

A Mother's Lens:
Envisioning a Supportive Approach to
Child Welfare Law



October 2024

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Coverdale Justice Society



Coverdale Justice Society's mission is to provide support and specialized services to women, youth, and gender-diverse individuals in Nova Scotia, with a focus on improving access to justice, providing alternatives to traditional justice, and enhancing public safety and well-being for these groups in the province. Our vision at Coverdale is to create a world where justice transcends the boundaries of the legal system and is deeply woven into the fabric of our society. We believe in fostering an environment where justice is not just a concept but a way of life, guiding our interactions and shaping our personal growth. We are dedicated to this vision and committed to making it a reality for all people.

Access to Justice and Law Reform Institute

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The Access to Justice & Law Reform Institute makes recommendations for the modernization, improvement and reform of law and acts as a center of coordination, research, education and action on access to justice. As an access to justice hub we engage and coordinate work with justice stakeholders, students, the public and frontline service providers to promote and build capacity on access to justice and law reform.

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Introduction

The connection between gender-based violence and child protection services is generally not well examined in prevailing mainstream law and policy literature in Canada. Two major reports seeking to map a path forward to addressing gender-based violence in Canada - the Mass Casualty Commission Final Report of the Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty¹ and **Canada's National Action Plan to End Gender-based Violence**² – do not make comprehensive recommendations to address child protection even though the two issues are so intimately intertwined. Conversely, in a major Inquiry Report focused on transforming child services in the Nova Scotia,³ the intersection of Gender-based Violence and child protection was not part of the mandate of the Inquiry.

The one notable and exception is the National Inquiry into Missing and Murdered Indigenous Women and Girls.⁴ While we do not address Indigenous child welfare in the province we borrow from this report insofar as the connection between Gender-based Violence and child protection are concerned. The report examined the connection between the unwillingness of women to report violence because of fear of police and child protection as well as how the outcomes for children in care may leave them vulnerable to violence like human trafficking.

The experiences of criminalized women involved in the child protection system in Nova Scotia, and indeed, in Canada, are reflective of the complex intersection between gender-based violence and child protection services. It is by now well understood that women in Canada can be criminalized for a myriad of reasons related to social and economic marginalization, including poverty, addictions, and mental health issues.⁵ At the same

¹ The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, *Turning the Tide Together: Final Report of the Mass Casualty Commission*, vol 3 (Ottawa: Privy Council Office, 2023) [MCC Volume 3: Violence].

² Government of Canada, “The National Action Plan to End Gender-Based Violence” (last modified 31 July 2024), online: <www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/national-action-plan-end-gender-based-violence.html> [National Action Plan].

³ Restorative Inquiry, The Nova Scotia Home for Colored Children, “Journey to the Light: A Different Way Forward: Final report of the Restorative Inquiry – Nova Scotia Home for Colored Children”, online: <<https://restorativeinquiry.ca/>> [Restorative Inquiry].

⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls” (2019), online: <www.mmiwg-ffada.ca/> [MMIWG Final Report].

⁵ Department of Justice Canada, “State of the Criminal Justice System: Focus on Women” (2020) at 31, online: <https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/pdf/SOCJS_2020_en.pdf>.

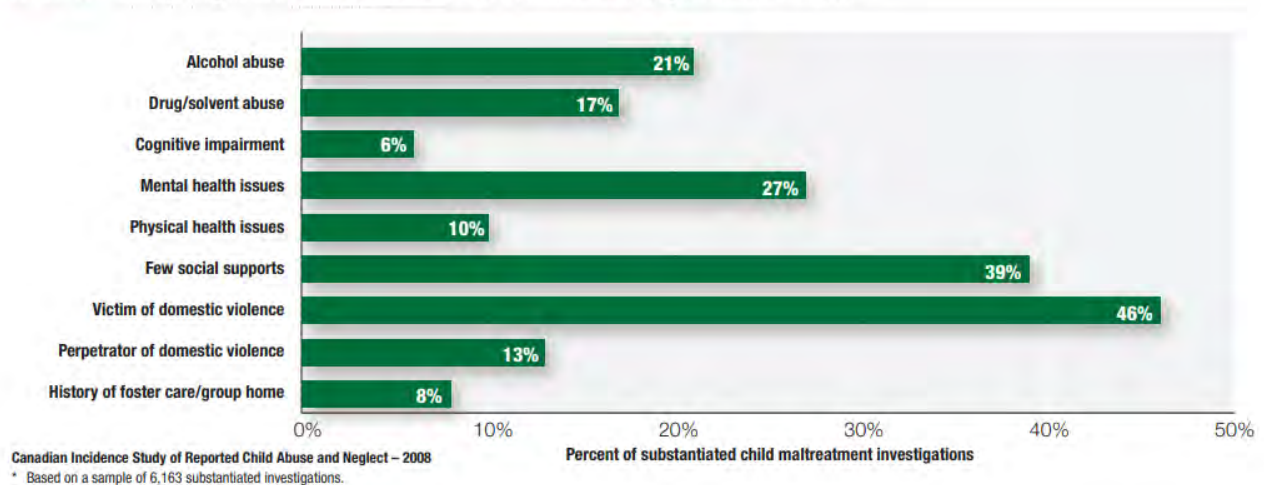


time, these social and economic factors are some of the leading “household risks” leading to substantiated cases of child maltreatment as per leading Canadian researchers.⁶ This is especially pertinent in Nova Scotia where it has been shown that our child poverty rate is the fourth-highest in Canada and the highest in Atlantic Canada.⁷

What’s more, one of the leading “household risks” leading to substantiated cases of maltreatment is the presence of intimate partner violence in the home. Exposure to intimate partner violence is itself a ground for apprehension in many child protection acts across the country. At the same time, this interaction is also influenced by colonialism and structural and systemic racism, leading to the overrepresentation of Black and Indigenous children in care as well as the overrepresentation of these communities in the criminal justice system.⁸

Figure 1⁹

FIGURE 10: Primary Caregiver Risk Factors in Substantiated Child Maltreatment Investigations in Canada in 2008*



⁶ Canada, Nico Trocmé et al, Canadian Incidence Study of Reported Child Abuse and Neglect – 2008 (Ottawa) National Clearinghouse on Family Violence, Public Health Agency of Canada: 2010) at 6 [CIS-2008].

⁷ Canadian Center for Policy Alternatives Nova Scotia, “2023 Report Card on Child and Family Poverty in Nova Scotia” at 12.

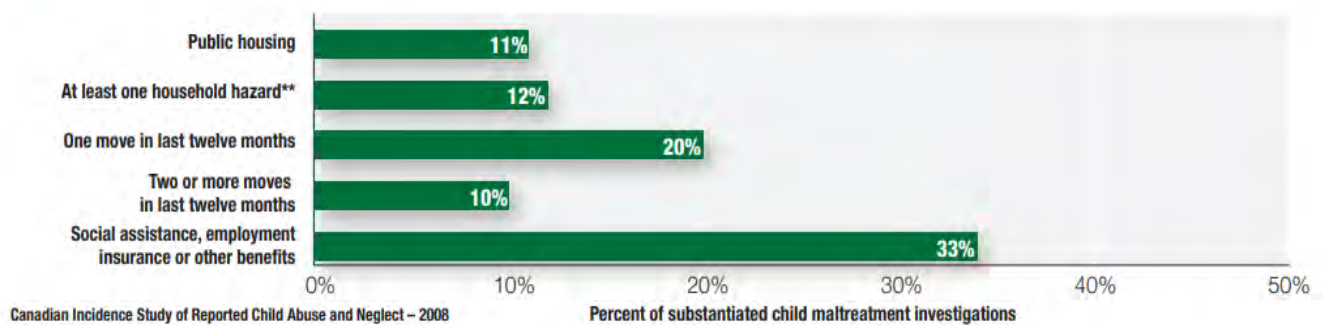
⁸ Bryn King et al, “Factors associated with racial differences in child welfare investigative decision-making in Ontario, Canada” (2017) 73 Child Abuse & Neglect 89 at 90-91, 99; Jean-Denis David & Megan Mitchell “Contacts with the Police and the Over- Representation of Indigenous Peoples in The Canadian Criminal Justice System” (2021) 63:2 Can J Corr 23 at 24.

⁹ CIS-2008, *supra* note 6 at 6.



Figure 2¹⁰

FIGURE 11: Household Risks in Substantiated Child Maltreatment Investigations in Canada in 2008*



Canadian Incidence Study of Reported Child Abuse and Neglect – 2008

* Based on a sample of 6,163 substantiated investigations.

** Any of the following: accessible weapons, accessible drugs or drug paraphernalia, drug production/trafficking in home, chemicals or solvents used in production, other home injury hazards, and other home health hazards.

The connection between intimate partner violence and criminalization is even less recognized in mainstream Canadian law and policy literature.¹¹ On the one hand, mandatory charging policies may see women criminalized for defending themselves in situations of intimate partner violence, or for failing to testify when an intimate partner is charged for such violence.¹² On the other hand, intimate partner violence – most notably, coercive and controlling violence - and gender-based violence may make women more vulnerable to situations in which they may become criminalized including substance abuse, homelessness, exacerbating mental health issues and even coercing women into exploitative sex work. These factors will also make them and their children more vulnerable to surveillance and apprehension by child protection services.

It is perhaps then unsurprising that the majority of cases of “substantiated maltreatment” of children in Canada from the last national study of cases of substantiated maltreatment, fell under the grounds of neglect – a ground closely connected with poverty and marginalization – and exposure to domestic violence.¹³

¹⁰ *Ibid.*

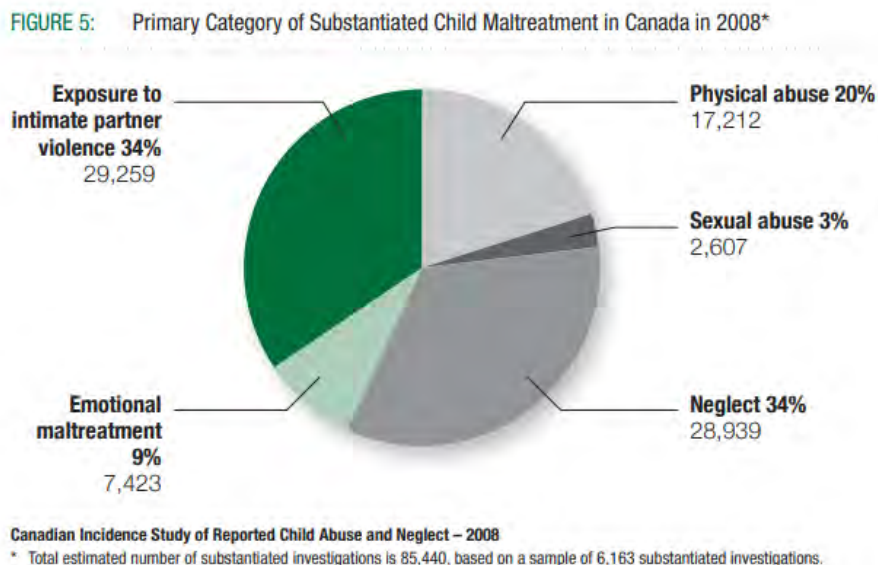
¹¹ With some exceptions, including, for example, see the work of Elizabeth Fry Societies including Dr. Nancy Ross, Leslie Bagg & Cary Ryan, “They Did Not Listen to Our Whole Story Women’s Experiences in the Domestic Violence Courts of Nova Scotia” (November 2023), online (pdf): <<https://dalspace.library.dal.ca/bitstream/handle/10222/83388/FINAL%202023%20Efray%20report%20They%20Did%20Not%20Listen%20to%20Our%20Whole%20Story.pdf?sequence=1&isAllowed=y>>; See also Barbra Schlifer Commemorative Clinic, “The Criminalization of Women Project” online: www.schliferclinic.com/criminalization-of-women/; MCC Volume 3: Violence, *supra* note 1 at 361-363.

¹² Cary Ryan et al, “A review of pro-arrest, pro-charge, and pro-prosecution policies as a response to domestic violence” (2022) 22:1 J Social Work 211 at 226-227.

¹³ CIS-2008, *supra* note 6 at 4.



Figure 3¹⁴



What’s more, the Mass Casualty Commission Final Report makes extensive recommendations for tackling intimate partner violence in Canada in recognition of the intricate connection between domestic and public violence. The Commission sought to understand patterns of behaviour and addressing the root causes of mass violence and in doing so, stresses the need to put women at the center – particularly women who are marginalized by intersecting inequalities. In the Final Report the Mass Casualty Commission emphasized that **“safety must be prioritized at every point in the continuum of strategies to end gender-based violence”**.¹⁵ The Commission recommended that **“[p]utting safety first requires reconsidering the direct and indirect obstacles that are put in the path of a woman seeking to get herself and her dependants out of harm’s way.”**¹⁶ This requires “lifting women and girls out of poverty, decentering the criminal justice system, emphasizing primary prevention, and supporting healthy masculinities.”¹⁷ Unfortunately, given what we know about the deep connection between intimate partner and gendered violence and child protection, the Report did not go the step further to making recommendations for reform of child protection services or the way that these services provide supports in cases of intimate partner violence.

¹⁴ *Ibid* at 4.

¹⁵ MCC Volume 3: Violence, *supra* note 1 at 441 (i.e. prevention, early intervention, response, recover and healing (see explanatory footnote above per footnote 7)).

¹⁶ *Ibid* at 449.

¹⁷ *Ibid* at 271.



For example, the Commission **noted that “The unacceptably low rate of reporting of gender-based violence is a result of factors such as systemic barriers rooted in the criminal justice system and the operation of racism, gender-based myths, and stereotypes; the complex interactions among the criminal, family law, and immigration law regimes; and the fact that these systems do not adequately take into account the reality of women’s lives.”**¹⁸ The Commission **recommended the development of “New community-based systems for reporting gender-based violence” with specific attention paid to “the needs of marginalized women survivors and the needs of other women who are vulnerable as a result of their precarious status or situation.”**¹⁹ However, while members of both the African Nova Scotian²⁰ and Indigenous communities²¹ raised the fact that many women in those communities will not report because of their fear of having their children apprehended by child protection services, the report did not address the place of child protection in the Final Recommendations.

Not only may the involvement of child protection services stand as an obstacle to reporting intimate partner violence but the way that child protection services is carried

¹⁸ *Ibid* at 364.

¹⁹ *Ibid* at 365.

²⁰ *Ibid* at 359. Importantly, Lana MacLean gave testimony on systemic racism and the relationship between the police and the African Nova Scotian community saying:

So for Black women, intimate partner violence or gender-based violence, must be viewed in terms of whether or not we are going to betray the community in reaching out to police. That betrayal has a lot of cognitive dissonance, a lot of psychological and emotional aspects of well-being that must be taken into consideration, and for particularly all women, but particularly African Nova Scotian women who have prevalence of having our children apprehended by child welfare. As our brothers and sisters in the Indigenous community, we need to be protective of that particular vital resource.

...

We say Black women are the keepers of culture in our community and we have to be protective of the larger – or have more situational awareness and not just our own issues of our own protectiveness, but – and we are very mindful of the impact of what it looks like for Black men if they are the perpetrators, to be actually engaged in the criminal justice system and that they are over-represented in the criminal justice system. So for us, it’s also another generation of loss into the criminal justice system and do we want to actively participate in that which is a part, again, of our interrogating our cultural normal and our faith-based practices with what is seen as trajectory towards justice.

²¹ *Ibid* at 361: “Many women survivors of gender-based violence worry that if they report the abuse, the police will involve child protection services and they will lose their children. The concerns are particularly strong for Indigenous and African Canadian women. Indigenous women have reported that the police asked them “irrelevant questions about their children while they attempted to report the violence they experienced.” During the Commission’s consultative conference with Indigenous Nova Scotians, Cheryl Copage-Gehue stressed the importance of understanding that the reason Indigenous women are not reporting violence is because they fear their children will be taken away from them.”



out may either promote or exacerbate intimate partner or gender-based violence. Child protection services that fail to support women to leave situations of intimate partner violence will leave them vulnerable to further abuse especially in the midst of a stressful and prolonged investigation and proceedings. Women who are experiencing substance **use or mental health challenges that don't receive appropriate services may be more** vulnerable to intimate and gender-based violence.²²

Additionally, the overarching goal of Canada's National Action Plan to End Gender-based Violence is ending intimate partner and gender-based violence. While the Plan addresses a number of related issues including creating a responsive justice system, one notable omission is addressing the fact that exposure of victims of intimate partner and gender-based violence to the child protection system may stand as a major obstacle to tackling these issues.

Finally, perhaps the most direct link between child protection services and intimate partner or gender-based violence is between child protection services and the outcomes for children in their care. As has been noted in numerous reports, child protection services may further colonialism and systemic racism in separating children from their culture and leaving them vulnerable and disconnected from community after care. We have seen this connection detailed in inquiries addressing injustices committed upon Indigenous peoples, for example in the Truth and Reconciliation Commission, for example. As well, in the course of the National Inquiry into Missing and Murdered Indigenous Women and Girls the link between child protection services and human trafficking was highlighted. Social workers noted that Indigenous girls were particularly vulnerable to human traffickers when they aged out of care, with traffickers quite literally parking outside of youth shelters.²³ This connection has been noted by others as far as the interaction

²² A Haller et al, "Mental Health/Substance Use Coercion and Intimate Partner Violence Survivors in Family Court" (September 2023), online at 3-4, (pdf): <https://fvfl-vfdf.ca/briefs/Briefs%20PDF/Issue-29---RESOLVE---English.pdf> [Mental Health/Substance Use Coercion]. See also Carole Warshaw and Erin Tinnon, "Coercion Related to Mental Health and Substance Use in the Context of Intimate Partner Violence: A Toolkit for Screening, Assessment, and Brief Counseling in Primary Care and Behavioral Health Settings" (March 2018), online (pdf): <https://ncdvtmh.org/wp-content/uploads/2022/10/NCDVTMH_MHSUCoercionToolkit2018.pdf>.

²³ MMIWG Final Report, supra note 4 at 111. "In offering testimony related to human trafficking, Diane Redsky, the executive director of Ma Mawi Wi Chi Itata Centre, talked about the way predators target Indigenous girls at bus depots or airports in order to take advantage of their vulnerability during a period of transition such as aging out of care. We [the Youth Task Force] highlighted that one of the key risk factors is the inconsistent provincial child protection policies in Canada. We had six provinces in our country where child welfare taps out at 16. So if you're 15 and a half and you are in need of protection, chances are there's actually a risk that you could be denied service. And, in fact, we heard from survivors that they were denied service because of their age. Given a bus ticket and an address to the closest co-ed youth shelter where we



between being a ward of child protection and vulnerability to human trafficking is concerned, with the UN Special Rapporteur on contemporary forms of slavery reporting after his visit to Canada on the causal connection between the overrepresentation of Black and Indigenous children in child protection and their exposure to contemporary forms of slavery including human trafficking.²⁴

In this Report we to add to what we hope will be a growing and evolving conversation engaging women and children from marginalized communities in a conversation about how to reconceptualize child protection law and practice. This reconceptualization is an important consideration in addressing gender-based violence and structural inequality and providing for the rights of vulnerable children. Because we see law as an important component in changing not only systems but in establishing new norms, we have partnered with a local organization to sketch out what a legislative child protection regime might look like based upon the vision articulated by the mothers involved in the project.

A Mother's Lens Project

In this project we recruited women with lived experience of both the criminal justice and child protection systems and asked them to take pictures that represented their experience with both systems. We chose this method (based on the Photovoice method²⁵) for its ability to allow participants to capture and reflect upon their daily lives using photography and to illuminate the complex experience of dealing with child protection involvement. We asked participants to take pictures that would convey how they felt about their experience in these systems – either in a literal or abstract sense, and then asked

know traffickers just park outside. They are just waiting to recruit and lure from these.”

²⁴ Amy Juanita Jones, “Fight4Freed: Foster Care and Human Trafficking (Report No.1)” (2020) at 4-6, online (pdf) <https://www.fight4freedom.ca/uploads/2/4/1/5/24157645/fostering_freedom_report.pdf>; United Nations General Assembly, Human Rights Council, 57th Session, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, Visit to Canada A/HRC/57/46/Add.1, online: <https://documents.un.org/doc/undoc/gen/g24/120/97/pdf/g2412097.pdf>.

²⁵ See Caroline Wang and Mary Ann Burris, “Photovoice: Concept, Methodology, and Use for Participatory Needs Assessment (June 1997) 24(3) Health, Ed & Behav 369. Photovoice is a participatory research method that integrates photography with social advocacy to highlight community issues. Originating from the work of Wang and Burris, Photovoice allows individuals, especially those from marginalized groups, to document their experiences and concerns through photographs. These images serve as tools for storytelling, empowering participants to share their unique perspectives. The approach involves having participants take photos that reflect aspects of their lives, followed by group discussions to explore the meanings of the images. This method helps identify themes and insights that may be missed by conventional research methods. By involving community members directly in the process of identifying social problems and solutions, Photovoice allows community members to become catalysts for social change.



them to prepare a final presentation on their photos and join in a discussion of the projects with all participants. Participant projects are now available online and several photos are used in this report to represent several common themes among participant projects.

We recruited women through social media platforms, email outreach, and direct communication with clients and various community organizations. A detailed poster **outlining the study's purpose and participation criteria was widely disseminated to** maximize visibility and engagement. In total, we recruited 12 women to participate in the project. These women were from various provinces at various times and therefore did not all have contact with contemporary child protection services in Nova Scotia. Some of the experiences of mothers involved in the study stretched back several decades and so not all participants were necessarily commenting on current experience with child protection services.

Once women were recruited for the project we undertook a three-phase approach: the Orientation phase, Photography & Narrative phase and Final presentation phase. In the Orientation phase we held an orientation session with participants and introduced them to the methodology of the project. This session included a detailed explanation of the **project's objectives, the process of taking and selecting photos, and ethical considerations** such as consent and confidentiality. We obtained informed consent from all participants, emphasizing their right to withdraw from the study at any time. In recognition of their time and contributions, we provided participants with transportation, child care reimbursement, food during meetings and an honorarium.

Participants were then given two weeks to for the Photography & Narrative phase of the project. Participants were given two weeks to take photographs that represented their experiences with the child protection system. To support them in this task, we provided digital cameras to those who needed them and offered technical assistance throughout this phase. We maintained regular contact with participants through follow-up meetings and phone calls to address any concerns, provided encouragement, and offered additional guidance as needed. This ongoing support ensured that participants felt confident and capable in capturing their stories.

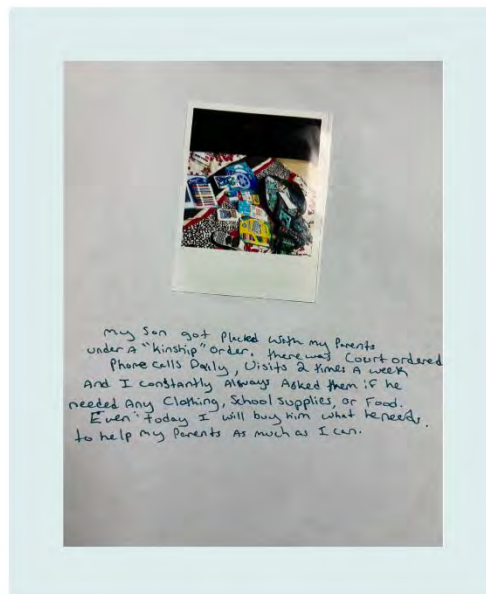
After the Photography & Narrative phase, participants attended a follow-up session to select their most meaningful photos and provide narratives that explained the



significance of each image. These narratives were crucial in contextualizing the **photographs and articulating the participants' experiences and insights.** During this Final Presentation stage, participants presented on their photographs and narratives and discussed why they took the photographs they did and why they displayed them in the way that they did. Participants then had a discussion on what they would have liked to have seen from their interactions with child projection. We have reproduced this discussion and common themes below.

What We Heard

There were a number of common themes that emerged from across the projects and Final presentations. **Strongest amongst them was the concern mothers had for their children's best interests.**

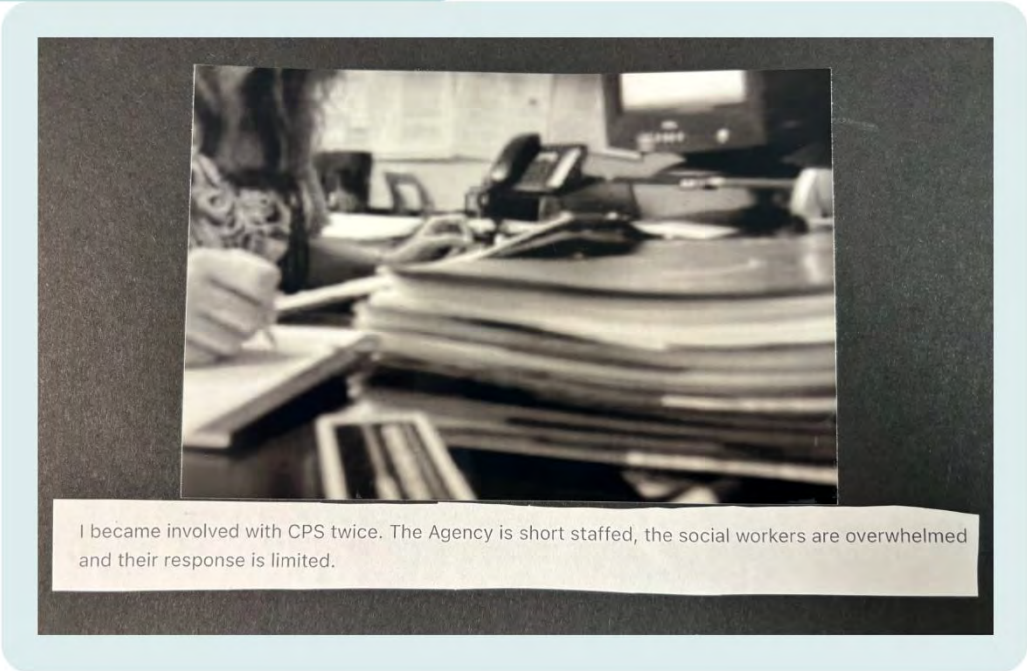
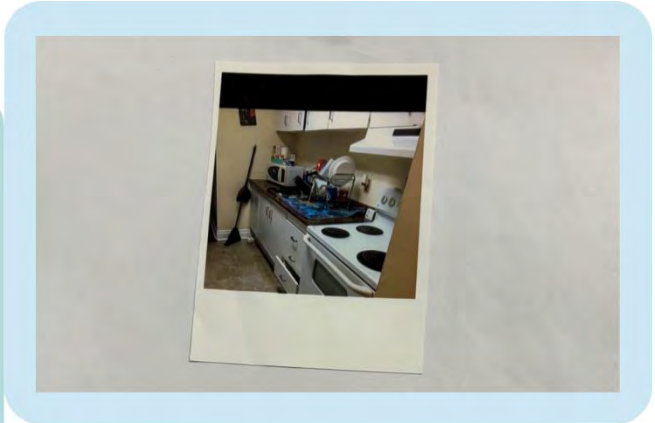


Text in photo: My son got placed with my parents under a “kinship” order. The was Court ordered phone calls daily, visits 2 times a week and I constantly always asked them if he needed any clothing, school supplies or food. Even today I will buy him what he needs to help my parents as much as I can.

At several points mothers continued to question the care provided to their children (some who had not been in care for several decades) by child protection services (hereinafter “CPS”). **Several women spoke of feeling alienated when on access visits with their children.** They commented that their children were made to meet with them in child protection offices when it would have been better to meet with them in child-friendly



places in the community. As well, some of the mothers expressed concern that child protection workers did not inspect their children's placements as often as required and some offices seemed short staffed with staffed overwhelmed.

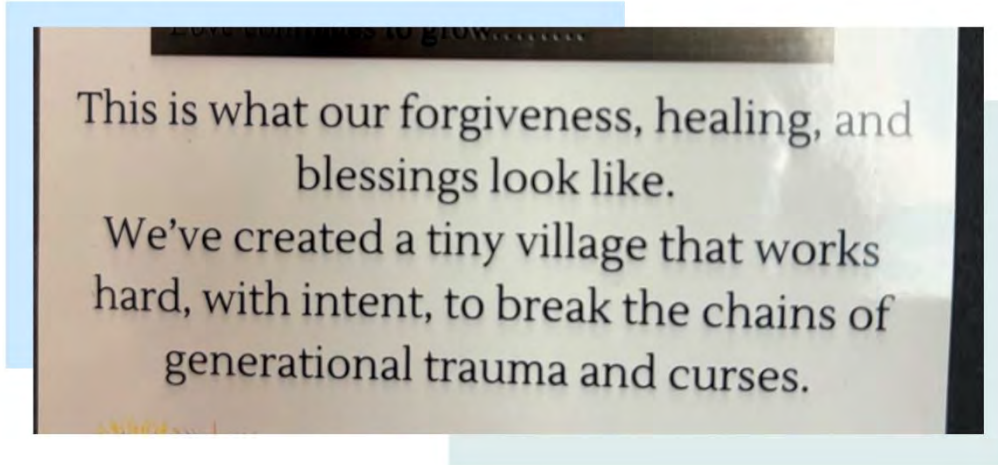


Text in bottom photo: I became involved with CPS twice. The Agency is short staffed, the social workers are overwhelmed and their response is limited.

Several women commented on the intergenerational nature of their interactions with child protection. Women who were children in the care of CPS would later have their



children apprehended. Two women who participated in the group were mother and daughter, with the daughter, having been in care now seeing her children apprehended by CPS.

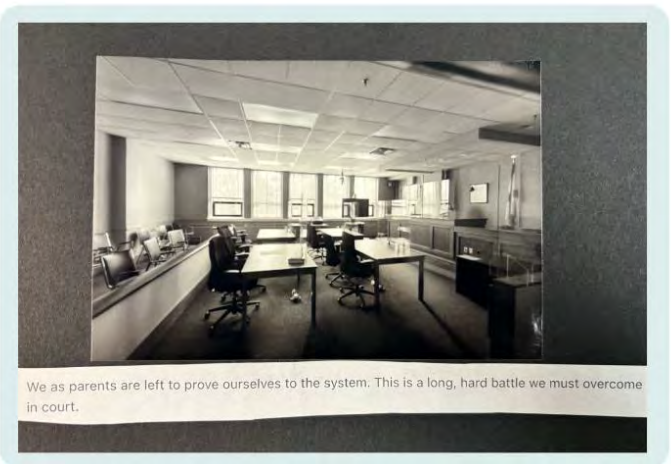


Text in photo: This is what our forgiveness, healing, and blessings look like. We've created a tiny village that works hard, with intent, to break the chains of generational trauma and curses.

Several women commented on their experience in court as alienating and frightening. **One noted negative feelings about her lawyer and that she didn't feel like she could trust him.**



This reminds me of when they had the judge put her in full care



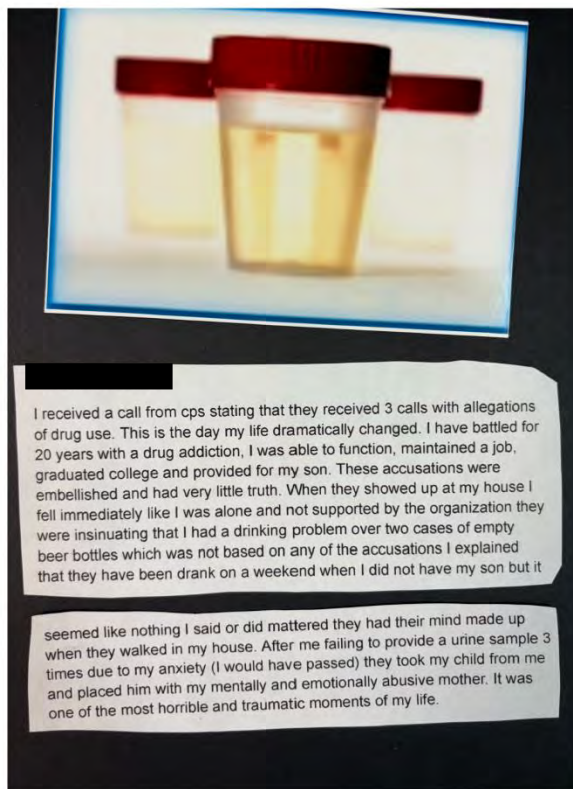
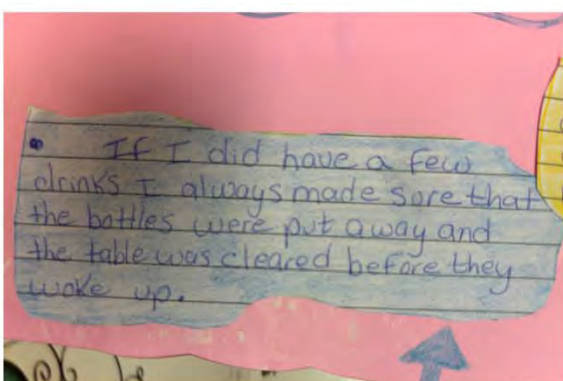
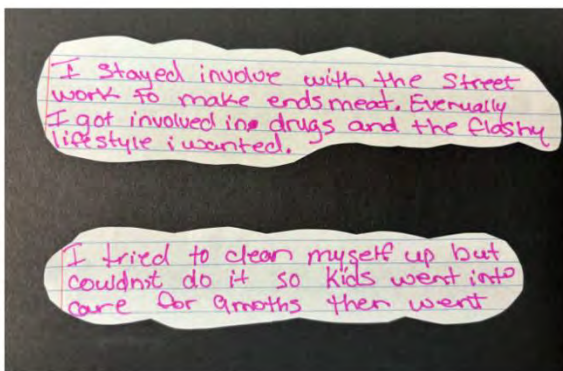
We as parents are left to prove ourselves to the system. This is a long, hard battle we must overcome in court.

Text in photo (left): This reminds me of when they had the judge put her in full care.

Text in photo (right): We as parents are left to prove ourselves to the system. This is a long, hard battle we must overcome in court.



Four women spoke of difficulties with drugs and alcohol.



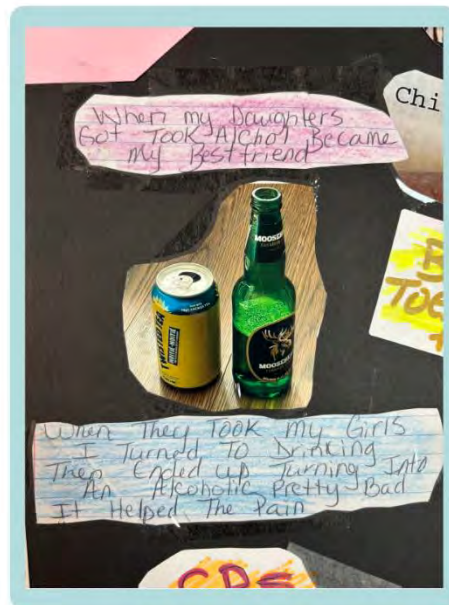
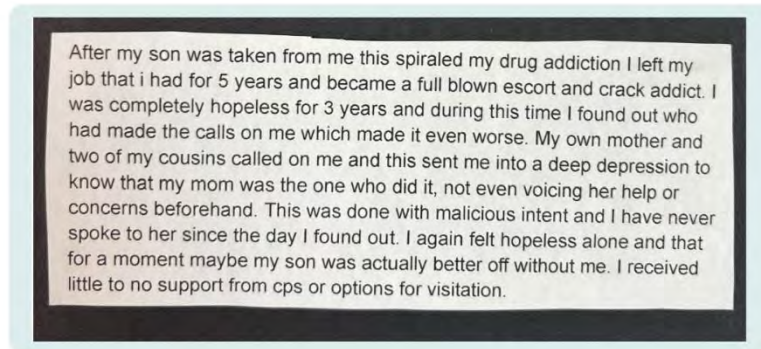
Text in photo (top left): I stayed involve with the street work to make ends meat. Eventually I got involved in drugs and the flashy lifestyle I wanted. I tried to clean myself up couldn't do it so kids went into care for 9 months then went...

Text in photo (bottom left): If I did have a few drinks I always made sure that the bottles were put away and the table was cleared before they woke up.

Text in photo (right): I received a call from cps stating that they received 3 calls with allegations of drug use. This is the day my life dramatically changed. I have battled for 20 years with a drug addiction, I was able to function, maintained a job, graduated college and provided for my son. These accusations were embellished and had very little truth. When they showed up at my house I fell immediately like I was alone and not supported by the organization they were insinuating that I had a drinking problem over two cases of empty beer bottles which was not based on any of the accusations I explained that they have been drank on a weekend when I did not have my son but it seemed like nothing I said or did mattered they had their mind made up when they walked in my house. After me failing to provide a urine sample 3 times due to my anxiety (I would have passed) they took my child from me and placed him with my mentally and emotionally abusive mother. It was one of the most horrible and traumatic moments of my life.



A common theme for women struggling with addictions in the group was that they felt their interactions with CPS and their experience of having their children apprehended in fact exacerbated their addictions rather than assisting them in recovery. Several women noted that while they admit to having an addiction to drugs or alcohol that they felt they could somewhat manage at the beginning of the process, by the time their children were apprehended, they felt they could no longer control their addiction due to the stress of the intervention.

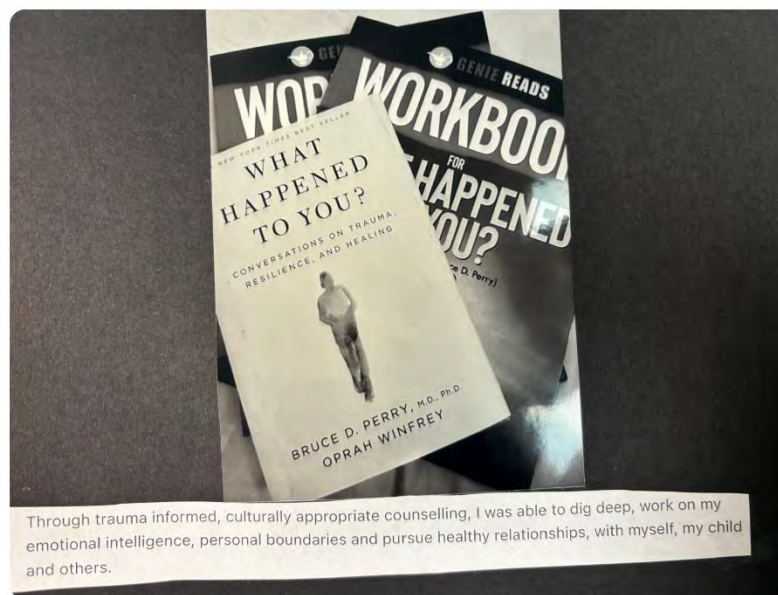


Text in photo (top): After my son was taken from me this spiraled my drug addiction I left my job that I had for 5 years and became a full blown escort and crack addict. I was completely hopeless for 3 years and during this time I found out who had made the calls on me which made it even worse. My own mother and two of my cousins called on me and this sent me into a deep depression to know that my mom was the one who did it, not even voicing her help or concerns beforehand. This was done with malicious intent and I have never spoke to her since the day I found out. I again felt hopeless alone and that for a moment maybe my son was actually better off without me. I received little to no support from cps or options for visitation.



Text in photo (bottom): When my daughters got took alcohol became my best friend. When they took my girls I turned to drinking then ended up turning into an alcoholic pretty bad it helped the pain.

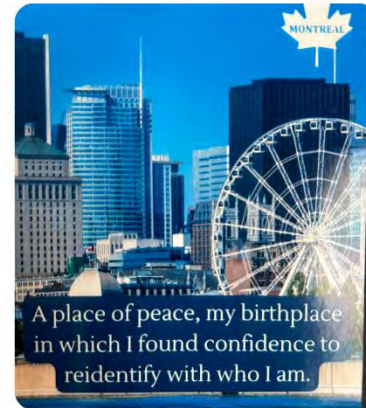
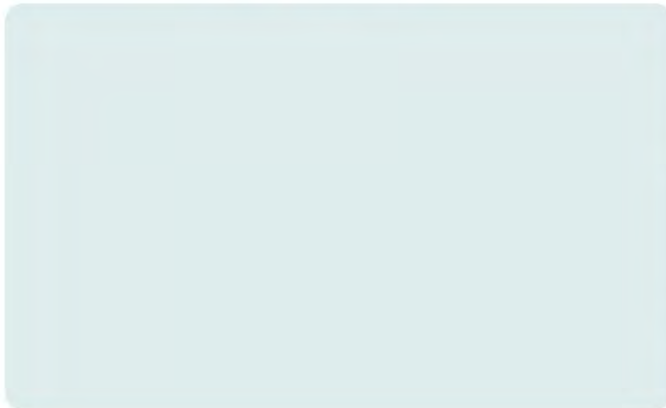
Several women noted that CPS intervention should be trauma-informed and assist them in their recovery as opposed to creating a stressful experience that deepened their addictions. Assisting them with their recovery would have assisted their children. One participant recommended that women and their children be provided by trauma-informed, residential care where women could focus on their recovery and have their children with them in a safe space.



Text in photo: Through trauma informed, culturally appropriate counselling, I was able to dig deep, work on my emotional intelligence, personal boundaries and pursue health relationships, with myself, my child and others.



A major theme that emerged, despite this difficult experience with CPS, was that of resilience.



Text in photo (top left): I then took a beautiful little girl into my care from cps. Strange how tables can turn around in life. To this day I still have the little girl in my care and custody.

Text in photo (top right): As soon as CPS became involved in my life, I decided to engage in services, get back into the community, pursue my High School Diploma and am now studying my B.A. in psychology.

Text in photo (bottom right): A place of peace, my birthplace in which I found confidence to reidentify with who I am.

One woman whose children were apprehended several decades earlier was now a bus driver who daily supervised and had the care of dozens of children on her school bus. Another woman was now a foster mother herself, caring for children in need of protection. One woman was currently enrolled in university and spoke of how she intended to become a social worker to assist other women in her position. And another woman spoke about



how she was now doing community work herself and serving as a peer supporter to women who were suffering from poverty and addictions.

There were a number of overarching structural inequalities that emerged from women's projects including racism, misogyny and poverty. While only 2 of the 10 women identified as African Nova Scotian, the vast majority of children of mothers involved in the project were racialized. One woman expressed that she believed her child was taken from her **because he is Black and voiced that when talking about child protection services, "Black Lives Matter".** Another participant noted that **not only do services have to be trauma-informed but they should be culturally appropriate so that Black and Indigenous children do not continue to be overrepresented in the system.**

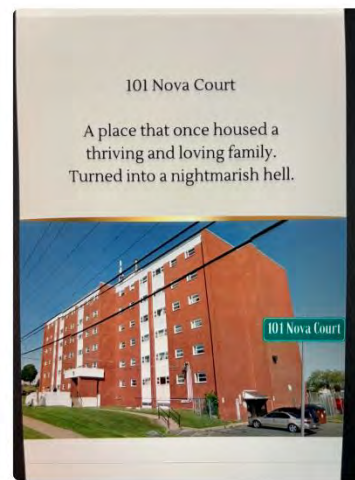


Text in photo (left): When my oldest was taken based on his race.

Text in photo (right): Stop the violence. BLM.



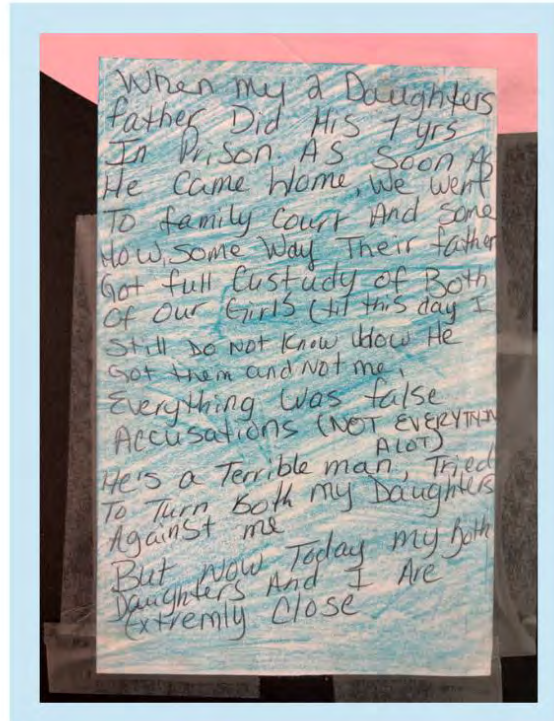
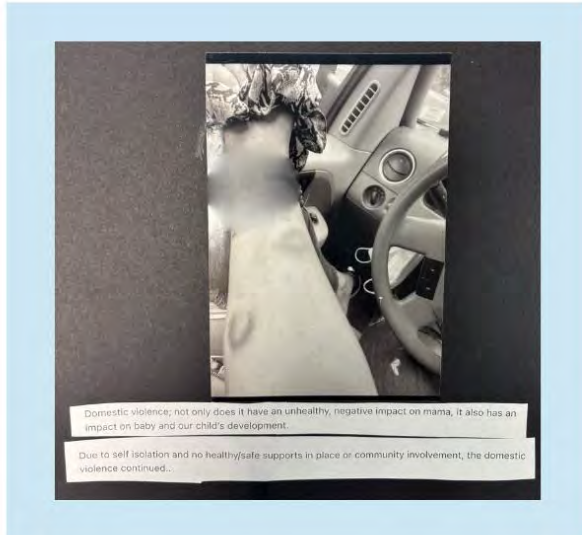
Aside from systemic racism, poverty emerged as a strong common experience amongst a number of the participants. Several mothers spoke of having to undertake sex work to support themselves and their children and not having the money to provide what CPS was requiring them to provide for their children. One woman recounted that she had to **undertake sex work in order to buy extra beds and items for her children's room because** that is what CPS required in order to see the return of her children and she had no alternative way of accessing financial assistance. Several women spoke of how their living in social housing had exposed them to CPS because they were exposed to social service workers and police who regularly surveilled these areas.



Text in photo (left): Whether the CPS all started. Spryfield Greyston Community. “Welcome to the Community of Greystone.”

Text in photo (right): 101 Nova Court. A place that once housed a thriving and loving family. Turned into a nightmarish hell.

Finally, the theme of gender inequality was present in the stories of most of the mothers in the project. Several of the women had been parenting alone and several women noted that they had been victims of domestic violence. One woman recounted how, after her husband was released from prison, he called CPS on her and eventually was given custody of her children.



Text in photo (left): Domestic violence; not only does it have an unhealthy impact on mama, it also **has an impact on baby and our child's development.** Due to self isolation and no healthy/safe supports in place or community involvement, the domestic violence continued.

Text in photo (right): When my 2 daughters father did his 7 years in prison. As soon as he came home, we went to family court and some how, some way their father got full custody of both of our girls. Til this day I still do not know how he got them and not me. Everything was false accusations **(NOT EVERYTHING A LOT).** He's a terrible man, tried to turn both my daughters against me but now today my both daughters and I are extremely close.



Several women spoke of how they felt they were being judged as mothers and of failing to live up to certain expectations of what a 'good mother' is.



Text in photo (left): When my neighbour decided to call CPS on me because she was upset that I told her to leave. Upon arrival I invited them in, and got them to look in my fridge, check my cupboards and go through my place. This was to prove I wasn't an unfit mother.

Text in photo (centre): For me it's always been important to have a nice/clean home for myself and my daughters.

Text in photo (right): My kitchen area was cleared of dirty dishes and a clean area for me to prepare meals the next day.



Most participants commented in some form on the importance of support.



Text in photo (left): Family SOS. This is showing where I did my parent class at.

Text in photo (right): me n my support person since day 1.

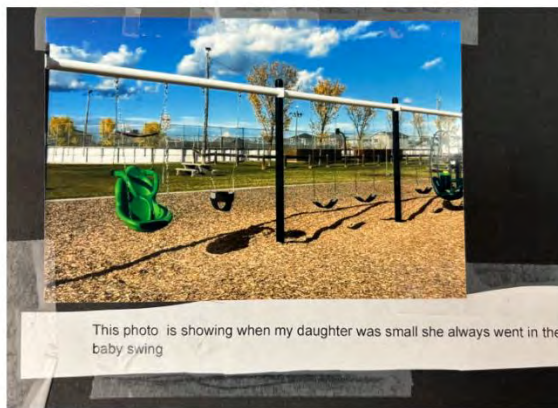
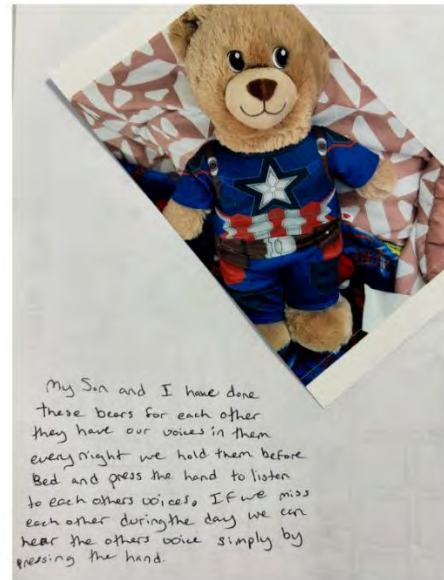
One mother spoke about how a lack of support and a situation of domestic violence made it difficult for her and her children to leave the violence and left them in an unsafe situation. Another woman spoke of how domestic violence and a lack of financial resources had lead her neighbours to calling police.

Several women noted receiving much needed assistance from service providers such as family resource centers and other community agencies. One woman noted how thankful she was for support she received from a community agency in terms of parenting skills. As she had no positive parental figures she was thankful for the support in her parenting. On the other hand, several mothers commented on being fearful of reaching out for support because of the potential involvement of CPS and in one case one mother noted that in reaching out to supportive services this had made her situation worse.



Ideas for Change

When speaking of their children's best interests' mothers spoke of where their children like to play and swim and represented happiness through community gardens as a source of fresh food.



Text in photo (top left): This one reminded me of the cat my daughter had when she went into care when she was younger his name was buster.

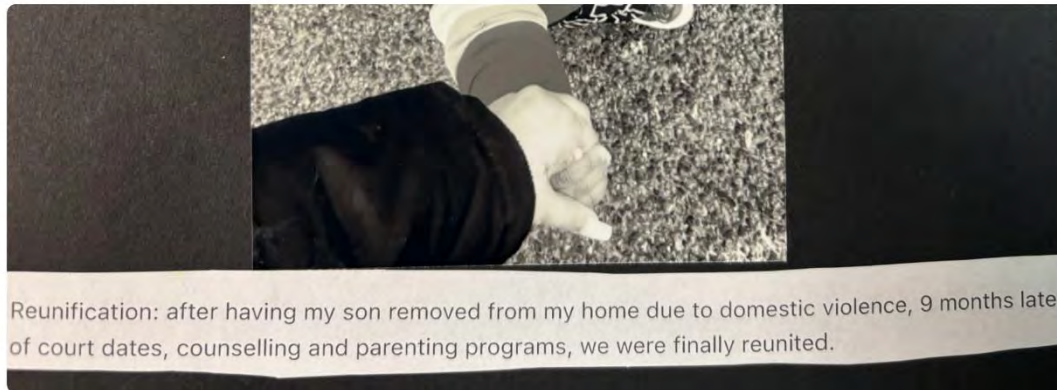
Text in photo (top right): My son and I have done these bears for each other they have our voice in them every night we hold them before bed and press the hand to listen to each others voices. If we miss each other during the day we can hear the others voice simply by pressing the hand.

Text in photo (bottom left): This photo is showing when my daughter was small she always went in the baby swing.

Text in photo (bottom right): kids fav place to be learning the bus routes having fun.



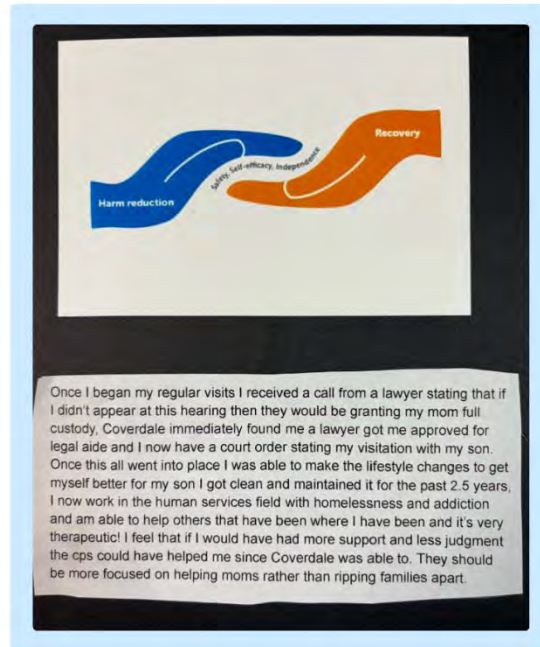
Mothers know what is in the best interests of their children and reunification should be the overarching priority of child protection services.



Text in photo: Reunification: after having my son removed from my home due to domestic violence, 9 months later of court dates, counselling and parenting programs, we were finally reunited.

As well, mothers and their children should be at the center of conversations about how child protection is providing services to their children. Some women mentioned that if children are placed out of the home child protection must regularly inspect where they are and regularly make sure that children have access visits in child-friendly places with parents and other important relatives. As noted above, some mothers recommended that access visits should be held in child friendly places such as parks so that children feel more comfortable than in CPS offices. Several participants reported wanting more support for positive visits with their children.

When asked what they would have found most helpful in their experiences, some of the mothers noted they would have wanted help with addictions, and referrals to health **professionals. They expressed wanting to be “seen as a person”, wanting greater empathy** from CPS workers and involvement with more CPS workers with more life experience and more experience with child-rearing and who were culturally appropriate.



Text in photo: Once I began my regular visits I received a call from a lawyer stating that if I didn't appear at this hearing then they would be granting my mom full custody. Coverdale immediately found me a lawyer got me approved for legal aide and I now have a court order stating my visitation with my son. Once this all went into place I was able to make the lifestyle changes to get myself better for my son I got clean and maintained it for the past 2.5 years, I now work in the human services field with homelessness and addiction and am able to help others that have been where I **have been and it's very therapeutic! I feel that if I would have had more support and less judgement** the cps could have helped me since Coverdal was able to. They should be more focused on helping moms rather than ripping families apart.

One woman felt CPS needed more workers in general as she felt they were overwhelmed. One mother felt there should be more visits by workers to placement homes to ensure the quality of the homes make sure homes were positive for children.



Some mothers noted the importance of keeping mothers and children together and getting supports to keep mothers and children in a safe and welcoming environment. One mother noted that even where mothers require intensive substance abuse counselling, this should be provided in a residential care facility that keep children and mothers together.



Text in photo (left): We must work towards a better, healthier life for ourselves and our children. I hope to see a live in facility, built for our families so that we can get the support and guidance we need while engaging in programs and still be able to live with our children, rather than being separated from our children. After all, our children's well being and best interest is of the up most importance. Our children are the future!

Text in photo (right): Let us help families from a human perspective lense. For those in need of supports with mental health & addictions. Let's work on bringing families back together.

Several women spoke about needing to take a trauma-informed and human perspective and in keeping families together with support and resources. Part of being trauma-informed and human centered is taking into consideration injustices like colonialism, racism and misogyny. As noted above, in commenting on her child's apprehension by CPS, one mother urged that, "Black Lives Matter".

Finally, some women reported the need for emotional support and counselling for parents dealing with apprehensions. If children have to be taken out of the home then the Agency should provide counselling and supports for parents to learn how to deal with the absence of their children and the trauma of the child protection involvement. Several mothers talked about how their battles with addictions got worse after their interaction with



children protection. Being trauma responsive means being trauma responsive for the whole family and ensuring child protection services do not cause trauma to either children or parents.



Grounding Reform in What We Heard: Moving to a Supportive Model of Child Welfare Law

The Need for a More Supportive Child Welfare System

As discussed above, there are many reasons why women may be criminalized that may also expose them and their children to the child protection system: the operation of systemic racism and colonialism, the overrepresentation of low income families in care and **the conflating of poverty with the “neglect” ground of child protection. As well, many** women may be criminalized because of mental health challenges, substance use and addictions and survival sex work, all of which may create situations in which child protection may find a child to be in need of protection based on grounds of neglect or the **“risk”**-based grounds of protection such as risk of emotional or physical abuse. Many of these themes emerged in the photographs and discussions with the mothers involved in the Mothers Lens project.

Finally, women may be criminalized because they are victims of intimate partner violence. As discussed above, in a most direct sense, women may be criminalized in reacting to



intimate partner violence, or in failing to show up to testify in cases of the criminalization of intimate partner violence. Women who are victims of intimate partner violence may experience mental health and substance use challenges and may be coerced into survival sex work by abusive partners. In many ways, then, **a woman's experience of intimate partner violence** may lead her to be criminalized. At the very same time, these same factors may also lead a child to be apprehended by CPS. It is for this reason that the Mass Casualty Commission recommended de-centering criminalizing approaches to intimate partner violence. These approaches create a fear amongst vulnerable women and stand as an obstacle to reporting.²⁶

A central recommendation of the Mass Casualty Commission calls for a shift away from punitive and criminalizing responses to violence towards a greater focus community-based prevention:

Punitive approaches create barriers to victims, potential victims, perpetrators, and potential perpetrators seeking assistance that might avoid future violence. A broader community safety strategy that integrates a public health prevention model is a sounder approach.²⁷

The Mass Casualty Commission Final Report **reviewed the “unacceptably” low rates of reported gender-based violence**, citing several examples of reasons for underreporting such as racism, persistent myths and stereotypes about gender-based violence, complex and intersecting legal systems, fear of not being believed and concerns about state harms and criminalization.²⁸ Particularly for Indigenous and African Canadian women, a predominant concerns around reporting experiences of abuse is the fear of child protection services intervention and the real risk that their children may be taken from them.²⁹ Compounding this is a concern that a survivor may be criminalized for reporting **abuse, for example if police are unable to discern “primary aggressor” and both partners** or just the survivor are charged. For survivors from marginalized communities in particular, reporting violence or engaging with formal systems therefore means taking on

²⁶ MCC Volume 3: Violence, *supra* note 1 at 362.

²⁷ *Ibid* at 217.

²⁸ *Ibid* at 364.

²⁹ *Ibid* at 361.



a significant risk for themselves and their children³⁰ and the possibility of increasing their experiences of inequality.³¹

Understanding and addressing Gender Based Violence and the factors that may lead children to be exposed to the child protection system, then (including exposure to intimate partner violence, poverty, maternal mental health, substance use and survival sex work) is a matter of human rights not just for mothers, but for children. Studies have shown that being in care presents risk factors for children including risk factors in care,³² and risk factors once they age out of care including homelessness and human trafficking.³³ One 2016 study discussed in the Restorative Inquiry on the Nova Scotia Home for Colored Children Final Report explored the connection between child protection services and homelessness in Canada. The report showed that 73.3% of youth who became homeless after the age of 16 (ie., the time a child would normally “age out of care” at that time) had been involved with child protection services.³⁴

With respect to the quality of care while in the care of child protection services in the **Province (hereinafter, “CPS”), Nova Scotia’s Auditor General made a number of** observations after her investigation of temporary emergency care and child and youth care homes for children in care. In her May 2024 report: *Health, Safety and Well-being of Children Placed in Temporary Emergency Arrangements and Child and Youth Care Homes* the Auditor General highlighted the following key messages:

- **Weak oversight of children in temporary emergency arrangements and child and youth care homes is increasing the risk that vulnerable children will not be properly cared for.**
- **Social workers are not meeting with children at the required frequency impacting their ability to properly plan for the child’s care.**
- **Missing and outdated plans of care may result in the needs of children not being addressed.**

³⁰ *Ibid* at 362.

³¹ *Ibid* at 13.

³² Nova Scotia, Office of the Auditor General, “*Report of the Auditor General to the Nova Scotia House of Assembly: Impact Health, Safety and Well-Being of Children Placed in Temporary Emergency Arrangements and Child and Youth Care Homes*” (Halifax: Office of the Auditor General of Nova Scotia, 2024) [Auditor General’s Report].

³³ MMIWG Final Report, *supra* note 4; UN Special Rapporteur, *supra* note 24.

³⁴ Restorative Inquiry, *supra* note 3 at 415.



- **No assessment or analysis by the Department of over 1,900** critical incidents or serious occurrences that could impact the health and safety of children.
- **Weak agreements do not allow the Department to hold service providers** accountable for the quality of care provided to children.³⁵

The unfortunate conclusion of these studies is that it cannot be said with certainty that **children’s best interests are always being prioritized in care. What’s more,** the Act in Nova Scotia does not provide for review of a child’s care after an order for permanent care and custody has been made. It is noteworthy that the UN *Convention on the Rights of the Child* affirms that the best interests of the child shall be a primary consideration in all actions concerning children, including those by social welfare institutions³⁶ and that children capable of expressing their own views have a right to do so in all matters affecting them and those views must be given weight.³⁷ Importantly, Article 2 of the Convention sets out that the rights therein are to be protected “without discrimination of any kind” and that children shall be protected against all forms of discrimination.

Indigenous scholars and advocates have for some time raised awareness of the overrepresentation of Indigenous children in care and its detrimental impact.³⁸ In response to this advocacy, the Government passed the *Act respecting First Nations, Inuit and Métis children, youth and families*,³⁹ recognizing the right of First Nations, Inuit, and Metis peoples to exercise their jurisdiction over child and family services. Through a process set out in the Act, Indigenous groups may undertake this process to have their child welfare legislation prevail over provincial child welfare laws.

There is relatively less research however on the disproportionate levels of investigation and child apprehension amongst other minority groups in Canada.⁴⁰ Statistics release in Nova Scotia during community presentations in June 2016 regarding the proposed

³⁵ Auditor General’s Report, *supra* note 32 at 7.

³⁶ *Convention on the Rights of the Child*, 20 November 1989, Can TS 1992 No 3 art 3 (entered into force 2 September 1990, accession by Canada 12 December 1991).

³⁷ *Ibid*, art 12.

³⁸ Some studies show that Indigenous children are approximately sixteen times more likely to be placed in foster care than non-Indigenous children, with numbers rising to thirty times more likely in some Canadian jurisdictions. This overrepresentation is most frequently motivated by allegations and concerns regarding neglect. See Johanna Caldwell and Vandna Sinha, “(Re) Conceptualizing Neglect: Considering the Overrepresentation of Indigenous Children in Child Welfare Systems in Canada” (2020) 13 *Child Indicators Research* 481 at 482-487.

³⁹ SC 2019, c 24.

⁴⁰ King et al, *supra* note 8 at 91.



changes to the *Children and Family Services Act*⁴¹ revealed that African Nova Scotian children were approximately 4.4 times more likely to be apprehended by child protection services.⁴² Information provided by the Department during the Restorative Inquiry into the Nova Scotia Home for Colored Children indicated that, in 2017, 24 per cent of the children in care were Black while they make up only 2.4 per cent of the population.⁴³

In one study from Ontario looking at Afro-Caribbean mothers and youth involved with child protection researchers reported that Black children in that Province were 41% more likely to be investigated and 57% more likely to be placed in out-of-home care in comparison to white children.⁴⁴ King et al observe that that this is due to the high number of referrals, which often come from schools, for "maltreatment related concerns", suggesting that bias is more likely to be present at the reporting stage.⁴⁵ In that research **mothers reported feeling like they had received "differential treatment" including feeling like they had been controlled and surveilled, and described cultural inadequacies in services and resources meant to provide support.**⁴⁶

Children who come from low-income families and from lone-mother families may also be overrepresented in care. This will be especially so for mothers that have been previously incarcerated. Many previously incarcerated mothers are lone mothers, which means they rely on a single income to support themselves and their families.⁴⁷ Multiple studies on previously incarcerated mothers demonstrate hardships with finding secure housing and employment during reintegration.⁴⁸ Lone mothers experiencing poverty may have an exceptionally difficult time supervising and meeting the needs of their children due to long working hours and an inability to maintain the resources to secure childcare and meet their children's material needs. In addition, racialized families are more likely to experience poverty due to a number of systemic factors.⁴⁹ The most recent Canadian Incidence Study of Reported Child Abuse and Neglect (2008) does not provide statistics on the income levels of families involved in the child protection system, but there is

⁴¹ SNS 1990, c 5.

⁴² Restorative Inquiry, *supra* note 3 at 455.

⁴³ *Ibid.*

⁴⁴ King et al, *supra* note 8 at 95.

⁴⁵ *Ibid.*

⁴⁶ *Ibid* at 91.

⁴⁷ Allison Crawford et al, "We're Still Human": A Reproductive Justice Analysis of the Experiences of Criminalized Latina Mothers" (2023) 32:1-2 *J Aggression, Maltreatment & Trauma* 262 at 317 [We're Still Human].

⁴⁸ *Ibid* at 269; Elizabeth E Adams, "Intensive Parenting Ideologies and Risks for Recidivism among Justice-Involved Mothers" (2020) 30:5 *Women & Criminal Justice* 316 at 319 [Parenting Ideologies].

⁴⁹ King et al, *supra* note 8 at 102.



information on housing which provide some insight on the socioeconomic status of families. This study shows that 70% of investigated families were not home owners and over 50% had moved on or more times in the past year.⁵⁰

As discussed in the introduction to this paper, along with exposure to intimate partner **violence, the ground of “neglect”, which can be broadly defined as the inability to meet a child’s needs or to adequately supervise them, is the most frequently substantiated ground of maltreatment in child protection cases across Canada at 34% of cases in a cross-Canada sampling of over 85,000 cases.**⁵¹ Although now dated, the same 2008 Canadian Incidence Study of Substantiated Maltreatment and Neglect indicated that the most substantiated type of maltreatment was exposure to intimate partner violence also at 34% of sample cases across Canada.⁵²

Salina et al address the relationship between intimate partner violence and unmet needs.⁵³ When women are unable to access necessities such as housing and food, they become exceptionally vulnerable and are more likely to become the targets of violence and exploitation by the partners that they rely on for survival.⁵⁴ This same connection between intimate partner violence and low income was investigated and addressed in the Final Report of the Mass Casualty Commission. For example, in her expert testimony at the Mass Casualty Commission Inquiry hearings, Prof. Janet Mosher observed that in research conducted in Ontario, it was found that priority access to safe housing was **critical for women’s safety.**⁵⁵ In interviews with survivors, Mosher found that many had returned to, or were contemplating returning to abusive situations because they could not survive on social assistance.⁵⁶ **What’s more, Mosher noted that women who cannot provide housing and food for their children are additionally afraid to leave abusive situations because of child protection involvement and fear of removal of their children. “So adequate funding for housing and social assistance I think is critical” Mosher testified.**⁵⁷ Indeed, in their expert report for the Inquiry, Dr. Jude McCulloch and Dr. Jane Maree Maher noted that a preventative approach to intimate partner violence would

⁵⁰ CIS-2008, *supra* note 6 at 42.

⁵¹ Caldwell & Sinha, *supra* note 36 at 493; CIS-2008, *ibid* at 31.

⁵² *Ibid* at 5.

⁵³ Doreen D Salina, Daphna Ram & Leonard A Jason, “Sexual Coercion, Trauma, and Sex Work in Justice-Involved Women with Substance Use Disorders” (2016) 25:3 J Aggression, Maltreatment & Trauma 254 [Sexual Coercion].

⁵⁴ *Ibid.*

⁵⁵ MCC Volume 3: Violence, *supra* note 1 at 315.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*



require increased funding to programs that would assist survivors to escape including **“social services, health services, child support, disability, housing programs, and culturally diverse and culturally safe support programs.”**⁵⁸

It is crucial, therefore, that when child protection intervenes in a situation where there is exposure to intimate partner violence, the services provided include adequate income assistance and assistance to obtain and maintain adequate housing for survivors and their **children. Both the Mass Casualty Commission and Canada’s National Action Plan to End Gender-Based Violence**⁵⁹ recognize that in order to address intimate partner and gender-based violence, Governments must address the poverty of women and girls. This is crucial for not only addressing gender inequality, but for keeping children, and indeed, as observed by the Mass Casualty Commission - communities – safe.

Failing to address intimate partner violence in a supportive fashion – through material social and economic supports, for example – may not only fail to allow survivors to seek places of safety with their children, but intimate partner violence can lead to, and exacerbate other risk factors to children in the home such as mental health and substance abuse challenges.⁶⁰ Furthermore, intimate partner violence in the home can prevent a victim from taking advantage of services to address mental health and substance use. For example, Haller et al explored the unique issues faced by intimate partner violence survivors, who have experienced substance use coercion.⁶¹ Survivors of substance use coercion may be coerced into using substances, be isolated from supports, or have their sobriety undermined or sabotaged. Abusers can intentionally use this kind of abuse against survivors in custody proceedings in the family court system, which can lead to child apprehension or difficulties obtaining custody. These two forms of abuse can form part of an overall coercive and controlling pattern of behaviour, known as mental health and substance use coercion.

⁵⁸ *Ibid* at 441.

⁵⁹ National Action Plan, *supra* note 2; MCC Volume 3: Violence, *supra* 1at 441-443. The Mass Casualty Commission’s recommended that **Governments must work to lift women and girls out of poverty in order.** The Commission notes that this is in line with one of the central goals of the National Action Plan to **“address the social and economic determinants that contribute to and perpetuate gender-based violence”** which recognizes the important connection between financial security and safety from violence. The **National Action Plan potential areas for investment, including “providing socio-economic benefits for those in need, providing wraparound services, and providing a range of housing options.”**

⁶⁰ Mental Health/Substance Use Coercion, *supra* note 22 at 8.

⁶¹ *Ibid* at 4.



Furthermore, not only is it important for child protection services to be supportive to help address intimate partner violence as a part of recovery, but a supportive system is required to be more trauma-responsive and more conducive to recovery where there are addictions concerns. Similar to the experience of **several of the mothers in the Mother's Lens Project, Duff et al's research also associates child apprehension with trauma that leads to escalated, sometimes life-threatening, substance use as coping mechanism.**⁶² Gunn et al suggest that the trauma endured by mothers who face familial separation increases the risk for severe substance use and relapse.⁶³ These researchers also highlight the stigma faced by mothers with a history of substance use due to gendered expectations regarding parenting, causing them to struggle with feelings of shame and inadequacy, even after they had stopped using substances.⁶⁴

Women who have challenges related to substance use and addictions may be more likely to take on survival sex work in order to support themselves and their children.⁶⁵ This may be more likely where they also experience intimate partner violence and in particular, coercive controlling behaviours.⁶⁶ This may be a particular risk for criminalized mothers given the difficulties associated with obtaining stable employment with a criminal record. This financial insecurity can prompt previously incarcerated mothers to engage in sex work for survival.⁶⁷ In Crawford *et al's qualitative study*, sex-work was a method for previously incarcerated mothers to overcome economic barriers due to less harsh criminal punishment in comparison to theft or selling drugs.⁶⁸ In turn, expectations and understandings of gendered behaviour often inform social systems like child protection

⁶² Putu Duff et al, "The 'Stolen Generations' of Mothers and Daughters: Child Apprehension and Enhanced HIV Vulnerabilities for Sex Workers of Aboriginal Ancestry" (2014) 9:6 PLoS One 1 [Stolen Generations] at 5.

⁶³ We're Still Human, *supra* note 47 at 269.

⁶⁴ Alana Gunn et al, "That's Not Me Anymore': Resistance Strategies for Managing Intersectional Stigmas for Women with Substance Use and Incarceration Histories" (2018) 17(4) Qualitative Social Work 490 at 494.

⁶⁵ Sexual Coercion, *supra* note 53.

⁶⁶ *Ibid.* Salina et al suggest that women engaged in sex work may have had an increased ability to numb traumas associated with sexual coercion through substance use. As well, In Silverstone et al's research, coercive control at the hands of a partner was the most common reason for women to begin exchanging sex for money. Many women that engage in sex work experience coercive control and sexual exploitation at the hands of a partner and are unable to stop without putting their safety at risk. Definitions sex work need clarity and should reflect the continuum of experiences that range from voluntary and involuntary sex work. Providing clear and consistent definitions can help institutions like the justice system and child welfare systems better understand the needs of women engaging in sex work, which should facilitate the provision of adequate services and supports.

⁶⁷ We're Still Human, *supra* note 47 at 268-269.

⁶⁸ *Ibid* at 269.



services.⁶⁹ Duff et al suggests that child welfare practices may assume that mothers who engage in sex work are exposing their children to an increased risk for sexual harm or exploitation.⁷⁰

Finally, several mothers in the **Mother’s Lens project commented on the alienating nature** of the systems they came across, including the justice system. This alienation highlighted the stress of the experience and they felt like their interests and those of their children were not being fully accounted for. In the Final Report on the Restorative Inquiry into the **Nova Scotia Home for Colored Children, it was observed that “our ‘system of care’ — as it has been broadly understood within the Inquiry to include those formal and informal networks, systems, structures, agencies, organizations, and institutions that are important to the care and well-being of individuals, groups, and communities — is generally oriented by the logic and demands of systems, not humans.”**⁷¹ As opposed to a human-centered approach that defines an outcomes framework centred on what matters to children and young people and their families, a system-centered approach substitutes its own understanding of best interests and prioritizes system-centered principles such as avoiding liability and the logic of risk.⁷²

As a result, the Inquiry found that such systems were not well equipped to meet people’s needs, that there was fear and mistrust of child protection services, and that the system was marked by systemic racism with the overrepresentation of African Nova Scotian children in care and the underrepresentation of members of the community in positions of authority.⁷³ Instead, the Inquiry recommended moving to a human-centered approach to child welfare that seeks break down silos and focus on relationships and needs instead of focusing on blaming individuals and acting on risk and avoiding liability.⁷⁴ The report notes the need to move towards being responsibility-focused and focused on problem solving and solutions in tandem with the community. The Final report of the Inquiry **acknowledged that “One of the most profound lessons taken from the history and experience of the Home was that caring for children and young people requires placing them and their needs at the centre of the systems, institutions, organizations, and services intended to care for them.”**⁷⁵

⁶⁹ Parenting Ideologies, *supra* note 48.

⁷⁰ See Stolen Generations, *supra* note 62.

⁷¹ Restorative Inquiry, *supra* note 3 at 436.

⁷² *Ibid.*

⁷³ *Ibid* at 392.

⁷⁴ *Ibid* at 490.

⁷⁵ *Ibid* at 411.



As a result the report recommended that, “The primary concern for child protection, then, should not be whether the child can remain in their home or not but what is needed to support healthy connection with their family.”⁷⁶ Similar to some of the findings of the Mass Casualty Commission Report and the need for a public health approach to addressing violence, **the report highlighted the importance of using a “social model” to draw attention to the “economic, environmental and cultural barriers” that must be addressed to keep children within healthy families.**⁷⁷

The public health approach to violence advocated by the Mass Casualty Commission Final Report proposed centering “**community-wide intervention strategies” to prevent violence and mass casualties, noting that such approaches “look to the social determinants of community safety including access to housing, health and social services, adequate income, and education.”**⁷⁸ The Mass Casualty Commission stressed that a public-health and society-wide response to violence requires an understanding and addressing of the **root causes of violence, in particular the ways in which a women’s vulnerability to violence may be exacerbated by “gender inequality, marginalization, and precarious status.”**⁷⁹ A public health approach must address the perspectives and needs of marginalized communities.⁸⁰

In taking a public health approach to violence the Mass Casualty Commission noted that primary prevention rather than punitive and intervening responses then becomes the **focus, and “this approach resists the tendency to individualize the responsibility for safety and refocuses the role of community.”**⁸¹ Moving beyond a focus on punitive responses, “[a] public health approach requires meaningful and sustained society-wide engagement that involves prevention, early intervention, response, recovery, and healing.⁸²

⁷⁶ *Ibid* at 419.

⁷⁷ *Ibid* at 423.

⁷⁸ MCC Volume 3: Violence, *supra* note 1 at 218.

⁷⁹ *Ibid* at 450.

⁸⁰ *Ibid* at 219.

⁸¹ *Ibid* at 449.

⁸² Mass Casualty Commission, “Turning the Tide Together: Final Report of the Mass Casualty Commission” Volume 4: Community at 412. The Mass Casualty Commission expands on these Public Health Prevention Strategies to End Gender-Based Violence: Prevention (stopping violence before it starts); Early Intervention (stopping violence from escalating and preventing it from reoccurring); Response (providing services and supports to address existing violence); and Recovery and Healing (helping to break the cycle of violence and reduce the risk of retraumatization).



Below, we sketch out what a supportive approach to child protective services could look like based upon this public health approach. Rather than taking a position that individualizes the risks to children at the hands primarily of vulnerable mothers, a supportive, public health approach focuses on the importance of supports aimed at prevention, recovery and healing.

The Current System of Least Intrusive Intervention

While several mothers involved in the project commented on their alienating experiences in court or negative experiences with lawyers, their ideas for change were largely focused on improving their personal experiences with child protection workers. In many ways, current child protection law acts as a gatekeeper to state action as opposed to an active influence in terms of what this action substantively looks like. Indeed, as will be argued below, in many ways, the jurisprudence that has developed in Nova Scotia over the last 25 years reveals the court is unwilling to strictly scrutinize Agency action beyond certain **requirements such as taking “reasonable measures” in providing services.**⁸³ Furthermore, recent case law has seen the Agency evading the operation of child protection law in Nova Scotia by failing to recognize Agency changes in custody as a **“constructive taking into care” without initiating formal applications. Rather than taking** a contextual approach and insisting on court scrutiny over Agency action that sees the custody of children changed without due process, the Court of Appeal chose to avoid scrutiny of this action **by narrowly interpreting what a “taking into care” means under the Act.**⁸⁴

This is not to argue for a more legalistic and rights-based intervention – this has clearly not worked as intended. Instead, it is to argue that a more supportive and preventive system is required to achieve the original aim of the Act – to provide for the best interests of children from marginalized families and to recognize that family autonomy for those **families may require services to “prevent or alleviate the social and related economic problems of individuals and families”.**⁸⁵ If coercive state action will not be closely scrutinized then it must be more supportive and preventative from the start – more akin

⁸³ *Children’s Aid Society of Shelburne (County) v SLS*, 2001 NSCA 62 at para 36; *DAB v Family and Children’s Services of Kings County*, 2000 NSCA 38; *Nova Scotia (Minister of Community Services) v LS* (1994), 130 NSR (2d) 193 (Fam Ct).

⁸⁴ *Nova Scotia (Minister of Community Services) v. DS*; *Nova Scotia (Minister of Community Services) v. KM*, 2023 NSCA 67 [*Nova Scotia (Minister of Community Services) v. DS; KM*]

⁸⁵ *Children and Family Services Act*, SNS 1990, c 5, Preamble [CFSA]



to a preventative public health approach to harm, such as that recommended by the Mass Casualty Commission. As set out in Commission materials:

The essence of a public health approach is to shift away from notions of individual risk and focus instead on activating our knowledge of prevalence and patterns of perpetration to intervene earlier and more effectively. This shift is often talked about in **terms of moving away from “downstream” interventions aimed at individual behaviour and moving toward “upstream” interventions focusing on the social factors that contribute to individual behaviour.** Primary prevention focuses on addressing root causes rather than specific incidents of violence.⁸⁶

In contrast to this preventative approach, provincial and territorial child protection law reacts to a determination by the Agency there are reasonable and probable grounds to find a child in need of protection by requiring the provision of services to address this need. Child protection law in Nova Scotia is premised on the least intrusive intervention model which is meant to test:

1. **Whether state intervention is justified; and**
2. **If it is, what care arrangement is in the child’s best interests in a contest amongst several choices such as supervised parent care or out of home care with either a family member or foster family?**

Once the timelines in the *Children and Family Services Act* are reached, however, a choice must be made between returning the child to the parent(s) care and terminating **the Agency’s involvement, or ordering the child into the permanent care and custody of the Agency.**⁸⁷ In testing whether or not the state can interfere with family autonomy, child protection law defines when a child will be found to be **“in need of protective services”**, and sets out the investigative powers and duties to report which may help ground a finding of a child being **“in need of protection”**.⁸⁸

This structure of child protection law is modeled upon a liberal rights-based approach which foregrounds a testing of the need for state intervention upon family autonomy

⁸⁶ MCC Volume 3: Violence, *supra* note 1 at 217.

⁸⁷ CFSA, s 45.

⁸⁸ *Ibid*, ss 12 A, 22-25



based upon strict timelines and threshold tests. In Nova Scotia, the Agency must bring an application within 5 days of taking a child into care showing on reasonable and probable **grounds that the child is a child “in need of protection”**.⁸⁹ A child placement hearing must **be heard within 30 days and a final “protection” hearing confirming the child is in need of protection** is to be heard at the 90-day mark.⁹⁰ A disposition hearing is then held at 180 days and then potentially reviewed until the timelines expire (12 months for a child under 14 and 18 months for a child over 14).⁹¹ In their original formulation, the grounds to find **a child “in need of protection” were designed to test the Agency’s evidence that there were objective and provable harms to the child that warranted Agency intervention.**⁹²

There are historical reasons for the structure of this liberal, rights-based approach to child protection law. Historically, child welfare interventions were predicated upon often **subjective and moralistic evaluations of “fitness” that tended to see the overrepresentation of the children of lone mothers, Indigenous, racialized and low income children in care.** By testing the need for state intervention based upon an **objective, rights based approach, legislators sought to introduce a “least intrusive intervention” to child protection services.**⁹³ It was hoped that this approach would limit **unwarranted state interventions into families where parenting was “good enough” and not placing children at risk.**

A key part of the “least intrusive approach” as it was first enacted in Nova Scotia, for example, was to recognize that a large component of the families who have historically – and will continue – to be involved with child protection services are families in poverty. As such, the Act is premised on the idea that state care of children is a last resort and intervention must be paired with services to help families keep custody of their children. This service-based orientation of the Act is contained in the **Preamble: “AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families.”**⁹⁴

However, despite the fact that so many families involved with the child protection system experience housing and economic insecurity, including survivors of intimate partner

⁸⁹ *Ibid*, s 39(1)

⁹⁰ *Ibid*, s 39(4), 40(1)

⁹¹ *Ibid*, s 41(1)(a), s 45

⁹² *Ibid*, s 22 as it appeared prior on Feb 28, 2017.

⁹³ DA Rollie Thompson, *The Annotated Children and Family Services Act* (Halifax: Department of Community Services, 1991) at 39.

⁹⁴ *CFSA*, Preamble.



violence, the case law in Nova Scotia indicates that services provided to parents are most **often “soft services” such as counselling, anger management treatment, addiction treatment, parenting skills courses and therapy.**⁹⁵ **Less common are “hard services” such as housing support and financial assistance with childcare and transportation.** And despite the fact that child protection law provides the ability of the courts to review the sufficiency of these services before making an order for permanent care and custody,⁹⁶ the case law in Nova Scotia reveals that the courts only hold the agency to the standard of **taking “reasonable measures”**⁹⁷ to provide services within the timelines set out in the Act.⁹⁸ **Indeed, the Court of Appeal has specifically stated that the Agency’s requirement to provide services should not be augmented by obligations under the UN *Convention on the Rights of the Child* or other international conventions.**⁹⁹

This “reasonable measures” interpretation of the services provision of the Act (ie., section 13) has meant that the form that services will take is largely under the purview of the Agency and are subject to the resources available to the department, the discretion, experience and ultimately, personal interactions of the employees of the department and families involved in the system. The resourcing problem is exacerbated by the fact that in 2017 the *Children and Family Services Act* was amended which saw significant changes to the Act including provisions dictating when a “child is in need of protective services.”¹⁰⁰ These definitional changes – specifically around the grounds of exposure to intimate partner violence, neglect and emotional maltreatment,¹⁰¹ ie., the three most commonly used grounds of protection – may be responsible for the spike in referrals to, and investigations carried out by the Agency further taxing Agency resources. The Auditor

⁹⁵ See for example: *Family and Children's Services of King's County v DAB*, 2000 NSCA 38; *Family and Children's Services of Lunenburg County v GD*, 2003 NSCA 123; *KLM v Nova Scotia (Minister of Community Services)*, 2007 NSCA 100; *Nova Scotia (Minister of Community Services) v. DC*, 2017 NSFC 10; *Nova Scotia (Minister of Community Services) v AP*, 2017 NSFC 13; *Nova Scotia (Minister of Community Services) v JR*, 2018 NSFC 19; *Nova Scotia (Minister of Community Services) v CK*, 2023 NSSC 135.

⁹⁶ Section 42(2) of the Act requires that a judge, before granting an order removing a child from the care of a parent or guardian, be satisfied that the Minister or an agency has complied with s. 13. That section provides that 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 intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

- a) have been attempted and have failed;
- b) have been refused by the parent or guardian; or
- c) would be inadequate to protect the child.”

⁹⁷ *Children's Aid Society of Shelburne (County) v SLS*, 2001 NSCA 62 at para 36.

⁹⁸ *Children's Aid Society of Halifax v LAG*, 2005 NSSC 197.

⁹⁹ *Nova Scotia (Community Services) v VAH*, 2019 NSCA 72.

¹⁰⁰ *An Act to Amend Chapter 5 of the Acts of 1990, the Children and Family Services Act*, SNS 2015, c 33.

¹⁰¹ *Ibid* at s 12.



General for Nova Scotia recently found that numbers of children in temporary emergency arrangements in the Province increased from 36 in 2017-2018 to 138 in 2022-2023 with costs rising from \$4.6 million to \$27.9 million in that period.¹⁰² And as will be discussed below, the Department released data showing investigations – and not substantiations – increased after the amendments came into force.¹⁰³

Not only does the least intrusive intervention model currently in place fail to scrutinize **whether services are addressing the root causes of a family’s problems, but the model does not substantively test whether state care of the child is in the child’s best interests** (just whether an alternative to parental care is warranted). As well, the law in Nova Scotia does not test whether, after making an order for permanent care and custody, state care **continues to be in the child’s best interests. This has lead** to problems, for example, with **children being held in temporary emergency care or “places of safety” rather than in the** care of loving families, potentially for extended periods of time. As discussed above, the recent report of the Auditor General found that while children are only supposed to be in temporary emergency arrangements for four days, their investigation found that children were spending up to eight months in these arrangements.¹⁰⁴ Their investigation revealed that there was not appropriate follow up by the Agency when children were in child and youth care homes and that the Agency was completing (or completing late) plans of care that were in term not reviewed appropriately.¹⁰⁵ Their investigation also revealed over 1900 critical incidents or serious occurrences that could impact the health and safety of children in temporary care.¹⁰⁶ The Auditor General found that there had been no analysis **completed by the Agency “to determine causes, trends, or patterns”**¹⁰⁷ that might help prevent these incidents from occurring going forward.

This is particularly troubling as we do not currently have a Child and Youth Advocate¹⁰⁸ **up and running in Nova Scotia, nor does the Province’s *Children and Family Services Act***

¹⁰² Auditor General’s Report, *supra* note 35 at 22.

¹⁰³ Nova Scotia, Department of Community Services, *A Targeted Internal Review of Sections of the Children and Family Services Act: Final Report and Recommendations*, (Province of Nova Scotia: 2021) at 16, online (pdf): <<https://novascotia.ca/coms/families/documents/children-and-family-services-act-review.pdf>> at 16-17. Total referral numbers in 2016-2017 were 917 (59% of which were investigated), whereas total referral numbers increased in the subsequent years (1161 in 2017-2018, 1255 in 2018-2019 and 1499 in 2019-2020) An average of 69% of referrals were investigated in these three years after the amendments.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid* at 33-34.

¹⁰⁶ *Ibid* at 38

¹⁰⁷ *Ibid* at 40.

¹⁰⁸ But see *An Act Respecting the Office for Children and Youth*, being PART XVI of the *Financial Measures*



provide for a formalized investigation and complaint procedure for children in the care of the agency outside from reporting to the Ombudsman.

Without proper services aimed at addressing the root causes of a family’s challenges, children may end up in these emergency temporary care situations for long periods of time or in child and youth care homes plagued by the systemic problems highlighted by the Auditor General. This result cannot be in the best interests of children, particularly when we take into account the high rates of homelessness of children as they age out of care and even their vulnerability to further violence such as human trafficking. Furthermore, without providing supportive and preventative care we are in effect allowing structural racism and discrimination to perpetuate. As noted above, Indigenous children, children of lone mothers and African Nova Scotian children are overrepresented in care. Failing to provide for these children – thereby placing them in situations where they may be experience poor outcomes in care or once they leave care – will continue to perpetuate the structural and systemic inequality that placed them at risk in the first place.

Because of the historic discrimination faced by families involved in the child protection system, we are seeing provinces searching for alternatives to the current regime – for **example, the adoption in Alberta of the “Signs of Safety” approach to child protection.**¹⁰⁹ As well, the advocacy work of First Nations, Inuit and Metis advocates has resulted in Indigenous groups taking control of child protection services in their jurisdiction and in many cases, fundamentally rewriting child protection law within them.¹¹⁰

With the new *Act respecting First Nations, Inuit and Métis children, youth and families*,¹¹¹ some First Nations that have developed their own child welfare legislation have taken a much less legalistic and more supportive approach to child protection. For example, the miyo-pimatisiwin Act developed by Cowesses First Nation in many ways takes a directly opposite approach to the least intrusive intervention model currently in place in Nova Scotia. The Act specifically prioritizes family unity and prevention services **which “may include financial assistance and supervision by the Director”**¹¹² and

(2024) Act, SNS 2024 c 3 which establishes legislation for such an office to come into force by proclamation.

¹⁰⁹ Jessica Roy, “Signs of Safety: The View From Early Help” (2022) 28:3 Child Care in Practice 482 at 485.

¹¹⁰ Alana Cattapan, Jamesy Patrick & Brenda Yuen, “Beyond the Constitutional Architecture: *An Act respecting First Nations, Inuit and Métis children, youth and families* at the Supreme Court of Canada” (2023) 56 Can J of Political Science 483 at 484-485.

¹¹¹ SC 2019, c 24.

¹¹² *Ibid.*



eliminates timelines under the Act so that families are set up for success without having to worry about completing services within a defined about a time.¹¹³ The Act specifically sets out that family placements are to be prioritized and if this is not possible then the child shall be placed with a member of the First Nation.¹¹⁴ In this way, the Act is much more prevention- and re-unification-focused than Acts modeled on the least intrusive intervention model and is arguably more conducive to supporting the family autonomy of families in crisis.

Finally, it is clear that a liberal, rights based approach has proven easily evaded in Nova Scotia. Recent court cases and complaints of “constructive taking into care” in the Province have further evidenced the limits of the law to impact child protection practice. While Nova Scotia’s *Children and Family Services Act* sets out stringent procedures to test state intervention, these cases show that child protection practice may be facilitating a change in custody of children without actually “taking the child into care” and engaging court scrutiny. Where workers obtain a referral that it is believed a child may be in need of protection, they may put together a “safety plan” setting out steps they believe parents should take before the Agency will step in and formally attempt to intervene. These safety plans may require the family, for example, to place the child with a family member. If the family declines to follow the safety plan, the Agency can initiate an application. In this way, the Agency can essentially facilitate a change of custody without the need for a formal application or court hearing. The Court of Appeal in Nova Scotia has held that this method of interacting with families is not counter to the Act.¹¹⁵

Overall, a least intrusive intervention approach to child protection has proven itself to be unable to provide for the best interests of children from vulnerable families. Indeed, during the MMIWG hearings this was recognized and a new way forward – one that has found its way into the new Acts written after the introduction of Bill C-92 – was clearly spelled out:

¹¹³ *Cowessess First Nation Miyo Pimatisowin Act*, s 2.2.

¹¹⁴ *Ibid*, s 7.1.

¹¹⁵ *Nova Scotia (Minister of Community Services) v DS; KM*, supra note 84. In this case, the Nova Scotia Court of Appeal heard two appeals advanced by the Minister, and rejected the concept of a “constructive taking into care,” finding that a physical removal of the child must occur to take a child “into care” per the *Children and Family Services Act*. At trial, both hearing judges found that the Minister had constructively taken the children into care based on evidence of social workers’ interactions with the parents prior to initiating a court application within the required five day timeframe. In one matter, the social workers developed a safety plan whereby the child would remain with the mother’s friend. In the second case, the mother was advised by social workers that the father could not remain at the family home. The Court of Appeal found that both hearing judges erred in finding there had been a constructive taking into care.



[T]here was a strong call across all sessions for a preventative approach to child and family welfare services, with an aim to preserve family unity and avoid recourse to foster care interventions insofar as possible. Participants stressed the importance of providing support for the whole family, not just the children, because individual well-being is inherently connected to that **of the family**. **“Our child protection system is focused on crisis management. It needs to be reversed [to] focus on keeping families whole and healthy, [addressing] housing, parenting, counselling, food, financial problems.”** (Inuit Perspectives) **“We don’t just work with the kid ... if we are going to help the child, we are going to help the family.”** (Quebec Perspectives) Specific recommendations include:

- **increased financial assistance for families**
- **increased funding for family welfare services in general,**
- **family healing and treatment centres**
- **outreach services,**
- **culturally informed support and education for parents and caregivers.**¹¹⁶

Below, we sketch out what a more supportive and preventive approach may look like in child welfare law. We use the **language of “child welfare” as opposed to “child protection” in recognition that we are moving from a system predicated on “risk” and “protection” towards one of wellness and supporting children and families to live healthy lives.**

A Supportive Model of Child Welfare Law

The strongest theme that emerged from the Mother’s Lens Project was concern the mothers had for the best interests of their children. Mothers photographed places and things their children loved and spoke of things that made their children happy including playing and eating good food. A system built to provide for the best interests of children must begin by centering the needs and interests of children and not simply focusing only on risk and mitigating risk within a defined period of time. These needs and interests are best articulated by children and the people that love and care for them and for this reason, a supportive approach must begin by gathering the input of children and their families to determine what type of care and support they need to live healthy lives.

¹¹⁶ MMIWG Final Report, *supra* note 4 at 114-115.



In family and child protection law, the “best interests of the child” is a highly fact-driven and contextual question. However, we also know that this is a malleable and outward looking concept that “must take into account society’s developing awareness of social issues that impact on the safety and overall well-being of children”.¹¹⁷ As set out above, by now we know from the research that there are dangers for children of being in care including dangers as they age out of care.¹¹⁸ A best interests evaluation must take into **account what a child’s care will look in the care of the Agency. It must take account of the** evidence establishing the likely quality of care they may receive, such as, for example, through reports submitted by provincial and territorial child advocates, ombudsmen and investigations and reports by Auditors General. As well, we know that systemic racism and discrimination operate so that children from racialized, low income and lone mother-headed families are overrepresented in care where they may face these dangers.¹¹⁹ The best interests of the child concept must then recognize that children should be supported to remain with their family or others that care for them and that this right to stay with **their family is fundamental to children’s right to equality and non-discrimination.**

Unlike the current system of child protection law, a supportive model would continue to evaluate the best interests of the child after an order for permanent care and custody is **made. As expressed by the mothers in the Mother’s Lens project, when children** are placed in the care of the Agency, the agency must regularly inspect these places and ensure that **children’s needs are addressed in child-friendly** placements. A supportive system must provide for an evaluation of best interests of the child at any point the child is in the care of the Agency. For this reason, the law must provide for an opportunity to review the **Agency’s plan of care even after an order for permanent care and custody is made, it must** provide for investigation of placements and for a formalized process for children to be able to raise concerns about their care, and to have these complaints heard in a formal setting with proper oversight.

For example, Nova Scotia may consider a model similar to **Ontario’s statutory regime**, which appears to be the most robust nationally in terms of oversight and complaint/review mechanisms for children in care. **Ontario’s *Child, Youth and Family Services Act*** sets out the rights of a child who is receiving services or in residential case

¹¹⁷ *VKG v IG*, 2023 ONSC 6329 at para 129.

¹¹⁸ See, for example, Auditor General’s Report *supra* note 32; UN Rapporteur, *supra* note 24.

¹¹⁹ King et al, *supra* note 8 at 91, 101; Duff et al, *supra* note 70 at 2.



including the right “to raise concerns or recommend changes with respect to the services provided to them without interference or fear of coercion, discrimination or reprisal and to receive a response to their concerns or recommended changes.”¹²⁰ In addition, The *Child, Youth and Family Services Act* provides robust provisions respecting the rights of children in care, including the right to be heard, the right to be informed about their residential placement and the right to speak to representation, including the Ombudsman.¹²¹

Ontario’s Act additionally provides for inspections without warrant or notice of **a child’s** residence or place where residential care is provided, and a child has the right to meet with the inspector privately if requested.¹²² Regulations further provide for support, supervision and annual reviews for foster care placements.¹²³

There are three central ways that complaints can be made and reviewed in Ontario. Children in residential care in Ontario may make complaints with respect to alleged violations of their rights **to the children’s aid society**. Complaints must be reviewed, and if a child or other person who has made a complaint is not satisfied with the results, the Minister may appoint a person to conduct a further review.¹²⁴ Secondly, the Child and Family Services Review Board (CFSRB) which operates under the jurisdiction of the *Child, Youth and Family Services Act*, is an independent tribunal that may review certain service-**related complaints related to children’s aid societies**, including if the child was not heard, if the child was not provided reasons for a decision or if **the children’s aid society** refused to proceed with a complaint or did not follow its complaint review process or timelines.¹²⁵ Lastly, the Ombudsman in Ontario can also be contacted to resolve and investigate complaints concerning children in care.¹²⁶

¹²⁰ SO 2017, c 14, Sch 1, s 3 [ON-CYFSA].

¹²¹ *Ibid*, ss 8-14.

¹²² *Ibid*, ss 275-276.

¹²³ O Reg 156/18.

¹²⁴ ON-CYFSA, *supra* note 120 ss 18-20; O. Reg. 155/18, ss 22 and 23 sets out requirements for the complaints procedures.

¹²⁵ ON-CYFSA, *ibid*, ss 119-120. See also information about this process online at Tribunals Ontario, “Complain About Services of a Children’s Aid Society” online: <<https://tribunalsontario.ca/cfsrb/complain-about-services-of-a-childrens-aid-society/>>. Complaints may be made directly to the CFSRB without going through the children’s aid society complaint process beforehand and a complaint may be made to the CFSRB even if a children’s aid society complaint process is already underway.

¹²⁶ *Ombudsman Act*, RSO 1990, c O.6, s 14(1.1).



Key to providing for the best interests of children is providing for supports so that children can remain in healthy environments with those who care for them, where at all possible. The focus of an evaluation of whether a child can remain at home in a healthy environment should not be the removal of risk but rather an evaluation of family strengths and needed supports. The focus of this evaluation should start with an onus on the Agency to show that:

- (1) they have involved the child (where possible) and the family in determining what supports are needed; and
- (2) that they have provided those supports, before they can develop a plan of care that requires the removal of the child from the home.

When the Agency is trying to establish that a child is in need of protection they must simultaneously address what that protection will look like by stating what type of supports they have provided and what types of supports they will continue to provide to the child and their family.

Further, as set out by the mothers in the project, supports must be child-centered and trauma-responsive. Services that keep caregivers and children together should be prioritized and the end goal of services and the process should be to prioritize reunification. One participant noted that where a parent needs intensive substance use counselling, for example, residential care should be provided that will keep mothers and children together.

In being child-centered and trauma-responsive, where a child must be removed from the home, access visits should be **child-centered and held in places that prioritize the child's** health and wellbeing. As noted above, several women spoke of feeling alienated when on access visits with their children and recommended that a more positive visit could have been supported by holding the visit in child-friendly places in the community.

A common theme amongst some of the mothers in the project was that while they did have some issues with drugs or alcohol when they became involved with child protection, the stress and trauma of their interaction with these services resulted in a deepening of their problems by the end of the process. Furthermore, some noted that although this experience was so traumatic and stressful, they were not provided with services to address



the pain and suffering they experienced after their children were apprehended. Some of the women stated that they wanted help with their addictions and they needed to be **referred to health professionals. As well, they expressed wanting to be “seen as a person”** by those that were providing services.

These comments reflect the importance of taking a trauma-responsive approach to the services provided to families in crisis. We are by now aware that a coercive intervention with families carries with it its own harms including deepening poor mental health and stress which is not conducive to recovery.¹²⁷ A trauma-responsive approach recognizes that interactions with child protection should leave families in a healthier place than when child protection became involved. Failing to provide for family health and well-being is counter to an ethic of care and risks placing others in the family at risk – potentially children – after an involvement with child protection is over. Failing to take a trauma-responsive approach risks jeopardizing the effectiveness of the services that families do receive.

A trauma-responsive approach to supports and services requires that service effectiveness be prioritized over pre-**defined timelines in the Act. While a child’s sense of time should** be respected and taken into consideration, this determination should be made by a judge considering the best interests of the particular child and family in question. For this reason, there should be no pre-defined timelines in the Act. A determination of timelines should be made by the presiding judge in making a determination of the best interests of the child and the sufficiency of services provided by the Agency.

Key to providing trauma-responsive services to children and families is addressing intimate partner violence in the home. While exposure to intimate partner violence is **recognized as a ground of protection in Nova Scotia’s child protection legislation, we** heard from some participants that they felt like services were not provided to help them deal with domestic violence. This sentiment is reflected in the literature as well.¹²⁸ This is especially troubling as we know from some of the major reports cited above, that intimate

¹²⁷ See for example Darcy Merritt, “Documenting experiences and interactions with Child Protective Services” (2021) 37:2 Focus (Madison) 3; Dorothy E Roberts, “Black Mothers, Prison, and Foster Care: Rethinking Restorative Justice” in Gale Burford, John Braithwaite & Valerie Braithwaite, *Restorative and Responsive Human Services* (Routledge, 2019) 116; McQuaid et al, “Parent-Child Separations and Mental Health among First Nations and Métis Peoples in Canada: Links to Intergenerational Residential School Attendance” (2022) 19:11 Intl J Envnt Research and Pub Health 6877.

¹²⁸ Laura Olszowy et al, “Voices from the frontline: Child protection workers’ perspectives on barriers to assessing risk in domestic violence cases” (2020) 116 Children and Youth Services Review 1 at 2.



partner violence is an epidemic and stands as a major obstacle to the health and wellbeing of women and children.¹²⁹ These reports have indicated that a public health approach is required to prevent and address intimate partner violence.¹³⁰ Intimate partner violence in the home can stand as a major obstacle to women accessing and succeeding with services. IPV can deepen mental health issues and substance use issues and can render survivors and their children powerless to escape these dangerous situations.¹³¹

Given the danger of intimate partner violence to women and children and the risk it poses to the success of service provision, it is integral that child protection services first and foremost address IPV in the home by supporting survivors and children to flourish. Solving the problem of intimate partner violence by insisting that it is the responsibility of survivors alone to protect their children from this violence is to fail to adequately support and protect children. This responsabilization of vulnerable women for IPV and GBV has been directly challenged in the Final Report of the Mass Casualty Commission and places survivors and children at risk.¹³² Instead, persons who use violence must be the focus of the investigation, including by providing them with counselling and services.

As mentioned by several of the mother participants, they required financial support to leave situations of domestic violence and to provide for their children. The research is clear that coercive and controlling behaviour, for example, may come with financial control so that survivors may experience financial abuse where they are not allowed to work or have financial control and may even be coerced into exploitative sex work.¹³³ The Mass Casualty Commission, for example, explored how criminalized women and those who engage in survival sex work are at a particularly high risk of experiencing gender-based violence.¹³⁴ Referencing the expert report of Dr. Gayle MacDonald and Dr. Meredith Ralston, the Mass Casualty Commission observed their findings that stigma and perceived criminality are two factors contributing to violence against survival sex

¹²⁹ MCC Volume 3: Violence, *supra* note 1 at 274-287. See also the recommendations from Government of Ontario, “Inquest into the deaths of Carol Culleton, Anastasia Kuzyk and Nathalie Warmerdam” (28 June 2022) online: <www.ontario.ca/page/2022-coroners-inquests-verdicts-and-recommendations#section-4>.

¹³⁰ MCC Volume 3: Violence, *ibid* at 219.

¹³¹ Haller et al, *supra* note 22 at 7.

¹³² MCC Volume 3: Violence, *supra* note at 299-303.

¹³³ See for example, The Learning Network, “Economic Abuse: Coercive Control Tactics in Intimate Relationships” (2021), online: <<https://gbvlearningnetwork.ca/our-work/infographics/economicabuse/index.html>>; Marie Eriksson and Rickard Ulmestig, “‘It’s Not All About Money’: Toward a More Comprehensive Understanding of Financial Abuse in the Context of VAW” (2021) 36 *Journal of Interpersonal Violence* 1625 at 1628.

¹³⁴ MCC Volume 3: Violence, *supra* note 1 at 283.



workers, who often experience increased precariousness by virtue of unstable housing, possible substance abuse and poverty.¹³⁵ Such circumstances also often contribute to their experiences of safety in community and reluctance to report violence.¹³⁶

In prioritizing addressing intimate partner violence, then, child protection services must **be aware of the financial toll of this form of violence and “hard services” such as housing, income assistance, daycare and even credit repair services** must be provided to assist survivors and their children leave violent situations.

Importantly, as raised by several of the participants, the Agency must show that support and services are culturally safe and appropriate. As stated above, a key aspect of providing for the best interests of children is integrating an understanding of systemic racism and discrimination in evaluating their best interests. In practice this will mean ensuring children and their families have access to culturally safe services to ensure the family is set up to succeed. Furthermore, ensuring the interaction with child protection is overall trauma-and-violence responsive requires that investigation and interaction with the Agency is itself culturally-safe. This would require working with culturally safe assessors hired by the Agency not only in the support stage, but right from the beginning when the Agency is investigating a referral and setting in place a safety plan.

As discussed, one mother expressed that she believed her child was taken from her **because he is Black and voiced that when talking about child protection, “Black Lives Matter”**. When child protection services are provided in a manner that deepens rather than challenges racial discrimination, this risks furthering the challenges that families are already experiencing and creates its own harm and trauma. This is especially so when we take into account the overrepresentation of racialized children in care and the realities of the intergenerational outcomes of child protection services. Some of the mothers commented on feeling like they were being judged by workers for failing to live up to **expectations of what “good mothers” are supposed to be. These stereotyped** and biased expectations may bear upon decisions made by workers, particularly when it comes to what services to provide. These same expectations may be even more onerous for Indigenous and racialized mothers and a commitment to addressing gendered and racial discrimination in the child protection system would see education and training to address these biases amongst workers and a challenging of decisions based upon these

¹³⁵ *Ibid* at 283-284.

¹³⁶ *Ibid* at 284.



assumptions by culturally appropriate assessors and ideally, judges. Experiences of discrimination and having to work with individuals acting their own implicit biases inevitably creates an unhealthy interaction that jeopardizes child, family and community well-being and is counter to a healthy and supportive approach to child services.

Some mothers involved in the project also spoke of alienating experiences in court and with their lawyers. Ensuring a supportive and trauma-responsive interaction, then, means ensuring that interactions with the justice system – and not just the Agency - are informed by the same principles. Hearings should be human-centered, held in spaces that make parents comfortable, such as in family-friendly spaces, in a non-intimidating environment where the message conveyed is not that parents are being investigated and punished, but rather that services are being provided to support parents to create healthy environments for their children. Again, increasing the stressfulness of the situation and failing to act in a trauma-responsive manner jeopardizes the ability of families to thrive with the supports provided.

Key to creating more human-centered interactions with parents is allowing peer supporters and other community to advocates to support them during their interactions with child protection services and the courts. As one mother expressed, she was not convinced that her lawyer was on her side. In order to make these experiences less alienating and to make families feel supported they should be accompanied by persons **they see as being “on their side” whom they trust and know they are seen “as human beings”**.

Despite the importance of having trusted supporters involved in the process, several participants noted that while they had some positive experiences with community service providers, there was some distrust of services. This is a huge loss considering these services are established for the very purpose of assisting parents to create healthy environments for their children. Part of this distrust is created because service providers have heightened duties to report in the course of their work pursuant to Nova Scotia's Act.¹³⁷ Rather than relying upon the judgement of service providers and their ability to discern whether or not there are protection concerns, in Nova Scotia, child protection **legislation mandates that service providers report reasonable suspicions that a child “is or may be about to suffer abuse in the imminent future”**.¹³⁸ This requirement puts service

¹³⁷ *CFSA*, s 24.

¹³⁸ *Ibid*, s 24(2)(h).



providers in a position where their helping roles may be subverted by this surveillance role imposed on them by the Act. In contrast, service providers should be able to use their discretion whether or not to report if they see a family is taking steps to remediate the situation and in their professional judgement, they do not see the child is at sufficient risk to call child protection services.

Finally, the way that a “child is in need of protection” is articulated in the Act obviously has a profound impact on all aspects of child protection involvement, from the duty to report, to the investigation stage, to safety planning and court proceedings. Vague and open-ended definitions of harm will inevitably allow value judgments that will place **families at risk where they don’t meet the two-parent, white, heteronormative, middle-class image** that is promoted in our society as the ideal. As well, vague and open-ended definitions allow for the implicit bias of workers, service providers and those in the justice system to determine when a child may be at risk. It was this very realization that prompted the drafters of the *Children and Family Services Act* in 1991 to include standards that were based upon an objective evaluation of harm and to remove vague and value-laden **judgments that saw mothers in particular subjected to evaluations of “fitness”**.¹³⁹ For example, the grounds for a child to be found “in need of protection” in the 1991 Act contained the following definitions focused on the need to show objective harm to the child:

[Emotional harm]

22(2)(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm; [emphasis added]

...

[Exposure to domestic violence]

22(2)(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence; [emphasis added]

...

[Neglect]

¹³⁹ Annotated CFSA, *supra* note 93 at 39.



22(2)(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm; 22(2)(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j) [emphasis added].

The insistence that the grounds of protection be connected to objective harms was a concerted effort to remove vague and discretionary standards and to utilize a more rights-based approach to child protection.¹⁴⁰ Unfortunately, in 2015, the legislature amended **Nova Scotia's Act and specifically eliminated these objective** standards as well as other **accountability measures (ie., the Act eliminated the Minister's Advisory Committee that** was established to provide some oversight and accountability over the Act).¹⁴¹ In contrast to these objective standards set out above, the 2017 amendments introduced broader, less defined standards that are arguably more susceptible to value judgements about vulnerable families. The above three grounds of intervention now read:

[Emotional harm]

22(2)(f) the child has suffered emotional abuse,¹⁴² inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

...

[Exposure to domestic violence]

(i) the child has been exposed to, or has been made aware of, violence by or towards

(i) a parent or guardian, or

(ii) another person residing with the child,

and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;

¹⁴⁰ *Ibid.*

¹⁴¹ SNS 2015, c 37.

¹⁴² Section 3(1)(la) "emotional abuse" means acts that seriously interfere with a child's healthy development, emotional functioning and attachment to others such as (i) rejection, (ii) isolation, including depriving the child from normal social interactions, (iii) deprivation of affection or cognitive stimulation, (iv) inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or (v) any other similar acts;



[Neglect]

(j) the child is experiencing neglect¹⁴³ by a parent or guardian of the child;

Not only did the 2017 amendments remove the requirement to connect the grounds of **protection with proof of objective harm to the child, but the definitions of “emotional abuse” and “neglect” included in the Act contain vague standards that may allow negative value judgments. For example, the definition of “emotional abuse” includes vague standards such as isolating the child including “depriving the child from normal social interactions”.**¹⁴⁴ As well, the definition of neglect includes the failure to provide the child with **“affection or cognitive stimulation” which can be vague standards for those with a duty to report, and those investigating and adjudicating these grounds to decipher.**¹⁴⁵

These broad based and discretionary definitions of when a child will be found to be in need of protection place those with a duty to report in a difficult situation as they are charged with the difficult responsibility of calling child protection based upon an assessment of whether the child is subject to these vague standards. Placing this responsibility on service providers to report a reasonable suspicion that, for example, a child has been made aware of domestic violence in the home, creates a sphere of surveillance around parents and potentially undermines their willingness and ability to reach out to service providers for the help they and their children may so desperately need.

What’s more, these amendments may have had an adverse impact on the ability of child protection services themselves to provide adequate care for children. Some statistics show that rates of investigation are up substantially since these amendments were introduced.¹⁴⁶ This would be a likely consequence of lowering the threshold for the Agency to intervene and for heightening the requirement of those to report with these broader definitions regarding when a child will be found to be in need of protective services.

¹⁴³ Section 3(1) (p) “neglect” means the chronic and serious failure to provide to the child (i) adequate food, clothing or shelter, (ii) adequate supervision, (iii) affection or cognitive stimulation, or (iv) any other similar failure to provide;

¹⁴⁴ *CFSA*, s 3(1)(la)(ii).

¹⁴⁵ *Ibid*, s 3(1)(p)(iii).

¹⁴⁶ Targeted Internal Review *supra* note 103 at 16-17. The report indicates that third-party referrals and investigations had increased after amendments to the Act in 2017. For example, total referral numbers in 2016-2017 were 917 (59% of which were investigated), whereas total referral numbers increased in the subsequent years (1161 in 2017-2018, 1255 in 2018-2019 and 1499 in 2019-2020) An average of 69% of referrals were investigated in these three years after the amendments.



Furthermore, information from the Auditor General indicates that since the amendments were introduced, the Agency has seen a marked increase in children being held in emergency temporary care arrangements as well as increased costs of these arrangements overall.¹⁴⁷ **The Auditor General’s report indicates that this increase in the number of children in emergency temporary care arrangements may have an adverse impact on the care of children as a whole as workers are not undertaking their investigation obligations and some 1900 critical incidents or serious occurrences had been reported regarding Agency care.**¹⁴⁸

For these reasons, it may be important to reintroduce the pre-amendment definitions of when a child will be found to be in need of protective services. These will help provide clarity for service providers to understand the scope of their duty to report, help eliminate damaging value judgments about vulnerable families involved in the system, and help create a more trauma- and violence-responsive engagement with families.

Structure of a Supportive Model of Child Protection Law

Below, we provide some recommendations on what a supportive model of child protection may look like as provided for in child protection legislation. The fundamental assumption behind this supportive model is that by shifting funding for services to supportive services for families – **rather than the current “residual” model of child welfare** – more children will be supported to remain in the home as opposed to finding themselves in the care of the Agency. As noted by the Auditor General in Nova Scotia, the cost of keeping children in Agency care has skyrocketed since 2017. A supportive and preventative model of child welfare would restructure to see these funds expended on services upstream to prevent children from having to end up living in group homes or emergency temporary care arrangements.¹⁴⁹

This focus on support and the importance of this support in providing for the best interests of children was recently recognized by the Supreme Court of Canada in the case of *Barendregt v Grebliunas*:

¹⁴⁷ Auditor General’s Report, *supra* note 32 at 22.

¹⁴⁸ *Ibid* at 38.

¹⁴⁹ *Ibid* at 22. The Report notes that “Over the five-year period of 2017-18 to 2022-23, the number of temporary emergency arrangements approved by the Department increased almost 300% from 36 in 2017-18 to 138 in 2022-23, while the cost rose over 500% from \$4.6 million to \$27.9 million over the same period.”



It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" is far from novel [citation omitted]. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances.¹⁵⁰

In recognition of the Supreme Court of Canada's views on the best interests of the child, a supportive Act is modelled first on the notion that in approaching families in a supportive, trauma- and violence- responsive manner requires the provision not just of **"soft" services but in the provision of "hard services" provided in a culturally appropriate manner.** The assumption behind the Act is that most families will agree to accept services especially where hard services are provided such as access to housing, income support, childcare services, etc. Where families do not agree to accept services, however, the Agency must have a means to obtain an order and require the family to accept services and potentially remove the child from the home as a last resort where the child cannot be supported in the home.

In a proceeding to provide services (ie., where the family does not agree to accept services) the Agency must show not only that the child is in need of supportive services as defined by the Act, but must show that they have offered appropriate supports. The fundamental assumption behind a supportive model is that it is not enough for the Agency to provide proof that the family in crisis is failing on their own. There must be proof that the Agency has recognized family strengths and supported these strengths through an offer of appropriate services. A critical question then to determining whether or not to order the parents to accept services is to evaluate whether the services and supports offered by the Agency are appropriate and outweigh the risk of Agency intervention itself. Where the Agency insists that the child cannot be supported in the home it must show how the child can be supported in kinship or community care. In making an application for kinship or community care the Agency must show how they are likewise supporting not only the parents but kinship or community placements.

With these principles in mind, we include what some recommendations as to what should be included in provisions comprising an Act centered around family support and child

¹⁵⁰ *Barendregt v Grebliunas*, 2022 SCC 22 at para 173.



health and well-being. We have labelled the Act the *Family Support and Child Well-being Act*. We address some of the central elements of a supportive Act including:

Preamble;

Services;

Definition of “Child in Need of Supports and Services”;

Application to Provide Services (ie. Where family does not agree to services);

Best Interests of the Child;

Review of Care;

Complaints Procedure;

Duty to Report;

Independent Advisory Committee;

Supporters in Court



Family Support and Child Well-being Act

Principles in Preamble

1. Children must be supported to participate in the decisions that impact them including what sorts of services and supports they require to live safe and healthy lives.
2. Child protection law must shift the focus of child protection intervention from a focus on “risk” and “individual responsibility” of parents to that of providing trauma-responsive and culturally safe services and support (hereinafter “services” and “support”).
3. Trauma-responsive and culturally safe services are those services that are attentive to structural racism, classism and misogyny and are careful not to further these forms of harm.
4. In evaluating whether intervention is “trauma-responsive” and “culturally safe” the Act starts from the presumption that child protection intervention may itself cause harm.
5. Services and supports must be family-centered, focusing on the needs and promoting the strengths of each member of the family and the family as a unit.

Principles Regarding the Provision of Services and Supports

6. In moving to a support-focused Act, the risk of harm of child protection intervention must be mitigated by undertaking the following:
 - a. Start with the proposition that any involvement with the family – whether this is at the investigation stage, at the safety planning stage, or at any time during the initiation of legal proceedings – constitutes child protection intervention which can be evaluated and subject to scrutiny by the courts.



- b. An understanding that because child protection intervention can come with its own inherent risks, accountability and transparency are integral to child and family well-being and ensuring the safety of services;
- c. Intervention at any stage must be accompanied by an offer of services and supports.
- d. Given the danger of a coercive intervention with families in crisis, where the Agency would like to provide supports to address the grounds of “emotional harm”, “neglect” or “exposure to intimate partner violence” they must show:
 - i. Where it appears there may be intimate partner or other family violence in the home, services must include access to counselling for the person who uses violence and services to support the victim of violence including housing, income support and child care services;
 - ii. Where there appears to be emotional harm caused to the child services must include access to counselling for both parents and children including a culturally safe and trauma-responsive assessment to determine whether there is intimate partner or other family violence in the home and/or issues of substance use;
 - iii. Where there appears to be neglect the agency must offer to support the family with housing, income support and child care services and a culturally safe and trauma-responsive assessment to determine whether there is intimate partner or other family violence in the home and/or issues of substance use;
 - iv. Where there appears to be substance use issues, services must be provided in a timely manner with referrals to appropriate health professionals and supports to keep the family together where possible.



Definition of “Child in Need of Support and Services”

7. A child will be in need of support and services where the parents or other caregivers are unable or unwilling to access services and:
 - a. The child has suffered physical harm or is at imminent risk of suffering physical harm;
 - b. The child has been sexually abused or is at imminent risk of sexual abuse;
 - c. The child requires medical treatment to alleviate physical harm or suffering;
 - d. The child has suffered emotional harm demonstrated by severe anxiety, depression, withdrawal or self destructive or aggressive behaviour;
 - e. The child has suffered physical or emotional harm caused by exposure to domestic or other family violence;
 - f. The child has suffered physical harm caused by chronic and serious neglect;
 - g. The child has been abandoned; or
 - h. The child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another person’s property.

Initiating Proceedings for Intensive Support and Services

8. If the family does not agree to the Agency’s plan of care the Agency must initiate an application to provide more intensive support and services.
9. In evaluating whether the Agency should be able to provide more intensive support and services, the Court must evaluate the sufficiency of services already provided. If the Agency has not provided sufficient services, particularly where the focus of the protection concern is “emotional harm”, “exposure to intimate partner violence” or “neglect”, the Court may order to Agency to negotiate more intensive services before initiating an application.
10. Where the Court agrees that the application for more intensive support and services should proceed, the Agency must show that the services are in the best interests of the child and must provide a plan as to how the provision of services must be monitored. If the Agency has not involved the child in the service plan, they must show that the child is not able to participate in the plan.



11. Timelines are based on the best interests of the child involved in proceedings and determined as part of the proceedings.
12. Where the Agency asserts that services can only be effective where the child is removed from the home the agency must show:
 - a. How the child's primary caregivers were supported with supports and services to keep the child in the home;
 - b. What kinship placements are possible and what supports will be provided;
 - c. What community supports are possible and what supports will be provided.

Best Interests of the Child

13. It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" is central to the best interests of the child test.¹⁵¹
14. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances.¹⁵²
15. Where the Agency is requesting temporary or permanent care of the child they must detail how Agency care will be undertaken in a child-centered manner including accountability and transparency measures to evaluate the child's best interests going forward.
16. The child must be involved in deliberations on the best interests of the child where possible.
17. There is an inherent threat to the best interests of the child as a result of child protection involvement. For this reason, child protection must show the provision of supportive services to mitigate this threat.

¹⁵¹ *Barendregt v Grebliunas*, 2022 SCC 22 at para 173.

¹⁵² *Ibid.*



Review after Placement out of home

18. Post out-of-home care review: Children must be provided with opportunities to grieve their care including by giving them access to justice.
19. The Agency must have a plan for counselling and support of parents if their plan is out of home care.
20. Families must be provided access to justice at all stages of child protection intervention.

Complaints Procedure

21. Children have the right to raise concerns or recommend changes and to receive a response to their concerns or recommendations. Children must be informed of this right and the process for doing so.
22. Children in care additionally have the right:
 - a. To be heard in respect of decisions
 - b. To have their view be given appropriate weight
 - c. To communicate privately and without unreasonable delay with their family members, lawyers, representative, the Child and Youth Advocate Office and members of Government.
23. Investigators may enter and inspect a child in care's residence without warrant or notice and a child has a right to meet privately with the investigator if requested.
24. A supervisor must be assigned to supervise and support foster parents, and the supervisor must visit at least once every three months to provide support in addition to providing an annual review.
25. If a child, parent or the child's representative raises a complaint, the complaint must be reviewed, and the Minister may appoint a person to conduct a further review if the child (or other person making the complaint) is not satisfied with the results.



26. An independent tribunal will be established to review and response to service-related complaints. A child or their representative may make a complaint to the tribunal if:

- a. The Minister did not give the child a chance to be heard when concerns were raised
- b. The Minister did not give the child a chance to be heard when decisions affecting their interests were made
- c. The Minister did not provide reasons a decision affecting the child's interests;
- d. The Minister refused to proceed with a child's complaint
- e. The Minister did not follow its complaint review process or timelines.

27. Service-related complaints may also be made to the Child and Youth Advocate Office.

Duty to Report

28. Every person who performs professional or official duties with respect to a child must report a child in need of support and services as defined in the Act. This includes an assessment by the professional as to whether the parents or guardians are willing to accept services.

Independent Advisory Committee

29. A Family Support and Child Wellbeing Committee shall be convened to review and report on the Act and the provision of support and services by the Agency. The committee shall be comprised of:

- (1) Two legal aid lawyers;
- (2) Four members with lived experience of child protection services;
- (3) Two community members from social service organizations serving parents and children in care.

The committee shall be supported by the Child and Youth Advocate Office and report bi-annually to the public on their review.



Supporters in Court

30. Where a child or parent/caregiver requests the presence of a peer or professional supporter in court this request will be allowed unless the request is clearly made to frustrate proceedings.

Works Cited

Legislation and Conventions

An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.

An Act Respecting the Office for Children and Youth, being PART XVI of the *Financial Measures (2024) Act*, SNS 2024 c 3.

Child, Youth and Family Services Act, SO 2017, c 14, Sch 1.

Children and Family Services Act, SNS 1990, c 5.

Cowessess First Nation Miyo Pimatisowin Act.

Ombudsman Act, RSO 1990, c O.6.

Treaties and Other International Agreements

Convention on the Rights of the Child, 20 November 1989, Can TS 1992 No 3 (entered into force 2 September 1990, accession by Canada 12 December 1991).

Cases

Barendregt v Grebliunas, 2022 SCC 22.

Children's Aid Society of Halifax v LAG, 2005 NSSC 197.

Children's Aid Society of Shelburne (County) v SLS, 2001 NSCA 62.

Nova Scotia (Community Services) v VAH, 2019 NSCA 72.

Nova Scotia (Minister of Community Services) v. DS; Nova Scotia (Minister of Community Services) v. KM, 2023 NSCA 67.

Reports, Inquiries/Commissions and Other Secondary Sources

A Haller et al, "Mental Health/Substance Use Coercion and Intimate Partner Violence Survivors in Family Court" (September 2023), online, (pdf): <<https://fvfl-vfdf.ca/briefs/Briefs%20PDF/Issue-29---RESOLVE---English.pdf>>.

Alana Cattapan, Jamesy Patrick & Brenda Yuen, "Beyond the Constitutional Architecture: *An Act respecting First Nations, Inuit and Métis children, youth and families* at the Supreme Court of Canada" (2023) 56 Can J of Political Science 483.

Alana Gunn et al, "That's Not Me Anymore': Resistance Strategies for Managing Intersectional Stigmas for Women with Substance Use and Incarceration Histories" (2018) 17(4) Qualitative Social Work 490 at 494.



Allison Crawford et al, ““*We’re Still Human*”: A Reproductive Justice Analysis of the Experiences of Criminalized Latina Mothers” (2023) 32:1-2 J Aggression, Maltreatment & Trauma 262.

Amy Juanita Jones, “Fight4Freed: Foster Care and Human Trafficking (Report No.1)” (2020), online (pdf) <https://www.fight4freedom.ca/uploads/2/4/1/5/24157645/fostering_freedom_report.pdf>.

Barbra Schlifer Commemorative Clinic, “The Criminalization of Women Project” online: <www.schliferclinic.com/criminalization-of-women/>.

Bryn King et al, “Factors associated with racial differences in child welfare investigative decision-making in Ontario, Canada” (2017) 73 Child Abuse & Neglect.

Canada, Nico Trocmé et al, Canadian Incidence Study of Reported Child Abuse and Neglect – 2008 (National Clearinghouse on Family Violence, Public Health Agency of Canada, 2010).

Canadian Center for Policy Alternatives Nova Scotia, “2023 Report Card on Child and Family Poverty in Nova Scotia”.

Carole Warshaw and Erin Tinnon, “Coercion Related to Mental Health and Substance Use in the Context of Intimate Partner Violence: A Toolkit for Screening, Assessment, and Brief Counseling in Primary Care and Behavioral Health Settings” (March 2018), online (pdf): <https://ncdvtmh.org/wp-content/uploads/2022/10/NCDVTMH_MHSUCoercionToolkit2018.pdf>.

Cary Ryan et al, “A review of pro-arrest, pro-charge, and pro-prosecution policies as a response to domestic violence” (2022) 22:1 J Social Work 211.

Darcy Merritt, “Documenting experiences and interactions with Child Protective Services” (2021) 37:2 Focus (Madison) 3.

DA Rollie Thompson, *The Annotated Children and Family Services Act* (Halifax: Department of Community Services, 1991).

Department of Community Services, A Targeted Internal Review of Sections of the Children and Family Services Act: Final Report and Recommendations, (Province of Nova Scotia: 2021), online (pdf): <<https://novascotia.ca/coms/families/documents/children-and-family-services-act-review.pdf>>.

Department of Justice Canada, “State of the Criminal Justice System: Focus on Women” (2020), online: <https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/pdf/SOCJS_2020_en.pdf>.

Doreen D. Salina, Daphna Ram & Leonard A. Jason, “Sexual Coercion, Trauma, and Sex Work in Justice-Involved Women with Substance Use Disorders” (2016) 25:3 J Aggression, Maltreatment & Trauma 254.



Dorothy E Roberts, “Black Mothers, Prison, and Foster Care: Rethinking Restorative Justice” in Gale Burford, John Braithwaite & Valerie Braithwaite, *Restorative and Responsive Human Services* (Routledge, 2019) 116.

Dr. Nancy Ross, Leslie Bagg & Cary Ryan, “They Did Not Listen to Our Whole Story Women’s Experiences in the Domestic Violence Courts of Nova Scotia” (November 2023), online (pdf): <https://dalspace.library.dal.ca/bitstream/handle/10222/83388/FINAL%202023%20Efrory%20report%20They%20Did%20Not%20Listen%20to%20Our%20Whole%20Story.pdf?sequence=1&isAllowed=y>.

Elizabeth E Adams, “Intensive Parenting Ideologies and Risks for Recidivism among Justice-Involved Mothers” (2020) 30:5 *Women & Criminal Justice* 316.

Government of Canada, “The National Action Plan to End Gender-Based Violence” (last modified 31 July 2024), online: www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/national-action-plan-end-gender-based-violence.html.

Government of Ontario, “Inquest into the deaths of Carol Culleton, Anastasia Kuzyk and Nathalie Warmerdam” (28 June 2022) online: www.ontario.ca/page/2022-coroners-inquests-verdicts-and-recommendations#section-4.

Jean-Denis David & Megan Mitchell “Contacts with the Police and the Over-Representation of Indigenous Peoples in The Canadian Criminal Justice System” (2021) 63:2 *Can J Corr* 23.

Jessica Roy, “Signs of Safety: The View From Early Help” (2022) 28:3 *Child Care in Practice* 482.

Johanna Caldwell and Vandna Sinha, “(Re) Conceptualizing Neglect: Considering the Overrepresentation of Indigenous Children in Child Welfare Systems in Canada” (2020) 13 *Child Indicators Research* 481.

The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, *Turning the Tide Together: Final Report of the Mass Casualty Commission*, (Ottawa: Privy Council Office, 2023).

Nova Scotia, Office of the Auditor General, “*Report of the Auditor General to the Nova Scotia House of Assembly: Impact Health, Safety and Well-Being of Children Placed in Temporary Emergency Arrangements and Child and Youth Care Homes*” (Halifax: Officer of the Auditor General of Nova Scotia, 2024).

Laura Olszowy et al, “Voices from the frontline: Child protection workers’ perspectives on barriers to assessing risk in domestic violence cases” (2020) 116 *Children and Youth Services Review* 1.



The Learning Network, “Economic Abuse: Coercive Control Tactics in Intimate Relationships” (2021), online: <<https://gbvlearningnetwork.ca/our-work/infographics/economicabuse/index.html>>.

Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (Oakland: University of California Press, 2018).

Marie Eriksson and Rickard Ulmestig, “‘It’s Not All About Money’: Toward a More Comprehensive Understanding of Financial Abuse in the Context of VAW” (2021) 36 *Journal of Interpersonal Violence* 1625.

National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls” (2019), online: <www.mmiwg-ffada.ca/>.

Putu Duff et al, “The ‘Stolen Generations’ of Mothers and Daughters: Child Apprehension and Enhanced HIV Vulnerabilities for Sex Workers of Aboriginal Ancestry” (2014) 9:6 *PLoS One* 1.

Restorative Inquiry, The Nova Scotia Home for Colored Children, “Journey to the Light: A Different Way Forward: Final report of the Restorative Inquiry – Nova Scotia Home for Colored Children”, online: <<https://restorativeinquiry.ca/>>.

Robyn J. McQuaid et al, “Parent-Child Separations and Mental Health among First Nations and Métis Peoples in Canada: Links to Intergenerational Residential School Attendance” (2022) 19:11 *Intl J Envtl Research and Pub Health* 6877.

Tribunals Ontario, “Complain About Services of a Children’s Aid Society” online: <<https://tribunalsontario.ca/cfsrb/complain-about-services-of-a-childrens-aid-society/>>.

United Nations General Assembly, Human Rights Council, 57th Session, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, Visit to Canada A/HRC/57/46/Add.1, online: <<https://documents.un.org/doc/undoc/gen/g24/120/97/pdf/g2412097.pdf>>.