

Children and Family Services Act: 4-Year Review

NSCSW Submission



Who We Are

The Nova Scotia College of Social Workers (NSCSW) exists to serve and protect Nova Scotians by effectively regulating the profession of social work. We work in solidarity with Nova Scotians to advocate for policies that improve social conditions, challenge injustice and value diversity.

Learn more about the College at nscsw.org/about.

Land Acknowledgement

The NSCSW is in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. This territory is covered by the “Treaties of Peace and Friendship” which Mi'kmaq and Wolastoqiyik (Maliseet) people first signed with the British Crown in 1725. The treaties did not deal with surrender of lands and resources but in fact recognized Mi'kmaq and Wolastoqiyik (Maliseet) title and established the rules for what was to be an ongoing relationship between nations.

All people in Canada have treaty rights and responsibilities. Those who have settler, arrivant and refugee origins are challenged to collectively work towards reconciliation with Indigenous peoples and communities.

Even as we reckon with our profession's role in residential schools and other colonial projects designed to displace, dispossess and disempower Indigenous peoples, social workers are also embedded in communities that are grappling with their own roles in the great and necessary labour of reconciliation.

As many Nova Scotian communities struggle through conflict and crisis — worsened by the intersections of a pandemic, economic uncertainty, and racism — we encourage all to approach this work with a trauma-informed lens and to draw on the resources available to use.

Glossary of Terms

Neo-liberalism	A political approach that favors free-market capitalism, deregulation, and reduction in government spending.
Austerity	A set of political-economic policies that aim to reduce government budget deficits through spending cuts or limiting expenditures
Managerialism	In political science, managerialism is a set of beliefs, attitudes and values which support the view that management is the most essential and desirable element of good administration and government.
Colonialism	The policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically.
Eurocentric	Focusing on European culture or history to the exclusion of a wider view of the world; implicitly regarding European culture as preeminent.
Afrocentric	Regarding African or black culture as preeminent.
Social locations	An individual's social location is defined as the combination of factors including gender, race, social class, age, ability, religion, sexual orientation, and geographic location. This makes social location particular to each individual; that is, social location is not always exactly the same for any two individuals

Introduction

The NSCSW has no doubt that the amended Act was implemented with the best intentions of children and youth in mind. However, unexamined best intentions have had devastating impacts, particularly in delivery of child welfare services. The Home for Coloured Children, the Shelburne School for Boys and Residential Schools were all designed with the best of intentions. However, as history has taught that if the privilege of decision makers is left unexamined, if there is a lack of lived experience of those involved in the system in the decision making and if there is a lack of public oversight then likely there will be devastating impacts on marginalized and vulnerable communities. It is crucial that we learn from the mistakes of the past and implement those lessons into present decision making. It is with this thought in our hearts and minds that we make this submission to the Children and Family Services Act Review Committee.

On March 1, 2017, the Liberal government in Nova Scotia amended the Children and Family Services Act (the “2017 amendments”). The changes included an expanded definition of a child in need of protective services, the addition of youth 16-19 years of age under voluntary services, limited the capacity of the judiciary to make decisions, prohibited a judge from making an order for access in a permanent care order, limited the opportunity for extending care for youth over 19 and tightened court timelines. The former Minister of Community Services Joanne Bernard stated that the transformation of the Children and Family Services Act (the “Act,” or “CFSA”) was needed to keep Nova Scotian children in their homes and to provide support before a family is in crisis. Social workers and community organizations repeatedly reported their concerns with the 2017 amendments prior to implementation. They were concerned with limited new funding and resources to the system, increased caseloads and workloads due to the complexity of family needs, the readiness of staff and community organizations to implement the changes, and the ability of families to make necessary changes given the tighten court timelines.

The amended Act abolished the Minister’s Advisory Committee, removing necessary checks and balances and public oversight of this crucial system. Provisions were added in Section 88(A) of the Act to conduct a review every four years, but gave discretion regarding the scope and process of the review directly to the Minister, seriously impeding the ability of Nova Scotians to have clear oversight of this crucial system. A review of the Act has been completed and the Department of Community Services chose to conduct the review in a manner that both limited the scope and engagement process, and has excluded core stakeholders such as frontline staff, families involved in the system, and children and youth in care. As such, the CFSA Review Committee chose three of the least problematic areas of the Act that focused on:

- **Section 25:** Duty to report third party abuse to ensure that the intended reporting duty is appropriately captured and any potential changes that could be made;
- **Section 94:** Prohibition on publications to determine whether there should be discretion for the Minister or the Court to publish information in exceptional circumstances; and
- **Section 63 - 66:** Child abuse register to explore if the legislation is effective in keeping children and the community safe.

The challenges that have emerged in the provision of services to vulnerable children and families through the amended Act have remained far too problematic for such a narrow review. The lack of public engagement also seems counter to the current political climate, which demands more government transparency and accountability. As well as the many calls from racialized and marginalized communities to fundamentally shift the focus of the child protection services away from intrusive and controlling forensic and investigative activities that drain resources away from services that might better support families, towards structural changes that will contribute to the well-being of communities and families. The current service delivery for child protective services is compromised by inadequate resources placed into this system to accommodate the demands of the amended Child and Family Services Act, the ever-increasing complexity of intersecting issues faced by vulnerable Nova Scotia families, and a lack of community resources. The pressure of these changes has had a wide-ranging impact on staff causing increased moral distress, increased health issues causing increased sick leave. Frontline social workers also report a slow response to backfill positions causing more stress.

Given the narrow scope, the NSCSW has chosen to provide a more comprehensive review of the Act (although still limited, due to a lack of available data), and evaluate the Act through the Canadian Centre for Policy Alternatives - Nova Scotia Office (CCPA-NS) and the Nova Scotia College of Social Workers (NSCSW) Social Policy Framework. The Social Policy Framework was designed to support the development and evaluation of social policy through a set of ten principles that have been researched and designed to create a more equitable and fairer Nova Scotia. Utilizing this framework, this submission will assess the impact of the Act and how it has contributed to creating greater inequality and inequity further marginalizing vulnerable children and youth. This submission will not make recommendations on how to improve the Act but rather it will lay the groundwork for NSCSW to do so in an additional policy paper.

Summary of Findings and Recommendation

Using the Canadian Centre for Policy Alternatives - Nova Scotia Office (CCPA_NS) and the Nova Scotia College of Social Workers (NSCSW) Social Policy Framework we submit that the current review is too narrow, requires greater public consultation and transparency and fails to live up to the commitments to anti-colonialism and ending anti-Black Racism as called for by the Truth and Reconciliation Commission and the Restorative Inquiry on the Home for Colored Children.

We are concerned that the Department has chosen not to review some of the most contentious changes to the Act as raised in the course of legislative debates, given the effect that these amendments may have on the rights and well-being of the most vulnerable children and families. These changes include the following:

- **Changes to section 22(2)** of the Act expanded the grounds of intervention which increases the probability of harmful referrals and assessments based on Eurocentric values, which in turn increases the risk of exposing racialized, newcomer and Indigenous children in particular to more intrusive actions under the CFSA;
- **Changes to section 22(2)(i)** of the Act (ie., the child has become aware of domestic violence in the home without proof of objective harm to the child)

increases the risk of dissuading victims of Intimate Partner Violence to report such violence or seek services thereby further endangering the victim and child(ren);

- **Changes to section 22(2)** also expanded the reporting obligations of professionals, officials and others who work with children and families under sections 23 to 25 CFSA. These new reporting provisions are likely contributing to the over surveillance of racialized and vulnerable communities and jeopardize the ability of service providers to ensure the safety and wellbeing of children and their families;
- Removing provisions that give judges discretion to make an order for access after permanent care and custody when this is in the best interests of the child. While this move was intended to facilitate more access to adoptions, it also has been counter to a restorative, relationship-oriented approach to child services and well-being, especially where children are older and have attached to their birth parents;
- A tightening of time limits under the Act, which is not reflective of the current social environment and the capacity of families to make changes and heal. Instead, these amendments adversely affect rural and low-income families who may experience a delay in accessing needed services in order to see the return of their children. As well, racialized families will be doubly affected if they are not able to receive culturally relevant services, thereby perpetuating the overrepresentation of racialized children in care.
- Extending the jurisdiction of the Act for youth aged 16-19 in order to provide consent-based services. The Department should review what effect these amendments are having on youth who are victims of human trafficking and homeless youth.

The 2017 amendments have had an especially adverse effect on the principles of Interconnectedness, Social Inclusion and Decolonization in Nova Scotia, counter to the best interests of vulnerable children and families. As well, the practical impact of the amendments on social workers – counter to the principle of Decent Work and Wellbeing – has been to increase workloads and responsibility on social workers without adequate supports. This has led to an increase in stress, and a crisis in recruitment and retention, which in turn has had a negative effect on the system overall.

A proper, open review of these sections of the Act is warranted in order to ensure that we are providing a safe and effective child welfare system. Such a review is an important component to ensuring the system is living up to the principle of Democratization.

Recommendation

We recommend a more comprehensive, evidence-based, open and accountable review of the CFSA that takes into consideration the impact of the amendments as a whole with particular focus on the sections outlined above. Special attention should be paid to the impact on racialized and Indigenous children, youth and families and on the support available for social workers to provide for the needs of these families in a safe and supportive environment.

Intersectional and Evidence-Based Policy Principles.

The Social Policy Framework indicates that policy that works for everyone must be designed to account for the multiple ways that power and privilege are unevenly shared; it captures the interaction and interconnection between social locations, policies, and institutions and offers a path toward systemic change (Findlay *et al.*, 2020). In addition, evidence-based policy-making rests on the foundational premise that government decisions that are influenced by research and data are more likely to solve problems effectively, and that we should learn from best practices (Findlay *et al.*, 2020). Many of the challenges that emerged out of the amended CFSA, appear to stem from a lack of intersectional and evidence-based policy principles. When implementing these changes, the Liberal government did not appear to connect the serious impacts of poverty, intergenerational trauma, and mental health on the well-being of family and children.

Nova Scotia has the highest poverty rate in Canada based on the Market Basket Measure (Findlay *et al.*, 2020), and the highest rate child poverty rate in Canada, with one in four children living in poverty (based on the MBM) (Frank *et al.*, 2020). Evidence has clearly shown that poverty is neither a necessary nor sufficient factor in the occurrence of child abuse or neglect, as it is caused by many interlocking factors (Bywaters *et al.*, 2016). However, there is a clear relationship between family socio-economic circumstances and the prevalence of child abuse and neglect. Scholars and researchers have continued to describe this relationship in a number of ways, either through a direct effect through material hardship or lack of income to support themselves, or an indirect effect through parental stress and neighbourhood conditions (Bywaters *et al.*, 2016). Disadvantaging socio-economic circumstances may operate as acute or chronic factors. Evidence suggests that these direct and indirect impacts of poverty also interact with other factors affecting parenting to increase or reduce the chances of child abuse and neglect including:

- parenting capacity (e.g. mental and/or physical illness, learning disabilities, (lack of) prior education, shame and stigma);
- family capacity for investment (e.g. to secure care, respite or better environmental conditions);
- negative adult behaviours (e.g. domestic violence or substance use, perhaps provoked or exacerbated by family stress);
- positive adult and child behaviours that promote social support and resilience; and
- external neighbourhood factors (e.g. the social and physical environment) (Bywaters *et al.*, 2016).

These interactions between poverty and other contributory factors are complex and frequently circular. For example, poverty increases the risk of mental illness, and mental illness increases the likelihood of poverty. Parental substance use accompanied by poverty is more likely to lead to contact with child protection services than substance use in a position of affluence (Bywaters *et al.*, 2016). The conception of poverty as a contributory causal factor is supported by evidence from experimental or quasi-experimental studies in the US, which found that raising the income of families in poverty had a statistically significant impact in reducing child neglect and abuse

rates (Gubits *et al.*, 2015; Waters *et al.*, 2016). Poverty is also directly related to adverse childhood experiences which produce many negative educational, health and mental health outcomes with substantial public costs (Bellis *et al.*, 2019; Kagi & Regala, 2012). A study conducted in rural Nova Scotia found 73% of survey respondents reported one adverse childhood experience and 31% reported four or more (Ross, *et al.*, 2020).

When the Liberal government amended the CFSA they also appeared to ignore the problems of rising inequality, deep inequities and a lack of overall trust in provincial services by the people of Nova Scotia. In Nova Scotia there has been a steady trend of widening income inequality perpetuated by neo-liberal ideology. In 1988, the income shares of the wealthiest ten per cent in Nova Scotia was 11.1 times the income share of the bottom ten percent. Three decades later, top incomes in Nova Scotia grew to 16.3 times the income share of the bottom (Findlay, *et al.*, 2020). Recently Engage Nova Scotia produced data that shows that only 27.1% of

Nova Scotians trust the provincial government. Rising inequality and the continued class divide between the rich and the poor have allowed the voices of the most vulnerable, particularly those of our racialized communities and children and youth, to go unnoticed, eroded trust, and increased anxiety and illness for all (Wilkinson and Pickett, 2009). Various governments have perpetually enacted austerity policies (expanding corporate influence in the process) to cut the cost of care, institutionalize new management systems, and centralize government services, leading to highly top-down bureaucratic systems (Findlay, *et al.*, 2020). This has led to increasing managerialism which devalues and deskills professional competence, and creates a management framework that is focused on liability and constantly searching for efficiencies rather than promoting human connection (Brown *et al.*, 2020; Findlay *et al.*, 2020). These trends have had a profound impact on the ability of Nova Scotians to receive the services and care that they rely on, and to make our economy one that works for all of us.

Neo-liberal policy is felt in the delivery of child protection services. At the time of the amendments there was evidence to suggest that the changes to Act would lean towards holding individuals, rather than the state, responsible for social risks such as illness, (dis)Ability, unemployment, and poverty (Brown, *et al.*, 2020); this evidence appeared to be ignored. In child protection the most common reason for a child being brought into care are neglect and abuse.

Neglect is defined in the Children and Family Services Act as the chronic and serious failure to provide to the child adequate food, clothing or shelter, adequate supervision, affection or cognitive stimulation, or any other similar failure to provide care (Nova Scotia Legislature, 2017). These issues are related to structural violence, trauma and poverty and are connected to broader structural issues that have allowed poverty to fester in Nova Scotia. Poverty is felt deeply, it is a social condition manifested in families' struggles to afford the cost of housing, food, childcare, clothing and transportation in the face of low wages, precarious work, racial and gender discrimination, a weak social safety net, inadequate public services and lack of affordable and available child and family services (Frank and Saulnier, 2017). Yet neo-liberal ideology holds individuals responsible for the failures of our systems (Brown, *et al.*, 2020).

Evidence also appears to have been ignored regarding the current social environment, which in all sectors (Health, Justice, Social Services...etc.) minimizes our collective responsibility for the safety and well-being of the family while simultaneously deploying indirect techniques to control

vulnerable families holding them responsible for our collective failures (Brown, *et al.*, 2020). Subsequently, individuals blame and shame themselves if they are unable to cope or are struggling. Today, child welfare service delivery demands significant individual focus on self-management, self-discipline, and regulation through “rational choices.” These individualized, decontextualized, and pathologizing approaches fail to address the social and political contexts in which families exist and the state passes this responsibility on to vulnerable and marginalized individuals and families to solve their own problems. This trend is reflected in the increasingly reduced provision of adequate social welfare services and supports (Brown, *et al.*, 2020). Evidence of this is reflected in Canadian public social spending which peaked in 1990 at just under 18% of gross domestic product (GDP). The most recent data shows that Canada spent 17.3% of GDP in 2017, which is about same as 1990. Canada spent less than 23 other countries including the United States. It is striking that only 1.6% of GDP in Canada is spent on social expenditures for families, and even less on the unemployed at 0.6% (Findlay *et al.*, 2020).

It also appears that the Liberal government did not use evidence or an intersectional analysis which is reflected in the lack of available socioeconomic or aggregated data on race, gender and ability available. Further to this it appears as though the Liberal government did not listen to the countless stakeholders that informed them that by expanding the definitions of neglect and emotional abuse, not amending language to incorporate a trauma informed lens when addressing domestic violence, and increasing the threshold for duty to report, that this would lead to increased referrals, more investigations, higher caseloads and workloads and less work done with families to actually support them with their safety and well-being.



Interconnectedness

The principle of interconnectedness draws from the idea that policies and social and health issues are interrelated and that people experience policy differently depending on their location in intersecting systems.

Improving social well-being relies on working across silos and developing policies that address multiple challenges at once (Findlay *et al.*, 2020).

When evaluating the amended Act to determine if the principle of interconnectedness was incorporated into these changes, it appears that it was not. The amendments to the Act did not change the preamble, which has strong language and frames the role of child welfare relatively well. NSCSW stakeholders in the spring of 2019 reflected that if we could bring the preamble to life, we would have a healthy child welfare system that embraces the principles

of interconnectedness. Provisions in the preamble reflect that the role of the child welfare system is based on the principles that the family exists as the basic unit of society, and its well-being is inseparable from the common well-being; the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society’s interest in protecting children from abuse and neglect and that social services are essential to prevent or alleviate the social

and related economic problems of individuals and families (Nova Scotia Legislator, 2017). Yet amendments in the Act moved us further away from the vision laid out in the preamble.

In particular, as will be argued below, the practical effect of the amendments was to create a very low threshold for intervening in the family based on vague definitions of a child in need of care while at the same time failing to provide services for pathways to safety and well-being. These two failures of policy have contributed to creating a child protection system that is more intrusive and focused more on investigations and court process than being able to create well-being for families. We first set out how the 2017 amendments have lowered the threshold to intervention and then analyze how they have failed to provide for pathways to safety and well-being.

Analysis of 2017 Amendments

The changes to section 22(2) of the Act created a new broader context for reasonable and probable grounds to believe a child is need protective services. This move put social workers in very challenging positions as the Act now mandates them to investigate a referral only if reasonable grounds to believe a child has been harmed or neglected is present, which is a lower threshold, given that provisions in the previous Act ensured that evidence was needed before an investigation could occur (Thompson 2015). Before bringing a child into care without a warrant, a social worker needs only to have such reasonable grounds to believe a child needs protective services and reasonable grounds to believe that the child's health or safety cannot be protected adequately otherwise than by taking the child into care. While these decisions are not made lightly, and are done generally by a team of social workers, within the current social environment and its lack of pathways to safety and well-being this provision impacts vulnerable and racialized families. These provisions have lowered the threshold for the practice of “Birth Alerts” which the Missing and Murdered Indigenous Women Report named as having very real effects and called upon provincial and territorial governments and child welfare services to immediately end the practice of apprehending infants from Indigenous mothers right after they give birth (MMIW, 2019). This widely expanded definition of a child in need of care also increased caseloads and workload pressures as more heavily administrative tasks related to the applications of courts under the CFSA have increased (See table 2 below) (Thompson 2015).

Child protection continues to see an over-representation of African Nova Scotian and Indigenous children in care. The CASW report *Understanding Social Work and Child Welfare: Canadian Survey and Interviews with Child Welfare Experts* shows that social workers have major concerns with the over the representation of visible minorities such as Black Canadian families (CASW, 2018). This over-representation is caused by what Robert Wright named in the NSCSW panel conversation on child protection as the system’s Eurocentric definitions of what a family is, and what parenting is, and discrimination that occurs against black families for not living up to that Eurocentric model (NSCSW, 2019). What the changes to the Act did was remove important checks and balances for social workers; checks and balances that allowed social workers to critically reflect in solidarity with their clients on what is in the best interest of children.

In the current environment, where there are few supports, inadequate field training, increasing complexity in family situations, intensifying workloads and a relatively young work force, these

changes put an unfair amount of responsibility onto social workers who are part of society shaped by Eurocentric values. The profession has much work to do considering when examining “the vehicles for evaluating ethics, such as codes and decision-making models, and the texts addressing ethics in social work, the absence of the recognition of racism as a fundamental problem in social work ethics is striking” (Weinberg, 2020).

For instance, in the [NSCSW] Code of Ethics, while there is recognition of ‘diversity’ and one mention of ‘discrimination’, a search of the term ‘racism’ does not reveal a single mention. Respect for and celebration of diversity are laudable goals, but they ‘whitewash’ the more troubling and insidious reality of racism in social work in Canada generally, and Nova Scotia in particular. (Weinberg, 2020)

Work to better understand and redress white supremacy in social work practice is currently underway (Stratford, 2020).

A closer examination shows how the Act created complex ethical tensions for social workers, who on a daily basis are facing moral distress (Weinberg, 2017) leading to moral injury.

The previous definition in s. 22(2)(f) and (g) of CFSA created the context for intervention based on emotional abuse and stated the following:

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

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm (Thompson, 2015).

The definition in the amended Act: (f) the child has suffered emotional harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately; s. 3(1)(1a) "emotional harm" means harm that seriously interferes with a child's healthy development, emotional functioning and attachment to others; (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f) and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the harm.

The definition of "emotional harm" remains vaguer and broader than any other definition in modern protection statutes in Canada (Thompson, 2015). First, the requirement that there be some observable evidence of emotional harm has been removed, taking away any reference to "demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour" (Thompson, 2015). This is a test that is also used in modern Canadian protection statutes. Without such indicia, every family is left to assessments of emotional harm that are predominantly embedded in Eurocentric values of "healthy development", "emotional functioning" and "attachment to others". This kind of vague language will determine whether a child is removed from a parental home, temporarily or permanently. Second, the new clause (f)

permits intervention even if the parents are willing to seek services to alleviate any harm, a position inconsistent with the principle of "least intrusive intervention" that animates the CFSA (Thompson, 2015). Third, clause (f) has been broadened by the new definition of "emotional harm", and then under clause (g) an agency need only show "a substantial risk" of "harm that seriously interferes with a child's healthy development, etc." To this date no evidence or information has been offered to support such a vast broadening of the "emotional harm" was required (Thompson, 2015).

The definition of neglect also remains highly problematic; the previous version of the Act stated in Sections 22(2)(j) and (ja) read:

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j).

This definition of neglect grounded in clause (j) was the product of the 1989 Legislation Committee, and was carefully written because of the immense potential for discrimination against parents living in poverty and at the time the Committee opposed the creation of a ground of "substantial risk of neglect," as they viewed that as too easily becoming that a parent was "poor", and nothing more. Clause (ja) was added later, in 1996 (Thompson, 2015).

The amended Act now states that neglect is (j) the child is experiencing chronic and serious neglect by a parent or guardian of the child; 3(1)(p) "neglect means the failure to provide (i) **adequate** food, clothing, shelter or any necessary medical, surgical or other remedial intervention; (ii) supervision, **including responsive and appropriate interactions with the child**, necessary to ensure a child's health, safety and well-being; and ~~(iii) a supportive, nurturing and encouraging environment necessary for a child's emotional development and well-being.~~ (ja) there is a substantial risk that the child will experience chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the harm (Thompson, 2015).

What the Act did was open up any family experiencing poverty to child protection involvement (poverty is the failure of systems as stated earlier). Clauses (j) and (ja) do not contain any reference to proof of "harm" or "risk of harm" to the child. It focusses exclusively upon the surrounding circumstances and then presumes harm, an approach inconsistent with the rest of s. 22(2) (Thompson, 2015). The current provision explicitly refers to "physical harm", as do most neglect grounds in modern Canadian protection statutes. The amended Act added, a parent must engage in "responsive and appropriate interactions with the child or face reporting, investigation and possibly the child being brought into care. The legislation opened up the opportunity once again for assessments based on Eurocentric values to be made on what kind of interaction is "responsive" or "appropriate" and left an opening for racialized and culturally diverse families to be assessed by a Eurocentric value system. The changes regarding the

failure to provide "adequate food, clothing, shelter", or the substantial risk of failure again lack a test element as there is no need to show any "harm" to the child, so that any poor home, any home on income assistance, is exposed to reporting, investigation and even the child being brought into care (Thompson, 2015). This provision opens up a punitive process for marginalized families for the failures of society, and places demands on social workers to work to counter their professional values of social justice, self-determination and empowerment.

Finally, regarding domestic violence language, the older version of the Act stated in clause 22(2)(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the harm. This was a controversial provision when it was included in the proposed CFSA in 1990 (Thompson, 2015). Transition houses argued that this provision doubly victimized the mothers who were the object of the domestic violence, and that the provision forced reporting obligations upon transition houses who were attempting to protect women from violence (Thompson, 2015). It also does not bring into context our newer understanding of trauma and its impacts. A majority of the Legislative Committee that developed the 1990 CFSA supported the inclusion of clause (i), as the real concern here is the "emotional harm" caused by the exposure of the child to repeated domestic violence. If anything, this provision has been interpreted too broadly (Thompson, 2015).

The provision in the amended Act states (i) the child has been exposed to or been made aware of, violence by or towards a parent or guardian or other person residing with the child, and the child's parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence. The amended Act does not define "violence", unlike "emotional harm", "neglect" or "sexual abuse" and has significantly broadened the interpretation. First, it no longer requires "repeated violence". Right now, a single incident can be grounds for a report or an investigation, but a single incident will not be sufficient to support a finding at the protection hearing, and long-term court orders affecting the family. The new clause (i) takes an archaic view of domestic violence, as the modern approach recognizes that there is a wide spectrum covered by the term, justifying a differentiated approach to these issues (Thompson, 2015).

Second, there is no debate that a child's direct exposure to repeated domestic violence against a parent produces emotional harm and behavioural consequences for the child broadly similar to those demonstrated by physically abused children (Thompson, 2015). The amended Act also includes a child being "made aware of violence" and treats it as equivalent to direct exposure.

For example, it means a child can be "made aware of a single incident of violence toward their other, at another location and at another time, without limitation or explanation, and this will support a finding that a child needs protective services (Thompson, 2015). This broadened and vague clause (i) has worsened the position of women and the transition houses that work with them, given what we know how hard it is to leave a domestic violence situation. The provision does not, in anyway account for structural violence and its impact on the family. Life spans are reduced when children and their families are socially dominated, politically oppressed, or economically exploited. Structural violence and direct violence are highly interdependent.

Structural violence inevitably produces conflict and often direct violence including family violence, racial violence, hate crimes (Van Dernoot, 2010). Given the documented evidence of structural violence against Black and Indigenous Nova Scotians documented by the Inquiry into the Home for Coloured Children, the Wortley report and the Missing and Murdered Indigenous Women report, this provision seems widely out of date for post-modern child welfare system.

In addition, child welfare systems often hold traumatized mothers accountable for the abuse of their male partners and place a greater responsibility on the role of “mother.” Brown, *et al.*, in 2009 wrote that not seeing fathers as part of the child welfare intervention has a significant impact on mothers. Mothers are expected to fill the role of both parents and further expected to mediate relationships between children and fathers. This places social workers into another area ripe for moral distress as workers are put in a position where they are asked to hold mothers responsible for monitoring the behaviour of the father in the children’s lives, essentially contracting out the surveillance of fathers to mothers (Krane, 2003). This creates a system in which social workers manage mothers, and in turn, mothers manage fathers. The phenomena of ghost fathers also impact child welfare policy-makers and social workers. By not having to see fathers, they are able to ignore possible real dangers that fathers may pose to their families or vice versa as potential resources to families (Brown *et al.*, 2009).

Finally, the 2017 amendments saw the extension of the jurisdiction of the Act through amendments to section 3 (1) (e), 19 and 20 to extend services to youth aged 16 to 19 years who need protective services. With these amendments, however, the Department of Community Services will only intervene where youth consent to services, and the downward trend in youth in care as will be evidenced below, raises concerns about whether these provisions adequately protect our most vulnerable youth. The amendments – calling for youth to give their consent to care – do not provide for protection of children extremely serious situations that require intervention without the child’s consent such as in cases of human trafficking and other situations involving sexual exploitation. The 2017 amendments also limited the ability to extend a Children in Care Order to provide continued support beyond 19. We will discuss the practical impact that these amendments have had below.

The amended Act, took child welfare further away from embracing the principle of interconnectedness.

Practical Impact of the 2017 Amendments

It has remained clear that policy stemming from the Liberal government are driven by a neo-liberal agenda that has produced fiscal and social policy embedded in austerity and managerialism, and this has put families in a worse position. Data from Engage Nova Scotia demonstrates that single parent families, who generally make up over 50% bulk of child welfare clients (Tromce *et al.*, 2004), quality of life is less than those of the rest of the Nova Scotia population (Engage Nova Scotia, 2020). More than 1 in 2 children living in lone parent families live in poverty (53.1%) compared to 11.7% of children living in couple families (Frank *et al.*, 2020). Data collected in Nova Scotia schools between 2015 and 2018 shows a meaningful increase in the rates of vulnerability from 25.5% to 28.8% (Findlay *et al.*, 2020). Vulnerability means that without additional support in areas like social competence, emotional maturity,

language and cognitive development, communications skills, and general knowledge, these children will face future health, educational, and social challenges (Frank and Saulnier 2017).

Researchers in Nova Scotia have long pointed to the weak social safety net and the lack of public programming as being at the root of these vulnerabilities (Findlay *et al.*, 2020). Policies enacted by the Liberal government to deal with these inequities and inequalities have fallen short. Well moves like universal pre-primary are welcome changes, they do not extend deep enough to deal with the vulnerability of families in Nova Scotia. On closer examination of the changes to income supports available to vulnerable Nova Scotian families, it is clear that they are falling short of the threshold to decrease vulnerabilities. The report on Child and Family Poverty released in 2020 demonstrates that the Market Basket Measure for poverty (Canada's official poverty line) for a single mother with two kids would require an income of \$36,778 a year to be above the poverty line. Current income supports for the family sit at \$24,280 a year leaving an income gap of \$12,498 or \$1079 a month (Frank and Fisher, 2020). The recent provincial budget extended income support to vulnerable Nova Scotians through the Nova Scotia Child Benefit but these changes amount to about \$32.00 extra a month. This leaves families short around \$1000 a month to even reach the poverty line. In addition, minimum wage falls short of the income needed to live a quality life, as the living wage for Halifax is now at \$21.80 (Saulnier (a), 2020)

Pre-COVID, people were already struggling to pay their rent. Overall, 28% of renters are in core housing need in Nova Scotia and of that percentage 42% are lone-parent renters (Leviton-Reid, 2020). Rents for a 2-bedroom apartment in Halifax increased by 15.8% last year and the vacancy rate is about 1.2% (NSACCW, 2020). Little wonder there are more homeless people, including families. It is estimated that 32,500 Nova Scotians are housing insecure (AHANS, 2019). There is list of over 5500 folks waiting for social housing (Housing Nova Scotia, 2020).

The Liberal governments solution to housing has been to give out more subsidies when there is depleting and limited stock of housing to subsidize. According to Adsum for Women and Children, out of the nearly 500 homeless currently in Halifax Regional Municipality, 62 are families, most of them female-led lone parent families (Frank *et al.*, 2020).

Statistics Canada's report on food insecurity, released in February of 2020 defined food insecurity as hunger and/or the fear of hunger because there's not enough money to buy food. In 2017-18, across Canada, 12.7 per cent of households suffered some level of food insecurity. In Nova Scotia, the number is 15.4 per cent — almost one in six households — the highest rate recorded in any province (Vibert, 2020). Prior to the pandemic, the annual Hunger Count in Canada showed an increase of 5% of new clients to foodbanks in Nova Scotia in March 2019 alone. Children made up 30% of those accessing foodbanks in Nova Scotia. Since the pandemic began, Feed Nova Scotia has seen a 15% increase in demand for food in Nova Scotia. (Frank, *et al.*, 2020).

A paper produced by the NSCSW shows that our mental health systems are falling short of the need and the failure to respond adequately to the mental health problems of our citizens and this is resulting in increasing physical health issues, acute crisis care requirements, and lowered employment and daily living capacity (Brown, *et al.*, 2021). The current focus on fiscal constraint, efficiency, rationalization, and managerialism at the expense of the quality of care for

the mental health and well-being of Nova Scotians will ultimately be a greater cost to the citizens and the province. The current service delivery model has not been implemented well and the current tiered framework lacks a clear strategy for implementation with a disproportionate focus on bio-medical treatment. This has created a mental health and addictions system that inadequately addresses the mental health needs of the province. The current strategies and tactics embedded in the tiered framework require greater accountability, oversight, and resources, with a stronger focus on localized, community-based approaches to care. Increased financial commitment to mental health and addiction services is a necessity, and is an important long-term social investment (Brown, *et al.*, 2020).

When former Minister Joanne Bernard was bringing amendments to the CFSA through, she stated in her second reading speech that these changes were needed to intervene earlier and to strengthen families. The problem is services that create childhood well-being are under-funded and hard to obtain. These issues are problems of funding, not legislation (Thompson, 2015).

The province did invest 18 million in the 2019-2020 budget to expand programs for preventive and early intervention and the goal of having some of these delivered through an Afrocentric and Indigenous lens is commendable. However, no legislative change was required to fund and deliver these programs. Also, of note these programs will likely fall short of their intended goals if the basic needs of families are not met at the same time. The Restorative Inquiry into the Home for Coloured Children states that there must be a shared responsibility for outcomes that matter for young people and their families. The inquiry indicated that safety and well-being go hand and hand and drew on a model of well-being from the New Zealand government to articulate specific outcomes that should be included. Early intervention and prevention programs that are being offered do a good job at facilitating some of these outcomes:

- strong positive relationships,
- spiritual and cultural connections,
- having their developmental needs met and supported,
- education, behaviour, life skills and selfcare skills,
- emotional resilience and support, and
- social and peer groups that are supportive, caring and positive (Council of Parties, 2019);

but fall short of meeting:

- physical and mental wellness,
- security – being safe from harm, living in a safe community, having a warm dry home, having enough food (Council of Parties, 2019).

Basic and common principles of well-being depicted in Maslow's hierarchy of needs indicate that before emotional and self-actualizing needs can be made, physiological and safety needs must be met (MacLeod, 2007). Safe housing, inadequate income, and food all must be met in order for a child and family to have a sense of safety and well-being.

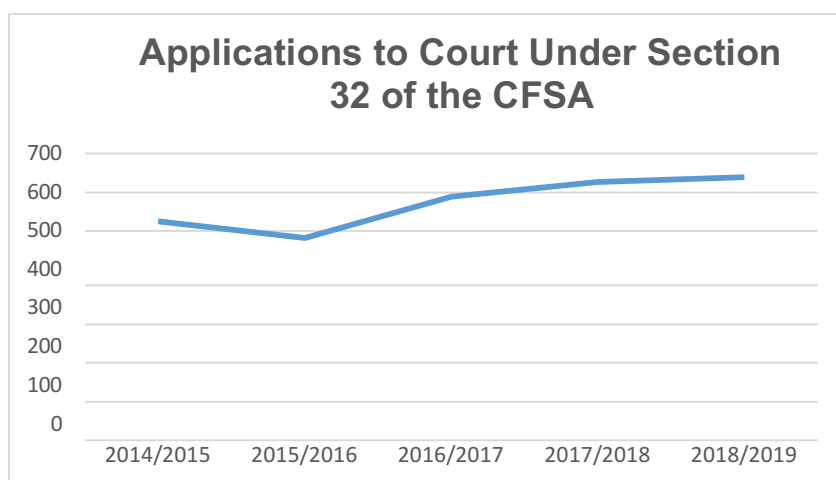
What is problematic about the amended Act, is that it appears to have not taken into consideration the failures of the current social environment to create pathways to safety and well-being. While at the same time creating a lower threshold based on vague definitions of a child in need of care. These two failures of policy coupled with lack of significant new funding and resources have contributed to creating a child protection system that is more intrusive and focused more on investigations and court process than being able to create support and well-being for families. Evidence of this trend can be found in increasing referrals and substantiated cases;

Table 1 — Department of Community Services – Referral and Substantiated Cases

Year	Count of CYFS referrals	Count of substantiated cases	Proportion substantiated
2019	16416	3686	22.45%
2018	15441	4942	32.01%
2017	14546	4604	31.65%
2016	12822	3731	29.10%
2015	12211	3731	30.55%

And increasing applications to the courts filed under the Children and Family Services Act

Table 2 —Department of Justice — FOIPOP



Finally, increasing of the use of places of safety. From Sept. 1, 2016 to Aug. 31, 2019, the department required placements of safety 249 times for 201 young people. Some required more than one placement. In total, those young people spent 23,940 days in hotels, houses,

apartments or cottages in the province, according to documents received in response to a freedom of information request (Gorham, 2020).

It can be noted that the overall number of children in care of the Minister has seen a slight decline. The data shows that the number of children brought into care between the ages of 0-11 has remained relatively stagnant. Whereas the amount of youth in care between ages of 12- 19 has dropped by 30.4% (See Table # 3). While more research is needed to explore this trend there are number of concerning areas that correlate with the drop-in youth in care in Nova Scotia.

Table 3 — Department of Community Services- Children and Youth in Care

Year	Count of children & youth in care	Count of females	Count of males	Age 0-4	Age 5-11	Age 12-15	Age 16-18	Age 19+
2019	1622	759	857	506	509	271	239	97
2018	1691	804	882	568	485	286	236	116
2017	1702	806	894	565	418	311	263	145
2016	1739	810	927	560	464	312	255	148
2015	1859	835	1023	539	528	327	276	189

1. **Youth in Need of Care** – When the act was amended it included section 3 (1) (e), 19 and 20 which expanded the age of child and services available to youth from 16 to 19 years who need protective services. However, there was an assumption in the proposed legislation that “children” at this age will always know what is in their best interest. Wording in legislation that says that the Department of Community Services will only intervene where youth consent to services, and the downward trend in youth in care raises concerns about whether these provisions adequately protect our most vulnerable youth. The changes in the Act specify that services for this age group would be provided “on a consent basis”, without power to protect ‘children” in extremely serious situations that require intervention without the child’s consent (e.g. sexual exploitation, serious physical abuse of a vulnerable, isolated 16-year-old who is afraid to leave, etc.). The legislation also limited the ability to extend a Children in Care Order to provide continued support beyond 19, making transition out of care more frequent.
2. **Human Trafficking** – In Nova Scotia police have reported more families coming forward from every corner of the province to say their children, mostly daughters, have been forced into the sex trade and moved out of the province (Burke, 2019). Nova Scotia has the highest rate of human trafficking incidents in the country with 2.1 in 100,000 people (Nova Scotia, 2020). The vast majority of victims of police-reported human trafficking were women and girls (97%), Nearly three in ten victims (28%) were under the age of 18 (Cotter, 2020).

3. **Youth Homelessness** – more data is needed to more closely examine the pervasiveness of youth homelessness in Nova Scotia. Gaetz *et al.*, 2016 have confirmed that 20% of the homeless population in Canada is comprised of youth between the ages of 13-24. In a given year, there are at least 35,000-40,000 youth experiencing homelessness in Canada. They may be temporarily living in hostels, staying with friends, living in 'squats,' renting cheap rooms in boarding houses or hotels, or actually living on the streets. A high percentage of youth experiencing homelessness were also in the care of child protection services. More research is needed to determine if there is a correlation between decreasing Youth in Care and Youth Homelessness.

A more comprehensive, evidence-based review would allow the Department and Nova Scotians to more fully understand the impact that the 2017 amendments are having on children and youth including the most vulnerable youth: youth in need of care, youth who are victims of human trafficking, and homeless youth.



Social Inclusion

Ensuring social policy solutions address the deeply-rooted systemic barriers in our policy, programs, and services means they should foster greater social inclusion. Social policy must focus on and redress the legacies of colonialism, racism, and slavery; remove socially-created barriers to access and strive for inclusion for people with disabilities (including invisible disabilities); challenge gender-based and heteronormative inequality; support newcomers and people living in the deepest poverty; and work for those in

urban and rural locations. Social inclusion must be guaranteed for the users of public services, as well as those who provide those services to us. Achieving social inclusion requires that we advance both equity and equality (Findlay *et al.*, 2020).

The amended Act appears not to have achieved the principle of social inclusion. In the current neo-liberal environment, the histories of colonialism and racism, the institutional abuse in residential schools, the Nova Scotia Home for Colored Children, the Shelbourne School for Boys, etc. have created a climate of fear in government in the delivery of services to vulnerable children (Barkley and Wright, 2020). This climate is reflected in an attitude of risk aversion, rather than a promotion of courage in the application of bold and competent interventions, centered in the cultural needs and lives of children and families, to address risks thereby further socially excluding already marginalized children and families (Barkley and Wright, 2019).

Analysis of the 2017 Amendments

The current focus on the CFSA review limits the review to one specific section in the extended duty to report provisions, it is impossible and not practical to evaluate the impact of mandatory reporting under s. 22(2) without assessing the entirety of duty to report changes. When the definitions of s. 22(2) were broadened, the reporting obligations of professionals, officials and others who work with children and families under sections 23 to 25 of the Act were extended. We have already seen a substantial increase in reporting and the data indicates that two-thirds of those new reports have not raised protection issues, with only one-third resulting in any

continued service or supervision (see above Table 1). Section 24 was intended to create an enforceable duty for professionals and officials to report in the CFSA, to be able to sustain a prosecution and conviction for failure to report, if necessary. Section 23 creates a general duty to report for all citizens, but its language is so vague that its offence provision likely would not support a conviction, and we have yet to have seen this tested in court (Thompson, 2015).

What section 24 did do is vastly expand the duty to report of professionals and officials, like doctors, teachers, day care workers, and transition house workers. First, the expanded definitions in s. 22(2) discussed above have required them to report more children and more families, as the duty to report arises from the possession by the professional or official of "reasonable grounds to suspect" any of the grounds in clauses (a), (c), (e), (f), (h), (i) or (j), which are problematic. For example, if a social worker working in a primary health care has reasonable grounds to suspect that a parent is not interacting with their child in a way that is responsive or appropriate, the social worker must report under the Act or face criminal prosecution (Thompson, 2015). The former Act required a professional or official to report if they have reasonable grounds to suspect that "a child is or may be suffering or may have suffered abuse", as defined in those clauses listed above. What must be reported is what has happened or is happening (Thompson, 2015). The amended Act adds a new duty to report that a child "is or may be about to suffer abuse in the imminent future." This would require a professional or official to make a judgment about the future, and has significantly broadened their reporting obligations.

There were a number of flawed changes to the Disposition Orders as well that have had a tremendous impact on children, youth their families and the social workers that serve them, not to mention case aides, legal aid and the courts. Many of the smaller changes were unnecessary. One of the common themes underlying these changes was the reduction of the discretion granted to judges under the CFSA to respond to the individual situations of children, and to reduce their ability to have oversight on the work of the Department removing once again important checks and balances (Thompson, 2015). The previous version of CFSA, like most modern protection statutes, reflects the child's sense of time in its time limits upon temporary care and custody orders in s. 45:

- 12 months for children under the age of 6 at the start of protection proceedings
- 18 months for children aged 6 to 11 at the start
- no time limit, once the child reaches the age of 12 during the proceedings.

The amended Act created a less flexible time limit of 12 months for children under the age of 14 and 18 months for youth over the age of 14, whatever their age. This does not reflect the child's sense of time, or the child's interest in reunification with their family (Thompson, 2015). Six of the other eight Canadian provinces adjust the time limits to reflect the child's age (only New Brunswick and Saskatchewan do not, and both have maximum time limits of 24 months.) Our time limits in Nova Scotia were already the shortest and least flexible in Canada. And unlike provinces like Ontario, Manitoba and Newfoundland and Labrador, our workers, lawyers and judges work hard to comply with these time limits (Thompson, 2015).

These time limits try to balance the child's interests between two options in the disposition process: the statutory preference that children are best reared by their parents in their own homes, consistent with the principles of least intrusive intervention, versus the need at some point for permanent placement for the child. Our tight 12-month limit for children under the age of six reflects that a very young child should not have to wait very long to find out their parents will be able to resolve their problems and resume custody. The slightly-longer period for children aged 6 to 11 reflects their somewhat greater ability to maintain ties to their parents while in temporary care. It must be kept in mind that these time limits are maximums. Our law is clear that a court need not await that maximum limit, if the agency leads evidence that makes clear that a parent will not be able to resume custody within a reasonably foreseeable time not exceeding the maximum time limits (Thompson, 2015).

More problematic than the court timelines are the cumulative and fixed lifetime limit for each child of 18 months on their time in temporary care in s. 45A. Section 45A states where a child has been the subject of more than one proceeding and the cumulative duration of all disposition orders made pursuant to clause (e)[placement with a relative or other third party] or (d)[an order of temporary care and custody] of subsection (1) of Section 42 in respect of the proceedings exceeds eighteen months, the court shall, in the child's best interests, (a) dismiss the proceeding; or (b) order that the child be placed in the permanent care and custody of the agency, in accordance with Section 47 (Thompson, 2015). These amendments adversely affect rural and low-income families who may experience a delay in accessing needed services in order to see the return of their children, and more research and evaluation is needed to determine if this timeline best represents the time needed to heal and grow well respecting the perception of time by the child. As well, racialized families will be doubly affected if they are not able to receive culturally relevant services, thereby perpetuating the overrepresentation of racialized children in care.

Finally, the 2017 amendments removed the ability of judges to award access after a permanent care and custody order is made. This change was made to facilitate a more successful adoption process. However, before the 2017 amendments, pursuant to section 47 of the Act, a judge had the discretion to make an order for access by a parent or guardian where the judge was satisfied that either a permanent placement was not planned or possible (including adoption), that a child was at least 12 years old and wished to maintain contact, or that there was some other reason to justify an order for access. Providing this discretion for judges was particularly important for older children especially who wished to maintain contact with their birth parents with whom they had formed an attachment. This section was drafted in the best interests of these children as it allowed the judge to make an award of access only where the judge determined that it was in the best interests of that individual child to have access to their birth parents or guardians.

Table 4 — Department of Community Services- Adoptions

Year	Count of adoptions
2019-2020	75*

2018-2019	103
2017-2018	108
2016-2017	126

**As of February 26, 2020*

This impact must be weighed against the impact on the successful adoption of children, and long-term outcomes for that child. Current data shows (See Table # 4) that it has not led to increased adoptions. Removing this discretion for judges to make orders for continued contact that are in the best interests of these children seems counter to the principle of promoting social inclusion as well as the principles of a restorative, relationship-oriented approach to child services. Instead, this amendment seems to introduce a blanket policy in favour of adoptive parents or foster parents as opposed to providing for an individual assessment of the needs of child.

Practical Impact of the 2017 Amendments

When evaluating whether the amended Act took into consideration the principle of social inclusion, it also appears that it did not. As stated earlier, the neo-liberal ideology guiding current child welfare policy has created a social environment where society's collective responsibility for the safety and well-being of the family is minimized while simultaneously deploying indirect techniques of control (Brown *et al.*, 2020). The data from the past five years shows the consequences of implementing more elements of social control on the lives of vulnerable families. There is correlation between the provision of the Act which extended the duty of professional to report incidence of neglect and abuse and referrals to the Department of Community Services (See Table 1). It has been demonstrated that mandatory reporting in other jurisdictions across the world has transformed child welfare from a system that focuses on providing services to children and families to one where intrusive and controlling forensic and investigative activities take precedence and drain resources away from services that might better support families (Ainsworth, 2002).

The push to mandatory child abuse and neglect reporting system fits the neo-liberal policy agenda and seems to be more about politics (Ainsworth, 2002). Duty to report legislation actively increases the number of referrals and can cause harm in a number of ways. Most saliently, mechanisms to increase reporting here in Nova Scotia did not include increased funding or additional social workers or personnel to Children, Youth and Family Services division. Accordingly, increased reporting depletes resources that are already spread thin and diverts attention away from children and families who need it the most (Ainsworth, 2002). In addition, reports of neglect disproportionately target low-income racialized families, who may experience a Child Protective Services intervention as an additional hardship, both emotionally and sometimes financially (Raz, 2017).

Social workers have continued to seek ethical consultation from the NSCSW on their duty to report. Many have indicated that they see this provision as a conflict with their professional ethics, in terms of informed consent, confidentiality and the rights of their clients towards self-determination. Social workers have expressed that they believe that their legal obligation to report under these vague and broad terms damages their relationships with clients which may

lead to greater results if they are able to maintain positive and healing relationships as opposed to instigating an investigation from the Department of Community Services. The amendments to Act regarding all duty to report matters must be evaluated in their entirety to determine their overall impact and whether they accentuated aspects of child protection that contribute to subversive social control of marginalized communities, which may move us further away from creating social inclusion, or if they did fact lead to overall safety and well-being for children and their families.

Parents already have immense difficulty in obtaining culturally relevant services within the maximum periods of time allowed under the former Act, particularly in rural areas. As indicated above, our social safety net and services available to parents do not meet needs. It should be reflected on as well that within mental health services there are very few options for racialized communities to receive culturally relevant services. The NSCSW, for example has 17 registered Private Practitioners who identify as African Nova Scotia, and Counseling Therapists and Psychologists have even fewer. The public system has been even less accommodating when it comes to providing culturally relevant services (Brown *et al.*, 2020). This seriously limits the capacity to heal past trauma, find the resources to lift that family out of poverty (this is impacted as well, by the federal and provincial government lack of coordination to return Canadian Child Benefit in a timely manner). The Minister has an obligation, not fulfilled at present, to ensure services are available to families in the process so that they have a realistic opportunity to have their children returned to their care (Thompson, 2015). The shortening of court periods is not reflected in the current state of the social safety net, and once again passed the failures of our collective society onto already marginalized families.

Furthermore, the cumulative effects of the amendments and the pressure on the system has meant a shift in social work practice towards risk aversion and a focus on individual liability as opposed to the structural effects that leave families and children in crisis. Wright and Barkley astutely recognize that the risks of individual behaviour by perpetrators are scrutinized by child welfare, but not the risks associated with structural issues such as the racism, poverty and colonialism which have rendered some solutions worse than that of the problems they were intended to resolve. It seems that “risk” has shifted from concern about the children in question to concerns about the “liability risk” to the institution. The definition of risk is “the possibility of loss or injury.” It seems that in current practice every “possibility” is treated as a “likelihood” resulting in an over-reaction to the daily challenges encountered by families living on the margins. The amended Act has further accentuated these trends and put social workers in a draining position where they are focused on crisis management and running from fire to fire, instead on being able to develop a contextual and collaborative analysis and interventions to support families towards safety and well-being (Barkley and Wright, 2019).



Decolonization

Re-imagining social policy requires abandoning government paternalism, and addressing the legacy of colonialism (Findlay et al., 2020). Indigenous communities continue to face the impacts of years of colonialism, residential schools and trauma, and a lack of culturally relevant services and resources to support the social determinants of health. As the violent acts of racism are continually directed at the Mi'kmaq through the fishery dispute there must be efforts made to provide culturally relevant care with our indigenous leaders and communities.

While the amended Act did update the terminology to better reflect how Indigenous communities identify, it did not address core recommendations from the Truth and Reconciliation Commission or the Missing and Murdered Indigenous Women and Girls Report. We know that **Mi'kmaq Rights Initiative** is working in partnership with the provincial and federal governments to address these recommendations to support Indigenous self-determination and inherent jurisdiction over child welfare. The NSCSW welcomes this work and aims to work in solidarity with Indigenous governments and leaders.



Decent Work and Well-Being

Social policy needs to attend to both paid work and unpaid caregiving through policies that address precarious work and caregiving for children, aging parents and/or partners. Caregiving is associated with high rates of depression, financial burden, and social isolation, which are especially acute for women, and affect their economic security and health. Social policies must recognize the value of caregiving with money, services, and time (including improving paid maternity and parental leaves and pension supports; investing in social infrastructure, like child care, home care, and long-term care; and increasing leisure time with more time out of the labor market to spend with family and to engage in our communities) (Findlay *et al.*, 2020).

What is problematic about that Act is that it increased the demands for social workers to be conducting investigations and assessing risks to families and the Department of Community Services using vague and broad definitions, resulting in higher caseloads, more administration for the purposes of court applications and limited capacity for taking on the emotional labour of creating safety and working towards family well-being. Training and mentorship remain inadequate with many brand-new social workers being thrown into complex practice, with no space or time given to process, or for reflection.

The work of professional care in Nova Scotia has continued to be undermined through societal expectations that the individual and family is solely responsible for social risks (Brown *et al.*, 2020). In child welfare the province steps in to provide care for children when family systems break down. State intervention is predominantly delivered by social workers who are predominately women; NSCSW data shows that 85% of social workers identify as female or a gender identity other than male. The patriarchy, and the beliefs and attitudes that flow from it,

continues to assume that professional care is low skilled work that women do, because they love it (Saulnier, 2019). This creates an environment in which care is not properly respected, supported or funded. This lack of respect and support is clearly displayed in the CASW child welfare report which provides a summary of why social workers leave child protection work:

- unmanageable workload (75%);
- system wide changes, increased expectations and administrative procedures (68%);
- unrealistic expectations by the organization (65%);
- workloads that interfered with personal and family life (53%);
- the emotional toll felt from the work (63%);
- firsthand experiences of violence and aggression or threats of violence from a client (44%);
- organizations lack adequate mental health resources and wellness initiatives to address staff post-traumatic stress (53%); and
- lack of adequate services and programs in the community to meet the complex needs of children youth and parents (53%).

Participants also reported that they believed that there is a trend toward de-professionalism in child welfare that is fueled by increased administrative requirements and high caseloads (CASW, 2018).

Similarly, a report produced by George Savoury for the New Brunswick government on child welfare found that social workers are spending an inordinate amount of time doing tasks such as scheduling appointments, copying, filing and faxing documents, doing requisitions to obtain services, all of which should be done by administrative assistants (Savory, 2019). In Nova Scotia the 2019 “How’s Work Going” survey demonstrates similar results with only 44% of Department of Community Services employees indicating that they feel valued. At the root of this devaluing is a sentiment reflected that workloads are unreasonable (57%), only 41% indicated that they feel safe and supported to bring forward and try new ideas and only 39% indicated that they have confidence in senior leadership (How’s work going, 2019).

This current child welfare environment created through the amended Act has consequences on the health and well-being of social workers. Statistics released in the fall of 2017 by FOIPOP show the significant stress the system is facing. There was a striking rise of social worker short-term illness hours, from 16,513 in the fiscal year 2013-14 to 26,105 in 2016-17 and an increase of nearly 10,000 hours (Peddle, 2017). This sick time can be attributed to moral distress that occurs in current social work practice. Moral distress provides a vehicle for identifying the gap between best intentions and what is actualized on the job (Weinberg, 2009). People enter social work desiring to do good. However, the neo-liberal environment in which social workers function creates huge stressors due to erosion of the social safety net, reductions in resources, and increasing restrictions on the autonomy of professionals, making it very difficult for them to fulfil that desire for goodness (Weinberg, 2009). Consequently, professionals sometimes fail in doing what they perceive of as their best, most ethical practice, and the theoretical tool of moral distress allows for a recognition of both that failure and the emotional price that workers pay when failure occurs (Weinberg, 2009). There is a strong connection between moral distress and

moral injury. The term moral injury has recently begun circulating literature on psychological trauma. It's been in two related, but distinct, senses; differing mainly in “the Who” of moral agency. Moral injury is present when there has been (a) a betrayal of what's right, (b) by a person in legitimate authority (“*they did it*”) or by oneself (“*I did it*”) and (c) high stakes situations. Moral injury impairs the capacity for trust and elevate despair and mental health and health issues (Shay, 2014). While more research is needed, it appears that current child welfare practice creates the context for workplace injury to occur through the repeated incidences of moral distress.

The Act increased the workloads and responsibility of social workers, removed checks and balances and oversight to support social workers reflect on this complex family systems, has yet to provide a model of practice, and has provided no new resources to accommodate these new demands. The amended Act has eroded the principle of decent work and well-being, which has further exacerbated the recruitment and retention issues previously faced by the Department of Community Services.



Fiscal Fairness

We cannot have high quality, affordable and accessible child and family services without also transforming our taxing and spending. We need a progressive tax system, where those who can afford it pay their fair share. And we need to reject tax benefits (such as income splitting) that benefit the wealthy, encourage traditional family and gender relations, and discourage women’s labour market participation.

Tax measures can’t replace the direct provision of services. We have to challenge the politics of scarcity and invest in our communities (Findlay *et al.*, 2020).

The Department of Community Services’ biggest challenges stem from consecutive governments fiscal policy which have allowed social policy to go underfunded for decades. When looking at the Department of Community Services budget from 2014-thought 2019, its total increases have amounted to 8%. The Consumer Price Index over this period has increased by 8.55%; spending increases have not even kept up with inflation. What is even more problematic is the Children, Youth and Family Services division actually saw its budget decrease by 28% over the past 5 years with total spending topping 147 million in 2014-2015

budget year to 101 million in 2018-2019, (this drop was due to a significant change to the access and transportation program, which has also led to increased demands for social workers). When looking at the total government of Nova Scotia government spending on a per-capita basis, our government spends \$11,177, which is less than they were spending in 2018-19 (\$11,349)-with an increase in population, comes an increase in need. We are one of the lowest spenders per capita in the country (Saulnier(b), 2020).

Without additional spending in the areas of family and children, and without delivering new resources to accommodate the new demands of the amended Act, the Liberal government has further entrenched inequality and inequity.



Democratization

The rising influence of corporations and business organizations in politics, alongside the declining power of labour unions and the weakening of equality-seeking civil society organizations, has damaged our democracy, and citizens are increasingly disillusioned with their governments. Governments need to consider the potential social impact of each policy they introduce, break down policy silos, and apply substantive gender-based and intersectional analyses.

Communities need the capacity to engage and to shape public policy (Findlay *et al.*, 2020).

Notably the amendments to Act removed many healthy checks and balances that allowed families, social workers and judges to work together in the best interest of the child, thus moving child welfare policy further away from the principle of democratization. More problematically the Act eroded public oversight and gave many discretionary powers to the Minister. Further to this the amended Act abolished the Minister's Advisory Committee and with nothing to replace it. There is no longer any independent source of advice to the Minister on the functioning of service delivery. The amended Act added a provision to provide for regular reviews of Act in Section 88A that once again gave the powers to the Minister to determine the scope and process for that review, negating community voice on the impact of the overall changes. Judicial oversight has been either removed or watered down in a number of key areas throughout the amended Act as well.

Even limitation of publication bans laid out in section 94 may limit the ability of the public to investigate child deaths and provide public recommendations. Efforts to bring more accountability to the child death review process introduced by the Liberal government in the fall of 2019 to amend the Fatality Investigations Act fall short as well. The proposed child death committee will conduct reviews of unexpected deaths of children under the age of 19 who have died while in provincial care and will include both individual case analysis—what happened and how—and a trend analysis. The purpose of the committee is to understand the factors that led to the tragedy, to inform lessons learned, and provide recommendations as to how they can be prevented in the future. The recommendations of such an expert committee would be non-binding and thus left to the discretion of government to implement. Further, there have been concerns voiced about the openness and transparency of the work of this committee, and whether their review and findings will be made public, if anything (Brogan, 2019).

The amended act further erodes the democratization of child welfare policy.



Public Provision

Delivery of care in our society must move away from the current approach, which relies heavily on either the market or the private sphere of the family (especially women) to meet our social needs. We see the limitations of this approach in caregiving, post-secondary education, employment training, and particularly within mental health care (Findlay *et al.*, 2020). The amended Act did not fundamentally change public provision of child welfare, which is still

delivered through a public system. However, particularly in the area of places of safety there is increasing evidence that service providers being contracted are for profit companies.



Universality

Universality is a core principle in the Social Policy Framework and states that programs and services must be accessible to all, regardless of income and paid for through general revenue from income taxes, rather than through user fees or payroll taxes. Access is a right or entitlement of citizenship, and not based on one's ability to purchase in the market. Universality is important for several reasons: durability (less vulnerable to government cuts), higher quality of services, less stigma for users, social inclusion for users

and providers, cost efficiency, solidarity and creation of a shared identity. There must be space for progressive universalism – programs designed to meet the unique needs of specific communities (Findlay at AI, 2020).

The amended Act left in place a residual child welfare system, which generally limits involvement to those who are perceived to be the most in need. Again, the Act itself would not be the place to address universality in child welfare programming; this would be accomplished through budgeting and programming. Overall Nova Scotia remains a system in which risk needs to be identified before programs are offered, moving further away from universal social programs.



Climate Justice

Social policy must be developed to ensure that the brunt of adjustment in the transition to a green economy does not fall onto marginalized communities, and ensuring these communities benefit as much. A just transition relies on addressing environmental racism (which is a determinant of mental health) and on strong social policy (income support, skills retraining, infrastructure investments, pharmacare, child care, housing). It means taking the opportunity to develop holistic policies (Findlay *et al.*, 2020). As Naomi Klein has

written, a green economy is caring economy. The amended act did not bring with new positions or new jobs, missing an opportunity to further climate justice.

It can also be noted that the newer definition of neglect as established above leaves a family that lives in poverty open to be investigated in a child protection matter. It is important to connect the fact that most environmental hazards, such as waste disposal sites and polluting industries, are located in proximity to African Nova Scotian and Mi'kmaw communities in Nova Scotia. Thus, those communities are left to suffer a myriad of negative impacts, such as a lack of fresh air, clean water, access to unspoiled nature, dwindling property values, and resulting mental and physical health impacts, which work to perpetuate their historical oppression (Stoughton, 2017). As Bywaters, et al., 2016 demonstrate, disadvantaging socio-economic conditions, such as those created by environmental racism, impact incidents of neglect and abuse.

The amended Act did not take into consideration environmental racism, missing an opportunity to address climate justice.



Shared Governance

Federal, provincial, territorial, and municipal governments need to cooperate in order to deliver programs and services such as mental health care to Nova Scotians. We have moved away from this model in favour of federal government retrenchment and “flexibility” for provinces and territories, resulting in weakened accountability, the erosion of national standards, and further fragmentation of Canada’s patchwork of social programs. The federal government must work with the provinces, territories, municipalities, and First Nations in the

funding of services and the setting of standards. Federal transfers to the provinces and territories and equalization payments are integral to supporting universal programs in Canada (Findlay *et al.*, 2020).

While the amended Act would not have been the place to address shared governance, current funding arrangements between the federal and provincial government have few restrictions on how federal funding to the provinces and territories is spent; this has exacerbated the patchwork of programs and services. Federal governments have continued to prioritize financial transfers to families over direct investment in services, and have been reluctant to establish common standards for social programs. This is something that must be addressed (Findlay *et al.*, 2020).

Impact of Ethical Social Work Practice

The impact of the amendments can also be felt directly by the NSCSW through its professional misconduct mandate. Since the Act was amended, the complaints to the College have increased by 60%, with 50% of those complaints coming from child protection concerns. Given that child protection social workers make up only 15% of all Registered Social Workers, this is over representation. The complaints the College receives from the public touch on all of the above issues. From complainants feeling like social workers were judging them because they didn’t have food in the fridge, feeling like they were investigated because their cultural beliefs about raising children were different from Eurocentric values, and feelings that social workers were holding them accountable for the abuse done by their partners.

Social workers engage with the most vulnerable in our society. They are educated with knowledge and skills to competently perform assessments, interventions, negotiations, mediations, advocacy, and evaluations. They are trained in inter-professional practice, community collaboration and teamwork. Social workers work in solidarity with vulnerable populations to address intrapersonal issues and to empathetically connect with clients on the impacts of structural issues affecting their lives. However social workers are also part of society that has continued to struggle with its colonial and racist propensities, and these are pervasive within Canadian culture.

Deborah Levans spoke frankly at the NSCSW 2019 Conference about white supremacy in social work practice, and offered that white supremacy is *when whiteness is normalized and seen as aspirational*. She offered examples of how the architecture of racism in the social work profession is embedded in practice, research and education. Part of practicing from an anti-oppressive lens is continually asking ourselves how this has impacted our own perspective and bias, and how we can address the resulting behaviours. Before the Act was amended, social workers in child protection noted that they needed more cultural safety training, and although there have been many opportunities for this in community, social workers from DCS are not offered funds or time off for professional development outside the training offered through the Department. Social work as a profession has a long way to go on addressing issues of white supremacy in practice and all sectors (practice, regulation and education) are working to decolonize curriculum and develop anti-racist education, regulation and practice (Stratford, 2020).

Conclusion

When a Social Policy Framework is applied to the 2017 amendments, analysis of their practical impact on the lives of vulnerable children, youth and families indicates that a more comprehensive, open, evidence-based review of the 2017 amendments is needed in order to provide for the rights and well-being of these children and families. The review of the *Children and Family Services Act* through the NSCSW and CCPA-NS Social Policy Framework has revealed that Act has contributed to greater inequity and inequality and needs serious revisions. Counter to the three sections currently under review by the Department, we have pointed to the 2017 amendments that have the greatest effect on the lives of children, youth and families, particularly those who are marginalized by colonialism, systemic racism and those that live on a low income.

Furthermore, the amendments to the Act placed social workers in an impossible situation where even the most ethical, empathic and altruistic social worker cannot begin to keep children safe in Nova Scotia without the fundamental tools and required resources to do so. Without these tools social workers often find themselves facing the seemingly impossible scenarios of trying to keep children safe and working towards well-being, in an environment that does not provide many pathways to safety and well-being. It is no wonder so many social workers are facing record levels of burnout and there are constant recruitment and retention issues.

We therefore call on the Department to institute a more comprehensive, evidence-based, open and accountable review of the CFSA that takes into consideration the impact of the amendments as a whole with particular focus on the sections outlined above. Special attention should be paid to the impact on racialized and Indigenous children, youth and families and on the support available for social workers to provide for the needs of these families in a safe and supportive environment.

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