

HIGH STAKES

**The impacts of child care on the
human rights of women and children**

By Kendra Milne

July 2016



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Executive Summary

There is a shortage of high-quality, regulated care and what exists is prohibitively expensive for many families.

THE CURRENT STATE OF CHILD CARE services in BC is failing women and children. There is a shortage of high-quality, regulated care and what exists is prohibitively expensive for many families. The situation results in serious repercussions for the human rights of individual women and children, and plays a key role in entrenching women's inequality more broadly. This project aims to explore those repercussions by gathering and analyzing the first-hand experiences of a diverse group of 15 women in order to assess the direct and indirect human rights consequences of BC's patchwork child care system.

The overarching finding of the project is that the current state of child care services in BC violates the human rights of women and children in complex and wide-ranging ways. This report documents those rights violations in six general areas:

- **ECONOMIC SECURITY:** Women may be unable to enter the paid work force because they are unable to secure care for their children or, if they can secure employment, they may take part-time or precarious work in order to balance work with caregiving or reduce the cost of child care. The economic insecurity that results can trap women in cycles of poverty and financial crisis, and can lead to forced financial dependence, which undermines women's equality.
- **WOMEN'S SAFETY:** The financial dependence that results from the current state of child care services puts women at an increased risk of intimate partner violence and creates barriers to their safety when that violence occurs. Even when women are able to flee abusive situations with their children, the cycle of poverty and financial insecurity they are often plunged into as newly single parents without access to affordable child care can cause them to return to their abusers.
- **IMMIGRATION STATUS IN CANADA:** As a result of Canadian immigration policy, access to child care services has a particular impact on women without legal immigration status who have fled violence. The financial insecurity that flows from an inability to access affordable and adequate care compounds with other aspects of vulnerability and undermines their ability to legally remain in Canada with their children.

HIGH STAKES: The impacts of child care on the human rights of women and children

The overarching finding of this project is that the current state of child care services in BC violates the human rights of women and children in complex and wide-ranging ways.

- **DISABILITIES AND HEALTH:** Mothers with disabilities experience disproportionate barriers to employment, higher rates of precarious employment and increased risks of involvement with the child protection system, making financial security and parenting more difficult. A lack of access to affordable child care services further threatens the economic security of these women and can put their own health at serious risk by exacerbating their disabilities.
- **THE RIGHT TO PARENT:** The relationship between parent and child, as well as the right of parents to make fundamental decisions in the lives of their children, are crucial to the human rights of both parents and children. A lack of access to affordable child care services can undermine these rights by constraining parental decisions and putting families at risk of separation through the child protection system.
- **CHILDREN'S RIGHTS:** Access to high-quality and affordable care can have a vast impact on the well-being of children, particularly as it impacts experiences of poverty, the risk of being separated from parents and the likelihood of being cared for in informal stopgap arrangements. When children cannot access high-quality child care, it has consequences for their human rights that are independent from those of the women caring for them.

Many of the harms experienced by women and children as a result of the current state of child care services align closely with rights Canadian courts have already recognized as justiciable and enforceable. Indeed, there are strong arguments that enforceable human rights law remedies can address many of these consequences. A coordinated, comprehensive solution is needed in order to support the human rights of women and children in BC.

The overarching recommendation from this report is that BC take immediate steps to adopt and implement the \$10aDay Plan. The Plan provides a broad framework to develop high-quality child care for every child whose family wants or needs it, improves affordability by capping fees at \$10 per day per child for full-time care and provides free care for families with annual incomes under \$40,000.



The overarching recommendation from this report is that BC take immediate steps to adopt and implement the \$10aDay Plan.

The current fragmented services do not meet the needs of women and children in BC, who need access to child care services that are coordinated, affordable, adequate in quality and available when they need them.

We also recommend that the BC government take immediate steps to ensure that the most serious human rights violations for women and children are remedied.

A comprehensive and coordinated public child care system cannot be built overnight. For that reason, we also recommend that the BC government take immediate steps to ensure that the most serious human rights violations for women and children are remedied by creating a new funding category through Child Care Operating Funding to provide free child care to women fleeing violence, including those without legal immigration status; culturally appropriate caregivers awaiting reunification with children in government care; the children of women with disabilities that affect their ability to provide care; and low-income lone parent families, including those on social assistance if a parent is in school, training or searching for employment.

BC's provincial government must take a leadership role in acknowledging and protecting the fundamental human rights of women and children by committing to a comprehensive, systemic solution. The current fragmented services do not meet the needs of women and children in BC, who need access to child care services that are coordinated, affordable, adequate in quality and available when they need them.

Introduction

TODAY IN BC, THERE IS AN INSUFFICIENT amount of high-quality, regulated child care and what exists is unaffordable. The current situation has serious and far-reaching negative consequences for the human rights of individual women and children, and for substantive gender equality more broadly.

A comprehensive public child care system has long been identified as fundamental to women's equality. For decades, activists have called on governments to respect the fundamental rights of both women and children by providing publicly funded universal child care in Canada, particularly a system that is affordable, high-quality and accessible. In 1970, the *Report of the Royal Commission on the Status of Women* made a number of recommendations for the development of a Canadian public child care system.¹ In 2005, the beginning of a national child care system was in sight as the federal government reached bilateral agreements with all ten provinces. However, in the wake of the 2006 federal election, the new government cancelled the agreements and development halted.² Since that time, there has been little progress in BC.

In recent years, the voices of women and children have often been absent from media coverage and public discourse surrounding child care.³ This project aims to fill that gap by gathering and analyzing first-hand experiences of women to assess the direct and indirect human rights consequences of BC's patchwork child care system. The stories gathered reveal how the current state of child care services forces women and children into financial dependence and economic insecurity; creates barriers for women leaving violence; impacts some women's ability to stay in Canada; puts women's and children's health at risk; undermines family preservation and women's ability to parent; and fails to adequately meet children's basic needs and support healthy child development.

1 Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: Minister of Supply and Services Canada, 1970) at 411–412.

2 "Canada's history of the never-was national child care program" (8 Feb 2012), online: Childcare Research and Resource Unit <www.childcarecanada.org>.

3 Patrizia Albanese and Ann Rauhala, "A Decade of Disconnection: Child Care Policies in Changing Economic Times in the Canadian Context" (2015) 6:2 *International Journal of Child, Youth and Family Studies* 252 at 262.

A comprehensive public child care system has long been identified as fundamental to women's equality.



This report contemplates how the Canadian legal system can be used to recognize and enforce the human rights of women and children to ensure that governments take action to fulfill those rights.

The experiences of the women reflected in this report amount to violations of international human rights agreements, which unequivocally recognize the role of governments in ensuring access to affordable and high-quality child care so that women can structure their lives, work and families with autonomy and dignity, and so children can fulfill their potential. Unfortunately, this recognition in international law has led to little meaningful action on the part of the provincial or federal governments. In the face of this ongoing government intransigence, this report contemplates how the Canadian legal system can be used to recognize and enforce the human rights of women and children to ensure that governments take action to fulfill those rights.

A legally enforceable right to child care may seem untenable in the current context of judicial unwillingness to recognize and enforce positive socio-economic rights. However, this project reveals that many of the implications for the human rights of women and children that flow from the current state of child care services align closely with rights Canadian courts have already recognized as justiciable and enforceable. Indeed, there are strong arguments that enforceable human rights law remedies can address many of these consequences.

The stories gathered for this project paint pictures of families struggling to ensure that children's care needs are met in the absence of a comprehensive and coordinated support system. Without a safe and accessible child care system, children's well-being is threatened. Without adequate social support for their role as children's caregivers, the health, safety and security of women are at risk. When it comes to child care, the stakes are high.

PART 2

Methodology

A KEY GOAL OF THIS PROJECT was to examine the impact of the current state of child care services in BC on women's equality by gathering the stories and experiences of women directly affected.

In order to do this, we connected with individual women through community partners, including women's organizations, legal advocates, anti-violence workers and organizations involved in child care related advocacy. The service providers then recruited specific women for the project or passed along information about it so that women could self-select to participate.

We conducted interviews with women using basic demographic questions followed by primarily unstructured interviews to gather any experiences with child care that they felt might be relevant to the project. While there are some drawbacks to unstructured interviews, this method was chosen to build rapport with participants; allow them to control the amount of information they shared and how they shared it, including on topics involving violence and trauma; and allow for the exploration of complex and unexpected topics.

We initially gathered the stories of 19 women, 15 of whom became full project participants by providing their stories in affidavits. Participants were given control over whether they wanted to participate anonymously by having their names and other identifying details redacted from the affidavits.

The goal of gathering affidavits was to qualitatively but rigorously capture a broad range of impacts that flow from the current state of child care services in BC. The stories gathered are not intended to be representative of every woman's experience, although the participants in the project come from a diverse range of backgrounds and perspectives. The majority of the participants were from the Lower Mainland, in addition to women from West Kootenay, Northern BC and Victoria. The participants ranged in age from 25 to 47 and all identified as women. Two participants in the project identified as women with disabilities, one as queer, two as having no legal immigration status in Canada, and two as recent permanent residents. Three women identified as Indigenous, two of Central/South American descent, one of South East Asian descent and one of Eastern European descent. Participants reported family incomes ranging from approximately \$200,000 per year to deep poverty without access to any regular income or permanent housing. Eight women were active in the work force and seven were not at the time of participation. All the participants were primary caregivers of children.



We initially gathered the stories of 19 women, 15 of whom became full project participants by providing their stories in affidavits.

Child Care in BC

Despite the existence of equal parental responsibilities in law, the women who participated in this project told us they were responsible for the majority of unpaid caregiving for their children.

WHO IS CARING FOR CHILDREN?

International law firmly supports the premise that men and women have equal responsibilities as parents in all matters relating to their children.⁴ Canadian law establishes that all parents have fiduciary obligations to their children, which include both financial and non-financial responsibilities.⁵ Absent exceptional circumstances, both parents are considered guardians and financial providers for children.⁶

Despite the existence of equal parental responsibilities in law, the women who participated in this project told us that, whether they parented alone or with a partner, they were responsible for the majority of unpaid caregiving for their children. Some women reported that despite trying to maintain equal caregiving responsibilities during a relationship, they ended up as the default primary caregiver.⁷

AFFIDAVIT: UNEQUAL RESPONSIBILITY FOR CHILDREN

Jennifer is a single mother of two children. When she split up from her husband, they never discussed who the children would live with. The responsibility automatically fell to Jennifer. She never imagined that she would be solely responsible for her kids when she decided to have children. Jennifer feels that her ex-husband doesn't really have to worry about the costs and organization of child care, housing, and other necessities for the kids because, at the end of the day, the responsibility falls to her. (Affidavit #2*)

4 *Convention on the Elimination of All Forms of Discrimination against Women*, 1 Mar 1980, 1249 UNTS 13, art 16(1)(d) (ratified by Canada 10 Dec 1981).

5 See *KM v HM*, [1992] 3 SCR 6.

6 *DBS v SRG*, 2006 SCC 37 at paras 37–38; *Family Law Act*, SBC 2011, c 25, ss 1, 39–40.

7 Affidavits #2, #4, #14. All project affidavits referenced in this report are available online: West Coast LEAF <www.westcoastleaf.org/our-work/a-right-to-childcare>. Project participants are referred to by pseudonyms unless a reference is marked with an asterisk.

It is not just the women who participated in this project who experience a socially constructed and disproportionately high level of responsibility for child care, and their experiences are not new. The unequal division of unpaid labour within the “private realm” of the family home and its economic consequences is part of the historical Western notion of the traditional family⁸ that persists to the present day despite the ever-increasing representation of women in the paid labour force. The gendered nature of unpaid child care is further evidenced by examining children’s places of residence after relationship breakdown and sole parenting statistics. Over 80% of lone parent families in BC are headed by women, in part reflecting that after a relationship in which a woman provides the majority of the unpaid care for children, that status quo caregiving arrangement is often appropriately reflected in custody and residency decisions when the relationship breaks down.⁹ Similarly, the majority of grandparents and other kinship caregivers are women.¹⁰

Statistics on the time spent on unpaid child care also reveal unequal responsibility. Regardless of whether women have paid employment, are lone parents or are part of a two-parent family, women spend approximately twice as many hours as men performing unpaid child care each week. On average, women spend over 50 hours each week caring for children. That number increases to 67.5 hours per week for children under the age of five,¹¹ and is the temporal equivalent to almost two full time jobs. The importance for women of affordable and accessible child care becomes obvious when one imagines attempting to balance this unpaid workload with paid employment, or managing this workload when parenting is already a struggle.

THE REGULATION OF CHILD CARE SERVICES

When women require help caring for children, some turn to family members (often other women) but most rely on BC’s inconsistent variety of child care services, which are also primarily provided by (often underpaid) women.¹² There are several categories of child care in BC, each of which has varying levels of government oversight.

8 See e.g. *Moge v Moge*, [1992] 3 SCR 813.

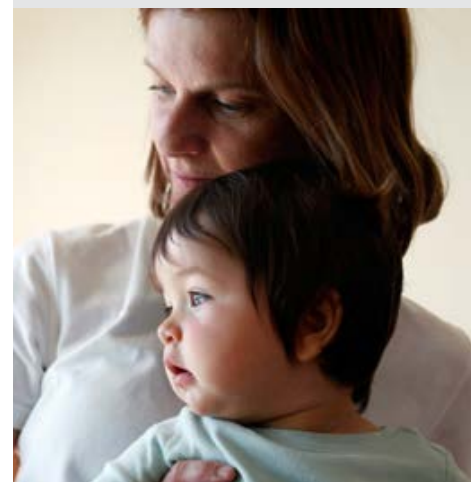
9 “CANSIM Table 111–0011: Family characteristics, by family type, family composition and characteristics of parents” (26 June 2015), online: Statistics Canada <www.statcan.gc.ca> (2013 data); *Family Law Act*, *supra* note 6, s 37(2)(c)–(e).

10 See Pieta Woolley, “With Less Support Family Caregivers Relieve the Foster System”, *The Tyee* (11 May 2013), online: <www.thetyee.ca>.

11 Anne Milan, Leslie-Anne Keown & Covadonga Urquijo, “Families, Living Arrangement and Unpaid Work” in *Women in Canada: A Gender-based Statistical Report* (Ottawa: Minister of Industry, 2011) at 20–21.

12 Kathleen Flanagan, Jane Beach & Petr Varmuza, *You Bet We Still Care. A Survey of Centre-Based Early Childhood Education and Care in Canada: Highlights Report* (Ottawa: Child Care Human Resources Sector Council, 2013) at 9.

There is an unspoken expectation that I will provide unpaid care for my children.
(Affidavit #15)





Because my husband earns more than me, I am the one who provides primary care for our daughters. If the nanny is sick, I am the one that stays home from work to care for the kids. (Affidavit #14)

First, there are “licensed” child care services governed by the *Community Care and Assisted Living Act*¹³ and the *Child Care Licensing Regulation*.¹⁴ Licensed child care can occur in a group or centre-based setting, or in a family home. It includes infant and toddler care, preschool care and school-aged care. The regulatory schemes require providers to meet health and safety, record-keeping, programming and staffing standards.¹⁵ Licensed care providers are subject to caps on the number of children they can care for at any given time, which vary based on the children’s ages and the type of care setting.

BC also has a category of child care called “registered license not required” or “unlicensed” care, which usually refers to care that is not governed by licensing requirements. Instead, providers can voluntarily register, which requires that they agree to maintain basic health and safety standards; and require criminal record checks for staff.

Finally, the majority of child care in BC is categorized as “license not required” or “unregulated” care. Child care providers in this category have no license and are not registered, and as a result, they may not adhere to training standards or comply with health and safety requirements. Providers range from family members like grandparents to those who earn an income by caring for other children in addition to their own. Because this form of care is not subject to monitoring, there is no accurate way to determine how many parents are using it or what quality of care is provided. Providers of both types of unlicensed child care can care for a maximum of two children or a sibling group in addition to the provider’s own children at any given time.

In BC, responsibility for child care is fragmented between several ministries and levels of government, but it primarily rests with the Ministry of Children and Family Development and the Ministry of Health. The Ministry of Health is responsible for establishing general licensing requirements under the *Child Care Licensing Regulation*.¹⁶ The actual licensing and monitoring is delegated to regional health authorities. The Ministry of Children and Family Development is responsible for BC’s child care subsidy system under the *Child Care Subsidy Act*,¹⁷ the training requirements and registration of Early Childhood Educators,¹⁸ as well as operating and capital funding programs and BC’s Child Care Council, which are governed by the *Child Care BC Act*.¹⁹ In addition, the Ministry of Education oversees some early childhood education programs, although they have a narrow focus on school readiness.²⁰

13 SBC 2002, c 75.

14 BC Reg 332/2007.

15 *Ibid*, parts 2–4.

16 *Supra* note 14.

17 RSBC 1996, c 26.

18 *Child Care Licensing Regulation*, *supra* note 14, ss 24–28.

19 SBC 2010, c 4.

20 See e.g. “StrongStart BC”, online: British Columbia <www2.gov.bc.ca>; “Ready, Set, Learn”, online: British Columbia <www2.gov.bc.ca>.

THE REALITY: THE AVAILABILITY AND COST OF SERVICES

BC's investment in child care and early childhood education is lower than the Canadian provincial average, and Canada's investments are low compared to other comparable countries.²¹ As a result, BC lacks a comprehensive and coordinated child care system. Current services fail to meet the needs of most women for two reasons: there is not enough high-quality care available, and what is available is often prohibitively expensive.

While there are no statistics on how many unregulated child care spaces are available in BC, given that licensed child care spaces are available for only 18% of children aged 12 and younger, it is clear that the number of spaces with mandatory training, health and safety standards and oversight is insufficient.²² BC's Early Years Strategy aims to create another 13,000 spaces by 2021. This additional investment, while welcome, will accommodate only another 2% of BC children.

The shortage of regulated care spaces means that families cannot access child care with mandatory quality standards when they need it. A survey conducted by the provincial government indicated that, of families wait-listed for care, over one third of parents who were in immediate need waited more than six months to secure a space.²³ Wait-lists are particularly lengthy for infant and toddler care.²⁴ Some participants in this project reported being wait-listed for child care spaces for as long as two to three years.²⁵

Current services fail to meet the needs of most women for two reasons: there is not enough high-quality care available, and what is available is often prohibitively expensive.

AFFIDAVIT: WAITING OVER TWO YEARS

Anna began researching child care options in 2011 when she was pregnant with twins. She initially got on the wait-list for her top choice of a licensed child care facility located very close to her home. Before she gave birth, Anna registered for the wait-lists of another 11 licensed child care providers. The twins were born in late 2011. By the end of her maternity leave, Anna had not heard from any of the child care providers and realized that her twins were not going to get into child care spaces before she had to return to work. She ended up hiring a nanny with no child care experience at an annual cost of over \$21,000. In July 2014, when they were two and a half years old, the twins at last got spaces with one of the providers Anna had been wait-listed for. (Affidavit #1*)



21 Iglia Ivanova, *Solving BC's Affordability Crisis in Child Care: Financing the \$10 a Day Plan* (Vancouver: Canadian Centre for Policy Alternatives, 2015) at 10, 15.

22 Martha Friendly et al, *Early Childhood Education and Care in Canada 2014*, 10th ed (Toronto: Childcare Research and Resource Unit, 2015) at 90, 94.

23 Tim Chan et al, *Parent Child Care Survey 2015* (np: BC Stats, 2015) at 25.

24 Kim Pemberton, "B.C. child care map is nice, critics say, but doesn't address the shortage of child care spaces", *Vancouver Sun* (31 May 2016), online: <www.vancouversun.com>.

25 Affidavits #1, #14.



When my younger daughter was about six months old, in January 2015, we placed her on the waitlist with the same licensed family child care provider that our older daughter attended... We have been told that the child care provider may have a space for her in September 2017. (Affidavit #14)

In 2015, the median cost of infant child care in Vancouver was \$1,225 per month,²⁶ and participants in this project reported monthly infant child care fees as high as \$1,800 per month.²⁷ While infant care is the most expensive, median monthly costs of full-time toddler and preschool care in Vancouver are also expensive at \$1,180 and \$905, respectively. In the calculation of Metro Vancouver's living wage, which is modeled on a family of four with two children aged four and seven, child care costs are the second largest expenditure after housing in a family's monthly budget, accounting for approximately 23% of core spending.²⁸ The cost of unregulated child care may be lower, but families accessing unregulated spaces have no assurance of monitoring for basic safety and staff training.

The provincial government does provide a subsidy system to reduce the cost of care for some families. Eligibility depends on family income and the reason child care is required. Subsidies are only available for very low-income families.²⁹ In an average month in 2014/15, subsidies were issued for less than 4% of children under 12 in BC.³⁰ Of that small fraction of families, it is likely that not all received a maximum child care subsidy. Even families that qualify for the maximum subsidy are still responsible for significant financial contributions because subsidies do not cover the actual costs of care.³¹ Both the income eligibility thresholds and the subsidy rates for the majority of child care categories have not increased in over a decade.³²

26 David MacDonald & Thea Klinger, *They Go Up So Fast: 2015 Child Care Fees in Canadian Cities* (np: Canadian Centre for Policy Alternatives, 2015) at 24.

27 Affidavit #10.

28 Iglia Ivanova, Seth Klein & Tanyss Knowles, *Working for a Living Wage 2016: Making Paid Work Meet Basic Family Needs in Metro Vancouver* (Vancouver: Canadian Centre for Policy Alternatives, 2016) at 3.

29 *Child Care Subsidy Regulation*, BC Reg 74/97, s 7.

30 British Columbia, Ministry of Children and Family Development, *Performance Management Report*, vol 6 (March 2015) at 4, 11. As a result of changes to the calculation of income that came into effect on April 1, 2016, BC reports that up to 900 children will either be newly eligible for a subsidy or eligible for an increased subsidy amount. Even if all 900 children are newly eligible, subsidies will only be provided to less than 3.8% of BC children under 12 based on 2015 population statistics. See "Child Care Subsidy fix to support more families" (29 March 2016), online: BC Gov News <www.news.gov.bc.ca>.

31 *Child Care Subsidy Regulation*, *supra* note 29, Schedule A.

32 See BC Reg 281/2005, ss 7 and 14 for the relevant sections of the *Child Care Subsidy Regulation* in 2005.



PART 4

Establishing a Legal Right to Child Care

INTERNATIONAL LAW IS CLEAR

International agreements to which Canada is a party illustrate our “consistently strong voice for the protection of human rights,”³³ and unequivocally recognize the role of governments in ensuring access to affordable and adequate child care services to realize the human rights of women and children. For example, the *Convention to Eliminate All Forms of Discrimination against Women* requires that state parties establish and develop a network of child care facilities to help parents balance family obligations with work responsibilities and participation in public life.³⁴ The *Convention on the Rights of the Child* requires that state parties render appropriate assistance to parents and legal guardians with child-rearing responsibilities and develop institutions, facilities and services for the care of children. It also requires states to ensure that working parents benefit from child care services.³⁵ Finally, the *UN Declaration on the Rights of Indigenous Peoples* requires that states take effective measures to improve the economic and social conditions of Indigenous people, with particular attention to elders, women, children, youth and people with disabilities.³⁶

Canada’s failure to take meaningful steps to fulfill international obligations has been well documented in recent years.

33 “Canada’s International Human Rights Policy” (15 Feb 2016), Global Affairs Canada, online: <www.international.gc.ca>.

34 *Supra* note 4, art 11.2(c).

35 *Convention on the Rights of the Child*, 20 Nov 1989, 1577 UNTS 3, arts 18.2 and 18.3 (ratified by Canada 13 Dec 1991).

36 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, (2007), art 21 (unqualified statement of support issued by Canada May 2016).



The stories gathered for this project illustrate that a variety of intertwined human rights implications result from the failure of the provincial and federal governments to live up to their obligations with respect to child care services.

Canada's failure to take meaningful steps to fulfill these international obligations has been well documented in recent years:

- In 2008, the Committee on the Elimination of Discrimination against Women expressed concern about the lack of affordable, quality child care spaces in Canada.³⁷
- In 2012, the Committee on the Rights of the Child expressed concern about the lack of public funding dedicated to child care and recommended that Canada take concrete action to improve the quality and coverage of its early childhood care.³⁸
- In 2016, the Committee on Economic, Social and Cultural Rights expressed concern about consequences flowing from women's primary role as caregivers in families and recommended that Canada pursue its commitment to affordable child care services across the country.³⁹

International rights bodies also recognize that all human rights are interdependent and indivisible from each other. In order to meaningfully fulfill international commitments, human rights must be considered collectively; no one right is more important than others and the undermining of one right may have a cascade of implications for others. Indeed, the stories gathered for this project illustrate that a variety of intertwined human rights implications result from the failure of the provincial and federal governments to live up to their obligations with respect to child care services.

Although international legal instruments expressly recognize the importance of public child care services to the equality of women and children, they are largely non-binding in the Canadian legal system unless they have been expressly incorporated into domestic laws.⁴⁰

In order to be meaningful, rights must be enforceable; a rights violation must have a legal remedy. Without enforcement, there is little government accountability, and law and policies that are necessary to support equality and human rights—like those that support child care services—are vulnerable to political whims and election cycles. The history of child care policy in Canada, and particularly the commitment to a federal child care system which was abandoned

37 *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, 42nd Sess, UN Doc CEDAW/C/CAN/CO/7 at para 39 (7 Nov 2008) [CEDAW Committee 2008].

38 Committee on the Rights of the Child, *Consideration of reports submitted by State parties under Article 44 of the Convention - Concluding Observations: Canada*, 61st Sess, UN Doc CRC/C/CAN/CO/3-4 (5 Oct 2012) at paras 71–72 [CRC Committee 2012].

39 Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Canada*, 57th Sess, UN Doc E/C.12/CAN/CO/6 (23 Mar 2016) at paras 21–22 [CESCR Committee 2016].

40 See e.g. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 69.

following the 2006 federal election, illustrate the perils of this approach. The dignity and full participation of women and children in our society cannot be dictated by such whims. With that in mind, the question becomes: can access to affordable and adequate child care services be enforced as a fundamental human right in Canadian law?

ENFORCING HUMAN RIGHTS IN CANADA

There are two key paths to the legal recognition and enforcement of human rights in Canada. The first path is the *Charter of Rights and Freedoms* (the “*Charter*”), which applies only to government actions.⁴¹ The *Charter* is the primary human rights instrument in Canada that can be used to override legislation, policy and other government action because it violates rights. It is the means to ensure that the government’s own laws and policies are subject to enforceable human rights standards. The *Charter* contains two protections which are violated by the failure to provide adequate child care: the right to equality (section 15) and the rights to liberty and security of the person (section 7).

The second path to legal remedies is human rights legislation, like BC’s *Human Rights Code* and the *Canadian Human Rights Act*.⁴² Human rights legislation places obligations on public services providers and employers (including the government) not to discriminate on the basis of specific aspects of individual identity, including sex, gender, family status, disability or place of origin. Protections enshrined in human rights legislation do not require that employers or service providers *provide* access to child care services; however, if the government or any other public service provider is already offering child care supports or services, they must do so in a way that does not discriminate.⁴³ This legal route has had some success challenging individual issues arising from accommodation of an employee’s child care issues,⁴⁴ but it is unlikely to address the key inadequacies of the current state of child care services.



The *Charter* contains two protections which are violated by the failure to provide adequate child care: the right to equality (section 15) and the rights to liberty and security of the person (section 7).

41 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

42 RSBC 1996, c 210; RSC 1985, c H-6.

43 See e.g. *Moore v British Columbia (Education)*, 2012 SCC 61 at para 26 [Moore].

44 With respect to child care and unpaid caregiving obligations, employers must accommodate the caregiving responsibilities of their employees, although the precise scope of those obligations varies. It tends not to protect what courts deem to be private parenting choices. Protections are generally provided to already-employed women who need some form of accommodation in their terms of employment to meet particular caregiving responsibilities. See *Health Sciences Association of BC v Campbell River and North Island Transition Society*, 2004 BCCA 260; *Canada (Attorney General) v Johnstone*, 2014 FCA 110; *Flatt v Canada (Attorney General)*, 2015 FCA 250.

In the practical application of Canadian law, there are three key questions relevant to determining whether access to safe, quality, affordable child care is a human right:

- 1) Does access, or a lack of access, to child care disproportionately impact women and children?
- 2) Does the current state of child care services in BC cause harm to individuals? If so, to whom?
- 3) Is the government responsible for ensuring access to affordable and adequate child care and what role should courts play in enforcing it as a right?

In each of the chapters of this report, we detail how the particular issues we discuss in the chapter—violence against women, immigration status, poverty, disabilities, the child protection system, and the best interests of children—provide affirmative answers to these questions. We argue that a lack of adequate child care disproportionately harms children and women, particularly single mothers, low-income women, Indigenous women, women with precarious immigration status and women with disabilities, and therefore the government’s failure to provide access to child care is a human rights violation.

(1) Does access, or a lack of access, to child care disproportionately impact women and children?

The purpose of the equality provision of the *Charter*⁴⁵ is to both prevent and remedy discrimination by recognizing individual dignity, personal autonomy and self-determination.⁴⁶ It guarantees substantive equality, meaning that the government must do more than just treat every person the same; it must accept and accommodate the different needs and experiences of different people. Further, it recognizes that identical treatment can sometimes produce serious inequality.⁴⁷

For example, in the 1990s the BC government faced a constitutional challenge because it did not provide sign language interpretation in hospitals.⁴⁸ The government argued it was treating everyone equally by treating them the same and not providing sign language

45 Section 15 protects the right to equality before and under the law, and to equal protection and benefit of the law, without discrimination on the basis of protected individual characteristics including sex, disability and family status. To prove discrimination under s 15, a claimant must show that a law or policy creates a distinction based on a protected characteristic and that this distinction is discriminatory because it creates a disadvantage. One way to show that a law is discriminatory is to show that it perpetuates prejudice or stereotyping; however, the law does not need to be based on stereotypes in order to be discriminatory. If a claimant establishes a violation of s 15, the government then has an opportunity to justify the violation under s 1 of the *Charter*. See *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at paras 563–571 [*Inglis*]; *Thibaudeau v Canada*, [1995] 2 SCR 627 at 722 (dissent); *Quebec (Attorney General) v A*, 2013 SCC at para 185 [*Quebec*].

46 *Quebec, ibid* at paras 138–139; *R v Kapp*, 2008 SCC 41 at para 16.

47 *Andrews v Law Society of British Columbia*, [1989] 1 SRC 143 at 164.

48 *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 [*Eldridge*].

interpretation to anyone. The Court disagreed: it said that the *Charter* requires accommodating the different needs of different people in order to ensure equal opportunity to achieve the same outcome. In that particular case, the Court found that the right to equality required that the government treat people who are deaf or hard of hearing differently than hearing people by providing them with the sign language interpretation they require in order to access health care.

For women, substantive equality requires the recognition and accommodation of their role as the primary unpaid caregivers for children. While no one is explicitly denying women access to child care while providing it to men, lack of access to safe, affordable and quality care disproportionately impacts women.

Women are disproportionately impacted by existing child care policy in many ways. Because women are more likely to be caring for children, they are more likely to experience economic insecurity as a result of that caregiving; need support to flee violence; and be impacted by interference with their role as a parent. For women who are disabled, Indigenous, or have precarious immigration status, the impacts may be unique or compounded. For example, the ways in which the state interferes with a woman's right to parent—including by failing to provide important supports which are necessary for some women to exercise that right, such as child care—have particular impacts on Indigenous women because of the legacy of residential schools and ongoing colonialism.

In addition, the current state of child care services disproportionately impacts children with disabilities, children of single mothers, Indigenous children, radicalized children, the children of parents without legal immigration status and gender non-conforming children because of their particular identities and needs. For example, only a portion of available child care spaces may meet the accessibility needs of children with disabilities, and thus the shortage of regulated child care spaces impacts them, and their mothers, more severely.

(2) Does the current state of child care services in BC cause harm to individuals? If so, to whom?

The lack of access to safe, affordable and quality child care has a detrimental impact on women and children. It infringes women's liberty rights and compromises women and children's physical security and psychological integrity. These harms are exacerbated for women and children from low-income families and/or who are marginalized in other ways. The *Charter* provides protections against many of these harms.⁴⁹

⁴⁹ Section 7 protects the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Claimants must first show that there is a sufficient causal connection between government action and an interference with or deprivation of their life, liberty or security of the person, and then they must show that the interference or deprivation is not in accordance with principles of fundamental justice. Underlying both the protection of liberty and security of the person is the protection of individual autonomy and dignity. If a claimant established a violation of s 7, the government then has an opportunity to justify the violation under s 1 of the *Charter*. See *Carter v Canada (Attorney General)*, 2015 SCC 5 at paras 55, 64; *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 75 [*Bedford*].



The government's failure to ensure access to an adequate and accessible child care system violates the psychological integrity of both women and children.

The right to liberty protected in the *Charter* includes the right to make inherently personal choices including a “protected sphere of parental decision-making” involving nurturing a child, caring for a child’s development and making decisions for a child in fundamental matters such as when and how the child will get medical treatment and where the child will go to school.⁵⁰ This right has been explained as being “rooted in fundamental notions of human dignity, personal autonomy, privacy and choice in decisions regarding an individual’s fundamental being.”⁵¹ The right to liberty is engaged when the government’s actions affect important and fundamental life choices, including choices about parenting.⁵² When governments fail to provide access to adequate child care, a woman’s liberty is curtailed by seriously undermining her ability to make choices about her employment, her relationship and what care arrangements are in the best interests of her child.

The right to security of the person protects personal autonomy, including a person’s physical security and psychological integrity. Harm to an individual’s “security of the person” includes “serious state-imposed psychological stress.”⁵³ For example, this protection is engaged by government action that deprives a parent of custody of their child, interferes with the parent-child relationship, and leads to the stigma and distress associated with losing the status of being a parent.⁵⁴ In the case of child care, the government’s failure to ensure access to an adequate and accessible child care system violates the psychological integrity of both women and children. It can cause extreme stress for women and children, and can result in a woman being deported, staying in an emotionally abusive relationship or having her child removed from her care entirely.

Harm to a person’s right to security also includes physical harm. In the context of child care, this harm includes impeding women from taking steps to protect themselves from violence;⁵⁵ hindering their ability to maintain their own health;⁵⁶ forcing children into care arrangements that do not meet their needs; and plunging women and children into poverty that compromises their access to basic necessities like food and shelter.

50 *RB v Children’s Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at 318; *CRB and SGB v Director of Child Welfare (Nfld)*, (1995) 137 Nfld & PEIR 1 (Nfld SC).

51 *Blencoe v British Columbia*, 2000 SCC 44 at para 50.

52 *Ibid* at paras 49–50.

53 *Ibid* at para 57.

54 *New Brunswick v JG*, [1999] 3 SCR 46 [JG]; *Winnipeg Child and Family Services v K LW*, 2000 SCC 48; *Inglis*, *supra* note 45.

55 See e.g. *Bedford*, *supra* note 49; *Jane Doe v Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 OR (3d) 487 (ONSC).

56 *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at paras 104, 118–119; *R v Morgentaler*, [1988] 1 SCR 30 at 59; *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at paras 90–94 [PHS].

(3) *Is the government responsible for ensuring access to affordable and adequate child care and what role should the courts play in enforcing it as a right?*

Legal cases attempting to enforce social and economic rights have often been marred by debates about the blurry line between what are referred to as “positive rights” (where the state must take action to fulfill the right) and “negative rights” (where the state must cease its interference with a right).⁵⁷ Social and economic rights often require governments to implement laws, policies or programs to ensure that everyone can meaningfully realize those rights.

Canadian courts have shown considerable discomfort with enforcing human rights remedies that involve harms resulting from government inaction or insufficient action. These claims are rejected by courts for two main reasons: first, it is often difficult to assess the extent to which a government’s failure to act causes or exacerbates a particular harm; and second, courts are reluctant to assess a government’s policy and resource allocation decisions, or grant remedies that may have significant fiscal consequences.

With respect to the first issue, international law clearly requires that governments play a role in ensuring access to child care services and it recognizes that clear harms result when this does not occur. Despite this, responsibility for the care of children is often painted as a private family issue and decisions around child care, division of unpaid family labour and child-rearing decisions are often characterized as matters of personal choice. This framework of personal responsibility and choice masks the government’s role in exacerbating harms that result when women cannot access adequate and affordable child care.

Courts have been hesitant to hold the government responsible for human rights violations that are not the direct result of state action, but in recent cases courts have acknowledged the role that the government can play in violating human rights by impeding the ability of individuals to alleviate the harms they are suffering from, even when it does not directly cause the original harm.

In a case about Canada’s obligations with respect to a supervised drug injection site, lawyers for the government argued that state action was not the cause of the health and safety issues faced by the injection site’s clients. Canada argued that the deprivation of health and well-being was caused by the clients’ drug use and personal choices, and was not related to the legislation that precluded the facility’s services. The Supreme Court of Canada rejected this argument and



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⁵⁷ The positive/negative rights debates are often at play in socio-economic rights cases. The government frequently attempts to frame a claim as a broad positive right in an effort to dissuade the court taking an institutional role recognizing and enforcing it. See e.g. *Gosselin v Quebec (Attorney General)*, 2002 SCC 84 at paras 81, 218–219 [*Gosselin*]; *Victoria (City) v Adams*, 2009 BCCA 563 at paras 90–97 [*Adams*]; *PHS*, *supra* note 56 at para 105; *Pratten v British Columbia (Attorney General)*, 2012 BCCA 480 at paras 44–62 [*Pratten*]; *Inglis*, *supra* note 45 at paras 390–404; *Bedford*, *supra* note 49 at paras 88–90; *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at para 148.

found that the law created a risk to health by preventing people from accessing health care.⁵⁸

In another case concerning homeless people's right to erect temporary survival shelters in public parks, the government argued that the law prohibiting shelters did not cause homelessness and therefore it was not responsible for the safety risks faced by people living outdoors. The BC Court of Appeal rejected this argument, finding that it was not necessary for the government to be the sole or even primary cause of the suffering at issue. Because the law prevented homeless people from addressing their need for adequate shelter, it violated their security of the person rights.⁵⁹

Finally, in a case about whether the criminal prohibitions against sex work violated women's rights, lawyers for Canada argued that third parties, and not the state, were the cause of the violence and harm faced by women engaged in sex work. The Supreme Court of Canada found that while third parties may be the immediate source of harm, that fact "does not diminish the role of the state in making a prostitute more vulnerable to that violence."⁶⁰

These decisions established that laws, policies and government actions that prevent an individual from being able to protect their well-being in potentially harmful situations violate human rights. The current state of government child care services results in the same indirect exacerbation of harm. This report details the ways in which current government action with respect to child care services puts the physical safety, psychological integrity, health, well-being and freedom of women and children at risk.

Canadian courts have also often been reluctant to recognize their institutional ability to enforce human rights when it requires an assessment of government public policy and resource allocation, and when a rights violation will require public spending to remedy.⁶¹ Courts often conclude that it is inappropriate for them to make these kinds of determinations. Concern about the fiscal implications of recognizing and enforcing social and economic rights has continued despite recognition by courts that budgetary constraints should not



This report details the ways in which current government action with respect to child care services puts the physical safety, psychological integrity, health, well-being and freedom of women and children at risk.

58 *PHS*, *supra* note 56 at paras 93–94, 106.

59 *Adams*, *supra* note 57 at paras 86–89.

60 *Bedford*, *supra* note 49 at para 89.

61 When courts have found that government action is required to remedy a socio-economic rights violation, it has occurred in cases where the government action at issue is relatively low cost: see e.g. *Eldridge*, *supra* note 48 (the Court discussed the "relatively insignificant sum" required to continue and extend sign language interpretation services during its s 1 analysis at para 87); *JG*, *supra* note 54 (the majority discussed the "relatively modest sum" required to provide legal counsel to parents during the s 1 analysis at para 100). In cases alleging positive rights, courts have often expressed concern about the potential cost and institutional implications of such a determination. See *Pratten*, *supra* note 57 at para 48; *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at paras 33–34; *Gosselin*, *supra* note 57 at para 332 (dissent).

absolve governments of their human right obligations absent a true fiscal crisis because to do otherwise would devalue the very rights at issue.⁶²

While cases alleging that the government has a legal obligation to take action in order to remedy social and economic inequities have been largely unsuccessful to date, courts have left the door open for the potential recognition and enforcement of such claims in the future.⁶³ It is, however, unclear when and how courts might open that door.

As the rest of this report will illustrate, the clear inadequacies of current government action with respect to child care services in BC and the disproportionate and serious harms that result for children and women provide an important opportunity for courts to recognize that the government has an obligation to protect *Charter* rights, regardless of whether such protection requires the expenditure of public funds. While some harms may be characterized as negative rights issues, other specific rights violations documented in this report provide potential pathways to the legal recognition of the government's obligation to support meaningful access to child care services.

For example, courts have already recognized that the state may have positive obligations when child protection authorities interfere with the relationship between a parent and child by apprehending a child,⁶⁴ and the logical extension of that right includes a positive government obligation to ensure women and children have meaningful access to child care services to prevent an apprehension before it occurs. Or, since courts have already recognized that government action that impedes women's safety constitutes a security of the person violation,⁶⁵ recognizing a positive obligation on the part of the government to ensure that women fleeing violence have access to child care services would eliminate key barriers to their ongoing safety.

Such an approach is consistent with the Supreme Court of Canada's recognition that *Charter* rights must evolve over time and that such change must happen incrementally,⁶⁶ with an initial focus on women and children who experience the most serious harms. It also provides courts with discrete areas of government action to scrutinize, eliminating some of their previously expressed institutional concerns about the appropriateness of delving into complex public policy. Most importantly, such an approach provides women and children with a meaningful legal remedy for the human rights violations they experience as a result of the current state of child care services in BC.

62 *Newfoundland v NAPE*, 2004 SCC 66 at para 72; *Moore*, *supra* note 43 at paras 50–53.

63 *Gosselin*, *supra* note 57 at para 83; *Pratten*, *supra* note 57 at paras 44–62.

64 *JG*, *supra* note 54.

65 *Bedford*, *supra* note 49.

66 *Gosselin*, *supra* note 57 at paras 79–83.

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Economic Security

The correlation between access to affordable and adequate child care and the economic security and independence of women is well established.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS firmly recognize the importance of financial and economic security. The *Convention to Eliminate All Forms of Discrimination against Women* requires that state parties ensure women have equal access to employment opportunities, choice of profession and job security.⁶⁷ The *International Covenant on Economic, Social and Cultural Rights* recognizes that women must have an equal right to work and to an adequate standard of living.⁶⁸ Finally, the *Convention on the Rights of the Child* requires that state parties ensure that the children of working parents have access to necessary and appropriate child care services and that all children have an adequate standard of living.⁶⁹

AFFIDAVIT: BARRIERS TO EMPLOYMENT

Katy is a single mother of a three year old. She has been on income assistance for the better part of three years despite trying to find paid work. She needs child care to find work, but even with a maximum subsidy, she has to use \$375 of her \$1,445 in monthly benefits for child care so she can search for work, attend interviews, and start a job if she gets one. That leaves Katy with only \$1,070 to pay for housing, utilities, food, transportation and all her other costs. The only reason that she can afford to search for work is because her child care provider agreed to give her a loan to cover the cost of care until she finds employment. Katy knows debt will make it harder to end her reliance on social assistance, but it is the only way she can find employment. (Affidavit #5)

⁶⁷ *Supra* note 4, art 11.

⁶⁸ *International Covenant on Economic, Social and Cultural Rights*, 19 Dec 1966, 993 UNTS 3, arts 3, 7 and 11 (ratified by Canada 19 May 1976).

⁶⁹ *Supra* note 35, arts 3, 18.3 and 27.

The correlation between access to affordable and adequate child care and the economic security and independence of women is well established. Women may be unable to enter the paid work force because they are unable to secure care for their child or, if they can secure employment, they may take part-time or precarious work in order to balance work with caregiving or reduce the cost of child care. The economic insecurity that results can trap women in cycles of poverty and financial crisis, and can lead to forced financial dependence, which undermines women's equality.

BARRIERS TO ENTERING THE WORK FORCE

The connection between child care and women's access to employment is not new or revolutionary. The 1984 Report of the *Royal Commission on Equality in Employment*, written by now Justice Abella of the Supreme Court of Canada, noted that "childcare is thus a critical access route for women. Unless it is provided in adequate quality and quantity, the debate about the right to equal employment opportunity is academic for most women."⁷⁰ The report went on to find that Canada could not afford to continue to debate whether child care should be a public or a private family expense, noting that the service is a necessity, not a luxury.⁷¹

More recent data confirms that women's caregiving roles still place significant constraints on their choice of whether to enter the paid labour force. Their participation in the work force continues to grow, although it still lags behind that of men.⁷² Employment rates of women without children are significantly higher than those for women with children, and particularly for women with younger children and lone mothers.⁷³ These employment rates illustrate that women's unequal labour force participation is likely at least partly related to their roles as mothers.

While access to affordable child care services is not the only driver of a woman's decision to enter the paid labour force, not having child care can create an insurmountable barrier for some women. It is clear that most women who provide primary care for children need someone to care for those children while they work in order to secure and maintain employment. The cost of that care can limit women's options.

70 Commission on Equality in Employment, Commissioner Judge Rosalie Silberman Abella, *Report of the Commission on Equality in Employment* (Ottawa: Minister of Supply and Services Canada, 1984) at 28.

71 *Ibid* at 192.

72 "CANSIM Table 282-0087: Labour force survey estimates (LFS), by sex and age group, seasonally adjusted and unadjusted" (10 June 2016), online: Statistics Canada <www.statcan.gc.ca> (May 2016 BC data).

73 Vincent Ferrao, "Paid Work" in *Women in Canada: A Gender-Based Statistical Report*, 5th ed (2010) Statistics Canada at tables 5, 6.



I was only able to put my daughter in child care because our child care provider was willing to provide me with a loan. When I find employment, I will be starting off with debt, but [it] is the only way... (Affidavit #5)

I take my youngest daughter with me when I clean houses. Many people do not want my daughter there while I clean or think I will work slower, which will cost them more because I get paid by the hour. (Affidavit #7)

Participants in this project reported being well aware that they had little chance of obtaining jobs that would pay them enough to cover the cost of child care in addition to their other expenses.⁷⁴ One participant resorted to loans to cover the cost of care, deepening her financial insecurity.⁷⁵ She also reported being unable to secure jobs that required working in the evenings and on weekends because she did not have child care available during that period and would not be able to afford additional care during non-standard work hours. Finally, two women reported attempting to bring their children to work with them, but those situations were not sustainable.⁷⁶

The role child care services play in supporting women to be able to work is also reflected in emerging research based on jurisdictions that have implemented broad-scale affordable child care systems. A 2015 report used results from Québec's provincial public child care system to estimate that if the \$10aDay Plan established by the Coalition of Child Care Advocates of BC were implemented, an additional 39,200 women would likely enter the provincial work force.⁷⁷

PRECARIOUS EMPLOYMENT TO BALANCE WORK AND CAREGIVING

Even when women are able to secure child care and paid work, their disproportionate caregiving roles continue to impact their financial security. The average amount of unpaid child care performed by most employed women each week amounts to an additional full-time job.⁷⁸ In an effort to try to balance paid work with unpaid caregiving, women are often forced to sacrifice job security and income by working less or accepting more flexible but lower paid jobs.

AFFIDAVIT: WORKING LESS TO REDUCE COSTS

Julia is the mother of two daughters. Her infant daughter has been on a wait-list for a space with a family-based licensed child care provider since early 2015. Julia has been told that a space may be available for her daughter by September 2017. As a result, Julia and her husband rely on a nanny to provide care for her younger daughter and after school care for her older daughter two days per week at a cost of approximately \$1,000 per month. Julia would prefer to work three or four days per week, but she instead works only two to three days because her family cannot afford to pay for additional child care. (Affidavit #14)

74 Affidavits #3, #5, #7.

75 Affidavit #5.

76 Affidavits #3, #7.

77 Ivanova, *supra* note 21 at 26.

78 Milan, Keown & Urquijo, *supra* note 11 at 20.

As a result, women work a disproportionate share of low wage and precarious jobs. In BC, women make up 70% of minimum wage earners aged 25-54,⁷⁹ an age range in which many women care for children. Women work a disproportionate amount of casual work and they make up 70% of part-time workers.⁸⁰ When a group of people aged 25 to 44 were asked why they work part-time, over 34% of women reported caring for their children as the reason, compared with just 3% of men.⁸¹

Part-time and precarious work has consequences for women's income. Canadian women on average earn 71% of what men earn when all employment income is considered, a number that has not changed since the early 1990s.⁸² Regardless of their family status, women make less than men, however, the majority of the gap can be explained by the "motherhood tax" or "child penalty," which refers to how far the earnings of women with children fall below those of comparable women without children. Canadian mothers earn 12% less than women without children.⁸³ The gap increases with the number of children, and it is larger for single mothers and mothers who have taken longer periods away from paid employment.

Project participants reported taking lower paid, less secure work because it was more flexible and made it easier for them to balance their unpaid caregiving tasks with paid employment. One participant reported making educational sacrifices and discontinuing part-time employment to prioritize her spouse's job and act as a primary caregiver for her daughter. Participants also reported working lower skilled, part-time or casual work to increase flexibility or minimize their child care costs.⁸⁴

There are a number of public policy options that can reduce wage and job security penalties for female caregivers. These include direct financial supports, tax rebates, maternity and paternity leaves, and child care services. However, only a public child care system can address the current crisis in BC by both lowering the costs and increasing the availability of high-quality, regulated child care services. Research has shown that formal child care systems provide a more consistent remedy for the gaps in wages and hours of work experienced by mothers than other policy options. In addition, although controversial, there is some indication that policy instruments like longer leaves may actually inhibit the progress of women's equality by reinforcing the role of women as the primary unpaid caregivers of children. Public child care systems, on the other hand, encourage and support the financial independence of women through employment.⁸⁵

79 Kendra Milne, *2015 CEDAW Report Card* (Vancouver: West Coast LEAF, 2015).

80 Status of Women Canada, "Fact Sheet: Economic Security" (2015), online: <www.swc-cfc.gc.ca> [Economic Security].

81 Ferrao, *supra* note 73 at 15.

82 Economic Security, *supra* note 80; Milne, *supra* note 79.

83 Cara Williams, "Economic Well-being" in *Women in Canada: A Gender-Based Statistical Report*, 5th ed (2010) Statistics Canada at 17.

84 Affidavits #4, #8, #11, #14.

85 See Joya Misra, Michelle Budig & Irene Boeckmann, "Work-Family Policies and the Effects of Children on Women's Employment Hours and Wages" (2011) 14:2 *Community, Work & Family* 139.



I was forced to drastically reduce my work availability. I was only able to survive because I can pay my rent and utilities with my daughter's federal children's benefits and child support payments.
(Affidavit #8)

CAREGIVING LEADS TO FINANCIAL CRISIS

The financial consequences of barriers to employment caused by the current state of child care services leave many women and children in financial crisis.

Even when women are able to work, the cost of child care undermines their ability to meet their basic needs. The cost of child care in BC is so high that even women with high or middle incomes struggle to cover monthly fees. A 2014 report found that average child care costs in Vancouver consume 29% of women's median income. One project participant reported that, although her gross income was approximately \$65,000, as a single mother she was unable to afford rent while paying for part-time child care and other basic expenses. She was forced to live with her parents and commute across several cities to work each day.⁸⁶

For women who work precarious jobs, even a temporary lack of child care services can have significant financial consequences. One project participant reported that her daughter could not attend child care for three months because she was wait-listed for disability-related supports. During this three-month period, the mother's income declined drastically because she reduced her employment availability to provide unpaid care. She survived only because her low-rent apartment allowed her to cover housing costs with her daughter's monthly child benefits⁸⁷ and child support.

The children and I moved in with my parents. I would prefer to live with my children independently, but I can't afford to pay for child care and rent, plus basic necessities.

(Affidavit #2)

AFFIDAVIT: BARELY GETTING BY

Charlotte is a single mother in Northern BC. Working five days a week, six hours per day, she takes home about \$2,000 each month. Charlotte's ex-partner is continuing to pay the mortgage on the home she and her son live in until they can sell it and divide the proceeds, so she has no housing costs right now. Her two-year-old son is in licensed child care for five hours a day. Charlotte's parents pick him up and provide free care until she finishes work in an effort to reduce costs. Even with this help, her son's child care costs approximately \$700 per month and consumes nearly half of Charlotte's monthly income. She lives pay cheque to pay cheque and uses a credit card to cover additional expenses between paydays. If she were to miss a pay cheque, Charlotte would not be able to afford food or her son's child care. (Affidavit #6)

⁸⁶ Affidavit #2.

⁸⁷ While it is not clear from the affidavit, this likely refers to a combination of monthly children's benefits paid through the Canadian Revenue Agency.



While the cost of child care impacts all women caring for children, women who are unable to work because of caregiving obligations, particularly if they are leading lone parent families, often live in deep poverty. They are disproportionately forced to rely on income assistance for basic financial support.⁸⁸ Including all other benefits available, a single woman with one child on regular income assistance receives approximately \$1,440 per month, almost \$600 per month under the poverty line.⁸⁹ Over three-quarters of families on income assistance in BC cannot afford adequate food.⁹⁰ The new federal Canada Child Benefit, intended to take effect in July of 2016, will improve the situation for families on income assistance, but many will remain below the poverty line.

In 2015, BC introduced the Single Parent Employment Initiative, which recognizes the barrier child care creates for women trying to transition from social assistance to employment. While the program is a positive development because it covers the entire cost of child care for single parents enrolled in specific forms of job training, it fails to support women who do not require additional training to secure work or those pursuing education that is not eligible for the program, such as any training program longer than 12 months, or employment training in ineligible sectors. In addition, the program does not address the inadequate number of regulated child care spaces in BC.⁹¹ The program was in place while participants in this project reported feeling trapped on income assistance because of the prohibitive cost of child care.⁹²

88 While sole-parent led families make up just over 15% of BC's family population, they make up 25% of the families on income assistance. See Ministry of Social Development and Social Innovation, "BC Employment and Assistance Summary Report" (March 2016), online: <www2.gov.bc.ca>; Statistics Canada, "Portrait of Families and Living Arrangements in Canada" (2011), online: <www12.statcan.gc.ca> at table 2.

89 First Call: BC Child and Youth Advocacy Coalition, *2015 BC Child Poverty Report Card* (November 2015), online: <www.still1in5.ca> at 30.

90 Valerie Tarasuk, Andy Mitchell & Naomi Dachner, *Household Food Insecurity in Canada – 2012*, (Toronto: Research to identify policy options to reduce food insecurity, 2014) at 11.

91 Coalition of Child Care Advocates of BC, "Baby Step Towards \$10aDay Child Care Plan? Single Parents on Assistance to Receive Free Child Care, but Critical Questions Remain" (13 Mar 2015), online: <www.10aday.ca>.

92 Affidavits #5, #7, #11.

If I had to pay for rent in addition to child care, my son and I would probably be homeless.

(Affidavit #6)

FORCED DEPENDENCE ON CO-PARENTS

AFFIDAVIT: FEELING TRAPPED



My husband and I have discussed my concerns about what would happen if our relationship ever ended. I know that he would be financially secure and I would not be. (Affidavit #14)

Jane is married and has a three-year-old daughter. Although Jane and her husband would like to have an equal relationship, her husband owns his own business and earns more than her, so they are forced to prioritize his work over hers. Jane works when she can, attends school only part-time in order to reduce the family's need for child care, and provides primary care for their daughter. Jane feels trapped because she is financially dependent on her husband, but she cannot work to become more independent and contribute more to the family income because they cannot afford additional child care. (Affidavit #4)

The high costs of child care, women's disproportionate role in caring for children, and women's already lower wages create additional consequences for women. Because they are often unable to meet their own and their children's basic financial needs while also fulfilling their children's care needs, women are frequently economically dependent on their partners.

Even when couples intend to share paid work opportunities and unpaid caregiving responsibilities equally, when deciding who will take time off or accept less secure employment to address caregiving needs, this intention can be difficult to realize. One participant reported that because she carried her children, gave birth to them, and took maternity leaves, her career had not progressed as quickly as her spouse's. Because her spouse could earn more, they prioritized his work and she worked only part-time to reduce the family's child care costs. Thus the gap between their respective earning potential grew.⁹³ This can become a self-reinforcing cycle as the financial incentive to prioritize the higher earner's career increases.

The economic insecurity that results for women who are unable to access affordable child care has deep and vast implications. In addition to the immediate impacts of being unable to meet their own basic needs and the needs of their children, the resulting financial crisis and dependence also has other consequences. These include an increased vulnerability to violence, additional barriers to fleeing violence and a compromised ability to stay in Canada with their children, all of which are explored in the following sections.

⁹³ Affidavit #14.



Fleeing Violence

The *Convention to Eliminate All Forms of Discrimination against Women* requires that state parties immediately pursue all available avenues to eliminate discrimination against women, which includes violence, regardless of whether it is committed by the state or a private individual.⁹⁴ The CEDAW Committee has noted that “disadvantaged socioeconomic conditions and a lack of social services increase women’s vulnerability to violence, since the lack of access to such resources reduces the choices available to women in situations of risk and prevents them from escaping violence.”⁹⁵

AFFIDAVIT: IN NEED OF SUPPORT

Mariana immigrated to Canada with her spouse and three-year-old son. Shortly after arriving here, she gave birth to her daughter. Mariana worked as a doctor in her home country, but she stayed home to care for her children after she arrived in Canada, becoming financially dependent on her husband. Shortly after giving birth to her daughter, Mariana fled her home with her two children to escape physical violence. She was focused only on her own safety and the safety of her kids. Mariana accessed a transition house and soon discovered that there were no child care services available there. At one point, her daughter developed a respiratory problem and was rushed by ambulance to the hospital where she was admitted for several days. When the paramedics came, they told Mariana that her son could not come in the ambulance and transition house staff told Mariana that he could not stay there. Mariana ended up asking a woman she barely knew to watch her son, and he remained there for several days while Mariana stayed with her daughter in the hospital. (Affidavit #13)

94 *Supra* note 4, arts 1–2; Committee on the Elimination of Discrimination against Women, *General Recommendation 19: Violence Against Women*, 11th Sess (1992) at para 24.

95 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (30 March 2015) at para 112.

Even when women are able to flee abusive situations with their children, the cycle of poverty and financial insecurity they are often plunged into as newly single parents can cause them to return to their abusers.

I left my ex-spouse because of physical abuse. After I left, I initially lived with my children in a transition house and then in second stage housing. When I left, I did not know how difficult things would be.

(Affidavit #7)



Canadian federal and provincial laws also acknowledge the impact of violence on women. Family violence is expressly recognized in BC's family law legislation, and provincial income assistance laws, housing policy and legal aid coverage provide some recognition of the kinds of services necessary to support women leaving a violent situation,⁹⁶ although they are far from adequate to meet women's actual needs. Even immigration policy, which will be addressed in a later section of this report, recognizes that violence and abuse are important factors to consider when assessing applications for permanent residence in Canada.⁹⁷

The current state of child care services in BC increases women's risk of experiencing violence in intimate relationships and creates significant barriers to their safety when that violence occurs. Even when women are able to flee abusive situations with their children, the cycle of poverty and financial insecurity they are often plunged into as newly single parents can cause them to return to their abusers.

BARRIERS TO SAFETY

Four project participants reported experiencing some form of violence in their relationship with their children's father, and this issue is by no means unique to their personal experiences. In 2013, more than 90,000 Canadians, 80% of whom were women, reported to police that they were experiencing intimate partner violence.⁹⁸ Further, Indigenous women, immigrant women, racialized women, women with disabilities and queer and trans women experience disproportionate rates of violence. As a result, it is essential to explore the impacts of child care on women's experiences of violence, and particularly the ways a lack of access to child care can create barriers to their safety.

Economic dependence in intimate relationships can create opportunities for an abusive partner to exercise additional control, creating an increased risk of violence.⁹⁹ The monumental task of shifting from financial dependence on a spouse to supporting oneself and one's children can be daunting for women, and can substantially constrain their ability to leave a violent situation. Indeed, financial concerns are among the most common reasons given when women

⁹⁶ *Employment and Assistance Regulation*, BC Reg 263/2002, s 4.1(4)(e), 7.1, 29(4)(h) (iii); BC Housing, "Housing Subsidy Supplemental Application Form", online: <www.bchousing.org>; Legal Services Society, "Serious Family Problems", online: <www.legalaid.bc.ca>.

⁹⁷ Government of Canada, "The Humanitarian and Compassionate Assessment: Dealing with Family Relationships" (24 July 2014), online: <www.cic.gc.ca> [H&C Assessment].

⁹⁸ Canadian Centre for Justice Statistics, "Family violence in Canada: A Statistical Profile, 2013" (15 Jan 2015), online: Statistics Canada <www.statcan.gc.ca>.

⁹⁹ British Columbia, *A Vision for a Violence Free BC: Addressing Violence Against Women in British Columbia* (2015), online: <www2.gov.bc.ca> at 4–6.

The women were required to provide unpaid care to their children 24 hours a day, seven days per week as they tried to navigate the complex road of leaving an abusive situation.

are asked why they did not leave an abuser sooner.¹⁰⁰ A Canadian study reported that half of the women interviewed who were fleeing abuse said that access to child care would have assisted them in leaving a violent situation sooner. This is especially concerning because by the time the women in this study entered a transition house or shelter, almost 60% were assessed as being at extreme risk of being killed by their partner.¹⁰¹

All four project participants who reported experiencing some form of violence from a spouse or partner were financially dependent on that person at the time the violence occurred because of their caregiving responsibilities. In addition, all four participants reported struggling to survive financially after they left because they did not have access to affordable child care that would support their employment.¹⁰² One participant described returning to her verbally abusive partner at least once; she reported that if she had known that she would be forced to leave her husband and that she would not be able to work to support herself, she would not have contacted authorities for assistance in the first place. Another participant spoke about the risk of further violence caused by a lack of access to child care and the financial insecurity that accompanies it. She noted that because she could not work and become financially independent, she felt at risk of further abuse.¹⁰³

In addition to the barriers to long-term financial independence, a lack of access to child care also creates some very practical and immediate obstacles for women after they have left a violent relationship. Two project participants reported that once they left their abusive partners, they stayed in a transition house with their children and did not have access to child care services there. This meant that the women were required to provide unpaid care to their children 24 hours a day, seven days per week as they tried to navigate the complex road of leaving an abusive situation.¹⁰⁴ One participant reported having to take her pre-school aged son with her to medical and legal appointments. Her lawyer advised her that it was inappropriate for the child to be present during appointments where they discussed the violence she had experienced, but she had no other options.¹⁰⁵ Both

The ambulance attendants would not let my son come with us and the transition house staff told me that I could not leave my son there... In that moment, I wondered whether it would have been better to stay with my husband because at least I could have left my son with him. (Affidavit #13)

100 Leslie M. Tutty, *Effective Practices in Sheltering Women: Leaving Violence in Intimate Relationships Phase II Report* (2006), online: YWCA Canada <www.ywcacanada.ca> at 50.

101 *Ibid* at 51, 42, 89–90.

102 Affidavits #3, #7, #12, #13.

103 Affidavit #3.

104 Affidavits #3, #13.

105 Affidavit #13.



Not having access to child care means that it is hard for me and other women to escape the cycle of abuse. Because I can't work and be financially independent, I'm at risk of becoming a victim of abuse. If I was able to support myself, my self-confidence would increase and I would be less likely to be victimized.
(Affidavit #3)

women reported finding it incredibly stressful and emotionally challenging to try to process their trauma without respite from constant caregiving or time for themselves.¹⁰⁶

The period after leaving a violent relationship is intense and stressful. Not only are women at heightened risk of significant violence from their abuser,¹⁰⁷ but they are also often trying to establish some form of financial security to support themselves and their children in the future. They may be processing trauma while also trying to find affordable housing and secure employment. They may be taking legal action to protect their own safety and the safety of their children, or to enforce their legal rights to financial support through family law. They may have increased healthcare needs as a result of the physical and mental consequences of violence.

Canadian research confirms the project participants' account of the overwhelming nature of the period after leaving an abusive relationship. Studies have found that access to free child care would allow women to attend medical and legal appointments; seek housing and apply for income assistance or employment without their children;¹⁰⁸ and access respite care so that they can begin to process the abuse. In short, it is a crucial support for women who have fled violence and are in the process of re-establishing their lives.

Child care subsidies are available if a caregiver is employed, actively searching for employment, attending school or employment training, or if they have a medical condition that interferes with the ability to care for a child.¹⁰⁹ Women who are rebuilding their lives after leaving a violent relationship are not eligible for subsidy unless they can fit into one of these categories. Subsidies are not available while they seek health care, legal services, attend other necessary appointments or process the trauma they have experienced. BC recognizes that access to income assistance and housing may be necessary supports for women who have fled abuse, but they exclude these women from accessing child care support services. This exclusion disproportionately impacts those most vulnerable to violence, including Indigenous women, women with precarious immigration status, racialized women, women with disabilities, queer women and trans women.

Whether to leave an abusive situation, as well as whether to return, is an incredibly complex and personal decision. A lack of access to child care services places serious constraints on women's ability to leave and establish the financial independence required to maintain their safety, which has direct consequences for their human rights.

106 Affidavits #3, #13.

107 Maire Sinha, "Family Violence in Canada: A Statistical Profile, 2011" (25 June 2013), online: Statistics Canada <www.statcan.gc.ca> at 4.

108 Tutty, *supra* note 100 at 89–90.

109 *Child Care Subsidy Regulation*, *supra* note 29, s 3.

A photograph of a woman with her hair in a ponytail, wearing a dark blue vest over a white long-sleeved shirt, sitting on a purple couch. A young child is sitting next to her, looking down. A black backpack is on the floor next to the woman. The background shows a bright, indoor setting with large windows.

Immigration Status in Canada

AS A RESULT OF CANADIAN IMMIGRATION POLICY, access to child care services has a particular impact on women without legal immigration status who have fled violence. The financial insecurity that flows from an inability to access affordable and adequate care compounds with other aspects of vulnerability and undermines these women's ability to legally remain in Canada with their children.

AFFIDAVIT: AN IMPOSSIBLE SITUATION

Sophia came to Canada as a student in 2009 and she currently has no immigration status here. She has one son who is three years old. She left her son's father because he was emotionally abusing her by constantly threatening to have her deported. Since leaving, Sophia has had no income aside from inconsistent child support payments from her son's dad. She is not eligible for income assistance because she has not yet filed an application for permanent residence. She has tried working illegally, but she cannot afford child care for her son and she is not eligible for any kind of child care subsidy because of her immigration status. Sophia and her son are homeless. They survive by couch surfing and sometimes staying in a transition house. A lawyer has told Sophia that if she cannot show immigration officials that she can support herself, her application for permanent residence status may be denied. (Affidavit #3)

Women without immigration status are often forced to rely on intimate partners for financial support, and that dependence as well as the ongoing threat of deportation can become a source of power that abusers hold over women.

HUMANITARIAN AND COMPASSIONATE GROUNDS

It is difficult to separate the vulnerabilities experienced by mothers without legal immigration status; they flow from the current immigration system, gendered caregiving responsibilities, and the discriminatory eligibility criteria for existing child care supports. The intersection of these systems creates multiple layers of vulnerability for these women.

Women without legal immigration status in Canada are particularly at risk of violence. They experience heightened financial insecurity because of additional barriers to paid work, ranging from immigration-related restrictions on legal employment, language barriers and a lack of accreditation or work experience recognized by Canadian employers.¹¹⁰ As a result, women without immigration status are often forced to rely on intimate partners for financial support, and that dependence as well as the ongoing threat of deportation can become a source of power that abusers hold over women.¹¹¹

If a mother without immigration status leaves an abusive situation, she faces a difficult road. Her primary option to stay in Canada is to make an application for permanent residence on “humanitarian and compassionate” grounds, which permits immigration officials to allow a person who is otherwise ineligible to remain in Canada permanently if their personal circumstances warrant an exemption from the normal immigration requirements.¹¹² The application process is slow, expensive and complex, and success is far from guaranteed.

Individual immigration officers have the discretion to decide whether to grant humanitarian and compassionate applications, but that discretion is guided by immigration policy. Policy directs immigration officers to weigh a range of factors when assessing applications and the only mandatory (but not determinative) factor is the best interests of any children directly affected by the decision.¹¹³ Other potentially relevant factors include the impact of family violence and the extent to which the applicant has become established in Canada.¹¹⁴ The consideration of the impact of family violence in immigration policy is an important recognition of the increased vulnerability and hardship experienced by women without immigration status, but the extent to which experiences of violence inform a particular decision is left to individual immigration officers. Decisions can be inconsistent.¹¹⁵

110 Sheryl Burns, *Single Mothers Without Legal Status in Canada: Caught in the Intersection Between Immigration Law and Family Law* (Vancouver: YWCA Vancouver, 2010) at 13–15; Heather Neufeld, “Inadequacies of the Humanitarian and Compassionate Procedure for Abused Immigrant Spouses” (2009) 22 *JL & Soc Pol’y* 177 at 183–189.

111 Burns, *ibid* at 13–16; H&C Assessment, *supra* note 97.

112 *Immigration and Refugee Protection Act, SC 2001 c 27, s 25*.

113 *Ibid*, s 25(1).

114 Government of Canada, “Humanitarian and Compassionate Assessment: Hardship and the H&C assessment” (2 Mar 2016), online: <www.cic.gc.ca> [Hardship and the H&C Assessment].

115 Neufeld, *supra* note 110 at 192–193.

I was told by immigration officials that, in order to improve my chances of getting permanent resident status, I needed to show that I can support myself. I felt caught because relying on income assistance hurt my chance of getting status in Canada, but I couldn’t work to support myself because I couldn’t afford child care.

(Affidavit #7)



If I am not working and can't prove to immigration authorities that I can support myself, my application for permanent residence may be rejected.

(Affidavit #3)

More problematic is the directive to consider the degree to which an applicant is established in Canada, which includes consideration of whether they have a history of stable employment in Canada and evidence of sound financial management.¹¹⁶ Reliance on public supports, including income assistance, housing or other services may be deemed to be evidence of a failure to become established in Canada. It can also be used as a basis on which to find a woman inadmissible for financial reasons.¹¹⁷ Even if an applicant is employed, any reliance on public financial assistance can count against the application.¹¹⁸ Immigration officers are directed to consider establishment in Canada even in cases of family violence, which seems to contradict the policy rationale recognizing the impacts of family violence on women.¹¹⁹

This policy can place single mothers without status, and particularly those who have left a violent relationship, in an impossible situation. They need to show that they are financially independent to strengthen their case to stay in Canada, but they have not had and do not have access to the child care supports they require to be able to do that. They are ineligible for BC's child care subsidy program regardless of whether they have a work permit because it is only open to Canadian citizens, permanent residents or approved refugees.¹²⁰

116 Hardship and the H&C Assessment, *supra* note 114.

117 *Immigration and Refugee Protection Act*, *supra* note 112, s 39.

118 See e.g. *Diaz Ruiz v Canada*, 2006 FC 465.

119 H&C Assessment, *supra* note 97.

120 *Child Care Subsidy Regulation*, *supra* note 29, s 5.

BC has taken action to change eligibility requirements for income assistance, but unfortunately not for other social supports like the child care subsidy program, and any reliance on these programs is still held against women pursuant to immigration policy.



Mothers without status are frequently caught between the immigration law and family law systems.

This situation was reflected in the stories gathered for this project. Three participants did not have legal immigration status when the project commenced. All three had recently left some form of intimate partner violence and reported struggling to survive financially afterwards.¹²¹ Two had pending applications for permanent residence during the project and were eligible for income assistance, and one did not so she was ineligible for any public financial support.¹²²

One participant had a work permit pending the determination of her application for permanent residence, but she was unable to work because she could not afford child care. Another participant reported trying to work illegally and bring her son to her job, but the situation was unsustainable. All three of the women's lawyers advised them that their applications for permanent residence would be undermined if they could not show that they were financially independent.¹²³

In addition, one project participant found herself in a common situation for mothers without legal immigration status: she was ordered to leave Canada after her first application for permanent residence was denied, but she did not have the legal authority to take her children out of the country. She was forced to choose between several poor options: stay in Canada illegally with her toddler and continue to act as her primary caregiver, leave Canada without her daughter, or leave Canada with her daughter, but risk being charged with kidnapping.¹²⁴ Mothers without status are frequently caught between the immigration law and family law systems.¹²⁵

There have been numerous recommendations to reform the humanitarian and compassionate grounds application as it applies to mothers without status who have fled violence, including issuing immediate temporary work permits to women, exempting them from the consideration of establishment in Canada and/or amending policy so that the receipt of social benefits does not negatively impact their applications.¹²⁶ BC has taken action to change eligibility requirements for income assistance, but unfortunately not for other social supports like the child care subsidy program, and any reliance on these programs is still held against women pursuant to immigration policy.

¹²¹ Affidavits #3, #7, #12.

¹²² *Employment and Assistance Regulation*, *supra* note 96, ss 7–7.1.

¹²³ Affidavits #3, #7, #12.

¹²⁴ Affidavit #7.

¹²⁵ Burns, *supra* note 110.

¹²⁶ *Ibid* at 34–45; Neufeld, *supra* note 110 at 204–208.

Disability and Health

INTERNATIONAL HUMAN RIGHTS AGREEMENTS confirm the importance of health as a human right. The *Covenant on Economic, Social and Cultural Rights* recognizes that everyone has a right to enjoy the highest attainable standard of physical and mental health and requires that state parties take steps to prevent disease.¹²⁷ The *Convention to Eliminate All Forms of Discrimination against Women* requires that state parties take action to eliminate discrimination against women with respect to healthcare services throughout their lifetimes, which includes preventing conditions affecting women.¹²⁸ The *Convention on the Rights of People with Disabilities* requires that state parties provide services that are designed to minimize and prevent further disability.¹²⁹

AFFIDAVIT: DECLINE IN HEALTH

Lindsay is a single mother. She was able to get off of disability assistance when she got a job as a healthcare aid making a good income, but the position required shift work. Lindsay struggled to balance her work with child care for her youngest son, which was intensely stressful. Eventually, the stress caused Lindsay's health to decline; she went on medical leave from her employment and then back on assistance. She began working casually as a house cleaner for cash to try to get back on her feet and to repay debts she accumulated when she could not work, but the combination of managing child care and employment again exacerbated her illness and she was hospitalized several times. Lindsay is no longer able to work and is now completely reliant on income assistance. (Affidavit #11)

¹²⁷ *Supra* note 68, art 12.

¹²⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Article 12 of the Convention (women and health)*, 20th Sess (1999) at para 29.

¹²⁹ *Convention on the Rights of People with Disabilities*, 30 Mar 2007, 2515 UNTS 3, art 25(b) (ratified by Canada 11 Mar 2010).

Parenting—and particularly parenting alone while trying to achieve economic security—is a source of enormous stress. Mothers with disabilities experience additional stress due to disproportionate barriers to employment, higher rates of precarious employment and increased risks of involvement with the child protection system.



The stress of the situation and trying to juggle parenting and my work caused my health to decline and I had a flare up of Crohn's disease.
(Affidavit #11)

Parenting—and particularly parenting alone while trying to achieve economic security—is a source of enormous stress. Mothers with disabilities experience additional stress due to disproportionate barriers to employment, higher rates of precarious employment and increased risks of involvement with the child protection system.¹³⁰ A lack of access to affordable child care services can further threaten these women's economic security and put their own health at serious risk.

BARRIERS TO MAINTAINING HEALTH

The majority of the participants in this project described the stress of trying to manage caregiving at the same time as other responsibilities in their lives. For two participants with disabilities, the stress of trying to handle work, the cost and availability of child care and unpaid caregiving when they could not access child care undermined their health.

One project participant reported a significant decline in her mental health when she was no longer able to afford to keep her son in child care.¹³¹ Another participant with a chronic inflammatory disease reported that despite being able to end her reliance on disability assistance after securing training and then employment, the strain of handling shift work with a young son took an enormous toll on her body.¹³² She ended up hospitalized and is now unable to work.

Stress can have negative health consequences and research shows that ongoing chronic stress can have as large or larger impacts on health than one-time traumatic events, particularly for populations already marginalized by poverty, gender, race and family status.¹³³ Research that examines the causes of stress, and particularly stress that results in poor health outcomes, reveals clear culprits: poverty, precarious employment, discrimination and lack of access to child care all causes stress that negatively influences health.¹³⁴ Viewed in this context, child care services may be a necessary accommodation to allow women with disabilities to support their employment and ability to parent without putting their own health at risk.¹³⁵

130 Laura Track, *Able Mothers: The Intersection of Parenting, Disability and the Law* (Vancouver: West Coast LEAF, 2014) at 26–28; 77–79.

131 Affidavit #9.

132 Affidavit #11.

133 Peggy A Thoits, "Stress and Health: Major Findings and Policy Implications" (2010) 51:1 (suppl) *Journal of Health and Social Behavior* S41.

134 Juha Mikkonen & Dennis Raphael, *Social Determinants of Health: The Canadian Facts* (Toronto: York University School of Health Policy and Management, 2010).

135 DisAbleD Women's Network Canada, "Policy Brief Re: Study on Economic Security on Women with Disability" (Report presented to the Standing Committee on the Status of Women, 3 May 2007) at 4.

The Right to Parent

THE IMPORTANCE OF THE RELATIONSHIP between primary caregiver and child, as well as the right of parents to make fundamental decisions in the lives of their children, is well recognized in both international and Canadian law. For example, the *Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* both require state parties to recognize that the family is a fundamental social unit that requires protection and assistance.¹³⁶ The *Convention on the Rights of Persons with Disabilities* requires that states provide parenting assistance to people with disabilities and to ensure that parents and children are not separated against their will unless it is in the best interests of the child.¹³⁷ Finally, the *Convention on the Rights of the Child* requires that states respect the rights of parents, ensure that children are not separated from their parents unless it is in the child's best interests and provide assistance to parents to support them with child-rearing.¹³⁸

AFFIDAVIT: PENALIZED FOR BEING INVOLVED

Laura is the single mother of a six-year-old daughter who has a disability that requires ongoing physical, occupational and speech therapy with daily exercises. Laura made the decision to work casually and have her daughter attend child care on a part-time basis so that Laura can perform the daily exercises herself. She was uncomfortable asking child care providers to do it and she wanted to ensure consistency and continuity in her daughter's therapies. However, securing part-time child care proved to be a major barrier. Laura was able to find appropriate child care spaces, but was told that her daughter could only attend on a full-time, not part-time, basis. Laura reported feeling like she was being penalized for making her daughter a priority and wanting to be involved in her development. (Affidavit #8)

¹³⁶ *Supra* note 68, art 10; *International Covenant on Civil and Political Rights*, 19 Dec 1966, 999 UNTS 171, art 23 (ratified by Canada on 19 May 1976).

¹³⁷ *Supra* note 129, art 23.

¹³⁸ *Supra* note 35, arts 5, 9, 18.

A lack of access to affordable child care services constrains parental decisions and puts families at risk of potential separation.

A lack of access to affordable child care services can fundamentally undermine these rights by constraining parental decisions and putting families at risk of potential separation.

UNDERMINING PARENTING DECISIONS

Parents generally have the right and the obligation to make day-to-day decisions in the lives of their children. Such decisions, like where the child will go to school, who will provide care for the child, whether and how the child receives health care and how best to support the child's development can have a significant influence on the child's long-term well-being.¹³⁹ Because parents are generally considered to be in the best position to know their child's needs, preserving this sphere of parental autonomy is crucial to ensure that day-to-day decisions are made in a child's best interests.¹⁴⁰

However, participants in this project reported that the current state of child care services in BC places significant constraints on their parental decision-making, and specifically their ability to choose their child's caregiver. Several participants reported that, while they would prefer to use licensed child care, the high cost of that form of care left them with little choice but to leave their children in less than ideal care situations.¹⁴¹ One participant reported relying heavily on her teenage son for child care,¹⁴² while others reported leaving their children with people they did not know very well or with friends or family members that they would not have chosen as caregivers if other options had been meaningfully available to them.¹⁴³

Research examining parental decisions related to the use of informal or unregulated child care mirrors the experience of these participants. While some parents choose informal child care because they prefer to have a person close to them care for their child, a grandparent for example, research from the United Kingdom indicates that cost is often a prominent consideration in decisions to use family, friends or neighbours for informal care.¹⁴⁴ The study also reported that working lone parents and lower-income families are more likely to rely on informal care providers.¹⁴⁵

Project participants also reported that the current state of child care services and the economic insecurity that resulted from it limited other important parental decisions, including choosing their children's living situation, schooling and healthcare providers.¹⁴⁶

139 *Young v Young*, [1993] 4 SCR 3 at 48.

140 *Ibid.*

141 Affidavits #1, #2, #5, #6.


142 Affidavit #11.

143 Affidavits #2, #5, #6, #8.

144 Caroline Bryson et al, *The Role of Informal Childcare: A Synthesis and Critical Review of the Evidence – Full Report* (London: Nuffield Foundation, 2012) at 107–110.

145 *Ibid* at 7.

146 Affidavits #2, #1, #8.



While my teenage son did the best he could, he was a teenager and was not in a position to consistently parent his brother.
(Affidavit #11)

INCREASED RISK OF CHILD PROTECTION

AFFIDAVIT: STRUGGLING TO PARENT

Lila is the single mother to a four-year-old son who can be very challenging to parent. She has depression and anxiety and receives disability benefits. She initially put her son in child care after struggling to parent him full-time, but she soon found that she could not afford her portion of the costs even with a full child care subsidy. With the help of a supportive doctor and a counselor, Lila voluntarily approached the Ministry of Children and Family Development (MCFD) to ask for support services. She explained that, while her son was not at risk of harm, she needed additional support to maintain her mental health. The Ministry covered her child care costs for two consecutive six month periods, for which Lila was very grateful. At the end of the year of funding, Lila tried to keep her son in child care on her own, but she still could not afford her portion of the fee, so she withdrew him after one month. She soon realized this was a huge mistake, as her relationship with her son became increasingly negative. She realized after four months that it was unmanageable for her to parent her son full-time unless he was in child care. (Affidavit #9)

The stress of parenting and the financial insecurity that results from being unable to access child care can undermine women's ability to parent. Many of the participants reported that their relationships with their children suffered due to the ongoing stress resulting from either financial insecurity or managing their unpaid caregiving without support.¹⁴⁷

Another project participant, an Indigenous grandmother, reported being unable to have her infant grandson placed into her care despite months of trying. Child protection authorities required that she have child care in place, but that proved to be a major obstacle. She was unable to afford the cost on her own and it took her several months to obtain accurate information about accessing financial assistance. When she finally learned that funding was available, she found out that she could not start receiving the funding until her grandson was actually in her care, but she could not pay to hold child care spaces while she waited. As a result, she was able to secure several child care spaces only to lose them when the court processes did not proceed as expected, causing her to restart the cycle of trying to find a child care space for her grandson.¹⁴⁸

¹⁴⁷ Affidavits #3, #5, #9.

¹⁴⁸ Affidavit #10.

The constant pressure and stress of not being able to support myself and be financially independent puts me at risk of continuing the cycle of abuse with my son because I do not have the resources and supports necessary to deal with my stress. (Affidavit #3)

During the four months my son was not attending child care, my relationship with him became increasingly negative.

(Affidavit #9)

All parenting can be stressful, but parenting with additional stressors such as being a sole caregiver, living in poverty and struggling to cover basic necessities, recovering from trauma, trying to ensure ongoing safety from violence, living with precarious immigration status or managing a disability can create levels of pressure that may be difficult for many women to manage. American research confirms that increased parental stress can negatively impact the parent-child relationship and increase the likelihood of involvement with the child protection system.¹⁴⁹ Further, Canadian research confirms that poverty can lead to an increased risk of childhood neglect,¹⁵⁰ one of the most common forms of child maltreatment as reported by Canadian child protection agencies.¹⁵¹

BC's own child protection legislation includes the guiding principles that the "family is the preferred environment for the care and upbringing of children" and "if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided."¹⁵² Access to affordable child care is one of the biggest concerns reported by marginalized women who have been involved with BC's child protection system.¹⁵³ American studies also illustrate that child care can play an important role in reducing the risk of child maltreatment and engagement with the child protection system, particularly for younger children.¹⁵⁴ Access to affordable, high-quality child care services can also provide a resource for parents to receive information on parenting skills and childhood development. In addition, as set out in earlier sections of this report, access to affordable child care services can support the financial independence and economic security of women by allowing them to enter the workforce and reduce their risk of experiencing violence, which reduces the child protection risk factors of poverty and childhood exposure to intimate partner violence.

Currently, the full cost of child care services can be covered by MCFD after a screening assessment for child protection concerns is completed, but it is only available for six-month periods. While MCFD may provide longer term service agreements through repeated six-month agreements,¹⁵⁵ these supports are generally not intended to be permanent in nature, regardless of a family's continued need for them.¹⁵⁶ While some stressors may be temporary, parents facing

149 Jessica Rodriguez-JenKins & Maureen O Marcenko, "Parenting Stress Among Child Welfare Involved Families: Differences by Child Placement" (2014) 46 *Children and Youth Services Review* 19 at 19–20.

150 Jean Hlady, "Child Neglect: Evaluation and Management" (2004) 46:2 *BC Medical Journal* 77.

151 *Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Major Findings* (Ottawa: Public Health Agency of Canada, 2010) at 31.

152 *Child, Family and Community Service Act*, RSBC 1996, c 46, ss 2(b) and (c).

153 Darcie Bennett & Lobat Sadrehashemi, *Broken Promises: Parents Speak Out About B.C.'s Child Welfare System* (Vancouver: Pivot Legal Society, 2008) at 94.

154 Jane Waldfogel, "Prevention and the Child Protection System" (2009) 19:2 *The Future of Children* 195 at 199–201.

155 *Child, Family and Community Service Act*, *supra* note 152, s 5.

156 See e.g. *Director v RMS, CS and WMD*, 2016 BCPC 47 at para 147.



long-term challenges such as lone parenting, poverty and disability may require ongoing support. In addition, existing research suggests that support services are not always offered as a preventative measure, but instead only after children are apprehended. Mothers with disabilities noted that preventive supports would be far more effective in dealing with parenting issues.¹⁵⁷ As one of the project participants noted, it is a shame that parents must wait until they are in a bad situation before they can access help.¹⁵⁸

Finally, requiring women to engage with the child protection system in order to access child care services is a barrier for many women, as the system can cause significant fear and stigma. BC's Early Years Strategy, child care subsidy system, and Aboriginal early childhood development initiatives are administered by MCFD, the same ministry responsible for the protection and apprehension of children. In particular, access to temporary support services that may cover the full cost of child care may be subject to a risk screening assessment for protection concerns.¹⁵⁹ The project participant who recognized that she was struggling to parent and decided to voluntarily request help from MCFD found the process to be a positive experience, but she also noted that this may not be the same for many women. She had a very supportive doctor who helped her strategize about how to safely talk to MCFD, as well as a counselor who attended at least one meeting with MCFD staff as a support person. The participant noted that women without this level of support may have a different experience interacting with MCFD.

Many women are very likely apprehensive about approaching child protection staff to ask for supports, particularly given the systemic discrimination reflected in BC's child protection system. Aboriginal children are approximately 12 times more likely to be in government care than non-Aboriginal children.¹⁶⁰ Given the extreme overrepresentation of Indigenous children in the child protection system,

¹⁵⁷ Track, *supra* note 130 at 28–29.

¹⁵⁸ Affidavit #9.

¹⁵⁹ *Ibid.*

¹⁶⁰ Representative for Children & Youth and Office of the Provincial Health Officer, *Growing Up in B.C. – 2015* (2015), online: <www.rcybc.ca> at 43.

My grandson is now nearly 10 months old. The process of trying to get him into my care has been devastating... I try not to think about it, but it feels like a loss, almost like a death in my family. My grandson is my child, my family, and I am heartbroken that he is still not living with me. (Affidavit #10)



Given the extreme overrepresentation of Indigenous children in the child protection system, as well as the legacy of residential schools, forced assimilation and ongoing state interference in family relationships and culture, Indigenous families may have an understandable mistrust of MCFD.

as well as the legacy of residential schools, forced assimilation and ongoing state interference in family relationships and culture, Indigenous families may have an understandable mistrust of MCFD. Despite the ongoing transfer of responsibility for the child welfare of Aboriginal children to delegated Aboriginal agencies, the institutional legacy and current experiences of colonialism may impact women's decisions about whether or not to seek existing child care supports.¹⁶¹

Mothers with disabilities are also overrepresented in the child protection system and face pervasive myths, misconceptions and pejorative stereotypes that can encourage the assumption that they are incompetent to parent. That can lead to unjustified state interference in their parent-child relationships.¹⁶² Again, it is understandable that they might be hesitant to voluntarily engage with a system that reinforces entrenched systemic discrimination against them in order to ask for support. As noted by one Canadian legal scholar, the implementation of child protection laws often reflects economic, social and cultural inequalities.¹⁶³

Access to adequate and affordable child care services can play a key role in allowing parents to make decisions in the best interests of their children, support enhanced parenting and preserve the parent-child relationship by preventing state intervention through child protection.

161 Kathleen Jamieson, *An Environmental Scan of Public Policy and Programs for Young Aboriginal Children in BC: A Cold Wind Blows* (West Vancouver, BC Aboriginal Child Care Society, 2014) at 34–35.

162 Track, *supra* note 130 at 26–27, 29–30.

163 Hester Lessard, "The Empire of the Lone Mother: Child Welfare Law, and State Restructuring" (2001) 39:4 *Osgoode Hall LJ* 717 at 719.

Children's Rights

INTERNATIONAL HUMAN RIGHTS AGREEMENTS contain strong protections for children and recognize their inherent vulnerability.¹⁶⁴ In particular, the *Convention on the Rights of the Child* requires that state parties support the development of children to the maximum extent possible; ensure that any facilities providing care for children conform to health and safety standards and provide competent care; and provide assistance to parents with child-rearing.¹⁶⁵ The Committee on the Rights of the Child has expressed concern over Canada's failure to commit funding to early childhood development (including for affordable and accessible child care services), the high cost and lack of available child care spaces and the absence of uniform training requirements.¹⁶⁶

The current state of child care services in BC also has consequences for the human rights of children that are independent from those of the women caring for them.

AFFIDAVIT: RELYING ON FAMILY

Jennifer is a single mother of two children. After she separated from her husband, she was forced to move in with her parents because she could not afford to pay for housing, child care and basic necessities. Even living with her parents, Jennifer is unable to afford to send her children to their licensed child care centre on a full-time basis, so she sends them part-time and relies on her mother to care for them one day per week. Her mother has depression and anxiety so Jennifer must carefully monitor how she is doing. Leaving her children with her mother is not an ideal situation, but Jennifer does so because it works and because the money she saves allows her children to attend a high-quality child care provider two days per week. (Affidavit #2*)

¹⁶⁴ *Convention on the Rights of the Child*, *supra* note 35, including the preamble, which states in part: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth' . . ."

¹⁶⁵ *Ibid*, arts 3, 6 and 18.

¹⁶⁶ CRC Committee 2012, *supra* note 38 at para 71.

At one point, a patchwork of various neighbours and other single mothers were caring for my daughter on different days of the week. The situation was very chaotic and hard on my daughter... (Affidavit #5)

In addition, the Committee has expressed concern about widespread discrimination against Indigenous children, immigrant children and children with disabilities.¹⁶⁷

Access to high-quality and affordable child care has an enormous impact on children, particularly as it affects poverty, the risk of being separated from parents and the likelihood of being cared for in informal stopgap arrangements. Some of the implications for children's human rights have been explored in previous sections, as the impact on children is tied to the impacts on their mothers or caregivers. However, the current state of child care services in BC also has consequences for the human rights of children that are independent from those of the women caring for them.

QUALITY OF CARE MATTERS

One of the most common impacts on children resulting from the current state of child care services in BC is that children are often cared for in informal and piecemeal care arrangements. Informal child care in BC is largely unregulated, which means that parents must inquire about and monitor whether a care provider meets basic health and safety requirements or has experience or training in early childhood care and development.

Governments have already taken positive action to support childhood development through the regulation of mandatory education and by ensuring that every child has access to an educational program that supports the development of their "individual potential" so that they can "contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy."¹⁶⁸ Those basic requirements apply in a variety of educational settings, including less formal, home-based schooling.¹⁶⁹ Given the increased vulnerability of children during early childhood and the ways in which early childhood education and care can impact long-term outcomes for children, it is difficult to justify the relative inaction on the part of the government to ensure safe, high-quality early childhood care.

Many project participants reported that they relied on informal, unregulated child care.¹⁷⁰ One participant reported getting a job on a Friday that started on a Monday. In order to be able to attend, her three-year-old daughter ended up in

¹⁶⁷ *Ibid* at paras 32(a)–(b).

¹⁶⁸ *School Act*, RSBC 1996, c 412 ss 1, 3. For a discussion of the ways in which governments recognize the vulnerability and developmental needs of children in Canada, see Alison M Latimer, "A Positive Future for Section 7? Children and Charter Change," (2014) 67:2d *Supreme Court Law Review* 537 at 547–552.

¹⁶⁹ *School Act*, *ibid*, ss 12–14, 166.25; *Independent School Act*, RSBC 1996, c 216, ss 1–2; *First Nations Jurisdiction Over Education in British Columbia Act*, SC 2006, c 10, s 19.

¹⁷⁰ Affidavits #2, #5, #11.



the care of various neighbours and other mothers. The participant reported that her daughter found the situation very chaotic and difficult.¹⁷¹ Another participant was unable to find regulated child care spaces for her infant twins despite registering for more than a dozen wait-lists, so she eventually hired a graduate student with no child care experience to care for her children.¹⁷² Participants also reported leaving their children in the care of family members in less than ideal circumstances because they were unable to afford other care options.¹⁷³

There is little doubt that a significant amount of unregulated child care is of high quality and this report does not take the position that child care is inadequate in quality simply because it is unregulated. Indeed, some project participants reported being very happy with informal care, preferring smaller and more intimate caregiving settings for younger children.¹⁷⁴ But without any regulation, oversight or monitoring, there is no quality guarantee for informal care. There is also little doubt that the quality of child care matters to children. Multiple studies have shown that high-quality early childhood education promotes child development and educational outcomes, and particularly for children from families with low socio-economic status.¹⁷⁵

“High-quality” care can vary depending on the individual needs of a child. For example, existing research notes that high-quality child care for Indigenous children means “care that is culturally appropriate, reinforces pride in identity, is grounded in an Aboriginal world view, and includes Aboriginal knowledge, values, ways of being and ways of caring for young children.”¹⁷⁶ Likewise, for

Multiple studies have shown that high-quality early childhood education promotes child development and educational outcomes, and particularly for children from families with low socio-economic status.

171 Affidavit #5.

172 Affidavit #1.

173 Affidavits #2, #6.

174 Affidavits #14, #15.

175 John Love et al, “Child Care Quality Matters: How Conclusions May Vary With Context” (2003) 74:4 *Child Development* 1021; see also Ivanova, *supra* note 21 at 13.

176 Jamieson, *supra* note 161 at ii.

children with disabilities, care should be accessible and inclusive. For children from immigrant and refugee families, cultural competency may be of key importance.

As addressed above, some of the participants in this project reported using informal care because the cost and availability of licensed child care limited their choices to such an extent that, in practice, they had no other options. It is not a coincidence that often project participants with the lowest incomes had their choices constrained in this respect. Children should not be pushed into lower quality child care simply because their parents cannot afford or cannot access services subject to quality standards.

EXACERBATING OTHER FORMS OF MARGINALIZATION

In addition to the benefits that high-quality early childhood services can provide all children, many children have particular needs. Many of these needs result from aspects of a child's identity that are protected under human rights laws because they are connected to historic discrimination and marginalization. For those children, the current state of child care services can have additional consequences that impact their dignity and equality.

For example, one participant has a daughter with a disability. While she receives provincial funding for staffing support so that her daughter can, in theory, attend any child care facility, she found it very difficult to actually secure a space that met her daughter's needs. When her daughter started school and required care



At times it has felt like child care providers view my daughter as a walking liability.
(Affidavit #8)

AFFIDAVIT: SEPERATED FROM FAMILY & CULTURE

Katherine is an Indigenous grandmother. She has been raising a teenage grandson for many years. The process of getting him into her care was very smooth under the Child in the Home of a Relative Program, but that program has since been eliminated. Katherine also has a 10-month-old grandson who was apprehended from her daughter at birth. Since then, Katherine has been trying to get her younger grandson into her care, but she has faced ongoing difficulties affording and securing a child care space for him. As a result, Katherine's grandson has been living with a non-Indigenous foster family approximately an hour away from her. Katherine knows of other Indigenous Elders who have been forced to fight to get their grandchildren out of government care. She is heartbroken that her grandson is not living with her. (Affidavit #10)



on non-instructional days, she found that her daughter was eligible for fewer care hours each day than children without disabilities because of limits on her support services. As a result, over spring break, the participant's friend cared for her daughter instead of the child care program with disability supports because the care hours available would not have allowed the mother to attend a full day of work.¹⁷⁷

Another participant reported that her son is exploring his gender identity and experimenting with his gender expression. He currently attends a child care facility that has been supportive, but he is due to start kindergarten this year. Because his parents were not able to get a space in a child care facility near their home when he first started attending care, his current child care provider will not pick him up for after-school care at his catchment area elementary school. That means that when he needs consistency and support the most because he will be transitioning to school, he may instead attend a new child care provider and lose ties to his current caregivers. As a result, his parents are considering holding him back from school for a year.¹⁷⁸

All of these children have specific needs as a result of fundamental facets of their identities and those needs are not being met. The high cost and shortage of regulated child care in BC creates barriers to securing high-quality care for all children, but especially for those who have specific care needs. The current inadequacies of BC's child care services can further exclude and marginalize these children.

177 Affidavit #8.

178 Affidavit #1.

He feels comfortable and safe at his current child care facility and changing facilities would create additional risks of stress and insecurity for him. (Affidavit #1)

Conclusions and Recommendations

It is clear that the current state of child care services disproportionately impacts women, and particularly single mothers, low-income women, Indigenous women, women with precarious immigration status and women with disabilities.

BC'S FAILURE TO ENSURE access to affordable and adequate child care violates the human rights of women and children. As addressed earlier, in the practical application of Canadian law, there are three key questions relevant to determining whether access to safe, quality, affordable child care is a human right:

- (1) Does access, or a lack of access, to child care disproportionately impact women and children?
- (2) Does the current state of child care services in BC cause harm to individuals? If so, to whom?
- (3) Is the government responsible for ensuring access to affordable and adequate child care, and what role should courts play in enforcing it as a right?

When we return to these questions, it is clear that the current state of child care services disproportionately impacts women, and particularly single mothers, low-income women, Indigenous women, women with precarious immigration status and women with disabilities. It also disproportionately impacts children, especially Indigenous children and children with disabilities.

Further, the lack of adequate and affordable child care in BC creates serious harms for women and children. They are forced to live in poverty or situations of economic dependence; they are at increased risk of experiencing violence and face obstacles to safety; they face barriers to staying in Canada if their immigration status is precarious; and they are unable to maintain their health if they have disabilities. The relationships between parents and children are threatened and the well-being of children is undermined.

Finally, the provincial government is responsible for ensuring access to adequate and affordable child care because the current state of child care services

exacerbates the harms experienced by women and children and makes it more difficult for impacted women to remedy those harms. The specific harms caused by a lack of access to child care provide discrete opportunities for courts to recognize and enforce the rights of women and children in a way that addresses concerns about the institutional role of the court and prioritizes the women and children most negatively impacted by the current state of services in BC.

WHERE DO WE GO FROM HERE?

These human rights violations can and should be remedied through the legal system if necessary; however, successful litigation typically results in a declaration that aspects of the current system have violated human rights, and the government is then left to determine a remedy. This can result in further piecemeal solutions that tinker with existing services to address individual violations, and these do not reflect a comprehensive approach rooted in sound public policy. As we already know from the existing state of child care services in BC, patchwork solutions are an inefficient and ineffective means to solve systemic rights violations.

Instead, the government must take a leadership role in acknowledging and protecting the fundamental human rights of women and children by committing to a comprehensive, systemic solution. The majority of the human rights implications identified in this report flow from the fact that regulated child care in BC is prohibitively expensive and difficult to access because there are too few regulated spaces. The current fragmented services do not meet the needs of women and children in BC, who need access to child care services that are coordinated, affordable, adequate in quality and available when they need them.

The Coalition of Child Care Advocates of BC and the Early Childhood Educators of BC have developed a comprehensive and concrete plan to build a coordinated public system for early childhood care and learning in BC that provides key implementation steps for government, commonly referred to as the “\$10aDay Plan.”¹⁷⁹ True to its name, the Plan caps full-time child care fees at \$10 a day per child, or \$7 a day per child for part-time care, with no fees for families with an annual income under \$40,000. Further, the Plan provides a framework to develop a regulated child care space for every child whose family wants or needs it. The Plan suggests that BC enshrine a right to access quality, affordable child care in legislation as a concrete way to recognize and fulfill its human rights obligations. The overarching recommendation of this report is that the BC government take immediate steps to adopt and implement the \$10aDay Plan.



The government must take a leadership role in acknowledging and protecting the fundamental human rights of women and children by committing to a comprehensive systemic solution.

¹⁷⁹ Coalition of Child Care Advocates of BC & the Early Childhood Educators of BC, *Community Plan for a Public System of Integrated Early Care and Learning*, 2016 Spring Edition (“\$10aDay Plan”), online: <www.10aday.ca>.



The stark consequences of BC's current child care services are clear: the rights of women and children are being violated.

In addition, any child care system in BC must meet the specific needs of the diverse range of families who require access to affordable and adequate child care. Specifically:

- Child care services must provide a range of forms of care and offer flexible availability. In particular, care must accommodate work outside of the usual Monday to Friday 9am to 5pm work week. Care must also be available on both a full-time and part-time basis.
- All child care services and supports must be available regardless of immigration status, particularly for women fleeing violence.¹⁸⁰
- Women fleeing violence, women who need support to parent and children awaiting kinship care placements must have prioritized access to free care without delay.¹⁸¹
- All child care services and supports should be separate from the child protection system to ensure that women do not fear asking for assistance.¹⁸²
- Culturally appropriate care must be available to Indigenous parents and children.¹⁸³
- All child care services must be fully accessible to children with disabilities so that they are not excluded or disadvantaged because of accommodation support availability.¹⁸⁴
- Child care services should be integrated with the education system in order to ensure consistency and stability when children transition from child care to school.¹⁸⁵

180 This aligns with the \$10aDay Plan recommendation that children from families facing economic, social or cultural barriers be fully supported and included.

181 This also aligns with the \$10aDay Plan recommendation that children from families facing economic, social or cultural barriers be fully supported and included.

182 This aligns with the \$10aDay Plan recommendation that early childhood care and learning be housed within the Ministry of Education.

183 This aligns with *Truth and Reconciliation Calls to Action* (2015), online: <www.trc.ca> at para 1(ii), which calls on the federal and provincial governments to provide “adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.” It is also in keeping with the \$10aDay Plan recommendation that First Nations and Aboriginal communities govern, develop and deliver early care and learning services that meet the needs of their communities.

184 This is consistent with the \$10aDay Plan recommendation that children with extra support needs be fully supported and included.

185 This is consistent with the \$10aDay Plan recommendation that early childhood care and learning be housed within the Ministry of Education, with a new role for Boards of Education, and that proposed Early Years Centres work closely with schools in order to ease transitions for children.

A comprehensive and coordinated public child care system will take time to build. The \$10aDay Plan contemplates a ten year implementation period. For that reason, we also recommend that the BC government take urgent action to ensure that the most serious human rights violations for women and children are remedied during the implementation period by immediately creating a new funding category through Child Care Operating Funding.¹⁸⁶

This new funding should enable women and children with urgent needs to access child care at no cost, such as women fleeing violence, including those without legal immigration status; culturally appropriate caregivers awaiting reunification with children in government care; the children of women with disabilities that affect their ability to provide care; and low-income lone parent families, including those on social assistance if a parent is in school, training or searching for employment. Children who are approved for this funding would simply be reported in the child care provider's monthly enrollment report and funding for the cost of care would be delivered through the monthly Operating Funding transfer already granted to the provider. The funding must be conditional on child care providers agreeing to charge these families no additional user fees. Such a transfer would meet the immediate needs of families currently experiencing the most significant harms; it could be easily integrated into an existing funding system, and thus administration would be simple; and it would be consistent with the \$10aDay Plan's focus on increasing access to licensed, high-quality care.¹⁸⁷

The stark consequences of BC's current child care services are clear: the rights of women and children are being violated. A coordinated public child care system that provides affordable and accessible care for all children in BC is required to ensure that the human rights of women and children are respected, and there are sound political and economic arguments to support such a commitment. However, if the BC government fails to take meaningful action to protect the rights of women and children, many of the violations that result may have enforceable legal remedies in Canadian law.

Now is the time to begin the implementation of an affordable, accessible and safe child care system in BC. The stakes are too high to wait any longer.

186 Child Care Operating Funding is an established system through which the provincial government provides financial support to licensed child care providers based on monthly enrollment reports. See "Child Care Operating Funding", online: British Columbia <www2.gov.bc.ca>.

187 Gradual roll-out could include eventually providing free care to all families with incomes under threshold levels, introducing fee caps for families not eligible for free care and requiring that participating providers meet additional standards and work up to the five accountability measures set out in the \$10aDay Plan (see page 14) as the rest of the Plan's framework is implemented.



The BC government must take urgent action to ensure that the most serious human rights violations for women and children are remedied during the implementation period by immediately creating a new funding category through Child Care Operating Funding.

West Coast LEAF works to advance women's equality and human rights through litigation, law and policy reform, and public legal education in British Columbia. West Coast LEAF is an incorporated BC non-profit society and federally registered charity. It is governed by an elected Board of Directors and supported by active members, committed volunteers, and a dedicated staff.



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