



August 30, 2022

Via Email (MCF.StandardsPolicy@gov.bc.ca)

Strategic Child Welfare & Reconciliation Policy
PO Box 9406 Stn Prov Gov
Victoria BC
V8W9S3, CANADA

Attn: Ministry of Children and Family Development

Re: Joint Submissions in response to MCFD's Child, Family and Community Service Legislative Reform

West Coast LEAF, Keeping Families Together, Parents Advocating Collectively for Kin, Raincity Housing, Atira Women's Resource Society, Feminists Deliver, and individual signatories, Frances Rosner (Lawyer), Meena Dhillon (Lawyer), Matthew Carwana (MD, MPH, FRCPC), are providing this submission on behalf of a collective of front-line family support organizations, impacted parents and kinship carers, and legal advocates with expertise in child protection law.¹

We work directly with those affected by BC's child protection system. While we welcome efforts to reform the *Child, Family, and Community Service Act (CFCSA)*, we urge you to take this opportunity to make meaningful, foundational changes to this system. We are providing these submissions to demand that the reform of the *CFCSA* center five key objectives:

1. Engaging in Transformative, Decolonizing Change and Upholding Indigenous Sovereignty
2. Upholding Family/Parental Rights
3. Shifting from Apprehension to Prevention
4. Maintaining Family and Cultural Ties and Relationships
5. Accountability and Transparency for Parents, Families, Nations, and Communities

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

¹ In these submissions, we interchangeably use "child protection", "child welfare" and "family policing" to refer to the laws, policies, practices, and guidelines that authorize and govern the removal of children from their caregivers by the state.

access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and the right to parent.

Keeping Families Together (KFT) provides a link to support and advocacy with parents' consent. Advocates act in solidarity with parents and support them to find programs, attend court, and witness child apprehensions. Support is offered to make sure parents know that they are not alone. KFT creates community and connection as parents seek to move forward with the support their families deserve.

Parents Advocating Collectively for Kin (PACK) is an alliance of mothers and birthing parents who use or have used currently illicit drugs and our impassioned allies. PACK has facilitated the development of a training course to better educate peer support workers to provide direct care and advocacy to mothers and birthing parents who risk MCFD intervention. PACK also provides direct support to our vulnerable peers who face the harms of lateral violence at the hands of the family police industry here in BC.

Raincity Housing Budzey Building is a supportive housing program that operates on the downtown eastside in Vancouver. The program offers a health promotion and harm reduction approach to working alongside families and single women (women identified, trans, two spirit and gender diverse folks are eligible to live at the Budzey). The building has 41 units for families and 106 apartments for single women. Within the family program the tenancies are in the women's' name but men can still live in the program with their partners.

Atira Women's Resource Society is a not-for-profit organization committed to the work of ending violence against women through providing direct service, as well as working to increase awareness and education around the scope and impact on our communities of male violence against women and children. Atira offers safe and supportive housing, related support programs, and delivers education and advocacy aimed at ending all forms of gendered violence. Atira operates from three core principles; feminist identified, operate within an anti-oppression framework, and utilize harm reduction practices in all areas of their work. Atira is trauma-informed and gender-responsive. Much of Atira's work is organized around family reunification and keeping families together.

Feminists Deliver is a grassroots collaboration of BC-based Two-Spirit people, non-binary folks, Indigiqueer, trans women, lesbian women, and cis women and girls, and the organizations that support them.

Frances Rosner (she/her/hers) is a Métis lawyer working as a sole practitioner in Vancouver, practicing primarily in family and prison law.

Meena Dhillon (she/her/hers) is a former social worker and now practicing lawyer representing parents.

Matthew Carwana, MD, MPH, FRCPC (he/him/his) is a pediatrician in BC.

We respectfully acknowledge that many of our offices are located in Vancouver on traditional, ancestral, and unceded Coast Salish homelands, including the territories of the xwməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səłílwətaʔt̓/Selilwitulh (Tsleil-Waututh) Nations.

1. Engaging in Transformative, Decolonizing Change and Upholding Indigenous Sovereignty

Reform of the *CFCSA* must address the harms which this legislation has enabled and perpetuated. The Ministry of Child and Family Development (MCFD) has an active role in the ongoing colonization of Indigenous children, youth, families, communities, and Nations throughout the province who come into contact with the child protection system. The ongoing colonial legacy of the child protection system is directly reflected in the crisis of MMIWG2S², the overrepresentation of Indigenous children and youth in care, harmful removals, and the interference with and surveillance of Indigenous families.³ In our collective experience, the *CFCSA* enables a system that is more akin to family policing and is rooted in suspicion, surveillance, regulation and punishment of families, especially Indigenous families. Policies and practices steeped in colonial attitudes about child and family wellness have resulted in enduring, ongoing interference by MCFD.

For more than thirty years, Indigenous people have been speaking out about the harms caused by MCFD. They have offered numerous recommendations for how MCFD can take accountability for the colonial violence it perpetuates and align its processes with international human rights law instruments such as the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) and the *United Nations Convention on the Rights of the Child*. These recommendations are found in *Liberating Our Children, Liberating Our Nation; The Royal Commission on Aboriginal Peoples; Indigenous Resilience, Connectedness And Reunification – From Root Causes To Root Solutions*; numerous reports from the Representative for Children and Youth; *The Truth and Reconciliation Commission of Canada* and; the *Calls for Justice from Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. For too long, MCFD has shelved these recommendations and upheld the status quo, perpetuating inter-generational harm. The government of BC must act now and with urgency to meaningfully engage and take up the

² Loanna Heidinger, Canadian Centre for Justice and Community Safety Statistics, *Violent victimization and perceptions of safety: Experiences of First Nations, Métis and Inuit women in Canada* (Canada: April 26, 2022); National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (Canada: 2019).

³ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report*.

many prior recommendations that have called for deep, transformative change of the current system.

Upholding Indigenous sovereignty and centring decolonization must be the foundation from which the *CFCSA* is reformed. For many Nations, self-determination cannot be truly achieved if the child protection system continues to remove children from their communities and Nations. Indigenous laws and community well-being are connected to children stepping into their community roles and practices.⁴ As the Union of BC Indian Chiefs wrote in 2002:

[F]or Indigenous Peoples to call forth our futures and ensure the survival of our Peoples, our Nations must exercise our jurisdiction and authority to care for and protect our children. This can only be achieved through a process of decolonization grounded in the reinvigoration of our traditional laws and based on our inherent right of Self Determination.⁵

The implementation of *An Act respecting First Nations, Inuit and Metis children, youth and families* (Bill C-92) provides MCFD with a pathway to reach *minimum* standards for working with Indigenous children, youth, families, communities, and Nations. We urge MCFD to go beyond minimum standards and set a higher standard in order to root out ongoing colonialism and take up the work of facilitating decolonization and Indigenous self-determination. This must be the new foundation for future legislation, which includes resourcing and supporting Indigenous Nations to envision and enact what care for children and families can look like through their Indigenous legal traditions and practices. There must be a deep investment now and without delay for families to heal from the harms enacted by the *CFCSA*.

We recommend:

1. Revising the Guiding Principles, Service Principles, and the definition of the best interests of the child in the *CFCSA*. We recommend that the revision of these principles include:
 - The right to self-determination of Indigenous children, youth, families, communities, and Nations that affirms and recognizes their inherent jurisdiction over the well-being of Indigenous children and families in accordance with UNDRIP and recognizes and respects the diversity of all Indigenous peoples, including the diversity of their laws, rights, treaties, histories, cultures, languages, customs, and traditions.⁶

⁴ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*, (Vancouver, BC: 2019).

⁵ Union of B.C. Indian Chiefs, *CALLING FORTH OUR FUTURE: Options for the Exercise of Indigenous Peoples' Authority in Child Welfare*, (Vancouver, BC: 2002).

⁶ Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, First Session, Forty-second Parliament, 2019. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-92/royal-assent>

- It is important that the CFCSA recognizes that reclaiming jurisdiction over care of Indigenous children is a fundamental aspect of the right to self determination under UNDRIP and BCDRIPA rather than a s. 35 right.⁷
- The need to uphold and affirm the *United Nations Convention on the Rights of the Child* and the *International Convention on the Elimination of All Forms of Racial Discrimination*.
- The need to uphold and enact the *Truth and Reconciliation Commission of Canada's Calls to Action* and *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice*.
- The requirement that all decision-makers with authority under the CFCSA (whether delegated or otherwise) account for the systemic, traumatic impact of residential schooling on children and their caregivers, and further consider the generational impact of child removal on parents who were themselves in care and whose children have been taken into the system as well. These considerations must be applied in all decisions.⁸
- The obligation of MCFD to safeguard constitutional and human rights in accordance with the *Canadian Charter of Rights and Freedoms* and BC's *Human Rights Code*.
 - This includes the need to uphold the principle of substantive equality by considering the unique circumstances and needs of Indigenous Elders, parents, kinship carers, youth, children, persons with disabilities, women, men, and gender-diverse persons and Two-Spirit persons.
 - The need to address the needs of Indigenous children and to help ensure that there are no gaps in the services that are provided in relation to them, whether they reside on a reserve or not are non-status, Métis and/or Inuit children.⁹
- Amending the best interests of the child and best interests of the Indigenous child principle to ensure that decision-makers turn their minds to the entirety of children's rights to ensure that children's rights are not viewed as hierarchical, but instead as interdependent.
 - This guiding principle should reflect the wholistic nature of children's rights including the principle of cultural continuity where the child's

⁷ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?* (Toronto, Ontario: 2019).

⁸ Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg, Manitoba: 2012).

⁹ Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, First Session, Forty-second Parliament, 2019.

connection and relationships with their family, community, Nation, and culture are prioritized.¹⁰

- The best interest of the child/best interests of the Indigenous child principle should *at minimum* direct decision-makers to:
 - Weigh the risks to the child's well-being if the child remains with or is returned to the family against the risks to the child's well-being that would be caused by the removal and placement of the child in care.
 - The assessment of the risks to the child if the child remains with or is returned to the family must be done with due consideration of all the supports and services that can be provided to the family.
 - Consider the impact of family violence on the child and provide all the necessary services and support for healing and well-being to the family in a manner that supports family members and prevents the need to remove the child from the custody of an abused family member.¹¹
- We strongly recommend that the *CFCSA* be revised to include and define the principle of the "best interests of the child, family, community, and Nation," as an additional principle alongside the best interests of the child and best interests of the Indigenous child principles.
 - Moving beyond the damage of the colonial, Eurocentric approach that views the child as separate from their family, community and Nation is essential to building a new foundation for the *CFCSA*.
 - This principle can also be a means to address past intergenerational impacts but also impacts for future generations.¹²
 - The trauma which apprehensions cause to the whole family, including the increased risk of loss of life for mothers, must be an important consideration in the application of this principle.¹³
- These revisions within the statement of principles will assist the courts, MCFD, MCFD service providers and contractors, accountability bodies, and stakeholders with understanding the purpose, role, and obligations of MCFD and with

¹⁰ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*; West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

¹¹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

¹² Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook 2nd Edition*, (Canada: 2020), 85.

¹³ Meaghan Thumath et al., "Overdose among mothers: The association between child removal and unintentional drug overdose in a longitudinal cohort of marginalized women in Canada" *International Journal of Drug Policy*, 2020, 102977, ISSN 0955-3959 <https://doi.org/10.1016/j.drugpo.2020.102977>

interpreting the *CFCSA*. The revision of the principles must require a process of Nation-to-Nation consultation and include Indigenous children, youth, families, communities, and Nations.

2. The *CFCSA* should affirm and explicitly address the right of Indigenous communities to have control over the design and delivery of services for their families and children, including the commitment to adequately fund resources and capacity building to ensure better support for families and communities to keep children in their family homes.¹⁴
3. In aligning the *CFCSA* with Bill C-92 there must be clarity and direction on how the best interests of the Indigenous child standard will be defined and applied in order to, at minimum, clarify a standard. This must be done through Nation-to-Nation consultation and include Indigenous children, youth, families, and communities and provide clarity on the application of provincial laws to Indigenous children.¹⁵
 - The *CFCSA* must require that all staff within MCFD know the National Standards as well as the best interests of the Indigenous child standards for each Indigenous Nation.¹⁶
4. The *CFCSA* must address the issue of services and support for First Nations children who are residing off-reserve, as well as non-status, Métis, and Inuit children.¹⁷
 - This must include guidance on the development of budgets that ensures off-reserve, Métis, non-status, and Inuit children and families are included in budgets, distinct from non-Indigenous children and families.¹⁸

2. Upholding Family/Parental Rights

The *CFCSA* lacks provisions that grant rights to parents and families at the detriment of children's wellbeing. A parent and family rights approach to child protection would value kin "as full participants in their families, communities, and services rather than as dysfunctional individuals" and engage the family in caring for the affected child(ren).¹⁹ Wherever possible and

¹⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (Canada: 2019); Yellowhead Institute, *Factsheet An Act Respecting First Nations, Inuit, And Métis Children, Youth And Families: Bill C-92 Implementation Strategies*, (Toronto, Ontario: 2019).

¹⁵ Yellowhead Institute, *Factsheet An Act Respecting First Nations, Inuit, And Métis Children, Youth And Families: Bill C-92 Implementation Strategies*.

¹⁶ Yellowhead Institute, *Factsheet An Act Respecting First Nations, Inuit, And Métis Children, Youth And Families: Bill C-92 Implementation Strategies*.

¹⁷ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

¹⁸ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

¹⁹ Joan Pennell et al, "Taking Child and Family Rights Seriously: Family Engagement and Its Evidence in Child Welfare" (2015) 90:4 Child Welfare 9-10.

without delay, parent and family rights must be reinforced in recognition of the power imbalance inherent to the relationship between families and MCFD that impedes parents' ability to assert their rights.²⁰

Since 2019, West Coast LEAF has recommended that the BC government and MCFD must ensure that each parent engaging with MCFD has access to a community-based support worker to help them navigate the child protection process. PACK BC has emphasized the need for peer-based support in particular.²¹ Community-based support workers must be trained in collaborative, trauma-informed, and culturally safe practices. MCFD currently operates a system based on coercion and surveillance; for example, parents who use substances are coerced into treatment plans that may not meet their needs.²² It is vital that advocates are provided to every parent so that all parents are able to assert their rights and those who do so are not outliers and deemed "uncooperative."²³

The *CFCSA* must require MCFD to resource and support the full exercise of rights by parents who are engaged in the system at all stages of the process. The consequences of a failure to support parents and families throughout their engagement with MCFD are acute and inadequately addressed. Apart from the impacts on children, the ending of a parent-child connection can have negative health outcomes for parents.²⁴ This includes but is not limited to: a mother's overdose risk significantly increasing in the period following their child's apprehension;²⁵ increased risk of homelessness for families following the removal of their children by MCFD²⁶ and; creating an intergenerational cycle where children who are removed from their families are more likely to experience their own children being removed through the family policing system.²⁷ The *CFCSA* must be amended to establish and uphold parental rights.

²⁰ *Kawartha-Haliburton Children's Aid Society v. M.W.*, 2019 ONCA 316 at para 69; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46 at para 114.

²¹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

²² National Advocates for Pregnant Women, *Pregnancy and Drug Use*, (New York, New York: September 2021), <https://www.nationaladvocatesforpregnantwomen.org/wp-content/uploads/2021/09/Pregnancy-and-drug-use-final.pdf>

²³ West Coast LEAF and Rise Women's Legal Centre, Joint Submissions in response to the British Columbia Law Institute Consultation Paper on Modernizing the Child, Family and Community Service Act, (January 2021), 10

²⁴ West Coast LEAF and Keeping Families Together, *Submission Regarding Specialized Homes And Support Services Redesign*, (Vancouver, BC: 2022), 4.

²⁵ Meaghan Thumath et al., "Overdose among mothers: The association between child removal and unintentional drug overdose in a longitudinal cohort of marginalized women in Canada" *International Journal of Drug Policy*, 2020, 102977, ISSN 0955-3959 <https://doi.org/10.1016/j.drugpo.2020.102977>

²⁶ Pivot Legal Society and West Coast LEAF, *Complaint to the Ombudsperson of British Columbia regarding the conduct of the Ministry of Housing and Social Development: Shelter allowance cuts when children are in the temporary care of the Ministry of Child and Family Development*, (Vancouver: May 2010).

²⁷ Kenny, Kathleen S et al. "Family Separation and Maternal Self-rated Health: Evidence from a Prospective Cohort of Marginalized Mothers in a Canadian Setting." *Maternal and child health journal* vol. 23,9 (2019): 1232-1239. doi:10.1007/s10995-019-02762-z

We recommend:

5. To encourage healing of the intergenerational effects of family separation, *the CFCSA* be amended to reflect the right of the child to not be separated from their family by reason only of their parent or guardian:
 - Lacking the same or similar economic and social advantages as others in BC; or
 - Engaging in substance use or coping with substance use; or
 - Having a disability; or
 - Having had engagement with the criminal justice system.²⁸
6. Establishing the rights of parents, families, communities, and Nations in the *CFCSA*. Specifically, amend the *CFCSA* to create a section granting these rights and providing for their enforcement. These rights should include, but not be limited to:
 - A positive duty on MCFD staff to ensure that each parent engaged with MCFD has access to a trained community-based support worker, which includes peer support, to help them navigate the family policing process.
 - A trained community-based support worker is skilled in collaborative, trauma-informed, and culturally safe practices.²⁹
 - To create a safe, constructive, and trust-building relationship with the parent, the community-based support worker should not be a compellable witness in court proceedings involving the parent.
 - Family visits and reunification must be paramount and never delayed due to shortages in MCFD resources. Where feasible, MCFD staff should work with community-based organizations that support parents to exercise their access rights by addressing barriers to attending access visits, such as paying for transportation and providing space, pursuant to the Director's power found in s. 93(1)(a).
 - Where reunification is not possible, family visits must continue to be prioritized to ensure a child has the ability to maintain a connection to their parents, families, communities, and Nations.
7. To permit tracking of false or malicious reports of child abuse or neglect, s. 14 of the *CFCSA* should be amended to prohibit anonymous reporting.
 - Parents can be brought into contact with the MCFD through anonymous reporting, creating an environment of surveillance which enables false reporting. Abusers in family violence situations can make false reports to re-victimize

²⁸ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

²⁹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

parents and subject them to investigation—and potentially child apprehension—without their reports being tracked.³⁰ Confidential reporting provides sufficient privacy to good faith reporters fulfilling their s. 14 *CFCSA* duty to report while allowing malicious reports to be tracked, which will minimize or eliminate costly investigations into “low-risk” families.

8. The legal duty of MCFD should be strengthened to consider less disruptive measures by:
 - Adding legislative language in the *CFCSA* that explicitly directs MCFD to actively and diligently pursue and implement less disruptive measures on an ongoing basis.
 - Including a non-exhaustive list of less disruptive measures that MCFD must consider on an ongoing basis including an order of preference of placements akin to that set out in section 16 of Bill C-92.
 - Adding legislative language in the *CFCSA* that directs MCFD to establish in court that social workers have made active efforts that proved unsuccessful to return the child to their family.
 - Where parents and Nations have identified less disruptive measures, the *CFCSA* should direct the MCFD to provide prompt, clear, and written reasons for rejecting these less disruptive measures.
9. Section 96 of the *CFCSA* must be revised to include procedural safeguards and an evidentiary threshold to restrict the MCFD's power to arbitrarily intrude on the privacy of parents' information, including for example, health records.³¹ The *CFCSA* must include meaningful limits on the MCFD's ability to request information to ensure that biases and stereotypes about parenting abilities do not inform requests for information and that requests are not unduly invasive. Limits on the MCFD's ability to request information are also needed so that parents are not dissuaded from seeking services like medical care.
10. Section 65(1) of the *CFCSA* should be amended to allow the Director, *parent, or party* to seek an order for a person or organization to produce a record, or a certified copy of the record, for inspection by the Director, parent, or party. There is currently no provision under the *CFCSA* that enables a parent or party with concerns about the safety of the child in a ministry approved home to seek records when serious incidents occur in the home that may be harmful to the child. The parent or party with concerns about the safety of a child should have an equal right to seek third-party records under the *CFCSA*, rather than being forced to rely on the Director to take steps to investigate concerns when they arise, obtain records, and then finally disclose them. The inability of the parent or party to apply for third party records raises serious access to justice issues that is easily remedied by amending section 65(1) and expanding who can apply.

³⁰ Rise, *False and Malicious CPS Reports: Why NY Should End Anonymous Reporting*, (New York, New York: 2020). <https://www.risemagazine.org/2020/09/false-and-malicious-reports-why-ny-should-end-anonymous-reporting/>

³¹ New Brunswick (Minister of Health and Community Services) v. G. (J.), 1999 CanLII 653 at paras 113–114.

3. Shifting from Apprehension to Prevention

Indigenous children and families have been and continue to be subjected to unjustified interventions and intrusion into their lives by MCFD. The *CFCSA* states that where there is a mention of the best interests of the child in the legislation, decision-makers must consider all the factors relevant to what is in a child's best interests. However, the analysis of a child's best interests often fails to consider the trauma and catastrophic cultural and intergenerational impact caused by apprehension itself.³² The harm caused by removal can often exceed the harm caused by unsatisfactory home situations.³³

Apprehension is frequently based on poverty construed as neglect, which punishes parents for being poor.³⁴ This response to poverty has created a reactive system that ignores families' need for resources until MCFD determines a paternalistic intervention is required.

The *CFCSA* must be restructured to prioritize preventative action in order to keep families, communities, and Nations together. Resources that are currently invested in the apprehension of children and youths should be re-allocated into prevention-based services that provide wholistic support to children, families, and communities, which includes honouring the attachment and cultural connection to family and Elders, with the purpose of curtailing unjustified interference and monitoring by MCFD. The *CFCSA* must be amended in line with federal legislation, which identifies the prioritization of preventative care as a key component of the national standard of care.³⁵ As explained in *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook*:

Priority to preventive care mandates a focus on keeping a child culturally connected, including providing preventive services to extended family or members of the child's Indigenous community, so that the child can be cared for within their Indigenous community.³⁶

³² Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd Edition

³³ Joseph J Doyle, "Child Protection and Child Outcomes: Measuring the Effects of Foster Care" (2007) 97:5 *American Economic Review* 1583 at 1584; Cedar Project Partnership et al. "The Cedar Project: Negative health outcomes associated with involvement in the child welfare system among young Indigenous people who use injection and non-injection drugs in two Canadian cities." (2015) 106:5, *Canadian journal of public health = Revue canadienne de sante publique*, e265 at e270. <https://doi.org/10.17269/cjph.106.5026>.

³⁴ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*, (Vancouver, BC: 2019), 23.

³⁵ Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd Edition

³⁶ Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd Edition

The CFCSA must require that, in following the directive to engage in “least intrusive measures,” MCFD undertakes “active measures”³⁷ that offer space for Indigenous families to steward resources in a way that maintains their self-determination, autonomy, and healing.

We recommend:

11. As a preliminary step, the BC government undertake a review of ministerial responsibilities over services and programs that are available to families. The purpose of the review would be to assess where responsibilities lie for prevention-based services. The review should result in an amendment of legislation and mandates which will reallocate funding to fill the current gaps in service provision.³⁸ This review should include the following:
 - Primary prevention-based services, which allow for access to resources and services such as family strengthening programs and parent education programs.
 - Secondary prevention-based services which identify families “at risk” of MCFD intervention by providing services such as visiting programs and respite care.
 - Tertiary prevention-based services for families who have experienced abuse or maltreatment, by providing ongoing mental health support and support services for children impacted by violence.
12. Develop legislative definitions of “risk” and “neglect” that differentiate and de-link risk and neglect from systemic issues such as poverty. The approach to risk and neglect must also recognize the need for intergenerational healing and affirm Indigenous self-determination through defining safety, risk, and well-being according to their laws and governance.³⁹
13. Include in the CFCSA a clear commitment to funding that allows for access to high level quality child and family services in a manner that is predictable, stable, sustainable, and needs-based in order to secure long-term positive outcomes for Indigenous children, families, and Nations.⁴⁰
14. In consultation with Indigenous communities and Nations, amend legislated timelines, including for example, those which dictate the timeframes under which a child and/or youth should be in care prior to becoming a “permanent government ward.”⁴¹ This should include 12-to-24-month age-based time frames for MCFD to make an application

³⁷ Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd Edition

³⁸ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

³⁹ Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, First Session, Forty-second Parliament, 2019. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-92/royal-assent>

⁴⁰ Yellowhead Institute, *Factsheet An Act Respecting First Nations, Inuit, And Métis Children, Youth And Families: Bill C-92 Implementation Strategies*.

⁴¹ Yellowhead Institute, *Factsheet An Act Respecting First Nations, Inuit, And Métis Children, Youth And Families: Bill C-92 Implementation Strategies*.

before the court for a Continuing Custody Order⁴² in order to develop creative family plans.⁴³

15. Include in the *CFCSA* an accountable and robust legal framework for prevention-based supports by:
 - Adding a comprehensive list of functions for MCFD at the beginning of the legislation including:
 - Working with community and social services to alleviate and remedy the socio-economic conditions that place families at risk.
 - Developing and providing services and supports before and after intervention. Proactively identifying groups of children for whom the recognition and realization of their rights may require MCFD to undertake special measures and develop special programming.
 - Replace the reference to prevention services in section 2(c) of the *CFCSA*, with a legislative provision that places a binding and measurable obligation on MCFD to provide support to keep families together who are at risk of having their children apprehended. The provision should place a positive obligation on MCFD to take active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the child's family. The courts must then be satisfied that these active efforts proved unsuccessful in keeping the family together.
 - Expand the list of supports under section 5 of the *CFCSA* to include the following:
 - improving the family's financial situation
 - improving the family's housing situation
 - improving parenting skills
 - improving child-care and child-rearing capabilities
 - improving homemaking skills
 - substance use support services
 - providing childcare
 - mediation of disputes
 - self-help and empowerment of parents whose children have been, are or may be in need of protective services

⁴² *Child, Family and Community Service Act*, RSC 1996, c.46.

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96046_01

⁴³ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

- transition supports for families whose children have recently been apprehended or returned.⁴⁴

4. Maintaining Family and Cultural Ties and Relationships

Family relationships play a critical role in the development and well-being of children. The *Convention on the Rights of the Child* recognizes that children have a right to know and be cared for by their parents.⁴⁵ This right recognizes that the preservation of children's identity is deeply connected with their family relationships and their ability to create close ties with their family, particularly their biological families.⁴⁶ Cultural ties are also critical to the health and well-being of Indigenous children. While cultural disconnection has been found to be a cause of harm, cultural continuity, which is described as the degree of social and cultural cohesion within a community, can save lives.⁴⁷ The *CFCSA* reform must prioritize maintaining family and cultural ties and relationships between children and their parents, families, communities, and Nations.

We recommend:

16. The *CFCSA* recognize that MCFD has a legal duty to maintain family and cultural ties and relationships by:
 - Requiring that MCFD take active and diligent steps promptly after a child is removed from their family and community to create a comprehensive ancestral family tree tracing both maternal and paternal lineages to ensure that family and cultural connections are discovered and restored in cases where they have been lost due to colonization.
 - Requiring that MCFD make active efforts to support ongoing relationships between parents, families, communities, and Nations, or at the least, access to children's family of origin.⁴⁸
 - Adding language in the *CFCSA* that explicitly directs MCFD to actively and diligently pursue and implement less disruptive measures on an ongoing basis.
 - Include a non-exhaustive list of less disruptive measures in the *CFCSA* that MCFD must consider on an ongoing basis, including an order of preference of placements akin to that set out in section 16 of Bill C-92. The *CFCSA* must require

⁴⁴ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁴⁵ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁴⁶ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁴⁷ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁴⁸ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

that the availability of alternative placements with parents and/or extended family members be reassessed on an ongoing basis.⁴⁹

- Adding legislative language in the *CFCSA* that directs MCFD to establish in court that social workers have made active efforts that proved unsuccessful to return the child to their family.
- Include MCFD's obligation to undertake "active efforts" or include "maximum contact" clauses, in relation to Indigenous child protection with First Nations who have not yet resumed full jurisdiction over Indigenous children and family wellbeing.⁵⁰
- Include a requirement that children in temporary care must be kept within an accessible distance to the parent with due consideration to the parents' circumstances (financial, etc.). Where a child needs to be close to their home Nation, parents must be given financial support to ensure that there is adequate access to maintain family connection.⁵¹
- Include a requirement of written documentation of active efforts to find placements that maintain connection to families, communities, and Nations, as a priority, or to require sworn statements from the Indigenous communities and Nations group that there is no available placement.
- Include a presumption with respect to access orders that access be maintained with some family or community members, as well as corresponding financial support to enable regular travel back to the community as a term of any permanency order.⁵²
- Include a requirement of written documentation of active efforts to consider children's and parents' needs and wishes with respect to placements.

5. Accountability and Transparency for Parents, Families, Nations, and Communities

We are encouraged to see prevention emphasized in this engagement to reform the *CFCSA*. However, robust accountability and transparency measures must be built into the legislation itself to ensure that prevention is prioritized at every stage. Significant rights are at stake for children and youth, as well as their families, communities, and Nations in all aspects of the Director's (or their delegates') decision-making.

⁴⁹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁵⁰ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

⁵¹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁵² Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

The *CFCSA* must be amended to ensure decisions taken pursuant to its authority are subject to timely, ongoing, and meaningful review, including regular reviews to ensure that social workers are using the least intrusive measures, and that de-escalating measures used as appropriate including returning children to their homes. Oversight must also be ensured with respect to social workers' decisions related to providing preventative support for families, Nations, and communities and the sufficiency and effectiveness of these supports. Compliance mechanisms must be built into the legislation to ensure that the aims of least intrusive measures, prevention, and the rights of children, parents, families, Nations, and communities are upheld and any bias in the decision-making is addressed.

We recommend:

17. The *CFCSA* be amended to require that decision-makers give notice to parents, families, Nations, and communities of any court proceedings. Amend s. 69 of the *CFCSA* such that it cannot be used to dispense of notice to Indigenous Nations and communities.⁵³
18. The *CFCSA* be amended to require that the commencement hearing following the presentation hearing and any subsequent hearings be held on a timely and urgent basis. Delays in the court's oversight over the decision to remove a child may cause irreparable harm to a child's well-being, attachment, and connection to parents, families, and communities, including increased risk to the well-being of parents as mothers face a higher risk of mortality when children are taken from their care. Hearings under the *CFCSA* must proceed with appropriate urgency given the potentially severe consequences following from the removal of children and the fundamental rights at stake.
19. Increase the court's oversight of MCFD's efforts to identify less disruptive measures by adding the following provisions:
 - The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less disruptive measures, including services to promote the integrity of the family, have been attempted, refused by the parent, or would be inadequate to protect the child.⁵⁴
 - Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order, consider whether it is possible to place the child with a person or group in accordance with the order of preference of placements.⁵⁵

⁵³ Ardith Walkem, QC, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd Edition, 166

⁵⁴ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁵⁵ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

20. Establish robust, impartial, accessible, and fair complaint and review procedures in the *CFCSA* that enable parents, families, communities, and Nations to challenge and participate in the review of any decisions made under the *CFCSA*, including decisions to remove children, decisions related to the degree of intrusive measures used, decisions related to the provision of preventative supports, decisions on placement priorities, and decisions on maintaining and furthering cultural connection.⁵⁶
21. Include remedies and forms of redress for parents and extended families if and when principles and rights set out in the *CFCSA* are not upheld by decision-makers. This should include effective resolution of complaints, including reconsidering or reversing decisions, expediting an action, commitments to follow, review or amend policies or procedures to prevent future problems, explanations for any errors made, the steps MCFD is taking to prevent errors from happening again, and acknowledgement and apologies for errors.⁵⁷
22. The *CFCSA* must establish a dispute resolution mechanism to deal with situations where Indigenous groups experience challenges in entering collaboration agreements with the provinces.⁵⁸
23. Amend the legislation to require that the Director, social workers, and all other service providers be required to notify parents, families, communities, and Nations in writing of the decisions, including with respect to the use of intrusive measures and providing prevention support.
24. Where parents and Nations have identified less disruptive measures, the *CFCSA* should direct MCFD to provide prompt, clear, and written reasons for rejecting these less disruptive measures.⁵⁹
25. Amend the legislation to require that the Director provide timely and ongoing disclosure of all relevant materials with corresponding lists of documents in all court proceedings.
26. Require that the Director prepare and publish annual reports on the number of Indigenous children in care, compared to non-Indigenous children, including the reason for the apprehension, the total spending on preventative and care services, and the effectiveness of various interventions in accordance with TRC Call to Action No. 2.⁶⁰

⁵⁶ West Coast LEAF and Keeping Families Together, *Submission Regarding Specialized Homes And Support Services Redesign*, (Vancouver, BC: 2022), 9.

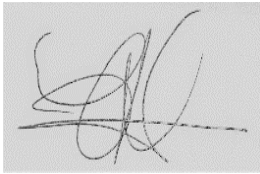
⁵⁷ Office of the Ombudsperson of British Columbia. *Complaint Handling Guide: Setting up Effective Complaint Resolution Systems in Public Organizations*

⁵⁸ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

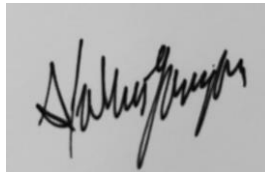
⁵⁹ West Coast LEAF, *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*.

⁶⁰ Yellowhead Institute, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families Does Bill C-92 Make the Grade?*

Sincerely,



Lori Damon, MA, RCC
Mental Health Clinician
Keeping Families Together



Sharnelle Jenkins-Thompson, MSW
Manager of Community Outreach
West Coast LEAF

Hawkfeather Peterson

Hawkfeather Peterson
Coordinator
PACK BC



Frances Rosner
Barrister and Solicitor



Janice Abbott
Chief Executive Officer
Atira Group of Women
Serving Agencies

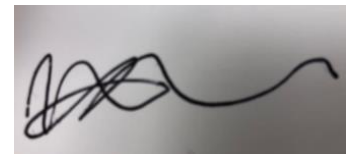


Linoy Alkalay
Project Coordinator
Raincity Housing Budzey
Building



Meena H.K. Dhillon

Meena Dhillon
Lawyer



Matthew Carwana, MD
MPH FRCPC Pediatrician



Angela Marie MacDougall, Battered Women's Support Services &
Jennifer Johnstone, Central City Foundation
Co-Chairs of Feminists Deliver