³⁴³ It is unclear what happens with the information gathered through the audits despite their decades of use by the Ministry to monitor performance. The Ministry explained that once an audit identifies areas of improvement, they canvass the program staff and an action plan is developed and monitored for implementation. However, one long-term staff member shared her concern that once the areas of improvement were discussed with the leadership team, the auditors move on and little else occurs.³⁴⁴ In 2013, the RCY found that the Ministry’s quality assurance efforts had “suffered periods of inattention and inactivity resulting in a rupture in accountability.”³⁴⁵



KTUNAXA KINBASKET CHILD AND FAMILY SERVICES

Ktunaxa Kinbasket Child and Family Services (KKFCS) deliver child protection services to Indigenous children and their families in four geographic areas of the Ktunaxa Nation within the Kootenay Region of British Columbia.

KKFCS has adopted the Signs of Safety model as its practice model for all aspects of its work from prevention to protection.

There are six practice elements of the Signs of Safety Model: understand the position of each family member; find exceptions to the maltreatment; discover family strengths and resources; focus on goals; scale safety and progress; assess willingness, confidence, and capacity.

KKFCS reports that shifting to the Signs of Safety model has resulted in a substantive decrease in the number of children entering care. Furthermore, when children do enter care, KKFCS has noted a substantive decrease in the number of contested court matters. KKFCS has also reported less child protection re-referrals. In place, re-engagement is often family-led.

For more information visit: ktunaxa.org/kkcfs/

2015: Increase the number of child protection workers and address workload issues to ensure workers have time to get to know families and provide the support needed.



STEPS TAKEN:

- **2015:** MCFD implemented a centralized hiring process for social workers, and hired 200 frontline workers
- **2016:** MCFD redesigned services to address workload issues for staff
- **2017:** MCFD developed a central recruitment scheme in an effort to attract workers to underserved and remote areas
- **2018/19:** MCFD began developing and implementing a recruitment and retention strategy in Partnership with the BC Public Service Agency that will target high-need areas of the province

REMAINING:

- MCFD to continue to work with the BC Association of Social Workers to assess and address the impact that recent changes in educational qualifications for child welfare workers is having on the social work profession
- MCFD to consider developing a regulatory body for child welfare workers
- MCFD should include caseloads in their annual audit to assess and continue to monitor the need to hire more social workers

DUE PROCESS VIOLATIONS

The inconsistency in practice means that many social workers are not following policies, including the many procedural rights parents have under the *CFCSA*. One of the main inconsistencies in practice involves the duty to provide caregivers with written reasons for the removal.³⁴⁶ Many project participants noted that they had not received written reasons for their child's removal and, for those that had, the reasons were perceived as inconsistent or insufficient. Others explained that the generality of the written reasons made it difficult for them to understand the risks to the child. In the case of *LS v BC*, the court found that the mother and Nation had tried hard to obtain reasons for the baby's removal, but they had only "received various inconsistent verbal explanations" from the director.³⁴⁷

Participants in our project spoke at length about the failures of social workers to accurately explain the process to them in a way that they could understand. They also spoke about how they often felt that they were not entitled to information about their child. One mother spoke about how it had taken weeks before anyone had contacted her to let her know that her child had attempted suicide. Another mother spoke about feeling like the social worker was trying to trick her into signing an interim order. She explained how difficult the decision to push back felt because she was worried that it could be used against her in court if it appeared that she wasn't cooperating:

Last week they tried to trick me to sign an interim order. They said we just have some papers for you to sign, you know for temporary custody. They wanted me to agree to them putting her somewhere else even though I completed all the work and I should have her home with me. I was, like, I'll look at it but I'm not signing it. I'm so glad I didn't because there's no going back.

If we go to court they can say she just signed it ... when it comes to that kind of stuff they should be explaining it more and definitely be trying to clarify what they want you to do ... there's people that just don't know. Her daddy even signed it because he didn't know. [...]

I don't know if this is going to come back to me. I don't know if they'll say to the court [I] didn't sign the papers. They shouldn't try to sneak things in. They're not explaining it to you. They just say you need to sign it. I'm not agreeing to give her up. I've been fighting to get her home for seven months. I've done everything they've ask me to do and now they're trying to get me to sign this order. It doesn't matter who the person is, they shouldn't be doing that to people. [...] They should be sent to your lawyer and the lawyer should be looking it over. — Storytelling circle participant

Participants also reported regular failures to adhere to legislated timelines. They spoke about how often there were significant delays arising from the social worker's heavy workloads, leave and vacation schedules, and the significant delays caused by the frequent changes in social workers assigned to their files. Almost all parents had experienced delays in being able to visit with their children. Parents spoke about the fact that their visitation was cancelled because there were not enough visitation rooms available at the MCFD office. One parent explained that her visitation was cancelled because the social worker went on vacation. Front-line support workers explained that they often offer their time and organizational space to allow visits to occur but that the Ministry rarely takes them up on it. One parent passionately explained the trauma caused by resource-based delays in access:

For me it's frustrating because they keep switching social workers on me and they say, when I want to see my son, they say the social worker is not in and my son is frustrated and I'm frustrated. Two weeks ago he was going to slash his hands because he is missing me. He said, "I don't know what to do. I don't know who to talk to. I have nobody to talk to." I tell him to be strong. And I say talk to the social worker but the social worker is not there. And I'm scared for his safety. A lot of things are happening in the foster home.

Every time I try to see him they have to have a meeting. I keep telling them, I went through treatments and tried my best and still. I'm trying my best to get my son back and they say "No, no, not until he is 16." I'm just missing my son. That's what gets me upset because they keep switching social workers, one worker and another worker. I've only seen him once since before Christmas and that's not fair. — Storytelling circle participant



CARE COMMITTEES

Care Committees are comprised of volunteers in their own community who advocate for Indigenous community members. Volunteers attend meetings, and receive training on legislation, cultural roles, and responsibilities. Elders also bring significant knowledge to this process.

Care Committees are currently active on the Stó:Lō territory in Chillwack. The Nation has managed to preserve their Care Committee despite funding being cut by the province.

Care Committees have proven vital resources for connecting families engaging with MCFD to the supports that exist in their communities.

A staff member explained that beyond the impact that delays in access have on the parent-child relationship and the family's well-being, a lack of access can also delay reunification:

One of the things I'm currently struggling with a family I'm trying to support is just that access is fiercely limited. And there is no possibility or little consideration to a possible return because, why? Because there hasn't even been enough access to allow a parental capacity report, reunification assessment to be done, and if you know their policy that is supposed to happen every six months. And if a child is under five years old, it's supposed to happen every three months.

It's almost February, last one was done in May of 2018. And yet, yeah, yeah, it's not the family. It's not the child choosing. This is not what the best interests of the child is. I[t's] to have their parents, which they have an obvious attachment to, but again social workers have the power to say no and now we're waiting until court. Then court gets pushed back and gets pushed back. — Storytelling circle participant

2015: MCFD should develop better tracking of the quality and timeliness of support services to children, youth, and families. Ensure accountability by having the assessment be independently done, regularly reported to the Select Standing Committee on Children and Youth, and publicly available



STEPS TAKEN:

- **2015:** MCFD began to redesign services to ensure staff can focus on the needs of families in their communities and expanded practice audits to ensure a high quality of practice (including aggregating analysis on findings from all audits to date to report out on themes and trends)
- **2018/9:** MCFD committed to distributing annual accountability statements to inform communities of funding spent in support of Indigenous children, families, and youth; the number of children in care; and the outcomes achieved in communities

REMAINING:

- MCFD should collaborate with Indigenous partners and communities to develop Indigenous evaluation metrics including indicators of whether funding is meeting the needs of Indigenous children, families, and communities
- MCFD should provide audit material to the Select Standing Committee on Children and Youth and make this information publically available
- MCFD should develop a mechanism for holding regional offices accountable to implement the necessary changes identified through quality assessments
- Project participants recommended that assessments should include the following key indicators:
 - o Whether timelines in the CFCSA are being followed
 - o Whether parents and youth are able to access quality services as needed without delay
 - o Whether obligations in the CFCSA and spirit of the legislation is being followed including whether all less disruptive measures are being considered; and social workers are providing clear, detailed, and written reasons for apprehension that are set out in accessible language
 - o Whether supports are being offered through a family-led approach where the parents have a say in the types of services their family needs

We also heard from parents and front-line support workers that social workers often failed to inform parents of the services that were out there. While one of the principles that guide MCFD's service provisions under the *CFCSA* is that families and children should be informed of the services available to them³⁴⁸ and that services should be integrated wherever possible,³⁴⁹ participants felt that they had to go to great lengths to find support services and that often these services were dispersed rather than being offered by one community-based organization.

There are lots of supports, there are. But you are only accessing supports if you go out on your own and trying to find the supports or by way of a support worker's knowledge, so it's not on display. It's not easy for people to do. It can prove to be difficult especially when you're a single mom and trying to access supports. It's just that the knowledge needs to be there. — Storytelling circle participant

The support programs in the communities have helped me and my family, mostly me, so then I can care for my family. There are a lot of great programs but I had to go and seek them out on my own, there's not a lot of information on programming. You kind of have to get to one organization and they help you branch out to other community organizations. — Storytelling circle participant

SYSTEMIC RACISM

Parents that participated in this project also spoke about how racism impacted social workers' assessment of a caregiver's abilities. Many parents spoke about the fact that social workers seemed to have predisposed opinions about their behaviour and ability to parent. Parents' perceptions are supported by research that demonstrates that bias can impact every aspect of child protection, from referrals to investigations to the accessibility of supports.³⁵⁰ One project participant, who was also studying to become a nurse, explained how discrimination against Indigenous mothers trickles through the entire system:

I think a barrier that I noticed, it's going to tie into nursing a little bit, is with labels. ... [For example], in the pediatrics unit, the nurse did her shift change to the other, talked about the baby and how the baby is doing and then when it came to one of her patients she literally said, "So, we have an Aboriginal mother and the ministry is involved," set the tone, and then she follows up with "Mom is doing really well, though." I'm like, you already set the tone that it's an Aboriginal mom who has the Ministry involved and for me that just ties into this because now it follows mothers around. Whether it's being labelled, it's something they wear, that hardship and burden. Just like removing labels. If you look on paper you may say "Wow, this lady sounds scary" or "This family sounds unsafe" but then you meet them and they just need help, you know. So I think that's a barrier. — Storytelling circle participant



NOWH GUNA TSEH CULTURE TRAINING

The Nowh Guna Tseh Culture Training was developed by the Carrier Sekani Family Services. Recognizing the need for those working with Carrier people to have culturally specific knowledge, this two-day training provides information on the attitudes and skills needed to ensure that child welfare practice is culturally safe and effective.

For more information visit: www.csfs.org/news/81/33/Carrier-Culture-Training-Nowh-Guna-Tseh

The Gitksan scholar and executive director of First Nations Child and Family Caring Society of Canada, Cindy Blackstock, has linked racism in the child protection system to the racist structure that justified colonization:

It's really the whole roots of colonialism, where you create this dichotomy between the savage, that being Indigenous peoples, and the civilized, that being the colonial forces ... if you're a savage, you can't look after the land, and so the civilized have to take over. And if you're a savage, you can't look out for your children, and the civilized have to look after them.³⁵¹

The impact of racism on the rates of Indigenous children in care is evident in the data. Statistics indicate that investigations of maltreatment involving Indigenous families are substantiated at eight times the rate of those for non-Indigenous families.³⁵² In BC, in fiscal year 2017/2018, there were 58,210 reports made to MCFD; 19,446 involving Indigenous children and 38,764 involving non-Indigenous children.³⁵³ This means that, while Indigenous children make up 63% of children in care, only 33% of reports to MCFD involve Indigenous children.³⁵⁴

The impact of stereotyping extends to the types of services and supports that parents are offered by social workers. Front-line support workers explained that many social workers refused to offer financial supports to family members who were taking care of children because of assumptions that family members were

2015: All MCFD employees must receive sufficient, recurrent, and mandatory training that is culturally safe; trauma-informed; and developed in consultation with Indigenous leaders.



STEPS TAKEN:

- **2016:** MCFD delivered cultural competency training as part of the social worker core training for new workers hired and made this training available to more staff, including expanding cultural competency training through online training, experiential learning, and mentorship
- **2018:** MCFD identified prioritizing staff training in key areas as a strategy to improve Ministry services and initiated the development of the Indigenous Identities, Rights and Culture training for Ministry staff

REMAINING:

- MCFD should consult with Indigenous communities to assess the adequacy of training including the frequency and duration of training currently available to MCFD staff. Based on this consultation, training should be made mandatory for all staff on a recurrent basis.
- MCFD should develop measures for assessing whether social workers are up-to-date on the training and effectively putting training into practice.
- Social workers should receive specific training on the communities they are regularly working with which recognizes the experiences of each Nation and community.
- Project participants also expressed the need for training to cover the following topics: gender-based violence; Indigenous rights, identities, and cultures; the role of ongoing colonialism on intergenerational trauma; the potential for communities and families to provide more appropriate solutions to family healing; and the importance of culture and connection to the child's well-being.

trying to benefit from the system. One mother also shared with us the heartbreaking story of a social worker's failure to recognize that she was suffering from postpartum depression:

I had a baby at 15. I was living in semi-dependent living. I got really depressed. I didn't understand this at the time, but I had postpartum and I couldn't get up. Postpartum is, for those of you who don't know, you don't even want to breastfeed your baby. You get really detached. But it was viewed as, because I was not diagnosed as a postpartum person, they just viewed me as, I don't know what they viewed me as, but it wasn't like this woman has postpartum let's help her, this teenager has postpartum, let's help her. — Storytelling circle participant

A TOP-DOWN APPROACH

Perhaps the most significant concern with the lack of a robust quality assurance framework and the absence of any accountability owed to parents is that it has given way to an unhealthy power dynamic between the social worker and the family. This dynamic makes parents' interactions with MCFD traumatizing and adversarial. It also builds distrust in the system that vastly undermines prevention efforts. At the individual level, parents explained feeling like they are at the whim of social workers. One parent explained that even her visits with her son feel like she's in prison:

It's not right for them to control both of us. Like, he wants headphones for me, they say no. Then they say you can call him Sunday or Monday and it's their say not our say. And even when we meet they stand right there listening to our conversation. Like I said, it feels like we're in jail. I've been trying so hard trying to do everything they want and it's just not enough. Like I said, one day, I just want him back. — Storytelling circle participant

The impact of a top-down approach to child welfare that centres power in the hands of the government is to marginalize parents from the process. This is particularly problematic for Indigenous people who view child welfare through a relationship-centered practice where families have a significant say in assessing what they need to overcome the barriers they face. Indigenous Elders and front-line staff explained the downfalls of this type of system and how it can impact a parent's ability to succeed:

It's pretty scary to think that the Ministry is a very, very tough place to fight against and it seems like they hold all the power and it is whatever they say. You have to do what they say and when they say it and they can change the rules whenever they want, and it's their game and you have to play it their way. How do we, as innocent people, change those rules? To what we understand is fairness? They don't seem to recognize fairness at all. They have no feelings towards the child who is being taken from their homes their mothers, disconnected, traumatized. My recollection is, over 20 years... it sounds to me like they're getting more power. [...] to think about how much power they have I don't know where the hope is. — Storytelling circle participant

They use that power and control. And they need to tone it down. ... There are a lot of families that just don't have that voice. They have policies that they have to follow. ... Those people need to return calls. They need to work with you. Yes they have a hard time returning phone calls and it's just frustrating in that end, they come in, they assess

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you, they say there's need for removal, they take all this financing away, then they want you to do all these steps, but then you lose your house, and they can't return your kids until you have a proper house, and it's a cycle that just goes on and on and on. — Storytelling circle participant

Front-line support workers also spoke about the importance of relationships in their communities. They explained the impact that a relationship-centered practice has had on the parents they work with and expressed their wishes for the Ministry to put in place human resource supports and policies that enabled social workers to build long-term relationships with families. In many ways, they saw this as a cornerstone of shifting the system from apprehension to prevention:

It is about relationships, and they do have to build those relationships with our communities and we've experienced such trauma in our communities so it takes time. It is a process. You know, I think about New Year's resolutions. You make one New Year's resolution and how hard is that? Change is really hard but we're expecting families to basically change their whole lives overnight without any supports. Again, that's very unfair. It's the communication. I hear that time and time again. "Oh I got a new social worker, and they lost the case files," and it's that lack of consistency and it's not fair to the families. Families have timelines, so they should live up to the same accountabilities. And it's not fair for the children to not be seeing their families. Change is really hard and you can't do it overnight. — Storytelling circle participant

2016: MCFD to commit to a more collaborative approach with Indigenous communities at the start of a child protection file.



STEPS TAKEN:

- **2017:** MCFD committed to recognizing the right of Indigenous families and communities to have responsibility regarding the upbringing and well-being of their children and engaged in discussions regarding jurisdiction over child welfare with interested and willing Indigenous communities.
- **2018 & 2019:** The province amended the *CFCSA* so First Nations, Métis, and Inuit peoples and communities can be more involved in child welfare decisions, including keeping their children out of care, in their home communities, with extended family members, and connected to their cultures.

REMAINING:

- MCFD must review and update its Practice Directive on Working with Expectant Parents with High Risk Behaviours with respect to considering additional practices and guidelines for social workers to plan with families to help mothers and their infants remain together, including the role of extended family and communities in supporting mothers and infants.
- MCFD must provide parents with the option to have the Indigenous community-based organization of their choice present at meetings and Alternative Dispute Resolution (ADR) processes.
- MCFD must review its policies and practices to increase the use of ADR processes, including changing the definition of family in ADR processes to recognize and honour Indigenous conceptions of family.



PHOTO: SHARNELLE JENKINS-THOMPSON

I guess something is that ... when my mom worked on the mainland there was a client who didn't want anything to do with them, she would slam the door in everyone's face. So they passed her on to my mom and I think she slammed the door in my mom's face also. But my mom went back and back again. Then she went there and the client said, "I'm cleaning fish," and my mom said, "Well, let's do it together." It had nothing to do with her kids or social work. It was just building her relationship. Then, the next time this client wanted to go to the longhouse and didn't have a babysitter ... my mom went with her. — Storytelling circle participant

Parents also shared their fears that this imbalance in power led to social workers approaching their family from a deficits-based perspective rather than a strengths-based perspective. Some project participants explained that they were worried that because of the risk-averse nature of the system, social workers are more likely to "apprehend and questions later." Once the apprehension occurred, the social worker would then search for deficits in the caregiver's ability to parent rather than working with them to identify pathways for improvement. One participant explained:

They take allegations seriously, and I know they have to take them seriously, I get that. But then they dig. "What can we find?" It's not about working with families for change but "How can we make them look inadequate?" so it doesn't seem like they just went and disrupted a family for no reason. They're covering their backs, they're not thinking anymore about what's best for the child. — Storytelling circle participant

This top-down approach counters what we heard from project participants who agreed that communities are best positioned to understand the needs, strengths, and relationships that can support families. In a

project researching best practices for maternal and child health for Indigenous people, participants did not want to endorse one model as “the best” option for meeting the health needs of the community.³⁵⁵ Instead, participants focused on what factors made a model work for them, and a main factor for success was that the program or intervention was developed by community.³⁵⁶ Social work educators in Norway, Western Australia and Aotearoa/New Zealand advocate for a model of child welfare that weaves together the rights under the Convention on the Rights of the Child and community development (CD) principles:

*CD principles require that all people involved in an action or issue are included in the processes used. This is one of the features that sometimes make the choice of CD unattractive to policy-makers or agency administrators as it is necessarily a lengthy process. Furthermore, inclusion is more than consultation; it necessitates taking into account the wishes and concerns of the people and designing actions accordingly. This also makes it an unpredictable process. But at the end of these deliberations are likely to occur actions that, even if they do not meet the expectations at the outset, are decisions which are understood by all, can be accommodated by all and can provide some of what all people would like to have happen.*³⁵⁷

In evaluating the *Touchstones of Hope* model for child welfare, developed by the First Nations Caring Society and implemented in Northern BC, the evaluation team remarked that “[r]econciliation [in child welfare] is not an event but a process of building and strengthening relationships through community participation and engagement.”³⁵⁸ At a practical level, the local community will have an improved understanding of the resources that are needed to support the family including the resources to purpose creative, out-of-the-box solutions.

Supporting localized responses to child welfare also means recognizing that the local culture and history can be part of programs and services. In the Storytelling Circles, both staff and parents alike, spoke about their frustration with workers who were unfamiliar with the local knowledge and how this connected with their parenting approach. Participants also expressed frustration that social workers did not understand or consider their community’s specific experience with colonialism. Staff explained that they had tried to encourage MCFD staff to learn these aspects of a family’s experience but felt that social workers tended to de-prioritize this knowledge.



TOUCHSTONES OF HOPE

The *Touchstones of Hope* initiative is a grassroots movement for reconciliation in Indigenous child welfare systems that was developed by the First Nations Child and Family Caring Society.

The initiative is grounded in the following principles; culture and language, holistic approaches, self-determination, structural interventions and non-discrimination. The goal is to go through a process of re-designing child welfare, based on the realities of each community, so that Indigenous children, youth and families are better served.

From 2008 to 2012, this initiative was implemented with DAAs in Northern BC. The outcomes of this collaboration can be found in Ashley Quinn & Michael Saini (2012). *Touchstones of Hope: Participatory Action Research to Explore Experiences of First Nation Communities in Northern British Columbia, Evaluation Report*. Toronto, ON: Factor-Inwentash Faculty of Social Work, University of Toronto.

THE NEED TO FUND CHILD WELFARE ADVOCACY FOR ALL PARENTS ENGAGING WITH MCFD

A strong theme that came up in the Storytelling Circles was the sense of isolation parents felt navigating the child welfare system. Several participants remarked that they had never been asked about their experience or heard another parent's experiences prior to participating in the Storytelling Circle. In all three communities, participants noted the importance of sharing their story and how this could be a source of strength and advocacy for the future. They also noted the importance of knowing their rights and how this could have helped them advocate on their families behalf. One participant said:

My motto now is: I'm not raising children anymore... I'm not. I'm raising warriors. You better believe that I am going to help them use their voice. And if you see something wrong, it doesn't matter what you feel about the person. You gotta do the right thing. — Storytelling circle participant

Many of the front-line service providers we spoke with emphasized the importance of ensuring that parents know their rights and that they have community-based support workers advocating alongside them. These workers explained that they did advocacy work 'off the side of their desks' and that they often had to find creative loopholes in funding to resource their advocacy work. Front-line support workers also spoke about how, despite having worked with families for years, social workers refused to engage them in the child welfare process.

Despite the resistance many front-line support workers face in advocating on behalf of families, their efforts can often make the difference between a child being placed into care or a family remaining together. The *Best Practice Standards for Child Protection Advocacy* guide, developed in 2014 by the Parents Support Services Society of BC,³⁵⁹ demonstrates the vast array of services and supports child protection advocates can offer to families including:

- Supporting parents to identify issues and explore solutions for their family;
- Assessing and finding appropriate community resources and referrals for the family;
- Ensuring accountability from social workers, lawyers, and community-based resources; and
- Painting a broad picture for the social worker of the obstacles the family faces and the strengths it possesses.

The work of advocating on behalf of families engaging with MCFD is complex and requires dedicated time and resources that will allow for an on-going relationship with the family. One participant explained the importance of young mothers knowing she was on their side. She described her process for helping mothers gain skills to move through the system and how this helped them achieve better outcomes in their interactions with MCFD. She explained that, rather than providing one-off supports, she is often supporting families for years to help them heal and grow.

Families need dedicated advocates in their communities that can support them in navigating the child welfare system. There are promising models across BC — like the Stó:lō Nation Care Committees, that have survived funding cuts — however there are also many gaps in community-based advocates. The province must commit to funding community-based child welfare advocates for all parents engaging with MCFD as a prevention-based measure.

Family violence: Current MCFD approaches and recommendations for change

PHOTO: ELAINE S/UNSPLASH

FAMILY VIOLENCE IS ONE OF THE LEADING RISK FACTORS identified by social workers in child protection investigations.³⁶⁰ Family violence includes all forms of violence directed at someone based on their family ties, including: intimate partner violence, child abuse, elder abuse, and other forms of violence between family members which, in an Indigenous context, extends beyond the nuclear family.³⁶¹ Family violence can take many forms, including physical abuse; sexual abuse; psychological and emotional abuse; intimidation, harassment and coercion; and restrictions of a person's financial or personal autonomy.³⁶² Family violence is highly gendered with women constituting 98% of survivors of spousal sexual assault.³⁶³ Women are also four times more likely than men to experience other forms of family violence, including being denied access to family income.³⁶⁴

The Ministry has extensive guidelines for social workers working with families that are experiencing violence, which are set out in MCFD's *Best Practice Approaches for Child Protection Intervention and Violence Against Women* (Best Practice Approaches).³⁶⁵ These guidelines recognize the risk of harm that family violence can have on the child and the link between the well-being of the child and that of the non-abusive parent — most often the mother.³⁶⁶ Their aim is to “promote an integrated response to mothers impacted by abuse and their children.”³⁶⁷

The Best Practice Approaches set out a detailed methodology for determining an appropriate response for when the child is in need of protection and working with the non-abusive parent to secure the child and parent's safety. They direct social workers to consider supportive interventions including listening to the mother's reasons for remaining with the abusive partner, ensuring the mother has a safety plan, and referring the mother to an anti-violence organization.³⁶⁸ They also direct social workers to offer voluntary support services to non-abusive parents to enhance their ability to protect themselves and their children.³⁶⁹ Additionally, they outline essential requirements for safety planning, which include securing safe housing for the parent and child, providing voluntary advocacy services for the

In cases of intimate partner violence, studies have noted contradictory over- and under-reactions by social workers investigating incidences of violence.



PHOTO: JULIE MARSH/UNSPLASH

non-abusive parent, referring the parent to services that will help them secure financial support, and providing transportation support.³⁷⁰

The Best Practice Approaches were produced in consultation with anti-violence organizations and contain some key strategies for working with families that are experiencing violence. The full implementation of these guidelines could result in a significant improvement in social work practice. However, at it currently stands, there continue to exist significant discrepancies in how these guidelines are implemented across the province.

In cases of intimate partner violence, studies have noted contradictory over- and under-reactions by social workers investigating incidences of violence.³⁷¹ The variations in practice are often related to differences in opinions about the impact of intimate partner violence on children rather than on factors such as the severity of the violence.³⁷² On the one end, under-reactionary practices are grounded in stereotypes that support the idea that intimate partner violence is a private matter between caregivers and should not trigger the state's involvement.³⁷³ Furthermore, mothers who have experienced violence often face disbelief, retribution, or claims that they are fabricating allegations of family violence.³⁷⁴

Social workers that tend to view family violence through this lens are more likely to close child protection files without undertaking an assessment of the nature of the family violence or the likelihood that the violence will escalate.³⁷⁵ In one study with social workers from BC and Manitoba, only one worker noted "assessing the relationship between the parents and trying to determine the extent of the violence and the level of control used by the abusive partner."³⁷⁶

In these cases, parents and children are not provided supports to address the root causes of the violence because the violence is not viewed as a child protection matter. This is the case despite conclusive research on the rate of re-referrals for families experiencing intimate partner violence that indicate that, if left unattended, intimate partner violence often escalates.³⁷⁷

Conversely, over-reactionary practices can result in further stigmatization and alienation of the non-abusive parent. Research indicates that social workers that apply over-reactionary practices are likely to place a high burden on the non-abusive parent to protect the child from the abusive parent.³⁷⁸ In these cases, social workers view parents that do not immediately leave their abusive partners as uncooperative or incapable of protecting their child from harm.³⁷⁹

Research has shown that workers assess "willingness to accept responsibility" predominantly through the conduct of the non-abusive parent³⁸⁰ and that any hesitation to cooperate with the social worker can quickly lead the worker to the conclusion that the child should be removed from the parent's care.³⁸¹ Many

of the mothers who participated in our project had experienced punitive treatment by social workers. These mothers shared stories of how, despite their best efforts to end all communication with their ex-partner, family reunification was delayed because an abusive ex-partner kept initiating contact:

Now it's been, I'm two-and-three-quarter-years clean and I've done everything they wanted and I was just told two days ago that I won't be getting them back. [...] One of the reasons is the contact with my ex. I have been doing everything to end contact with him but because he won't stop, they're holding that over my head. — **Storytelling circle participant**

The focus on the parent's willingness to admit their failings creates an adversarial relationship between the non-abusive parent and the social worker. In one study, mothers who had experienced family violence noted the importance of social workers that could "act like a friend" by listening, demonstrating empathy, and offering supports.³⁸² Social workers' demeanor and approach can further the relationship of distrust that already exists between Indigenous communities and the child welfare system.³⁸³ One participant told us that the social worker's conduct had made her regret speaking honestly:

[The social worker said,] "I can't go in front of the judge and rescind the order if I'm not confident enough that you've cut communications with your ex-husband" because I had but, there were times he could get to me through FB or a friend or something and I'd been honest with the social worker about everything, which was my mistake because they used everything against me. — **Storytelling circle participant**

Another shortfall with the system's response to family violence is that the abusive parent is rarely engaged.³⁸⁴ The Best Practice Approaches provide minimal guidance on how to engage the abusive parent. The guidelines direct social workers to focus their work with the abusive parent on helping the parent take accountability for their actions.³⁸⁵ There is limited direction on how to support the abusive parent. There is also no mention of the impact that colonial policies have had on Indigenous fathers and therefore no mention of the type of programming that these fathers may need to help them parent. The scarcities in programming for fathers was identified by project participants as a significant shortfall of the current child welfare system.



INDIGENOUS DOMESTIC VIOLENCE PREVENTION PROGRAM

The Fraser Region Aboriginal Friendship Centre Association, Indigenous Domestic Violence Prevention Program, engages families impacted by domestic violence with the goal of reducing and alleviating child safety concerns within families. Referrals for the program are made by MCFD, the Provincial Courthouse, the RCMP, and through self-referrals by families.

The program has three components:

- A liaison worker who develops safety plans and provides support to families including locating housing, and advocating on parents' behalf;
- Weekly healing circles and monthly workshops are held on topics relevant to increasing safety and reducing risks; and,
- One-on-one counselling support to women who faced relationship violence, men who have experienced violence or who harm their partners or as couples where safety permits

For more information visit: fracfa.org

While there is no pan-Indigenous approach to addressing family violence, many models focus on working cooperatively with the family to address the violence, including the socio-economic and historical dimensions that underlie the violence.

In practice, social workers cite difficulty with locating abusive partners, safety concerns, and privacy and other legal restrictions as some of the limitations they face in engaging abusive partners.³⁸⁶ Social workers report that, beyond speaking with the parent and referring him to anger management classes, there are few available options to engage abusive parents.³⁸⁷ They also widely report that they have not received training on how to effectively balance the child's safety with the supports and services that parents and the broader family may need.³⁸⁸

These punitive and apprehension-based approaches to child welfare are both ineffective and in violation of parents' and children's rights. As set out in Part 5, states have an obligation to develop preventative programming to support children, women, and families experiencing violence. Conversely, without preventative and financial supports, apprehension of a child from a parent who is experiencing abuse likely amounts to a violation of that parent's constitutional rights.

Participants in our project saw the solutions to family violence as being rooted in efforts that aim to heal the entire family and community. They expressed the view that families that are experiencing violence require intensive support services and programming because situations where there is family violence cannot be quickly resolved.³⁸⁹ This necessitates trained social workers who work collaboratively with the non-abusive parent by recognizing their strengths and the broader socio-economic factors that compound their experiences of violence.³⁹⁰ It also requires the existence of readily available, culturally safe, accessible, and long-term programs that can support each family member individually as well as the entire family unit, including extended family members.³⁹¹ One parent shared her vision for how mothers experiencing violence should be treated:

I think what would be more beneficial for moms, because I was in the same boat, we need support with domestic violence. Instead of saying "If you go back we're going to take your kids," say, "Here's what we're going to do, let us walk with you, let us help you, here's what we're going to do, here's a bus pass to help you to go here, here's some child care so you can take co-dependence [classes], let's build you up instead of smashing you down" because, at that point, most people that have abusive relationships also have addiction issues. So, take away their kids, what do you think is going to happen? [T]hat also goes for the trauma, too. — Storytelling circle participant

Indigenous Nations have always had and continue to have community-driven responses to family violence.³⁹² While there is no pan-Indigenous approach to addressing family violence, many models focus on working cooperatively with the family to address the violence, including the socio-economic and historical dimensions that underlie the violence.³⁹³ Indigenous approaches also aim to keep the family together, engage extended family members, and work with parents individually as well as with the entire family unit.³⁹⁴ Supporting these Indigenous community-led approaches should be at the heart of MCFD efforts to improve outcomes for families experiencing family violence.

Substance use: Current MCFD approaches and recommendations for change

PHOTO: BRYCE EVANS/UNSPLASH

[W]hen I first moved to [city] I made a call to them asking them for help to move my file from [province] to BC. They said they never got a call, there's nothing we can do, we can't offer you anything, we're sorry. A month and a half later when I was crying, I started drinking, because that's the addiction I had and how I learned to cope with things in my life, and they came and removed my kids. I didn't know what I was going to do. I had no support in my life, I had nobody with me. I was living in a basement with three kids at the time and they were there to take my kids. What I wanted from my file was that initial phone call of when I asked for help but they didn't want to focus on that they just wanted to focus on all the things that they had prior to. — Storytelling circle participant

CAREGIVER SUBSTANCE USE is identified as a child protection concern in a significant number of child welfare cases. In one study, MCFD social workers reported that approximately 70% of the mothers with whom they had come into contact were using substances.³⁹⁵ Despite the high prevalence of caregiver substance use as a child protection concern, child welfare files that involve caregivers who use substances continue to have discernibly poorer outcomes than all other child welfare files.³⁹⁶

Participants in our project pointed to a number of aspects of MCFD policy and practice that may be undermining outcomes. First, participants noted feeling like social workers automatically treated parents who use substances as “bad parents” and incapable of caring for their children. Moral conceptions of a “good parent” have in fact shaped how social workers view and respond to the needs of families with caregivers who use criminalized substances.³⁹⁷ Researcher Susan Boyd argues that child welfare policies rely on norms that view poor and racialized women who use criminalized drugs as inherently unfit to parent.³⁹⁸ These practices conflict with evidence that shows that substance use does not inherently make a person an unsuitable parent and parents who use substances employ numerous strategies to mitigate harm.³⁹⁹

Participants in our project pointed to a number of aspects of MCFD policy and practice that may be undermining outcomes.

Parents told us that they were limited in their ability to breastfeed their infants and that they had to advocate with social workers to increase breastfeeding time.

Participants also noted that the way that the child welfare system currently deals with caregivers who are engaging in substance use perpetuates colonial violence. Current child welfare policies and practices continue to take on an individualistic approach that divorces people from the systemic factors that influence the use of substances, such as ongoing colonialism, and the factors that create barriers to ending or reducing the use of substances, such as criminalization.⁴⁰⁰ Rather than applying principles of harm reduction, the current child welfare system is abstinence-focused and penalizes parents that use substances.⁴⁰¹ For example, research demonstrates that social workers often rely on risk-assessment tools that deem the use of substances to be inherently risky.⁴⁰² One mother shared with us that she lost her children the moment the social worker found out about her addiction:

I was struggling with addiction when my husband went to jail. He convinced me to move here and when I was trying to get clean, like, my kids had issues with, um, one of them has behavioural issues and they weren't getting along and I couldn't handle it because I was struggling with addictions, so I called for respite care and um, then they asked me if they could talk to the kids without me being there and I didn't have anything to hide so I said "sure" and that turned into them apprehending my kids. — Storytelling circle participant

Abstinence-based approaches are particularly harmful for infants of parents who use substances. Despite the universally known health benefits of breastfeeding and research indicating that breastfeeding should be supported for infants who have been exposed to substances because it can “delay the onset and decrease the severity of withdrawal symptoms,”⁴⁰³ in BC, there are currently “no policies or guidelines for practitioners in child protection to follow that specifically support the promotion of breastfeeding between a mother and infant when the infant has been removed.”⁴⁰⁴ Though it appears that the Ministry is working on developing policy guidelines to support parents in breastfeeding their babies.

Parents told us that they were limited in their ability to breastfeed their infants and that they had to advocate with social workers to increase breastfeeding time. Front-line support workers identified a need for more supportive housing where parents and infants could reside together. One front-line support worker expressed concern that the impact of separating a newborn baby from their parent was not given due consideration by social workers:

Not really acknowledging the disruption of attachment that happens when infants are removed from the hospital and beyond and then that's something that moms struggle with, a new mom who wants to exclusively breastfeed or whatever the situation is. Things like that aren't being honoured because access is only allowed once per week. So my wish would be for social workers to really honour that and recognize that, you know, we talked about these studies that show how these early experiences impact th[ese] long-term trajectories of, you know, children and adult help. But that [analysis] is not really part of this system of apprehension that happens really early on in a child's life. — Storytelling circle participant

Abstinence-based child welfare practices that rely on stereotypes about the ability of caregivers who use criminalized substances to provide for their children are not only ineffective, they are also harmful.⁴⁰⁵ Apprehension in and of itself is a traumatizing event

that can destabilize a caregiver's health behaviours. Research indicates that the removal of children from their families, with little to no support offered to parents, can have the impact of further entrenching the parent in substance use.⁴⁰⁶ Many parents shared heartbreaking stories of how having their children removed undermined their health behaviours. One parent shared with us that, after having her children removed, she "went back into full blown addiction for about eight months." A front-line support worker also explained the impact she felt apprehension had on new parents:

That mother just gave birth, she's in an institution, she's in a hospital [with staff] looking over her. The baby was returned a week later. However, that doesn't need to happen because just the taking can be traumatizing for the baby, we don't know, and for the mother, she didn't need to have that emotional stress that could put them back into addictions. So sometimes parents want to change but they can't and then we are traumatizing them more. They want to get better and healthier but we're making more trauma happen in their lives and that's hurtful. — Storytelling circle participant

The experiences of parents whose families had been in contact with MCFD because of substance use-related concerns varied vastly. Some parents shared examples of social workers who accompanied them to appointments, did home visits, and encouraged their progress. However, the vast majority of parents told us that they felt that they had little say in the type of programming they should be doing. Others told us that social workers acted like they could have full control over the parent's life once they'd identified substance use as a risk factor. One parent said:

I've been clean for almost three years now. I've done everything they've wanted me to do. I went to every class, I did modified interaction guidance with my child with the behavioural issues where I had a visit with him that was recorded and went over it with the clinician the next week and multiple parenting programs and everything, I've just let them plan my life with visits. — Storytelling circle participant

Parents also expressed feeling a deep sense of isolation. Many felt that the social worker focused on securing the child's safety and left the parent to navigate the system on their own without any logistical support. A front-line support worker said:



SHEWAY PREGNANCY OUTREACH PROGRAM

Sheway is a pregnancy outreach program located in the Downtown Eastside of Vancouver. Grounded in a harm reduction approach, the focus of the program is to help women have healthy pregnancies and positive early parenting experiences.

Sheway aims to provide a stigma-free environment that is more welcoming than other healthcare settings. The program provides health and social service supports to pregnant women and women with infants under eighteen months who are using substances.

An MCFD social worker is embedded as part of the Sheway team. The social worker has delegated authority but does not use it in their work. Instead, the focus remains on supporting clients in working with their MCFD social workers.

For more information visit: vnhs.net/programs/sheway



PHOTO: LEILA BOUJNANE/UNSPLASH

A lot of the time I find that baby is being treated with the best interests of the child and that's the whole social worker's focus and mom is left to navigate the system on their own without any supports. There's not a lot of relationships between social workers and mom, kind of just broken. I find there is not a lot of support of the mom or acknowledgment of the trauma that the mom has gone through after having their child removed. So that's something that moms struggle with, having their child removed, then being left alone to navigate the system. It's frustrating. — Storytelling circle participant

Many parents felt that even when programming was made available it was inaccessible, ineffective, or short-term. Parents' experiences are echoed in the research, which indicates that standard child welfare interventions do not address the underlying trauma, mental health, or systemic factors that impact substance use.⁴⁰⁷ Studies have found that common approaches to addressing caregiver substance use focus on addressing the caregiver's substance use without accounting for the caregiver's alternative needs or the accessibility of the program.⁴⁰⁸ Furthermore, research indicates that programs that focus on "consequences and compliance" are ineffective and may even lead to re-traumatization.⁴⁰⁹

The RCY has found that MCFD appears to have unsatisfactory policies, training, and implementation of best practices in supporting families with caregivers who engage in substance use.⁴¹⁰ The RCY has noted that "[a]ddressing parental substance misuse and its impact on child safety and development is complex and critical work requiring strong clinical knowledge and supervision."⁴¹¹ The RCY has identified the lack of a dedicated ministerial budget for addiction and parental substance use and fragmentations in service delivery as significant barriers to providing effective child welfare services for families with caregivers who engage in the use of criminalized substances.⁴¹²

While these challenges may appear unsurmountable, there are numerous programs that are effectively supporting parents who use substances. These programs share a number of key foundational principles that



FRAFCA INDIGENOUS BIRTH KEEPERS

The FRAFCA Indigenous Birth Keepers program is a culturally rich prenatal program which aims to enhance the skills and knowledge of expecting mothers and fathers. The program matches parents with Birth Keepers and Elders to ground this life event in traditional teachings and relationships.

A doula, or "birth keeper", is offered as a resource to expectant parents. The goals of the program are to support expectant parents by easing stress and helping parents experience the most healthy and loving connection possible from pregnancy to birth.

For more information visit: frafca.org

should be seen as best practices in working with parents who engage in substance use. These programs attempt to reduce the stigma associated with substance use, making parents feel welcome and supported.⁴¹³ They rely on harm-reduction principles, including “meeting people where they are at, offering pragmatic solutions, respecting human rights, and ending drug prohibition.”⁴¹⁴ Effective programs often rely on well-trained interdisciplinary teams that provide a one-stop shop model of care to parents and infants.⁴¹⁵ These types of programs see parenting and recovery as a journey typically focusing on improving the parent-child relationship.⁴¹⁶

The implementation of this type of programming will require MCFD to develop effective policies, improve training for social workers, increase file supervision by substance use experts, and improve collaboration with Indigenous community-based organizations and health authorities.⁴¹⁷ It may also require a fundamental shift in how MCFD and social workers view positive parent-child relationships. One front-line support worker said:

We need to be more creative when planning for families — not all mothers can parent 24/7, 365 days of the year. We can work to keep mothers involved with their children in a way that works for the family. — Service provider

2014: MCFD must work with the Ministry of Health to create a comprehensive addictions strategy and a system of care for parents who are using substances

STEPS TAKEN:

- **2019:** The BC government released, *A Pathway to Hope*, a new 10-year vision for improving mental health and addictions care for people in BC.

REMAINING:

- MCFD should continue to collaborate with the Ministry of Health to design and implement a strategy for parents with addictions. A comprehensive strategy should:
 - o recognize that it is not always in the best interests of the child to remove a child from a parent or guardian with an addiction;
 - o follow a community-based harm reduction framework that focuses on supporting parents in the fulfillment of their roles;
 - o Increase the availability of continuous services that are integrated and able to address interrelated needs;
 - o provide supports to allow parents that relapse to stay together with their children particularly new mothers and babies;
 - o ensure priority access to addictions treatment for parents in cases where there is a risk of apprehension;
 - o increase capacity of existing programs to ensure timely access to services;
 - o address families’ accessibility needs including: transportation, cultural sensitivity and relevance of programming; and timing of services to ensure parents can continue to work and parent; and,
 - o make specialized substance use consultants available to support families to develop timely safety planning including engaging and enabling the support of family members.



Improving financial supports for Indigenous families

PHOTO: KELEN LOEWEN/UNSPLASH

“They want me to do these programs but how do I get there? How are you going to get there financially? Can you pay a sitter? Those were some of the barriers I faced”

AS SET OUT IN THE PART 4 OF THIS REPORT, the vast majority of Indigenous children in care come from families on income assistance.⁴¹⁸ Despite increases in welfare and disability rates as well as the Child Opportunity Benefit, families on income assistance continue to live at approximately 60% of the poverty line.⁴¹⁹ Many caregivers are unable to access even these limited financial supports due to complicated and often inconsistent rules and regulations. Furthermore, families that have had children taken into care lose some of these financial supports for the duration of the time that their children are in care driving them even further into poverty.

MCFD and the BC government have taken some significant steps in increasing the rates of financial supports to families to enable children to stay out of care.⁴²⁰ However, these reforms do not go nearly far enough to meet the socio-economic needs of families that are at risk of having their children apprehended due to poverty-related neglect. Many parents felt that the financial supports they were getting were insufficient. They spoke about how they struggled to make ends meet on social assistance and how this added pressure impacted their ability to address social worker concerns about their parenting. For example one parent shared with us how poverty limited her ability to access all the programming the MCFD social worker required her to attend:

I think just hearing from what people say, one of the barriers for me was financially. Just even getting around, transit and all. Getting from agency to agency, getting there was one of the issues I used to have, unless I had bus pass.

Also with child care, with some of the programs. They want you to do self-care, counselling, but when you have to do self-care and you have children, you have three in school and one at home, what do you do with the one at home? You don't have anybody to watch them for you. ... self-care is something I'm working on now [that my kids are at school] but I see moms with young kids and they're struggling. They want me to do these programs but how do I get there? How are you going to get there financially? Can you pay a sitter? Those were some of the barriers I faced and it was like butting heads with the worker and you're trying to show them that you're trying to commit to this but you're

always faced with something. Or your child gets sick and you're at home and it just feels like a cycle. Those are some of the issues I felt of trying to get somewhere, to and from, and child care, and they want you to focus on you and it was a cycle, which nobody seemed to understand or get unless they were in that situation themselves. — Storytelling circle participant

As set out above, poverty-related apprehensions are in contravention of parents' and children's rights. MCFD has an obligation to address any financial factors that may lead to a child being placed in care. Yet, there is no reference in the CFCSA or MCFD policy about the steps the Ministry is taking to support families that are in need of financial supports. There is also no consolidated policy to address gaps and hurdles that arise around accessing financial services.

The Ministry must review the current provincial benefits framework to assess what changes may need to be made to the CFCSA and its financial policy to ensure that families are in fact benefiting from financial supports. Currently, there remain vast inconsistencies in the accessibility of benefits, which means that the families that are most in need of benefits are falling through the legislative and regulatory cracks. This may also require that MCFD develop its own internal process for ensuring that each family with whom they are in contact is receiving all of their financial entitlements.

MCFD should also develop a province-wide policy for the provision of added financial supports to families in need. This policy must set out a means for bridging the gap between the current social assistance rates and the poverty line to ensure that all families engaging with MCFD are, at minimum, provided with the financial supports they need to be pulled out of poverty.

ENSURING FINANCIAL SUPPORTS ARE NOT REDUCED WHEN A CHILD IS TAKEN INTO CARE

When a child is taken into care, the family's financial supports are reduced to account for the child no longer living in the home. Given that at the current rates, families in BC are already receiving \$15,000-\$18,000 below the poverty line,⁴²¹ any further reduction in assistance is likely to increase poverty-related structural factors that place children at a heightened risk of apprehension. One parent shared her story of how the reduction in social assistance rates impacted her family and how she had to rely on community-based supports to make ends meet:

We all have issues like all other low-income families. We are all struggling. We're trying to make ends meet. We're not sure what we'll feed our family. But where we come from and how we got to where we are today and where we go from here, they need to focus on that. Financially, when they removed my children, they cut social services, assistance, a lot. So there I was renting this \$1000 basement apartment. I had a nice landlord who worked with me and a church that worked with me in the end and when I got my children back, financially [MCFD] did not help me. The church brought \$400 worth of food over because MCFD had to look in my fridge first. But they didn't help with that. They leave you financially crippled. They leave you financially to fail again. — Storytelling circle participant

The reduction in benefits also undermines caregivers' abilities to bring their children home. Parents whose children are removed lose financial benefits and supports that make it harder, if not impossible, for them to be able to get to a position where their children will be returned to them. The reality is that, since income assistance rates are 40% below the poverty line, families are spending every bit of their supports, including the amounts linked to the size of the family unit, on bare necessities including food, shelter, and transportation. When these amounts are reduced by more than 30% — as is the case with income assistance

rates when children are apprehended⁸ — then families have to make even tougher decisions between how they get their kids to school, whether they're able to buy a winter coat, and if they can afford rent.

Perhaps the most significant concern with the current framework is the way in which the delays in reinstating benefits undermine the family's ability to succeed at the critical moment of reunification. Apprehension is a traumatic event for children and parents. This makes supports at reunification essential for families to heal and not get swept back into the revolving door of the child protection system. We heard from many parents who had to wait for months to have their benefits reinstated, including those who took significant steps to advocate for retroactive benefits to the date their child was returned. One parent explained the advocacy she had to do to ensure this significant financial support was returned to her family:

When your children are taken, your child tax goes directly to the Ministry. When my children were returned on the 7th of May, I said "What happened to the rest of the child tax?" ... So then I talked to the office's financial department. I said "You owe me \$74.5" I don't think they were going to return that to me. People don't even know to ask for that. They still owe you the rest of the month of the child tax when they return your kids. But you have to advocate for that. — Storytelling circle participant

MAKING FINANCIAL SUPPORTS WORK FOR EXTENDED FAMILY-BASED CARE

THE EXTENDED FAMILY PROGRAM

The Extended Family Program (EFP) provides funding and supports to family members and people with a strong relationship or cultural connection to the child who are willing and able to care for children. The program also offers an out-of-court avenue for extended family members to be able to care for children through an Extended Family Program Agreement (EFPA).⁴²² Given that Indigenous children aged 14 and younger are two times as likely as non-Indigenous children to live with grandparents,⁴²³ the EFP has the potential to provide much needed financial supports to Indigenous families to support them to stay together.



TILLICUM TRANSITIONAL HOUSING

The Tillicum Lelum Friendship Centre provides transitional housing to new and expectant young Indigenous mothers and their children who are homeless or at risk of homelessness in the Nanaimo region.

The program's goals are to encourage family reintegration, education, health, housing stability, employment, and increased opportunities for social and economic participation.

For more information: tillicumlelum.ca/programs-services/

⁸ Under the EAA, the monthly income assistance support for single families is \$385.00/month. For single parents with one dependent, it is \$525.58/month. See *Employment and Assistance Regulation*, BC Reg 263, 2002 [*Employment and Assistance Regulation*].

The MCFD 2019/20–2021/22 Service Plan identifies increasing and aligning financial assistance for extended family members as a key strategy to further the goal of ensuring that children’s placements are driven by their need and not the extended family member’s financial situation.⁴²⁴ On April 1, 2019, the rates of the EFP were increased to reflect rates provided to foster parents. Alongside the increase in EFP rates, the government also amended the *CFCSA* to enable the child’s Nation or Indigenous community to sign onto an EFPA in addition to a parent or guardian. This amendment recognizes the legality of customary care agreements and removes the program’s two-year time limit for Indigenous kinship caregivers.⁴²⁵

However, the eligibility criteria for this program continue to create systemic barriers for kinship caregivers attempting to access financial and other supports. Statistics indicate that, of the 13,000 children estimated to be living in formal and informal kinship care arrangements across BC, only a fraction — 409 families — are benefiting from the EFP.⁴²⁶

One barrier to accessing the EFP is that social workers fail to inform kinship caregivers of the existence of the program or explain that it is a mechanism to provide families with supports and services. This leaves many kinship caregivers without any access to financial supports, even in cases where the children were placed in kinship care by MCFD.

Another barrier to accessing these supports has to do with the pathway that kinship caregivers are directed to take to secure guardianship. We heard from front-line support workers that many kinship caregivers who come forward expressing an interest in caring for children are told by social workers or their lawyer to apply for guardianship through the *Family Law Act*.⁴²⁷

Once a kinship caregiver is granted a guardianship order under the *FLA*, they are no longer able to access the EFP. Upon receipt of guardianship, caregivers are regarded to be in the same legal position as parents and are no longer legally recognized as being in the unique role of a kinship caregiver. This means that the only supports available to kinship caregivers with legal guardianship are the same financial supports available to all BC parents, which is a fraction of what is offered under the EFP and do not account for the hardship that kinship care families experience. It is essential that MCFD improve the accessibility of this essential program so that kinship care families can access the supports and services necessary to provide for the wellbeing of children in kinship care.



GRANDPARENTS RAISING GRANDCHILDREN SUPPORT CIRCLES

The Grandparents Raising Grandchildren Support Circles are anonymous, confidential, self-help groups offering weekly or bi-weekly meetings and activities organized by trained volunteer facilitators. They are offered by Parent Support Services Society of BC in collaboration with community agencies in the Lower Mainland, the Fraser Valley, in Victoria and mid/northern Vancouver Island, Sunshine Coast, Kelowna, Kamloops and Prince George.

Circles help grandparents and others raising a family member’s child learn positive parenting by providing them with a safe atmosphere where they can share their stories and stresses, learn new skills, receive emotional support, and learn about services and resources.

For more information visit: parentsupportbc.ca/grandparents-raising-grandchildren/

A UNIVERSAL BENEFIT FOR ALL CHILDREN LIVING IN EXTENDED FAMILY-BASED CARE

Prior to the EFP, the Child in the Home of a Relative Program (CIHR) was the main pathway by which children living with extended family members received financial supports. The CIHR stopped accepting applications in March 2010. In its place, MCFD implemented the EFP, which is meant to provide enhanced supports for families in order to encourage family reunification.⁴²⁸ Because the EFP was not meant to replace the CIHR, the vast majority of relatives caring for children through informal arrangements were left without any financial supports. Others, though receiving regular child benefits, are not receiving any financial supports to account for their additional needs as kinship caregivers.

This confusing mix of financial supports for extended family-based care must be resolved. It is essential that, in addition to a program like the EFP that supports family reunification in cases where there is a risk of maltreatment, there exist a universal kinship care benefit that applies to all children living in extended family-based care. Kinship caregivers and children living away from their parents may be coping with the trauma of family separation. They face additional financial and caregiving hardships that most other families do not face and should be provided with the financial support to enable them to thrive.

A universal kinship care benefit should be low-barrier and available to all children living in kinship care. Ideally, there should not be any screening requirements because this would be a benefit conferred to pre-existing families without any reported risk of maltreatment. However, if it is determined that screening is needed, the screening should be as low barrier as possible, accounting for the fact that many families are fearful of engaging MCFD. Willingly engaging MCFD is unrealistic for many families that have experienced the intergenerational trauma of growing up in care, have felt discriminated against by MCFD policy and practice, or are worried about whether their cultural practices or immigration status may place them at risk of having their children apprehended. One option would be to allow for community-based organizations that work closely with the family in the provision of family support to provide a recommendation letter or report setting out the family's needs.

ENSURING CONSISTENCY IN FINANCIAL SUPPORTS FOR EXTENDED FAMILY-BASED CARE

In 2016, Grand Chief Ed John recommended that the Ministry undertake a legislative review and financial policy review to determine the changes that would need to occur to ensure that families under the EFP were receiving the Child Tax Benefit (now called the Canada Child Benefit).

However, in reading the Grand Chief's report, it is clear that the spirit of this recommendation is that all kinship care families have access to the Child Tax Benefit, not just those under the EFP. Currently, kinship caregivers authorized to care for a child through other sections of the *CFCSA* — including those under an interim custody order; a temporary custody order; or a continuing care order — remain ineligible for the Child Tax Benefit.⁴²⁹

MCFD must fulfill the underlying intention of Grand Chief Ed John's recommendation by undertaking a legislative review and financial policy review to ensure that all extended family-based caregivers are receiving the Child Tax Benefit and other benefits for each dependent in their care.

A pathway forward

PHOTO: JACK CHURCH/UNSPLASH

MAKING PREVENTION SERVICES WORK for Indigenous communities necessitates the realization of the inherent right of self-determination for all Indigenous peoples. The families that participated in our project identified the pathway forward as one leading toward self-determination. Parents said that what gave them hope for the future was the idea that Indigenous peoples could regain full control over child welfare services for their children. The Union of BC Indian Chiefs wrote in its pivotal work, *Calling Forth Our Future: Options for the Exercise of Indigenous Peoples' Authority in Child Welfare*, that self-determination is a cornerstone of making child welfare work for Indigenous peoples:

*[F]or Indigenous Peoples to call forth our futures and ensure the survival of our Peoples, our Nations must exercise our jurisdiction and authority to care for and protect our children. This can only be achieved through a process of decolonization grounded in the reinvigoration of our traditional laws and based on our inherent right of Self Determination.*⁴³⁰

There is no one model for achieving and enacting self-determination in Indigenous communities. Each Nation and community will have their own path and process informed by their culture, teachings, spirituality, experiences, relationships, and so on. Baskin has remarked that: “[t]he movement towards Aboriginal self-determination rooted in community-based responsibility, action, ownership and empowerment needs to be respected and supported. Aboriginal communities must have the jurisdiction, legal responsibility, and the financial resources to determine their own local priorities, standards, and organizational capacities [...]”⁴³¹

The child welfare system is intricately woven into the process of self-determination, both as an outcome and as a foundational part of the process. In many Nations, self-determination cannot be truly achieved if the child welfare system continues to remove children from their communities and Nations. Indigenous laws and community well-being are connected to children stepping into their community roles and practices. In exploring the discourse around family violence in Indigenous communities, health scholar Cindy Holmes and interdisciplinary Kwagu't scholar Sarah Hunt/Tłaliłila'ogwa explain that:

Parents said that what gave them hope for the future was the idea that Indigenous peoples could regain full control over child welfare services for their children.

In many Nations, self-determination cannot be truly achieved if the child welfare system continues to remove children from their communities and Nations.

Revitalizing models of family [...] allow for Indigenous systems of governance to thrive. Recognizing the key role that kinship plays in the maintenance of Indigenous community knowledge and legal systems, these broad and interconnected efforts counter logics of dominant family violence discourse which continues to portray Indigenous families as a problem rather than a solution to colonial violence.⁴³²

In the movement towards self-determination this means revitalizing Indigenous legal traditions. Through Indigenous legal systems, Indigenous people take on roles in their community that are specific to their Nation's cultural practices.⁴³³ These roles are informed by family networks and spiritual understanding that comes from the relationship with the land.⁴³⁴ This means that "the increased ability of Indigenous people to take up their familial responsibilities free of various forms of violence [including the removal of children by the State] is necessary for the revitalization of legal systems which serve in the maintenance of healthy, self-determining communities."⁴³⁵

THE RIGHT TO SELF-DETERMINATION AND THE NEED FOR MORE SIGNIFICANT GOVERNMENT ACTION

The inherent right to self-determination held by all Indigenous peoples is well established in international law⁴³⁶ and has also been confirmed in the 1996 report by the Royal Commission.⁴³⁷ The right to self-determination includes the rights of Indigenous peoples to self-govern,⁴³⁸ maintain their own institutions,⁴³⁹ and develop and administer their own economic and social programmes.⁴⁴⁰

In order to give meaning to the right to self-determination, UNDRIP imposes corresponding obligations on state governments. Under UNDRIP, states are required to take concrete actions to allow for Indigenous self-determination which are developed through consultation and cooperation with Indigenous communities.⁴⁴¹ States must also give Indigenous peoples financial and technical assistance so that they may exercise their right to self-determination.⁴⁴²

A pathway for realizing the inherent right to self-determination in the area of child welfare has been laid out by many Indigenous activists, academics, and leaders. For example, in *Calling Forth Our Future*, the Union of BC Indian Chiefs set out a detailed list of recommendations for the federal and provincial governments to undertake in order to follow through with their commitments to self-determination.

The report calls on the federal government to recognize the right of Indigenous peoples to define their own citizenship and to amend Canadian law to enable Nations to exercise their inherent jurisdiction over child welfare for all their members, regardless of whether they are living on or off reserves.⁴⁴³ It also calls on the federal and provincial governments to adhere to the principle of free, prior, and informed consent for all decisions that impact the rights of Indigenous peoples.⁴⁴⁴ Furthermore, the report calls on the federal government to ensure that there is full federal funding for Nations that assume jurisdiction over child welfare.⁴⁴⁵

In recent years, Canada and BC have made significant efforts towards the realization of the right of Indigenous peoples to self-determination in the area of child welfare. Numerous reports have set out detailed overviews of these government efforts.⁴⁴⁶

Generally, federal and provincial efforts toward self-determination in the area of child welfare can be categorized as follows:

1. Provincially, MCFD has made efforts to delegate authority to Aboriginal agencies, Bands and tribal organizations over the delivery of child welfare services.⁴⁴⁷
2. The provincial government has passed legislative amendments that enable the sharing of information and engagement of Indigenous communities early on in a child protection file⁴⁴⁸ and recognize the shared responsibility of Indigenous communities in the well-being of Indigenous children.⁴⁴⁹
3. The provincial and federal governments have entered into agreements with groups such as the Secwépemc Nation and the Métis Nation of British Columbia to begin the process of transferring jurisdiction over child protection to Indigenous communities.⁴⁵⁰ These agreements establish working groups, set out the intentions and responsibilities of the various parties, and address the funding needed to plan for and operationalize full jurisdictional transfer.⁴⁵¹
4. The provincial and federal governments have also entered into modern treaties with some Nations that recognize the rights of Nations to make laws around child and family services that provide for standards comparable to those set out in provincial legislation.⁴⁵²
5. The federal government has passed new federal legislation that sets out a process for the transferring of jurisdiction over child welfare to Indigenous communities.⁴⁵³

As we discuss below, these efforts have had an important impact in the lives of some Indigenous families. However, they fall far short of what is needed for Indigenous peoples to be able to exercise their right to self-determination in the area of child welfare. In fact, there has been slow progress in the two key recommendations that Indigenous leaders have been making for decades: the transfer of unlimited jurisdiction to Nations and the complete funding of child welfare services. Thus, it is for lack of will and not lack of vision that we have not seen far-reaching steps toward the realization of the right of self-determination for Indigenous peoples.

JURISDICTIONAL SHORTFALLS: THE LIMITS OF DELEGATED APPROACHES

At the provincial level, one of the main avenues for working toward self-determination and improving child welfare services for Indigenous children has been the efforts by MCFD to delegate authority over Indigenous child welfare to Indigenous communities by way of delegated Aboriginal authorities (DAA), regional Aboriginal authorities (RAA), or agreements with bands and Nations.

Since the 1980s, there has been a slow transfer of responsibility of child welfare from MCFD to DAAs with the aim of returning “historic responsibilities for child protection and family support back to Aboriginal Communities.”⁴⁵⁴ DAAs have varying degrees of delegation, from being able to provide voluntary family services to Indigenous families (C3) to full child protection duties (C6). There are 23 DAAs across the province; 11 DAAs have full C6 delegations.

DAAs serve approximately 43% of Indigenous children in care, compared to 57% who receive services directly from MCFD.⁴⁵⁵ The framework for assessing who has responsibility over the provision of child welfare services to Indigenous children is complex and based on a combination of factors, including the child’s status under the *Indian Act*, the child’s place of residence, the existence of a DAA in the community, and that DAA’s level of designation.⁴⁵⁶ The means that the delivery of child welfare services to Indigenous children in BC is a complex puzzle of players with varying levels of responsibility, resources, and reach. At any given time, it is difficult to assess who is tasked with providing services and how the funding for those services will be paid.

Both parents and staff said that MCFD creates a hierarchy of systems and supports, forcing community-based organizations to rely on programs that are culturally ineffective and unsafe.

Nevertheless, the above efforts have made a real difference for some Indigenous families. For example, we heard very positive feedback from project participants about the ways that the delegation of authority over the provision of child welfare services to DAA had impacted their ability to access culturally safe and services. We also heard from families that the full delegation of authority over their child protection file to a DAA had resulted in a significant shift in the way their file was handled.

That's what changed for me when I found [DAA]. They were willing to work with me. It was the first time MCFD worked with the families and the kids and the families because that's what's best for the children. To be raised with their moms, with their dads, with their siblings. — Storytelling circle participant

However, many communities and Nations have also expressed concern that the current delegation approach does not go nearly far enough to ensure that communities are leading the way in developing child welfare services that are culturally safe for their children. For example, the Splitsin of the Secwépemc Nation have expressed concern about MCFD's delegated authority model. Chief Wayne Christian has said that jurisdiction is key and anything short of it will likely be ineffective:

It's not about programs and services, because those programs and services have to operate under the provincial realm and that doesn't work. That's the issue, but people don't see that. They just see the money and think that's going to solve everything.

Many front-line service providers expressed similar frustration with the ways in which MCFD imposed metrics of evaluation on their work that showed little consideration for what families found to be important and impactful. This top-down approach counters the fundamental point made by project participants that communities are best positioned to understand the needs of Indigenous families and to develop culturally safe and effective prevention programming.

We heard from front-line support staff that the Ministry is increasingly dictating the types of programming they should provide to families. They said that they felt that colonial mentalities of what is best for children and families continued to guide the types of services MCFD will fund. Both parents and staff said that MCFD creates a hierarchy of systems and supports, forcing community-based organizations to rely on programs that are culturally ineffective and unsafe.

Administratively, too, what I've seen over the years, they're starting to dictate to us how we should provide our services and what we should be offering. Rather than us saying this is what's needed in community. They say you either take it or leave it. You d[o] it this way or [not] at all. We'll find somebody else to do it. Again, there's been so much research and best practices, and it seems like we're taking a lot of steps back and not moving forward. [It's a s]truggle for ... whole communities. I feel for families who are jumping through hoops and not understanding where the light is at the end of the tunnel. They're not getting empowered to get their children back or even see their children. That's not the way society or community should be, it's about connection and attachment and I find the system the total opposite. — Storytelling circle participant

An added concern with the current delegation system is that it may be cultivating a pan-Indigenous approach to child welfare over an approach rooted in community-led solutions. In reviewing MCFD's approach toward the intended implementation of RAAs in BC, the Haida/Tsimshian and Scottish lawyer, Kelly A. MacDonald, critiqued the RAA model for being a "top down" delegated model that "does not appear to provide a great deal of room for Aboriginal approaches to the delivery of services."⁴⁵⁷ The Huu-ay-aht treaty Nation has also expressed concern that their child protection authority under the treaty is limited by existing provincial legislation and standards.⁴⁵⁸

By delegating responsibility to Indigenous front-line staff while maintaining decision-making authority in the hands of non-Indigenous MCFD staff, the system may also be undermining trust between communities and Indigenous service providers. The Union of BC Indian Chiefs in *Calling Forth Our Future* expressed concerns about how the continued delegation of child welfare to Indigenous communities without the transfer of full jurisdiction may be feeding into the ongoing colonial project:

*With the creation of delegated service delivery agencies, the federal and provincial governments have created an Indigenous civil service to deliver government programs and policies. Under delegated models, there is no recognition of Indigenous Peoples inherent jurisdiction, and no reflection of our own laws and traditions. Delegated models represent the imposition of self-administration under foreign laws and ultimately the institutionalization of neo-colonial policies.*⁴⁵⁹

Indigenous social workers working for DAAs with C6 delegation face significant challenges in overcoming the trust deficit that communities have with a Ministry that has been complicit in colonial practices of family separation and assimilation.⁴⁶⁰ Many also find themselves having to fight with the Ministry to apply practices that are rooted in Indigenous worldviews and secure funding for programming that is not prioritized by MCFD. In turn, the alignment with provincial standards has been seen by some as absorbing Indigenous social workers into the sphere of MCFD without a meaningful change in practice and approach.

The Indigenous community-based organizations we had the opportunity to visit explained to us that it is their goal to practice in a value-based manner rooted in Indigenous worldviews including approaches that are relationship-based, family-centred and wholistic. However, they faced challenges in implementing their approach to child welfare because they are bound by a system that is risk-averse and crisis centred. One representative shared with us how their organization overcame this challenge:

We really endeavour to work in a different way. Child welfare work is inherently risky. There's always risks, and some social workers have in the past felt uncomfortable, some of the people that worked here, because they felt that we were leaving children at risk. And for myself [...] it just seems that we're very committed to doing child welfare differently.

And someone was saying if you do the same thing over and over and expect different results that's the definition of insanity. So, we are really trying to do it differently because [of] these unhappy stories we've heard. We're trying to do it differently because we have to balance the risk.

But we feel that having children grow up within their family is always the best, and that's what we really strive for. We know there's circumstances, we've all seen them, when it's not possible, but we, at this agency, really, it's really our goal from the board level onward to minimize that. We want the families to be together if at all possible, and we're trying to think outside the box and different ways of doing that to allow it to happen. — Storytelling circle participant

JURISDICTIONAL SHORTFALLS: THE LIMITS OF MODERN TREATIES AND *BILL C-92*

The federal and provincial governments have also entered into modern treaties with Nations for the transfer of authority of child welfare services. Grand Chief Ed John's report, *Indigenous Resilience, Connectedness and Reunification*, lays out the framework for some of these treaties. While the language varies, typically these treaties will recognize the authority of the First Nations government to make laws with respect to child and family services on reserve so long as those laws are comparable to provincial standards.⁴⁶¹ It will also set out some commitment on behalf of the Nation and the provincial government to reach agreement with respect to child and family services for children who do not reside on reserve.⁴⁶²

Bill C-92 provides for a similar framework for the transfer of jurisdiction to Indigenous people. The new federal legislation provides two ways for an Indigenous group to take control over child protection services in their community. First, an Indigenous group can notify the federal and provincial governments that they intend to implement their own child protection laws and begin exercising their right to self-govern. Under this process, federal and provincial laws will continue to apply, and Indigenous families may be disrupted by MCFD procedures despite having their own laws in place.⁴⁶³

Under a second process, an Indigenous group may enter into an agreement with the federal and provincial governments that sets out the Indigenous group's jurisdiction over child and family services. The three parties will have 12 months to negotiate and finalize the agreement. Following these 12 months, jurisdiction over child protection will be transferred to the Indigenous community regardless of whether an agreement

2005: BC government and MCFD to immediately implement Jordan's Principle, which requires that government provide services to Indigenous children, and address jurisdictional disputes later



STEPS TAKEN:

- **2008:** The province of BC endorsed Jordan's Principle across all government services and a Tripartite Jordan's Principle working group was formed
- **2011:** BC and the federal government signed a formal bilateral agreement aimed at continuing to implement Jordan's Principle
- **2018:** MCFD service plan sets the following as a key objective: that children, youth and families receive timely access to the services they need, including new approaches aimed at improving access to coordinated and culturally safe mental health and wellness for Indigenous children and youth

REMAINING:

- BC government to develop and implement mechanisms for transparency, accountability, and First Nations participation in the implementation of Jordan's Principle
- MCFD to support families in knowing their rights and navigating the complex administrative process
- BC government and MCFD to ensure that children are provided with services while the family navigates the process and develop a consistent mechanism for repaying costs for services provided in the interim



PHOTO: TIM COLE/UNSPLASH

was reached with the federal and provincial governments. Under this process, the community's laws prevail over Canadian law, unless application of the community's laws would contravene the best interests of the child as it is understood in Canadian law.⁴⁶⁴

The limits of the framework in *Bill C-92* are similar to those that exist under modern treaties. The authority of Nations to govern child welfare is limited to the Nation's treaty lands.⁴⁶⁵ However, as a result of colonial policies of displacement, most Nations have children living off of treaty lands. In the case of the Huu-ay-aht Nation, most of its children live in Port Alberni, outside of Huu-ah-ayt treaty lands. This means that the powerful work the Nation is doing in caring for its families is limited in scope because Huu-ah-ayt does not have authority for the child welfare of its children who are living outside treaty lands.⁴⁶⁶

Accordingly, following a treaty or agreement that transfers jurisdiction over child welfare to the Nation, Nations will then also be required to negotiate with provincial governments to gain some form of authority over child welfare for children living outside treaty land.⁴⁶⁷ Nations whose children live across multiple provinces may need to negotiate separately with each province to have some authority over child welfare for all their children.

In BC, the format of these agreements involves MCFD notifying the child's Nation or Indigenous community when one of their children comes into contact with the provincial child welfare system. The child's Nation or community can then become involved in supporting the development of plans of independence for youth and plans of care for children, the provision of support services to the child or youth, and the investigation and assessment of whether the child is in need of protection.⁴⁶⁸ However, because decision-making authority remains with MCFD, the ability of the Nation to impact the child's placement varies depending on the Nation's relationship with each MCFD regional office.

Furthermore, issues of identification may be impacting the ability of communities to track the progress and outcomes of their children and to support children that come into contact with the child welfare system. For example, Métis leaders have shared concerns about ongoing issues of identification for their children, noting that social workers are often ill-equipped to identify their children as Indigenous.⁴⁶⁹ The Métis professor, Dr. Jeannine Carriere, argues that misidentification means that Métis children are less likely to be benefiting from important changes in law and policy that are aimed at cultural continuity for children in care. For example, Carriere notes that Métis children who are not identified as Indigenous are not benefiting from the province's Cultural Safety Planning Policy, which forces MCFD to consider how a child's cultural rights are being met in cases of adoption.⁴⁷⁰

THE SHORTFALLS WITH FEDERAL AND PROVINCIAL FUNDING OF CHILD WELFARE SERVICES FOR INDIGENOUS FAMILIES

In January 2016, the CHRT released its ruling in the hard-fought case of *First Nations Child and Family Caring Society of Canada v Attorney General of Canada* where it held that the federal government had discriminated against Indigenous children in its funding of child welfare services. The CHRT also found that the federal government's funding formulas incentivize the removal of Indigenous children from their families. The federal funding mechanisms force agencies to take children into care to access supports rather than encouraging the use of less disruptive measures and prevention-based services.⁴⁷¹

The CHRT also noted that federal funding was cut substantially with even the slightest decrease of the child population on reserve; there was a lack of funding for workers to canvass informal care arrangements; insufficient cost-of-living adjustments; and a lack of core funding to cover infrastructure costs. Other reports have noted that federal funding models also do not address the systemic factors that result in the overrepresentation of Indigenous children in care, including socio-economic marginalization and the impact of intergenerational trauma.⁴⁷²

The RCY has found that funding mechanisms at the provincial level may mimic some of the discriminatory approaches of the federal funding scheme. In reviewing the Delegation Enabling Agreements (DEA), the contract that sets out the funding arrangements and operation duties of DAAs, the RCY found that some DAAs receive funding based on the number of children in their care, which creates a similar incentive-based framework as the federal funding scheme.⁴⁷³

Parents also expressed concerns that the types of programs that received funding were short-term and crisis-focused. Families' experiences with accessing primary and long-term prevention supports is in line with the problems identified by the CHRT and the RCY reports, with a funding scheme that heavily finances services for children in care. Families shared concerns that they felt programs incentivized the placement of children in care rather than keeping them with their families and communities. The lack of long-term primary prevention supports, was identified by parents as a factor that contributed to the cycle of Ministry engagement:

*Well before I had [organization] in my life, I was trying to help my daughter. I was trying to get someone to look at her and see if she has learning disabilities because I thought she was autistic. Doctors would just look at her, not do any testing, "She's not autistic, nothing you can do." It took until when I got the girls with [organization] that they tested them. They got the help they so desperately needed. So I find it so sad that for some parents, the only way to get the help your kids need is to put them in care because you can't get them the help as a parent, you try and try and try but you can't do it. That's sad, a parent knows their kids the best. They should be able to get their kids tested and all the services they need. I kind of wish parents could access what they need for their kids [out of care]. — **Storytelling circle participant***

*The support programs they have in the community mostly work with you if you're dealing with a crisis, with family services. And then once you have been settled and children have been returned, they stop, there is no need for them to be with you anymore. So that was one of the barriers I had. But coming to this program since my son was about two, it's ongoing, which has been really helpful in the community. Even if your children age out of programs, there are others. If you're alone and you don't know where to go, that's where the barriers start. But it has been helpful to have someone who can support you. A lot of the organizations have good programs but there's only so much they can support you with and then you're done but this one has been there all along. — **Storytelling circle participant***

I know there [are] support programs out there and classes and stuff but, like, as far as being referred to them, my social worker hasn't really mentioned anything that would help me. Because I have a child that has serious behavioural issues and she hasn't referred me to anything that I can go to in a continuing basis. There has been an ADHD program that I can go to [but] it's over. But nothing that I know of that is an ongoing thing that can help me with my child continuously and that's what I've been needing especially with him. — Storytelling circle participant.

The RCY also noted that there is a lack of standardization in how funding is allocated across regions, which results in uneven funding, unpredictable contracts of varying lengths, and a lack of a clear method of assessing the needs of Indigenous communities, particularly small remote communities.⁴⁷⁴ DEAs differ significantly between regions due to the fact that there is no clearly defined method for determining funding needs across the province.⁴⁷⁵ Instead, DEAs are negotiated and signed individually between regional MCFD representatives and DAAs.

2016 — MCFD to commit to developing a new funding structure that ensures equity in programming as a core principle of service delivery and dedicated minimum funding earmarked to meet overall need. MCFD must increase preventative program funding to Indigenous communities for existing or new promising practices. Funding must be equitable, sustained and long-term, and cover the delivery of holistic services as identified by communities.

STEPS TAKEN:

- **2017:** As part of a \$40 million/year permanency funding initiative, MCFD started giving \$14.4 million annually to DAAs to ensure parity in funding for provincially funded DAAs
- **2018:** Ministry committed to improving their current approach to funding prevention by working closely with the Government of Canada and Indigenous communities
- **2018:** Ministry provided \$6.4 million to First Nations and Métis communities and organizations to support prevention and \$10 million to Aboriginal Head Start Programs, which in part provide family bonding and prevention services
- **2019:** Ministry committed to advancing a child focused and family centered approach, in part through strengthening families through practice, culture, and resources

REMAINING:

- MCFD must develop tools to determine the minimum funding that must be earmarked to meet overall need. It should also establish a transparent and accessible framework for reviewing MCFD funding decisions
- MCFD must improve transparency of how it negotiates DEAs and funds DAAs
- The provincial government should, in consultation with Indigenous partners, develop a provincial strategy for funding and delivering prevention-focused child welfare services across the province
- MCFD must continue to work with communities to ensure that they are being adequately funded to provide child welfare services.



This results in inconsistent and inequitable funding among DAAs, with DAA workers expressing concern over the lack of transparency in how DEAs are negotiated.⁴⁷⁶ Workers also noted discrepancies in the funding between DAAs and MCFD offices, particularly with regard to the supplemental supports given to foster parents. The RCY noted that many DAAs “lack the funding to offer their own culturally based foster care training to potential caregivers.”⁴⁷⁷ Funding discrepancies are most felt in rural and remote communities where a significant portion of the funding goes toward addressing accessibility issues.⁴⁷⁸

Despite decades of litigation and advocacy by Indigenous leaders, the rates and framework of federal and provincial funding for child welfare services continue to fall far short of what is required to meet the needs of Indigenous children. Most recently, *Bill C-92* was passed without a clear direction and commitment on the type and level of funding that would accompany the legislation. In fact, the Bill is virtually silent on Canada’s obligation to fund child welfare for First Nations.

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In *First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, the CHRT noted that child welfare services should be “prevention oriented rather than removal orientated” and should be deemed “essential services.”⁴⁷⁹ Thus, what is needed is legislative language that recognizes that child welfare services are essential services and will be compensated as such.⁴⁸⁰ The Yellowhead Institute suggests a framework comparable to that which is set out in sections 3 and 5 of the *Canada Health Act*.⁴⁸¹ These provisions combined identify reasonable access without financial barrier to health services as the primary objective of Canadian health policy and set out the federal government’s commitment to fully compensate provinces for healthcare associated expenses.

The legislation should also require the federal government to enact regulation in consultation with Indigenous peoples that lays out the rules for meeting legal funding requirements. According to Justice Sébastien Grammond of the Federal Court, who, prior to his appointment, was a member of the legal team that represented the complainant in *First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, funding regulation should be drafted in a manner that addresses all aspects of Nations’ funding needs including: core funding, funding for preventative services, adjustments for remoteness, and yearly adjustments for inflation.⁴⁸² He also argues that the legislation should create the role of an independent commissioner to hear complaints concerning the adequacy of the government’s funding formulas and regulations.⁴⁸³

These shortfalls in the funding of child welfare services for Indigenous peoples pose a threat to self-determination and the well-being of Indigenous communities, families, and children. Cindy Blackstock has expressed concern that shifting jurisdiction to Indigenous communities without protections around equitable funding will lead to “case-by-case” negotiations that give rise to inequality in the provision of services to Indigenous children.⁴⁸⁴ If Nations are not resourced to provide adequate services, they will not be in a position to effectively exercise full jurisdiction over child welfare.⁴⁸⁵ Given the findings of the CHRT, anything short of a binding commitment by the federal government to provide sustainable and sufficient funding to Nations to cover the full cost of child welfare services is bound to undermine the inherent right of self-determination.

Despite decades of litigation and advocacy by Indigenous leaders, the rates and framework of federal and provincial funding for child welfare services continue to fall far short of what is required to meet the needs of Indigenous children.

A photograph of a wooden bridge crossing a stream in a forest. The bridge is made of dark wood and has railings. The stream is flowing through the forest, and there are many trees and ferns. The lighting is natural, suggesting a sunny day.

Conclusion and Recommendations

PHOTO: YANN ALLEGRE/UNSPLASH

The intention of this report is to amplify the voices of Indigenous families who have had prior or ongoing engagement with the child welfare system.

THERE IS AN URGENT NEED to shift the child welfare system from being apprehension-based to prevention-focused. Indigenous leaders, activists, and families have been advocating for transformative change for decades. The intention of this report is to amplify the voices of Indigenous families who have had prior or ongoing engagement with the child welfare system. We hope that their experiences and knowledge will urge decision-makers to undertake systemic efforts to improve the ability of the current child welfare system to support families in remaining together. In collaboration with project participants, we have compiled the following list of recommendations directed at the BC government and MCFD:

Recommendations for systemic reform:

1. The BC government should work with Indigenous communities to undertake a comprehensive and transparent assessment of the steps that need to be taken to address the disparities in the social determinants of health for Indigenous peoples in BC.
2. The BC government should undertake a review of the current breakdown in ministerial responsibilities over primary, secondary, and tertiary prevention supports to assess where responsibilities lie for prevention services. It should then amend legislation and mandates, and reallocate funding to fill the current gaps in service provision.
3. The BC Human Rights Commission should undertake a review/inquiry into MCFD culture, training, policies, procedures, practices, and accountability mechanisms to assess whether MCFD policy and practice is in line with the *Human Rights Code*.

Recommendations for legislative reform:

1. MCFD should undertake a comprehensive legislative review of the *CFCSA* in order to bring the provincial child welfare standards in line with the federal minimum standards. It is essential that Indigenous communities and Nations are adequately consulted in the review process.
2. MCFD should amend the guiding principles of the *CFCSA* to ensure that children's rights are not viewed as hierarchical but interdependent. The guiding principles should reflect the holistic nature of children's rights including the right of the child to maintain relationships with their family and community, the child's right to support services, and the importance of maintaining the child's relationship to their culture.
3. MCFD should amend the best interests of the child principle set out in the *CFCSA* to ensure that decision-makers turn their mind to the entirety of children's right. The best interests of the child principle should at minimum direct decision-makers to:
 - (a) consider the trauma caused by apprehension;
 - (b) weigh the risks to the child's well-being if the child remains or is returned with the family against the risks to the child's well-being that is caused by the removal and placement of the child in care;
 - i. assessment of the risks to the child if the child remains or is returned to the family must be done with due consideration of all the supports and services that can be provided to the family; and,
 - (c) consider the impact of family violence on the child and provide all the necessary services to the family in a manner that supports family members and prevents the need to remove the child from the custody of an abused family member.
4. MCFD should amend the *CFCSA* to reflect the right of the child to not be separated from their family by reason only of their parent or guardian:
 - (a) lacking the same or similar economic and social advantages as others in BC society;
 - (b) engaging in substance use or coping with addiction when a parent is actively pursuing or participating in addiction services; or
 - (c) having a disability.
5. MCFD should, in consultation with Indigenous communities and Nations, amend legislated timelines to allow for an opportunity to develop creative family plans;
6. MCFD should review the legislation to assess how the legislation could support a more accountable and robust legal framework for prevention-based supports including by:
 - (a) Adding a comprehensive list of functions for MCFD at the beginning of the legislation which includes:
 - i. working with community and social services to alleviate and remedy the socio-economic conditions that place families at risk;
 - ii. developing and providing services and supports before and after intervention;
 - iii. proactively identifying groups of children the recognition and realization of whose rights may require MCFD to undertake special measures and develop special programming

MCFD should undertake a comprehensive legislative review of the *CFCSA* in order to bring the provincial child welfare standards in line with the federal minimum standards. It is essential that Indigenous communities and Nations are adequately consulted in the review process.

- (b) Replace the reference of prevention services in section 2(c) of the *CFCSA*, with a legislative provision that places a binding and measurable obligation on the Ministry to provide supports to keep families together who are at risk of having their children apprehended. The provision should place a positive obligation on the Ministry to take active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the child's family. The courts must then be satisfied that these active efforts proved unsuccessful in keeping the family together.
 - (c) Expand the list of supports under section 5 to include:
 - i. improving the family's financial situation;
 - ii. improving the family's housing situation;
 - iii. improving parenting skills;
 - iv. improving child-care and child-rearing capabilities;
 - v. improving homemaking skills;
 - vi. drug or alcohol treatment and rehabilitation;
 - vii. providing child care;
 - viii. mediation of disputes;
 - ix. self-help and empowerment of parents whose children have been, are or may be in need of protective services; and,
 - x. transition supports for families who have just had a child apprehended or returned
7. Strengthen the legal duty of the Ministry to consider less disruptive measures by:
- (a) Adding legislative language in the *CFCSA* that explicitly directs the Ministry to actively and diligently pursue and implement less disruptive measures on an ongoing basis;
 - (b) Including a non-exhaustive list of less disruptive measures that the Ministry must consider on an ongoing basis including an order of preference of placements akin to that set out in section 16 of *Bill C-92*;
 - (c) Adding legislative language in the *CFCSA* that directs the Ministry to establish in court that social workers have made active efforts that proved unsuccessful to return the child to their family;
 - (d) Where parents and Nations have identified less disruptive measures, the *CFCSA* should direct the Ministry to provide prompt, clear, and written reasons for rejecting these less disruptive measures.
8. Increase court oversight of MCFD's efforts to identify less disruptive measures by adding the following provisions to the *CFCSA*:
- (a) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less disruptive measures, including services to promote the integrity of the family, have been attempted, refused by the parent or would be inadequate to protect the child;
 - (b) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order, consider whether it is possible to place the child with a person or group in accordance with the order of preference of placements.

Recommendations for improving financial supports:

1. The provincial government must immediately raise welfare and disability rates to the Market Basket Measure (MBM), index them to the cost of living, and remove arbitrary barriers.
2. In the meantime, the BC government and MCFD should bridge the gap between the current welfare and disability rates and the MBM for all families that are at risk of having children apprehended by MCFD.
3. The BC government should amend legislation to ensure that there is no reduction of benefits for families when a child is temporarily taken into care so that income supports and housing can be maintained while parents are working to bring their children home.
4. MCFD should develop a policy for supporting each family with whom it comes into contact to secure all the available provincial and federal benefits. This may require training social workers to understand social assistance frameworks or creating a position within MCFD for a social assistance support worker that can help families secure all the benefits to which they are entitled.
5. MCFD should develop a plain-language fact sheet for kinship caregivers that sets out the pathways available to them under the *CFCSA* and *FLA*. Social workers must be required to provide this information sheet to all caregivers that could qualify for the EFP.
6. MCFD must advocate with the provincial government for the creation of a universal kinship caregiver benefit that is provided to all families in kinship care. This should apply to all children living in kinship care including families in which kinship caregivers have been granted guardianship orders under the *FLA*.
7. MCFD should undertake a legislative review and financial policy review to ensure that all kinship caregivers are receiving the Child Tax Benefit and other benefits for each dependent in their care.

Recommendations for improving prevention-based efforts:

1. The BC government and MCFD should increase preventative program funding to Indigenous communities for existing or new promising practices. Funding must be equitable, sustained and long-term, and cover the delivery of holistic services as identified by communities. Funding should cover services such as:
 - Human resource needs of community-based groups including issues with retention, burn out, inequity in pay scales etc.
 - In-home support
 - Pregnancy support and baby welcoming programs
 - Transition support programming for families after children have been removed or upon being returned home
 - Supports for parents whose children are in care
 - Provide in-home support immediately as a tool to prevent removal
 - Funding for cultural programming that is consistent and frequent
2. The BC government and MCFD must fund and resource supportive housing alternatives where parents and children who are at risk of harm can live. These homes should be specifically qualified to address complex family circumstances. Creative housing solutions where caregivers and children can stay together while receiving wrap-around support are especially needed in remote areas.

The BC government and MCFD should increase preventative program funding to Indigenous communities for existing or new promising practices.

3. The BC government and MCFD should work with Indigenous communities to fund and develop comprehensive services for families that are experiencing violence including services for abusive men and services for the entire family. These services should address intersecting needs including historical trauma, parenting skills, and substance use.
4. MCFD should work with community-based groups to develop safety and risk assessment tools that are adapted in order to recognize the unique cultures and ways of life of Indigenous communities across BC.
5. For expecting parents, it is important to have an advocate or family support worker do initial visits to enhance the chances for engagement with services prior to birth. MCFD must work with community-based organizations that have developed best practices in engaging expectant parents to assess how the Ministry can develop a pathway whereby expectant parents could voluntarily seek prevention supports prior to their child's birth.
6. Frequent family visits and family reunification must always be the top priority and never delayed due to shortages in MCFD resources. MCFD should ensure that staff understand the need to prioritize frequent family visits and, where feasible, work with community-based organizations that are supporting the parent to ease access.
7. Children in temporary care must be kept within an accessible distance to the parent with due consideration to the parents' circumstances (financial etc). Where a child needs to be close to their home nation, parents must be given financial supports to ensure that there is adequate access to maintain family connection.
8. MCFD should work with community-based organizations to assess creative ways that social workers could be placed directly within community including mechanisms that would need to be put in place to ensure this does not undermine the relationship of trust between community and families (i.e this may include frontline workers focusing only on prevention and no apprehension).
9. MCFD must work with the Ministry of Public Safety & Solicitor General to develop a comprehensive strategy for parents that are incarcerated or on parole.
 - The strategy must recognize that it is not always in the best interests of the child to remove a child from a parent or guardian that has had engagement with the criminal justice system.
 - There must be supports to allow parents to have access with children in prison and while on parole. For example, the government should re-open the mother and baby unit in prisons.
 - The policy should set out a strategy for expediting criminal checks so that no child's placement is delayed because of a criminal record check.



PHOTO: NATHAN DUMLAO/UNSPLASH

Recommendations for improving advocacy for parents and Indigenous communities:

1. The BC government and MCFD must ensure that each parent engaging with MCFD has access to a trained community-based support worker to help them navigate the child welfare process. Community-based support workers must be trained in collaborative, trauma-informed, and culturally safe practices.
2. MCFD should work collaboratively with Indigenous communities to develop training and tools to support Indigenous peoples and communities to understand their rights regarding child welfare.
3. The BC government and MCFD to fund child and family advocates in each community-based organization and Nation as a support service to families and the broader community.
4. MCFD to ensure that the Indigenous community supporting the parent has been contacted and assisted to participate in the process where consent has been given by the parent.
5. MCFD to create a comprehensive list of region-specific services and supports that can be easily accessed by families and front-line support workers.

These recommendations are only some of those shared by project participants. Throughout our community consultation process we heard of many other areas of the system that need to be changed. While we were limited in our ability to include everything that we heard during our consultation process, we think it important to highlight these as areas for potential future investigation:

- **Breaking down ministerial siloes:** The reasons for the over-representation of Indigenous children in care extend beyond MCFD. Parents spoke of many other areas, including education, health care, and the criminal justice system, that impact their families' experiences with the child welfare system.
- **Improving relationships between parents and foster parents:** The parents who participated in our project, including foster parents, identified a sentiment of distrust between parents and foster parents. They also identified a need to improve the relationship and re-envision the role of foster parents in the child welfare system. Parents also expressed concern about the standard of care applied to foster parents and the need to support Indigenous families and communities to take on the roles of foster caregivers.
- **Envisioning success:** The parents who participated in our project noted the significance of bringing all stakeholders together to collaboratively develop a vision for the future of child welfare in BC.

APPENDIX 1

Storytelling Circle Dialogue Outline

PROPOSED PROCESS

Partner with organizations that already host groups where families come together to support parents and/or caregivers.

MEETING #1 — PROJECT INTRODUCTION

The first meeting will be to introduce West Coast LEAF, Project Staff and give a Project Overview. Share the questions we will be discussing and answer any questions. We will go over confidentiality and share examples of how personal stories have gone into West Coast LEAF projects in the past. We will leave a sign-up sheet with the Organization Program Staff, as well as contact information for Project Staff. There will be a maximum of 10 people for the dialogue.

We would also meet with the Program Staff and Elder/Knowledge Keeper that would be in the group with us to go over set up and process and protocols we should adhere to.

Proposed Agenda (2.5 hours including meal)	
45 minutes	Family Meal for all Program participants with project staff
15 minutes	People who are participating in the dialogue settle children into childminding
15 minutes	Open Dialogue with prayer/grounding words/song from Elder/Knowledge Keeper
25 mins	Introductions – Who, where, what drew you to this project?
30 mins	Who is WCL Project Overview: Goals, deliverables and objectives Project Overview: our process, questions we are asking and that we are coming back in the spring to review data together Questions?
10	Go over consent form Sign and collect consent forms
10 mins	Close with thank yous Close with final prayer from knowledge keeper/Elder
5 mins	See everyone in 2 weeks!
	Clean up!

MEETING #2 — STORYTELLING CIRCLE

Proposed Agenda for the dialogue - 3 hours (including meal)	
45 minutes	Family Meal for all Program participants with project staff
15 minutes	People are participating in the dialogue settle children into childminding Offer participants opportunity to select gifts from gift table as they settle in and get name tags <i>[this can also occur at the end depending on group protocol]</i> Have participants fill out consent form and cheque information [if not yet done so]
15 minutes	Open Dialogue with prayer/grounding words/song from Elder/Knowledge Keeper
10 mins	Introduce Process for Circle and go over confidentiality and consent Organization Program Staff introduce what supports are available after the dialogue
60 mins	Introduce the 3 dialogue questions Allow people to answer in whatever order they choose, starting with one and then moving along in circle to try and go through the circle 3 times
15 mins	Close with thank yous Close with final prayer from knowledge keeper/Elder
5 mins	Remind people cheques will take a 4-6 weeks Remind people we will be back in 2019 to share findings and discuss ideas

Storytelling circle guiding questions for dialogue

- Question 1: What do preventive programs, resources and services look like to keep your family well? Were you able to find what you needed? If yes, where are these supports?
- Question 2: In trying to find these supports for your family have you not been able to access them? Were there barriers stopping you?
- Question 3: What do social workers need to know about working in your community?
- Question 4: If you have had positive experiences with social workers, what made them good experiences?

MEETING #3 — SHARING FINDINGS AND DEVELOPING RECOMMENDATIONS

Proposed Agenda for the dialogue - 3 hours (including meal)	
10 mins	Have participants sign in Welcome back
30 mins	Family Meal for all Program participants with project staff Meal Blessing
10 mins	Open Dialogue with prayer/grounding words/song from Elder/Knowledge Keeper
15 mins	Intro Circle and Check-in - How has everyone been?
10 minutes	Intro to Activities and goals for the afternoon —“Policy Recommendation Activities”
45 mins	Cycle 1
40 mins	Cycle 2

15 mins	Closing Circle with thank yous Close with final prayer from knowledge keeper/Elder
5 mins	Let people know next steps to report and publicizing recommendations
	Clean up!
Policy Recommendation Activities	
Set Up 5 mins for intro	On large posters/flipchart the 9 key themes are written on each one Under each one is the grouped in theme and some examples from the data Also included is any relevant MCFD policy or related recommendations from other reports i.e. RCY Need sticky notes and dot stickers Blank flipchart Group by 3 and set up in 3 different corners of the room Intro activity
Cycle 1 45 mins	REVIEW THE DATA Participants break into small groups Small group facilitator reads out data themes under each main heading After reading out each section asks the following questions and scribes on flipchart: – Does this seem accurate of your experiences in community? – Is there anything that doesn't seem right, that we should relook at? – What stands out to you as most important? Capture feedback directly onto sheets CAPTURE RECOMMENDATIONS THAT BEGIN TO DEVELOP On blank flipchart with the 3 headings written on, begin to capture the suggestions and recommendations that arise as people respond to the data Each group will have 15 minutes before rotating to the next
Cycle 2 40 mins	REVIEWING RECOMMENDATIONS Under each of the 9 themes are any related MCFD policy/legislation and any prior report recommendations Facilitator will go through each section and related pieces asking and writing down: – how do we think this would work in your community? – What are the benefits? Challenges? Participants will each have colour coded stickers to place on the recommendations/policy/leg they like, are unsure of, do not like DEVELOPING NEW RECOMMENDATIONS Facilitators will ask: – what actions are missing from government, social workers, organization? – What resources, supports would you like to see in your community? – What practices and policies do you think social workers, lawyers and judges could/should be working from? Each group will have 13 minutes before rotating to the next
Final Review During Clean Up	Participants will have time to move around the room and cast final votes on recommendations they like, unsure of, don't like

APPENDIX 2

Information Gathering Survey – Frontline and Management Staff

SURVEY PREAMBLE

Contact information

1. Name (first and last)
2. Contact (email and phone number)
3. Mailing Address for honorarium cheque

Organization information

4. Organization Name
5. Where is your organization-based?
6. In your community are there fully delegated (C6) Indigenous child welfare services? If yes, which agency is in your community?
C3 C4 C5 C6
7. What type of services does your organization provide to families? (please select all that apply)
 - a) Family support through case management (such as one-on-one meetings, home visits)
 - b) Family support through group work (such as parenting groups, family drop-ins, peer mentor groups, cultural nights)
 - c) Family/Parenting Education and life skills classes/groups
 - d) Family support through counselling
 - e) Family preservation and/or Crisis Intervention
 - f) Family case planning
 - g) Investigation into child safety concerns
 - h) Removing children and placing into care
 - i) Permanency Planning
 - j) Screening and supporting foster placements for children and youth
 - k) Family Reunification
 - l) Guardianship for children and youth
 - m) FASD Keyworkers
 - n) Early childhood development services
 - o) Youth Aging out of care services
 - p) Elders in Residence
 - q) Family Advocates
 - r) Disability services for children, youth and adults
 - s) Other, please describe
8. What demographic of families does your organization serve (such as Indigenous families, young parent, immigrant families, grandparents raising grandchildren, low-income families, families in a geographic specific location, caregivers involved in sex work, caregivers with disabilities)? Please describe:

Organizational practices and relations

9. If your organization works with Indigenous families, does your organization provide services that follow an Indigenous worldview, model, laws and/or practices (such as Medicine Wheel Teachings, Wet'suwet'en Holistic Wellness Conceptual Framework etc.)? If yes, please describe as appropriate:
10. If your organization is working and providing services from an Indigenous worldview can you please describe how and if this is making a change or impact on the families receiving services:
11. Does your organization adhere to a Code of Ethics? If yes, please describe how they are implemented with staff:
12. If your agency investigates child safety concerns, what model and/or practice(s) does your agency follow to assess risk? Please describe:
13. If you are a non-delegated agency (or do not have full delegation), what is your relationship like with your local delegated agency and/or MCFD in responding to child safety concerns? Please describe:
14. If you are a non-delegated agency (or do not have full delegation), what is your relationship like with your local delegated agency and/or MCFD in collaborating and supporting families in accessing preventative services to prevent apprehension of children? Please describe:

Prevention services

15. What do successful prevention-based services and programs with families look like in your organization and community (poverty alleviation programs, parenting education, cultural programs, access to elders etc.)? How do you connect families with these services? Please describe:
16. What barriers exist in your organization and community to provide prevention-based services and programs (funding, lack of staff, bias, lack of cultural understanding, policies, legislation etc.)? Please describe:
17. What would address the barriers to providing prevention-based services in your community? Please describe:
18. Is your organization part of implementing child safety/protection (family case planning for example) that is informed and grounded in the local communities' protocols? Why or why not?

Implementing best practices

19. Has your organization implemented any changes (such as policies, structures etc.) based on recommendations from "Indigenous Resilience, Connectedness and Reunification—from Root Causes to Root Solutions," (2016)? If yes, what changes have been implemented? If no, please describe why:
20. Has your organization implemented any changes (such as policies, structures etc.) based on recommendations on reports from the Representative of Children and Youth? If yes, what changes have been implemented? If no, please describe why:
21. Has your organization implemented any changes (such as policies, structures etc.) based on the Truth and Reconciliation Calls to Action? If yes, what changes have been implemented? If no, please describe why:
22. Any final thoughts to share to with West Coast LEAF in regards to child protection and preventative services and programs for families?

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West Coast LEAF is an incorporated BC non-profit society and federally registered charity. West Coast LEAF promotes gender equality and human rights through equality rights litigation, law and policy reform, and public legal education in British Columbia.



Fraser Region Aboriginal Friendship Centre Association:

FRAFCA offers services to the urban Indigenous people in Surrey on the unceded land of the Fraser Salish People. FRAFCA aims to provide a place of support, healing, and advocacy for people from birth to death.



Lii Michif Otipemisiwak (LMO): Located in Kamloops, on unceded Secwepemc (Shuswap) territory, LMO provides child protection and support services to the local Métis population. The team at LMO is transforming services and improving outcomes for families by doing this work according to Métis values.



Tillicum Lelum Aboriginal Friendship Centre: Since 1968, Tillicum Lelum has served Indigenous people living in the Nanaimo area, on unceded Snuneymuxw First Nation territory. They work with community by providing housing facilities and holistic programs that address the physical, mental, emotional, and spiritual needs of the community.

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