



West Coast Legal Education and Action Fund

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VIA EMAIL: financecommittee@leg.bc.ca

Select Standing Committee on Finance and Government Services
Parliament Buildings, Room 224
Victoria, BC
V8V 1X4

Re: Submissions on dedicated and sustainable funding for community-based sexual assault crisis response teams and integrated sexual assault clinics

West Coast LEAF urges the government of British Columbia to invest in a rights-based framework for survivors of sexual assault by committing to provide dedicated, secure, and sustainable funding for community-based sexual assault crisis response teams and integrated sexual assault clinics across British Columbia¹. We are joined in this ask by a growing number of umbrella and direct-service organizations that have been working tirelessly to support sexual assault survivors across British Columbia; these organizations are listed below. Their knowledge and expertise drives the underlying premises of these submissions.

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, 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.

We have particular expertise in equality and human rights, and a long history of work on sexual assault law and policy. Commencing in 2016, we partnered with the YWCA-Metro Vancouver on a project aimed at identifying strategies to reduce barriers in the justice system for sexual assault survivors through dialogue among key stakeholders, including frontline anti-violence activists and service providers, police, former Crown, retired judges, academics, and defense counsel. As part of this project, we spoke with survivors of sexual assault about their experiences reporting or not reporting. In November 2018, we released *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault*² which centers women's experiences of the devastating impacts of sexual assault, which are all too often deepened by the legal system's inadequate responses.

¹ We use this terminology to maintain consistency with terminology used in other Budget 2020 submissions by frontline anti-violence organizations including VSAC and WAVAW.

² Prochuk, Alana (2018) *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault* West Coast LEAF: Vancouver.

It is in the context of the findings of our project that we support the submissions of the Victoria Sexual Assault Centre (VSAC) – the only integrated sexual assault clinic in the province – as well as those of Women Against Violence Against Women Rape Crisis Centre (WAVAW) which coordinates one of the few Sexual Assault Response Teams (SARTs) in BC. In particular, we echo the following findings and recommendations:

- Community-based integrated sexual assault response teams that provide medical care, forensic exams, crisis support, and police reporting options can drastically reduce the long-term effects of the trauma on survivors of sexual assault including reducing the likelihood of re-traumatization when engaging with the criminal justice system;
- These services can substantially reduce the overall social cost of sexual assaults in British Columbia and improve confidence in the justice system;
- These services are drastically underfunded in urban centres and virtually non-existent in rural communities;
- There is an urgent need for dedicated, sustained, and adequate funding for sexual assault crisis response teams and integrated sexual assault clinics; and,
- For people experiencing intersecting forms of marginalization that face particular hurdles to accessing emergency care, including trans survivors of sexual assault, integrated clinics and support teams may provide one of the only viable service frameworks.

We provide the following rights-based analysis and legislative framework for realizing the recommendations set out within VSAC's and WAVAW's submissions.

A rights-based framework for survivors of sexual assault recognizes that survivors have rights when in receipt of services, protection, and supports following a sexual assault that are regularly being violated by state actors. Survivors of sexual assault have the right to security of the person³, including the right to protection against severe psychological harm caused by state conduct⁴. The heart breaking video of an RCMP officer in Kelowna questioning a 17-year-old Indigenous youth in care following her report of sexual assault is but one example of the ways in which state conduct can violate a survivor's right to security of the person.⁵ In the video, the officer asks the youth if she was 'at all turned on' and suggests consent can be inferred from the fact that the youth "did not put up much of a fight".⁶ This conduct is not only in violation of the progressive law of sexual assault⁷, but it is also conduct that has been proven to cause severe psychological harm to survivors of sexual assault and result in re-traumatization. The youth explained her experience of the investigation as follows: "It's very horrifying, my mental health couldn't take it, so I ended up in the hospital so I could process it,"⁸

Despite significant efforts by many, including justice system actors, to shift underlying stereotypes and misapprehensions about survivors of sexual assault, the above experience is unfortunately well known to anti-violence advocates. One need look no further than the commentary by former Judge Robin Camp who asked a 19-year-old complainant of sexual assault why she did not "keep her knees together" to see how rape myths continue to permeate the entire justice system and undermine the right to security of the person

³ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the Constitution Act, 1982.

⁴ *Chaoulli v Quebec (AG)*, 2005 SCC 35 at pp 116.

⁵ Sterritt, Angela and Jason Proctor, "Were you at all turned on?: RCMP's handling of sexual assault interview denounced" *CBC News* (2019), online: <<https://www.cbc.ca/news/canada/british-columbia/rcmp-sexual-assault-video-1.5137676>>.

⁶ *Ibid.*

⁷ *Criminal Code*, RSC 1985, c C-46, s 273.2(c)

⁸ *Supra* note 5.

for survivors of sexual assault.⁹ The complainant testified following the trial that the judge’s conduct had made her contemplate committing suicide and that it had made her hate herself”.¹⁰

Survivors’ reports are supported by statistics on the attrition of sexual assaults through the criminal justice system. Statistics from 2017 demonstrate that of the only 5% of sexual assaults against women aged 15 and older that are reported to police, 19% are declared unfounded and charges are laid in only 49% of the remaining cases¹¹. The numbers dwindle even further once charges are laid with only 49% of cases proceeding to trial and just half of those resulting in a conviction.¹² This means that a meagre 0.3% of sexual assaults against women result in a conviction.¹³

Survivors of sexual assault also have the constitutional right to equal protection and equal benefit of the law.¹⁴ This right is assessed through a substantive equality framework which places a burden on the state, when providing a service, to do so in a way that accounts for the lived experiences of those accessing the service. Thus, because responses to sexual assault – including investigation, the court process, accessing health care, and counselling supports – are services provided by the government, the government is obligated to provide these services in a way that does not reinforce, perpetuate, or exacerbate the disadvantage experienced by survivors of sexual assault.

Yet, an intersectional substantive equality analysis focusing on the lived experiences of survivors of sexual assault demonstrates that government policies and practices do exacerbate the disadvantages experienced by survivors of sexual assault in BC. The right to equal protection and benefit of the law is placed in peril when the conduct of some state actors is permeated with sexist stereotypes.¹⁵ Systemic issues with emergency response, investigations, the criminal trial process, and the provision of support services following sexual assault also have the ability to undermine a survivor’s right to equality because women and people of all marginalized genders are overwhelmingly the victims of sexual assault, [and thus]... disproportionately impacted by the resulting poor quality of investigation”.¹⁶

In addition to its obligation to ensure that laws, policies, and state conduct do not undermine a survivor’s right to security of the person and equality rights, the government has a positive obligation to exercise due diligence to prevent, investigate, prosecute gender-based violence and compensate survivors, 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.¹⁷ The CEDAW Committee has found on numerous occasions that states

⁹ Graveland, Bill “Sex assault complainant testifies at review of Alberta judge who asked her why she couldn’t keep her knees together” *GlobalNews* (2016) <<https://globalnews.ca/news/2924267/sex-assault-complainant-testifies-at-review-of-alberta-judge-who-asked-her-why-she-couldnt-keep-her-knees-together/>>.

¹⁰ *Ibid.*

¹¹ Lievore, D. (2003). *No Longer Silent: A Study of Women’s Help-seeking Decisions and Service Responses to Sexual Assault*. Canberra: Australian Institute of Criminology and Office for Women, p. 41.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Supra* note 3 at s 15(1).

¹⁵ *Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al.*, [1998] O.J. No. 2681.

¹⁶ *Ibid.*

¹⁷ Representative of the Committee on the Elimination of All Forms of Discrimination against Women, 11th Session, January 20-30, 1992, at 1-8, U.N. Doc. A/47/38.

have violated the anti-discrimination provision when they have failed to provide adequate support services.¹⁸

The state has additional obligations vis-à-vis Indigenous women, Two Spirit, gender diverse and gender non-confirming people under the United Nations Declaration on the Rights of Indigenous Peoples¹⁹ (UNDRIP). UNDRIP places positive obligations on states to “take the appropriate measures”²⁰, including providing financial and technical support²¹, to ensure that every Indigenous person has the right to ‘life, physical and mental integrity, liberty and security of the person’²² and the right to live free of discrimination²³ including in accessing social services²⁴. UNDRIP emphasizes the obligations on states to ensure that Indigenous women “enjoy the full protection and guarantees against all forms of violence and discrimination”²⁵.

Nevertheless, Indigenous women, Two Spirit, gender diverse and gender non-confirming people continue to face high rates of violence in BC and significant barriers when dealing with system actors.²⁶ This has created distrust in the justice system. One project participant clearly explained why she did not see reporting as a viable option for her:

I’m also a woman of colour, and [...] I never thought [reporting to police] would be helpful or that I would be treated fairly. [...] I’ve heard a lot of things about Aboriginal women who have, you know, tried to reach out about different assaults in the Vancouver area and just like what little support they’ve been getting. (Interview 30) (page 30)

Anti-violence experts and researchers have regularly maintained that survivors need integrated, culturally-safe and trauma-informed services for the full realization of their fundamental rights. Our research on dismantling the barriers to reporting sexual assault supports the submissions of VSAC and WAVAW that: the best practice model for responding to sexual assault is through community-based assault crisis response teams and integrated sexual assault clinics. Survivors that participated in our research spoke to the urgent need for these services:

I needed someone to hold my hand, you know, and it wasn’t there, and that was sort of the feeling I got. Like it was very much on me to, to do [complete paperwork and apply for supports] and [...] it doesn’t work that well, *like it’s just not realistic for somebody that’s gone through something like that*. (Interview 28) page 60

¹⁸ See e.g. *A.T. v. Hungary*, United Nations, Comm. on the Elimination of Discrimination against Women, UN Doc CEDAW/C/32/D/2/2003 (January 26, 2005) [where there was no shelter for a mother and her child to access following fleeing domestic violence]; see also *Goekce v Austria*, UN, Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/C/39/D/5/2005 (August 6, 2007); *Yildirim v. Austria*, UN, Committee on the Elimination of Discrimination against Women, UN Doc CEDAW C/39/6/2005 (October 1, 2007) [where there was state failure to respond adequately to allegations of domestic violence].

¹⁹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, online: <https://www.refworld.org/docid/471355a82.html> [accessed 26 June 2019].

²⁰ *Ibid* at art 38

²¹ *Ibid* at art 39.

²² *Ibid* at art 7 (1)

²³ *Ibid* at art 2.

²⁴ *Ibid* at art 24.

²⁵ *Ibid* at art 22(2)

²⁶ *Supra* note 2 at p 31.

Maybe I would report if I knew that the police interview would be comfortable, you know, if the officer, if I knew that the officer would be friendly, approachable, would believe me, would be easy to talk to, it didn't feel like an interrogation. If the room was comfortable. I remember seeing that awful video of the woman who was sexually assaulted and was interviewed in this tiny little room that looked like a depressing cell, like that just, God that was awful, I wouldn't want to sit in a room and talk about something so personal in a room like that. So even like the environment matters too. And if it didn't take a lot of time, like if they actually managed to get everything in one interview and you didn't have to go back for a second interview [...] and then if you didn't have to tell your story five times, that would also be nice. And if you knew that your rights and really your well-being as a victim would be respected and not just by police but in the court system, [...] that they wouldn't treat you as just a means to a conviction, that they would actually, you know, place you at the center of things rather than focusing solely on the accused's right to a fair trial at any cost. (Interview 21)

This framework for addressing sexual assault has been echoed in numerous reports including, most recently, in *The Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls*²⁷:

3.5. We call upon all governments to establish culturally competent and responsive crisis response teams in all communities and regions, to meet the immediate needs of an Indigenous person, family, and/or community after a traumatic event (murder, accident, violent event, etc.), alongside ongoing support.

It is vital to fund this essential service to realize the rights of survivors of sexual assault. This funding must be needs-based and, thus, sufficient to meet the needs of all survivors in urban and rural centres. This funding must also be provided separate and apart from other funding needs of anti-violence organizations including the need to provide legal aid to anti-violence organizations who face section 278 applications within sexual assault trials as we, along with EVA BC and Surrey Women's Centre, recently set out in our letter to the Attorney General.

Furthermore, we urge you to consider legislating the right of victims of sexual assault to access community-based integrated crisis assault services in order to create a pathway for dedicated and sustained funding. The longevity of the funding is not only essential for the rights of survivors; it will also ensure that any long-term benefits materialize including the reduction in the overall social cost of sexual assault, increases in health outcomes, and improved confidence in the justice system.

In addition to, and in support of, dedicating funding to community-based integrated crisis sexual assault services as described above, we recommend the following amendments to the *Victims of Crime Act*:

Addition:

Community-Based Assault Integrated Crisis Services to be Provided

The Ministry of Public Safety and Solicitor General must take reasonable measures to ensure that victims of sexual assault are provided with access to community-based assault crisis services which at minimum include:

1. trauma-informed, culturally-appropriate care; and
2. wrap-around services including crisis support, victim services, and navigation support

²⁷ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls* online: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a.pdf>.

Amendment:

Section 5(b) to: “Justice system personnel must offer a victim general information concerning (b) *community-based assault crisis services* and other victim services”. [Italics indicate addition to legislative text]

Conclusion

We urge the government of BC to support a rights-based framework for survivors of sexual assault by committing to provide dedicated, secure, and sustainable funding for community-based assault crisis response teams and integrated sexual assault clinics across British Columbia. We support the submissions made by VSAC and WAVAW and encourage the government of BC to implement their recommendations by way of both an increase in funding and a legislated right to community-based assault crisis services.

Sincerely,



Elba Bendo, Director of Law Reform
West Coast LEAF

Encl.
VSAC Submissions
WAVAW Submissions

We are joined in this ask by:
Atra Women's Resource Society
Central Okanagan Elizabeth Fry Society
Chilliwack Community Services
Ending Violence Association of British Columbia
Tri-City Transitions Society
Vancouver Sexual Assault Centre
Women Against Violence Against Women



SUBMISSIONS

BRITISH COLUMBIA BUDGET 2020 CONSULTATION

June 2019

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Select Standing Committee on Finance and Government Services
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Submission to the Standing Committee on Finance and Government Services Budget 2020 Consultations

Introduction

West Coast LEAF welcomes the province's commitments in Budget 2019 to supporting families across British Columbia including by increasing financial supports, eliminating interests on student loans, and investing in quality, affordable, accessible child care. Many of the commitments in Budget 2019 have the potential of alleviating some of the systemic inequalities experienced by women and all people that experience gender-based discrimination. However, as it stands, some of the most marginalized families across BC are unable to access many of these important supports.

Budget 2020 must follow through on these commitments by setting out measures that will ensure that all BC families are able to benefit from these provincial supports. Accordingly, we recommend the following legislative amendments and related funding increases:

1. There should be 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. Taking away benefits from families whose children are temporarily removed from their home forces low-income families further into poverty and unnecessarily increases the length of separation between children and their families.
2. The rate increases to the Extended Family Program (EFP) must be accompanied by amendments to the eligibility criteria in order to be accessible to the vast majority of kinship caregivers. As it stands, the significant rate increases for the EFP set out in Budget 2019 only apply to a small fraction – less than 20% – of the children living in kinship care arrangements.
3. In order for the most marginalized families to be able to access these benefits, family advocates must be available to support families that are most at risk of having their children apprehended due to poverty and poverty-related systemic factors. We urge the province to ensure that there is adequate funding for First Nations, delegated agencies, friendship centres, and all community-based organizations to hire family advocates to support families, particularly those at risk of having a child apprehended.

About us

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, 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.

We have a particular expertise in equality and human rights and we have done in-depth research on the relationship between gender equality, the BC child care system and the impact on child apprehensions¹; the intersection of parenting, disability, and the law²; and equality, discrimination and violence and the family law system³.

Our Budget 2020 submissions are grounded in the expertise, experiences, and recommendations of Indigenous parents, family members, front-line staff, and Elders who are guiding our research project: *Putting Families First: Shifting the Child Protection System*⁴.

Framing income supports: the gendered element of poverty and child apprehension

In BC, like elsewhere around the world, economic insecurity disproportionately impacts women and those facing interlocking forms of marginalization. About 13% of BC women live in poverty, and about 16% of racialized women in BC live in poverty, higher than the rate for either racialized men or white women. The disparity is even more pronounced for Indigenous women. Approximately 31% of First Nations women and 33% of Inuit women in BC live in poverty. Rates of poverty are higher among senior women, with about 15.5% of BC women aged 65 and older living in poverty, compared to 10% of men in the same group, and seniors who are Indigenous, racialized, or disabled remain particularly at risk.⁵ Furthermore, LGBTQIA2S+ people are more likely to live in poverty than heterosexual or cisgender people. It has been estimated that 25-40% of LGBTQIA2S+ youth in Canada are homeless, and recent research found that the median income of trans-Ontarians was just \$15,000.⁶

This economic inequality is compounded by the fact that women and all people experiencing gender-based discrimination are significantly more likely to be caring for children and, because of structural household factors linked to systemic inequality, more likely to have their children apprehended. Women head over 80% of the lone-parent families in BC⁷, among which the poverty

¹ West Coast LEAF, “High Stakes: The impacts of child care on the human rights of women and children” (12 July 2016), online: West Coast LEAF <<http://www.westcoastleaf.org/our-publications/high-stakes-impacts-child-care-human-rights-women-children/>>.

² West Coast LEAF, “Able Mothers: The intersection of parenting, disability, and the law” (24 September 2014), online: West Coast LEAF <<http://www.westcoastleaf.org/our-publications/able-mothers-the-intersection-of-parenting-disability-and-the-law/>>.

³ West Coast LEAF, “Troubling Assessments: Custody and Access Reports and their Equality implications for BC Women” (30 June 2012), online: West Coast LEAF <<http://www.westcoastleaf.org/our-publications/troubling-assessments-report/>>.

⁴ West Coast LEAF, “Shifting the Child Protection System” (2019) online: West Coast LEAF <<http://www.westcoastleaf.org/our-work/shifting-the-system/>>.

⁵ West Coast LEAF, *2018 CEDAW Report Card: How is BC Measuring Up in Women’s Rights?* (December 2018) at 29.

⁶ Prepared by Lori E. Ross & Anita Khanna, [What are the needs of lesbian, gay, bisexual, trans, and queer \(LGBTQ+\) people that should be addressed by Canada’s Poverty Reduction Strategy \(CPRS\)? A joint submission from the Canadian Coalition Against LGBTQ+ Poverty \(CCALP\)](#).

⁷ “CANSIM Table 111–0011: Family characteristics, by family type, family composition and characteristics of parents” (26 June 2015), online: Statistics Canada www.statcan.gc.ca (2013 data).

rate is 42% (compared to 9% for children and youth in two-parent families).⁸ Senior women head the vast majority of the formal and informal kinship care arrangements in BC.⁹ Women also face additional structural risk factors that are compounded by poverty. For example, 43% of Indigenous women and 30% of non-Indigenous women in Canada had their experience of domestic violence identified as a risk factor in child protection investigations.¹⁰ These statistics demonstrate that insufficient income supports and barriers to accessing supports have a disproportionate impact on women and people that face gender-based discrimination. Conversely, they demonstrate that making financial supports more accessible for families dealing with the child protection system and those in informal kinship care arrangements can help reduce gender inequality in the province.

Detailed Recommendations

- 1. There should be 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. Taking away benefits from families whose children are temporarily removed from their home forces low-income families further into poverty and unnecessarily increases the length of separation between children and their families.**

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. Poverty is one of the most significant structural household factors that leads to children to be taken away from their families and communities.¹¹ 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 leading structural factors that underpin the overrepresentation of Indigenous children in care; 63% of children in care are Indigenous despite Indigenous children comprising 10% of the child population in BC.¹² The fact that most families on income assistance would require another \$15,000 - \$18,000 per year to reach the poverty line¹³, means that any further reduction in assistance rates increases poverty-related structural factors that place children at increased risk of apprehension.

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

⁸ Statistics Canada, "Table 11-10-0135-01: Low income statistics by age, sex and economic family type" (2018) (2016 data), <https://www150.statcan.gc.ca/t1/tb11/en/cv.action?pid=1110013501>.

⁹ Pieta Woolley, "With Less Support Family Caregivers Relieve the Foster System", The Tyee (11 May 2013), online: www.thetyee.ca.

¹⁰ 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, 2008) at xiii.

¹¹ *Ibid* at xiv.

¹² *Ibid* at 9.

¹³ First Call: BC Child and Youth Advocacy Coalition, *Submission to Select Standing Committee On Finance and Government Services* (Vancouver: 2019) at 4.

them. Because of the definition of “dependent”¹⁴ in the Employment and Assistance Act¹⁵ (EAA) and the Employment and Assistance for Persons with Disabilities Act¹⁶ (EAPWDA), and the definition of “eligible individual” in the Federal Income Tax Act¹⁷, a family whose child has been temporarily taken into care will lose a significant amount of the already insufficient income they have to maintain standards of living acceptable by MCFD. 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 rates¹⁸ – 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.

In fact, under the current legislation, parents even risk a reduction in their shelter allowance upon removal of a child from the home which could lead to the family facing eviction¹⁹ or having to downsize to be able to afford rent. In turn, the new living space may be deemed unfit for visitation and even for the child to be returned to the family.²⁰ In 2010, West Coast LEAF and Pivot Legal Society called on the Ombudsperson of BC to investigate shelter allowance reductions for families with children in temporary foster care. As a result, the current policy guidelines were introduced. While the guidelines suggest that the shelter allowance “may be maintained” during a temporary apprehension, it is up to the social worker to confirm, on a six month basis, that the parent is ‘actively working on the return of the child’. In practice, there is in fact a significant gap between the social worker’s perception and the parent’s effort. We heard from many parents who said that they felt that prejudices, discrimination, and a lack of cultural competency impacted social worker’s assessment of parents’ efforts to bring their children home.²¹

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

¹⁴ These Acts state that a ‘dependant’ “in relation to a person, means anyone who resides with the person and who (a) is the spouse of the person, (b) is a dependent child of the person, or (c) indicates a parental role for the person’s dependent child”. See *Employment and Assistance Act*, SBC 2002, c 40, s 1 [EAA] and *Employment and Assistance for Persons with Disabilities Act*, SBC 2002, c 41, s 4 [EAPWDA].

¹⁵ EAA, *ibid.*

¹⁶ EAPWDA, *supra* note 8.

¹⁷ The federal *Income Tax Act* states that an ‘eligible individual’ “in respect of a qualified dependant at any time means a person who at that time (a) resides with the qualified dependant, [and] (b) is a parent of the qualified dependant who (i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant”. RSC 1985, c 1 s 122.6 [Federal Tax Act]. The BC *Income Tax Act* adopts the federal definition for the purpose of the BC early childhood tax benefit. See RSBC 1996, c 215, s 13.07 [BC Tax Act].

¹⁸ 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. *Employment and Assistance Regulation*, BC Reg 263/2002, Schedule A s 2 [EAR].

¹⁹ Darcie Bennett & Lobat Sadrehashem, *Broken Promises: Parents Speak about B.C.’s Child Welfare System* (Vancouver: Pivot Legal Society, 2008) at 93–94, online: Pivot <http://d3n8a8pro7vhm.cloudfront.net/pivotlegal/legacy_url/310/BrokenPromises.pdf?1345765642>.

²⁰ The BC Poverty Reduction Coalition et al, “Shifting the Culture at the Ministry of Social Development and Poverty Reduction” at 6, online: BC Poverty Reduction Coalition <<http://bcpovertyreduction.ca/wp-content/uploads/2018/12/Culture-Shift-at-MSDPR-Final.pdf>>.

²¹ See Ministry of Children and Family Development, *Performance Management Report 8* (British Columbia, 2016) at 44, online: Province of British Columbia <https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/00-public-ministry-reports/volume_8_draftv7.pdf>. 43.4% of assessments of neglect for Aboriginal parents were recorded as ‘Parent unable/unwilling to care’. *Ibid.*

reunification. Apprehension is a traumatic event for children and parents. This makes supports at reunification absolutely essential for families to thrive and not get swept back into the revolving door of the child protection system. We heard from many parents that had to wait for months to have their benefits reinstated and even ones that had taken significant steps to advocate for retroactive benefits to the date their child was returned.

A true commitment to shifting the child protection system from apprehension to prevention mandates that the province end the removal of benefits when children are temporarily taken into care. Accordingly we recommend that:

- The government commit in Budget 2020 to funding the continuation of benefits for families whose children are in temporary care;
 - The Lieutenant Governor in Council prescribe that, for the purposes of both the EAA and EAPWDA, a child continues to be a dependent of a parent who is in temporary care;²²
 - The government amend the BC Income Tax Act²³ to ensure that the provincial child tax benefit is maintained for parents when a child is taken into temporary care;
 - The government consider using the Child Benefits Top-up Supplement to maintain supports for parents when their federal child tax benefit is cancelled due to a temporary child removal²⁴. The timeline during which the supplement can be offered should increase from four months to the duration of the time during which a child is in temporary care. Additionally, the amount should be increased to be equivalent to the federal child tax benefit to ensure that parents are able to continue receiving support equivalent to the federal tax benefit when children are temporarily removed;²⁵ and,
 - The government supplement any of the above amounts that currently transfer to MCFD to ensure these amendments do not impact the funding available for children in care.²⁶
- 2. The rate increases to the Extended Family Program must be accompanied by amendments to the eligibility criteria for this program in order to be accessible to the vast majority of kinship caregivers. As it stands, the significant rate increases for the EFP set out in Budget 2019 only apply to a small fraction – less than 20% – of the children living in kinship care arrangements.**

Supports for family members and communities that are willing and able to care for children is one of the most important preventative measures the government can offer families. This is particularly true for communities where extended family members and community members continue to play

²² *EAA*, *supra* note 8, s 1(2).

²³ *BC Tax Act*, *supra* note 11, s 13.07.

²⁴ *EAR*, *supra* note 12, s 61.1; *Employment and Assistance for Persons with Disabilities*, BC Reg 265/2002, s 59.1.

²⁵ See British Columbia, “General Supplements & Programs Rate Table”, online: Province of British Columbia <<https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables/general-supplements-and-programs-rate-table>>.

²⁶ *Children’s Special Allowances Act*, SC 1992, c 48, s 8(1). See also Government of Canada, “Children’s Special Allowances (CSA) Fact Sheet”, online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/child-family-benefits/childrens-special-allowances-fact-sheet.html>>.

significant roles as caregiving supports including in Indigenous communities, where children aged 14 and younger are twice as likely as non-Indigenous children to live with their grandparents²⁷. Accordingly, the increase to the rates of the Extended Family Program that was announced in Budget 2019 and took effect on April 1, 2019 is an important first step in harmonizing benefits for kinship caregivers.²⁸ However, for this preventative measure to be accessible to communities that rely most on kinship care, the eligibility criteria for this program must be amended to remove the systemic barriers families face in accessing these financial supports.

While it is unclear exactly how many children are in informal care arrangements, data suggests that these arrangements are increasing in BC and throughout Canada.²⁹ Parent Support Services Society of BC, who has been doing significant work with kinship caregivers, estimates that there are as many as 13,000 children living in kinship care arrangements³⁰ in BC. Currently there are 2,668 children that are known to MCFD to be living in kinship care or on their own.³¹ When comparing these counts, the most conservative estimate reveals that, at most, only 20% of the total number of children living in kinship care arrangements are benefiting from the rate increases to the EFP.

A significant barrier for Indigenous and racialized communities who have been on the receiving end of government over-intervention in their families and communities is that the program is run through MCFD and requires an agreement with MCFD. For families that have experienced the intergenerational trauma of growing up in care, 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, willingly engaging MCFD is simply unrealistic. There must be a pathway where kinship caregivers can qualify for the EFP without having to trigger MCFD involvement including a safety assessment.

However, if the intended purpose of the EFP is to provide supports to families as a less disruptive measure to apprehension, then an alternative system entirely must exist where kinship caregivers can access financial supports. One option is for the government to reinstate and revamp the Children in the Home of a Relative Program (CIHR) which was grandfathered in 2010.³² As a program covered under the EAA, the CIHR, or its equivalent, does not need to trigger the same level of intrusion into the family home by MCFD.

²⁷ Annie Turner, “Living arrangements of Aboriginal children aged 14 and under” (Statistics Canada Ministry of Industry, 2016), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>>.

²⁸ See British Columbia, “Maintenance Rate Increases by Care Category”, online: Province of British Columbia <https://www2.gov.bc.ca/assets/gov/family-and-social-supports/foster-parenting/maintenance_rate_increases_by_care_category.pdf>.

²⁹ Christine Schwartz et al “Kinship Foster Care” (2014) 8:3 Children’s Mental Health Research Quarterly 1 at 4, online: Children’s Health Policy Centre <<https://childhealthpolicy.ca/wp-content/uploads/2014/07/RQ-3-14-Summer.pdf>>.

³⁰ Parent Support Services Society of BC, “Update: 2019 BC Budget- What does it mean for Kinship Care Families?” (28 February 2019), online: Parent Support Services Society of BC <<https://www.parentsupportbc.ca/category/uncategorized>>.

³¹ First Call: BC Child and Youth Advocacy Coalition, *supra* note 6 at 9.

³² British Columbia, “Child in the Home of the Relative”, online: Province of British Columbia <<https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/child-in-home-of-relative>>.

Regardless of the specific pathway for providing supports to kinship caregivers that do not meet the current eligibility criteria for reasons related to systemic inequality, the following aspects of the program must be in place for barriers to be adequately removed:

- The definition of kinship caregiver must be culturally safe;³³
- The obligation to undergo a criminal record check must be removed as it has no correlation to the types of supports being provided;
- The requirement for a prior contact check must be removed as it has no correlation to the types of supports being provided;
- There must be no obligation to sign an extended family agreement with MCFD;
- The requirement for a home assessment to be undertaken by MCFD should be removed;
- The rates of the CIHR must be raised in order to be harmonized with the EFP.

In place of these requirements, we recommend that there be a requirement that allows for community-based organizations that work closely with the family in the provision of family support to provide a recommendation letter or report for the caregiver's inclusion in the program.

3. In order for the most marginalized families to be able to access these benefits, family law advocates must be available to support families that are most at risk of having their children apprehended due to poverty and poverty-related systemic factors. We urge the province to ensure that there is adequate funding for First Nations, delegated agencies, friendship centres, and all community-based organizations providing family support services to hire family advocates to support families, particularly those at risk of having a child apprehended.

Family advocates provide culturally appropriate services, ensure that parents and families are treated with dignity and respect, and help alleviate the power imbalance that exists between MCFD and an individual or a family.³⁴ Additionally, these family advocates reduce the cost on the legal system and legal aid service providers by supporting community legal clinics and lawyers through dealing with various family needs and assisting with navigating the system so that clinics can focus their resources on advancing the legal matter.³⁵ Family advocates are essential supports for families as they navigate the child protection system and can drastically improve the adherence of social workers to the obligations set out in the act including by developing Safety Plans, suggesting less disruptive measures, and facilitating family visits.

³³ Child, Family and Community Services Act, RSBC 1996, c 46, s 8(1) [CFCSA]; see also British Columbia, "Foster Child Placement with a Person Other Than the Parent in BC", online: Province of British Columbia <<https://www2.gov.bc.ca/gov/content/family-social-supports/fostering/temporary-permanent-care-options/placement-with-a-person-other-than-the-parent>>. The current definition for kinship caregiver in BC is: "[have] established a relationship with a child or has a cultural or traditional responsibility toward a child, and [be] given care of the child by the child's parent." The caregiver must not be the child or teen's legal guardian. CFCSA, *ibid*.

³⁴ Arthur Paul, *A helping hand to justice* (Native Courtworker and Counselling Association of British Columbia, 2005) at 7–8, online: Native Courtworker and Counselling Association of British Columbia <https://nccabc.ca/wp-content/uploads/2015/02/2005NCCABC_AnnualReport.pdf>.

³⁵ In Budget 2019, the provincial government committed to improving access to justice through continuing consultation and development of the Indigenous Justice Strategy and pilot legal clinics throughout BC. See British Columbia Ministry of Finance, *Making Life Better- Budget 2019* (British Columbia, 2019), online: British Columbia <https://www.bcbudget.gov.bc.ca/2019/pdf/2019_budget_and_fiscal_plan.pdf>. A family advocate should also be funded in order for this legal advocacy initiative to be effective.

We recommend that the government fund family advocates for each community-based organization that expresses an interest in hiring advocates. Funding should be transparent, multi-year, and should not create competition among organizations. Funding must be provided through a dedicated, sustained, needs-based assessment for individual organizations to ensure that each community supporting parents can have a family advocate get to know the families and provide continuous support.

Lastly, while we welcome the significant investments in core funding for the province's Aboriginal Friendship Centres,³⁶ we urge the government to ensure that this funding does not come with any restrictions on the ability of Friendship Centres to spend funding dollars on advocacy and advocacy-related support for families.

Conclusion

We urge the government to further its important objectives from Budget 2019 by committing in Budget 2020 to making supports work for families that are most vulnerable to being absorbed into the child protection system.

³⁶ See British Columbia Ministry of Finance, Working for You- Budget 2018 (British Columbia, 2018) at 24, online: British Columbia <https://www.bcbudget.gov.bc.ca/2018/bfp/2018_Budget_and_Fiscal_Plan.pdf>.