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West Coast Legal Education and Action Fund
604.684.8772/ lawreform@westcoastleaf.org
westcoastleaf.org

Prepared by Elba Bendo & Emily Beierl

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Victoria, BC, V8V 1X4

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

Introduction

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

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

1. There should be no reduction of benefits for families when a child is temporarily taken into care so that income supports and housing can be maintained while parents are working to bring their children home. Taking away benefits from families whose children are temporarily removed from their home forces low-income families further into poverty and unnecessarily increases the length of separation between children and their families.
2. The rate increases to the Extended Family Program (EFP) must be accompanied by amendments to the eligibility criteria in order to be accessible to the vast majority of kinship caregivers. As it stands, the significant rate increases for the EFP set out in Budget 2019 only apply to a small fraction – less than 20% – of the children living in kinship care arrangements.
3. In order for the most marginalized families to be able to access these benefits, family advocates must be available to support families that are most at risk of having their children apprehended due to poverty and poverty-related systemic factors. We urge the province to ensure that there is adequate funding for First Nations, delegated agencies, friendship centres, and all community-based organizations to hire family advocates to support families, particularly those at risk of having a child apprehended.

About us

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Detailed Recommendations

- 1. There should be no reduction of benefits for families when a child is temporarily taken into care so that income supports and housing can be maintained while parents are working to bring their children home. Taking away benefits from families whose children are temporarily removed from their home forces low-income families further into poverty and unnecessarily increases the length of separation between children and their families.**

Despite increases in welfare and disability rates as well as the Child Opportunity Benefit, families on income assistance continue to live at approximately 60% of the poverty line. Poverty is one of the most significant structural household factors that leads to children to be taken away from their families and communities.¹¹ Systemic inequality caused by colonial policies from Residential Schools to the sixties scoop to the ongoing discrimination in the *Indian Act* has resulted in poverty being one of the leading structural factors that underpin the overrepresentation of Indigenous children in care; 63% of children in care are Indigenous despite Indigenous children comprising 10% of the child population in BC.¹² The fact that most families on income assistance would require another \$15,000 - \$18,000 per year to reach the poverty line¹³, means that any further reduction in assistance rates increases poverty-related structural factors that place children at increased risk of apprehension.

The reduction in benefits also undermines caregivers' abilities to bring their children home. Parents whose children are removed lose financial benefits and supports that make it harder, if not impossible, for them to be able to get to a position where their children will be returned to

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

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

¹⁰ Vandna Sinha et al, *Kiskisik Awasisak: Remember the Children Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2008) at xiii.

¹¹ *Ibid* at xiv.

¹² *Ibid* at 9.

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

them. Because of the definition of “dependent”¹⁴ in the Employment and Assistance Act¹⁵ (EAA) and the Employment and Assistance for Persons with Disabilities Act¹⁶ (EAPWDA), and the definition of “eligible individual” in the Federal Income Tax Act¹⁷, a family whose child has been temporarily taken into care will lose a significant amount of the already insufficient income they have to maintain standards of living acceptable by MCFD. The reality is that, since income assistance rates are 40% below the poverty line, families are spending every bit of their supports, including the amounts linked to the size of the family unit, on bare necessities including food, shelter, and transportation. When these amounts are reduced by more than 30% - as is the case with income assistance rates¹⁸ – then families have to make even tougher decisions between how they get their kids to school, whether they’re able to buy a winter coat, and if they can afford rent.

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

Perhaps the most significant concern with the current framework is the way in which the delays in reinstating benefits undermine the family’s ability to succeed at the critical moment of

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

¹⁵ EAA, *ibid*.

¹⁶ EAPWDA, *supra* note 8.

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

¹⁸ Under the EAA, the monthly income assistance support for single families is \$385.00/month. For single parents with one dependent, it is \$525.58/month. *Employment and Assistance Regulation*, BC Reg 263/2002, Schedule A s 2 [EAR].

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

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

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

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

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

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

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

²² EAA, *supra* note 8, s 1(2).

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

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

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

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

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

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

A significant barrier for Indigenous and racialized communities who have been on the receiving end of government over-intervention in their families and communities is that the program is run through MCFD and requires an agreement with MCFD. For families that have experienced the intergenerational trauma of growing up in care, felt discriminated against by MCFD policy and practice, or are worried about whether their cultural practices or immigration status may place them at risk of having their children apprehended, willingly engaging MCFD is simply unrealistic. There must be a pathway where kinship caregivers can qualify for the EFP without having to trigger MCFD involvement including a safety assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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