

ENVIRONMENTAL SCAN AND
NEEDS ASSESSMENT OF CHILD
WELFARE LEGAL SERVICES IN
ALBERTA: FINAL REPORT

May 25th, 2020

Flora Stevenson

Research & Community Engagement Coordinator
fstevenson@albertalawfoundation.org

Table of Contents

- I. Background
- II. Executive Summary
1. Child Welfare Laws, System and Process in Alberta
 - 1.1 Jurisdiction
 - 1.2 Child Welfare Laws
 - 1.2.1 International Laws
 - 1.2.2 Federal Laws
 - 1.2.3 Provincial Laws
 - 1.3 The Child Welfare System in Alberta
 - 1.4 The Child Welfare Data in Alberta (Overrepresentation of Indigenous Children in Care)
 - 1.5 The Child Welfare Process in Alberta
2. Child Welfare Legal Services in Alberta
 - 2.1 Legal Services Available to Parents
 - 2.2 Legal Services Available to Children and Youth
3. Gaps in Child Welfare Legal Services in Alberta
4. Ideas to Bridge Gaps in Child Welfare Legal Services in Alberta
5. The COVID-19 Pandemic and Next Steps

I. Background:

Since January 2018, the Alberta Law Foundation *Bridging the Gaps* initiative has been bringing justice stakeholders together to talk about access to justice issues and solutions for vulnerable Albertans. During a *Bridging the Gaps* workshop in May 2019, participants identified gaps in child welfare legal services in Alberta and expressed their interest in further investigating this issue.

Based on this feedback, and in response to the Truth and Reconciliation Commission and the National Inquiry into Missing and Murder Indigenous Women and Girls findings regarding the child welfare system, the Foundation decided to conduct an environmental scan and needs assessment of child welfare legal services in Alberta. The project started in September 2019 and has taken the following steps:

- Research about child welfare law and process in Alberta (brief overview).
- Research about existing child welfare legal services in Alberta.
- Twenty-six interviews with child welfare service providers across Alberta to identify existing services and gaps in child welfare services (September 2019 to February 2020).
- *Bridging the Gaps* workshop focused on family law and child welfare legal services (November 19th, 2019).
- Creation of the Child Welfare Focus Group (CWFG) to continue the conversation about child welfare legal services in Alberta. There are currently 25 members.
- Short report to the CWFG with a summary of research and interview findings (February 4th, 2020).
- First CWFG meeting (February 24th, 2020). Participants confirmed the gaps identified in the short report and came up with some ideas to address such gaps.
- Report with the list of ideas identified by the focus group (March 5th, 2020).
- Final report summarizing main findings from research, interviews, workshop and focus group conversations (May 25th, 2020).

The Foundation greatly appreciates the contribution of all the people who generously shared their knowledge and thoughts about the child welfare system in Alberta.

II. Executive Summary

There are federal, provincial and international laws applicable to the child welfare system in Alberta. The *Child, Youth and Family Enhancement Act* is the main piece of legislation governing the child welfare process in Alberta. According to the Act, Children's Services must conduct several safety assessments and safety judgments to determine the child's need for intervention throughout the child protection process (i.e. intake, investigation and intervention).

The ability for parents to influence decision-making decreases as the child protection process escalates and service decisions become more intrusive. However, most public legal services (i.e. Legal Aid) are available only after child apprehension, once matters get to court. At this point, parents have a limited timeframe and impact on the decision to reunite their family.

Indigenous children are overrepresented at all points of child welfare decision-making. Indigenous children make up approximately 11% of the child population in Alberta,¹ but account for almost 70% of the children in care.² In 2016, 30.1% of all initial assessments for Indigenous children resulted in permanent guardianships, compared to 4.6% for non-Indigenous children.³

Several child welfare legal service providers across Alberta were interviewed to gather their perspective of the system. The most **common statements** include:

- There is a big power imbalance between Children's Services and parents involved with child welfare issues.
- Most parents have a deep mistrust and fear of the child welfare system.
- Most parents complain about lack of transparency when dealing with Children's Services. Many say they are not sure what direction Children's Services staff is taking with their family.
- Parents see the child welfare system as adversarial.
- Parents often don't know their rights and obligations.
- Most parents involved with the child welfare system are low income and vulnerable due to trauma, mental health, addiction issues or FASD.
- Indigenous children are overrepresented in the child welfare system.
- Children's Services focuses on safety and risk, not on parents' needs.
- There are inconsistencies in the way caseworkers apply the Signs of Safety (safety assessment and judgement).
- Some caseworkers do not give enough weight to the profound negative effects of apprehension and parent-child separation on the child's wellbeing.

Regarding **legal services**, interviewees said that:

- Most parents qualify for Legal Aid representation based on income level. However, Legal Aid child welfare services are only available after apprehension.
- There are regional differences regarding child welfare services available and needs.
- It takes a few weeks to a few months (depending on the location) to get a Legal Aid lawyer appointed.
- There are locations in Alberta with no Legal Aid Duty Counsel at child welfare dockets.
- Parents need to be supported to understand their rights and options prior to apprehension in order to maximize their influence in decision-making about their children.
- Parents need help to build safety plans and need someone to follow up with them to make sure it gets done.

¹ Census Profile, 2016 Census, online: <https://www12.statcan.gc.ca/census-recensement/2016/dp-profil/details/Page.cfm?Lang=E&Geo1=PR&Code1=48&Geo2=&Code2=&Data=Count&SearchText=Alberta&SearchType=Beginns&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=48> .

² Government of Alberta, *Child Intervention Information and Statistics Summary*, online: <https://www.alberta.ca/assets/documents/cs-child-intervention-info-stats-summary-2019-20-q1.pdf>

³ *Ibid.*

- There is not a lot of information available to parents before an intervention record is open.
- Pre-apprehension legal services would likely have to count on Children's Services caseworkers making referrals to such services.
- Legal and social service providers need to work together to better support parents.
- The Office of the Child and Youth Advocate seems to be covering the need for legal representation and advocacy for children and youth well. (Budget changes may affect their services)
- Lawyers and law students need specialized training and mentoring to confidently practice child welfare law. However, it is hard to find training and mentoring opportunities in this area. Child welfare law is often not part of the family law curriculum in law schools or LESA training programs.

Some of the **gaps in legal services** identified include:

Pre-apprehension

- Legal advice from lawyers (i.e. summary legal advice)
- Legal information, navigation and parent advocacy from non-lawyers

After apprehension

- Legal advice while waiting for a Legal Aid lawyer to be appointed
- Legal advice and representation to parents who are low income but do not qualify for Legal Aid
- Legal information, navigation and parent advocacy
- Duty counsel services at child welfare dockets in certain locations in Alberta

Post intervention (children and youth in care)

- Independent legal information and advocacy to children and youth in care to help them understand and protect their rights

Legal training

- Legal training for law students and lawyers on Child Welfare Law
- Legal training for law students, lawyers, judges and Children's Services regarding Bill C-92 and Indigenous child welfare laws

Members of the Child Welfare Focus Group offered some **ideas to address such gaps**:

1. Take a holistic approach to systemic advocacy to help change the many systems that come into contact with vulnerable families (e.g. Children's Services, police, the legal industry, schools, government)
2. Empower individuals with legal information (pocket size card) about the child welfare process with referral to legal services
 - a. Build a list of places and organizations where vulnerable people go to in different cities in Alberta.
 - b. Create/review and print pocket size legal information material (see Native Counselling Services of Alberta child welfare materials).
 - c. Distribute materials directly to individuals
3. Educate service providers (intermediaries) working with families and vulnerable individuals about the child welfare process and where to go for legal services
4. Expand/enhance the provision of legal advice and representation to parents involved in child welfare matters
 - a. Provide pre-apprehension legal advice for families involved with child welfare matters
 - b. Provide legal advice and representation to parents who are low income but do not qualify for Legal Aid
 - c. Create a Child Welfare Hotline, where parents can call to receive legal information (and maybe legal advice) about the child welfare process

5. Develop a child protection case conference model for Alberta, with the support of a Case Management Judge
 - a. Look into the England's model for child protection case conference (<https://learning.nspcc.org.uk/child-protection-system/child-protection-definitions/>)
 - b. Bring Children's Services into the conversation
 - c. Identify and connect with judges willing to case manage
 - d. Identify and connect with organizations that can be part of the child welfare case conference
 - e. Set up a pilot project
6. Offer training to lawyers, law students and judges on child welfare law and related issues
7. Implement/expand alternative dispute resolution tailored to child welfare matters (considering the power imbalance between Children's Services and parents)
8. Strengthen the relationship between caseworkers and the communities they serve
9. Strengthen the relationship among all legal and social service providers helping families with child welfare issues in Alberta.
10. Include "Gladue Reports" (with a focus on resilience) in child welfare cases involving Indigenous families.
11. Expand the number of family reunification homes.
12. Create a place to smudge at courthouses across Alberta
13. Develop a Family Treatment Court for Alberta.

The present report is based on information collected prior to the COVID-19 pandemic. The pandemic caused an unprecedented disruption in the courts system. All non-urgent family matters were adjourned until courts can reopen. Urgent child welfare matters (e.g. apprehension orders, Initial Custody Hearings) continue to be heard by courts.

All legal clinics and Legal Aid continue to provide legal services over the phone. They anticipate a flood of cases after courts reopen, especially for family matters, which may aggravate access to justice issues.

The Foundation hopes to reconnect with the Child Welfare Focus Group in the near future to hear their perspective of the impact of the COVID-19 pandemic on child welfare clients and service providers.

1. Child Welfare Law

1.1 Jurisdiction

In Canada, child welfare is a matter of provincial and territorial responsibility,⁴ which includes jurisdiction over legislation, governance and funding.⁵ The federal government has a role with respect to Indigenous people,⁶ which has taken the form of funding for First Nations children and families living on reserve, under the First Nations Child and Family Services program.⁷

Many scholars also argue that despite provincial jurisdiction over child welfare in general, the federal government is empowered to legislate with respect to Indigenous child welfare.⁸ Recently, the federal government has done so, for the first time, with the introduction of *Bill C-92*.⁹ The Bill recognized Indigenous People's jurisdiction over child and family services, as part of an inherent and Aboriginal right to self-governance, which includes authority to draft their own child welfare laws, administer and enforce these laws,¹⁰ and to provide dispute resolution mechanisms.¹¹

As a result, there are federal, provincial and international laws applicable to the child welfare system in Alberta, and potentially multiple Indigenous laws arising from *Bill C-92*. The following section will provide an overview of the main child welfare laws relevant to Alberta.

1.2 Child Welfare Laws

1.2.1 International Laws

1.2.1.1 *Convention on the Rights of the Child*

The United Nations *Convention on the Rights of the Child* (Convention) is the most widely ratified international human rights treaty in history and outlines the fundamental rights children have, and the obligations of governments to children. It is considered the legal foundation of child protection.

It contains four fundamental principles:

1. Life, survival and development;
2. Best interests of the child;
3. Equality and non-discrimination;
4. Respect for the views of the child.

Canada ratified the Convention in 1991, with letters of support from all provinces and territories. The Convention contains "civil, political, economic, social and cultural rights to support children's optimal development and well-being."¹² As the Convention is an agreement between state parties, individual citizens do not have the responsibility to uphold it. However, if they work for or act on behalf of the government (e.g. social workers), they do.

Although the Convention is not typically referenced in child welfare legislation in Canada,

⁴ Under s 92(16) of the Constitution Act, 1867 ("matters of a merely local or private nature").

⁵ *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2006 at para 48.

⁶ Pursuant to s 91(24) of the Constitution Act, 1867 ("Indians, and Lands reserved for the Indians").

⁷ *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC at para 28-30. Federal funding is subject to the regulations within the Indigenous Services Canada's First Nations Child and Family Services program, which is currently under review, online: <https://www.sac-isc.gc.ca/eng/1100100035204/1533307858805>. See also Canadian Bar Association, *Bill C-92* (April 2019), online: <https://www.cba.org/CMSPages/GetFile.aspx?guid=f70fcef1-519d-4da4-b316-ea326e6105b5> [CBA Bill C-92].

⁸ See for example Grammond, Sébastien, "Federal Legislation on Indigenous Child Welfare in Canada", *Journal of Law and Social Policy* 28:1 (2018) 132-151 at 133.

⁹ *Bill C-92, An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, 1st Sess, 42nd Parl, 2019 [Bill C-92].

¹⁰ *Ibid* at s 18(1).

¹¹ *Ibid* at s 18(2).

¹² Canadian Bar Association, *Child Rights Toolkit: Introduction* (2017), online: www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/overarchingFramework/Introduction [Child Rights Toolkit: Introduction]

“the Supreme Court of Canada has clearly stated that the values reflected in international human rights law should assist in the interpretation of our domestic statutes, and has used the Convention as an interpretive tool in the in the child protection context.¹³ The Supreme Court has also stated that our domestic legislation will be presumed to conform with international law unless the wording of the statute clearly compels a different interpretation.¹⁴ Accordingly, the significance of the Convention as an advocacy and decision-making tool in the area of child protection law should not be overlooked.”¹⁵

1.2.1.2 Other International Laws

Child rights are also contained in other international laws such as *The Universal Declaration of Human Rights*; *The Declaration on the Rights of the Child*; *United Nations Convention on the Elimination of all Forms of Racial Discrimination*; *United Nations Declaration on the Elimination of Violence against Women*; *United Nations Convention on the Elimination of all Forms of Discrimination Against Women*; *United Nations Declaration on the Rights of Persons with Disabilities*; *United Nations Declaration on the Rights of Indigenous Peoples*.¹⁶

1.2.2 Federal Laws

1.2.2.1 Charter of Rights and Freedoms¹⁷

The Supreme Court of Canada recognized that “the role of the State in child protection matters is to intervene when the level of care provided to children by their parents falls below minimum standards.”¹⁸ However, considering the potentially profound effects of such intervention on both child and parent, child welfare law must conform to the rights enshrined within the *Charter of Rights and Freedoms* and interference may only be justified if in accordance with the principles of fundamental justice.¹⁹

1.2.2.2 Bill C-92

Bill C-92²⁰ was introduced on February 28, 2019 and came into force on January 1, 2020. The main purpose of the Act is to:

- “affirm the rights and jurisdiction of Indigenous peoples in relation to child and family services,”²¹ as part of an inherent and Aboriginal right to self-governance;
- “set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children,”²² in response to the Truth and Reconciliation Call to Action #4;
- and to contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous People*.²³

¹³ *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, [1989] SCJ No. 45, at para. 23; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 69; *A.C. v. Manitoba (Director of Child and Family Services)*, [2009] 2 S.C.R. 181, 2009 SCC 30, at para. 93 in *Canadian Bar Association, Child Rights Toolkit: The Rights of Children in Child Protection Matters* (2017), online:

www.cba.org/CBAMediaLibrary/cba_na/PDFs/Publications%20And%20Resources/Toolkits/ChildRights/Tempesta-Shaften-ChildProtection.pdf [CBA Toolkit]

¹⁴ *R. v. Hape*, [2007] 2 S.C.R. 292, [2007] S.C.J. No. 26, at para. 53 in CBA Toolkit, *supra* note 13, at 1.

¹⁵ *Child Rights Toolkit: Introduction*, *supra* note 12.

¹⁶ *Ibid.*

¹⁷ *Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, Schedule B of the Canada Act 1982 (U.K.)*, 1982, c. 11

¹⁸ *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48 (CanLII), [2000] 2 SCR 519 [*Winnipeg CFS*].

¹⁹ *Ibid.*

²⁰ Bill C-92 at *supra* note 9.

²¹ *Ibid* at s 8(a).

²² *Ibid* at s 8(b)

²³ *Yellow Head Institute, The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit, and Métis Children, Youth and Families* (2019) at 4, online: <https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf> [Yellow Head Bill C-92 Analysis].

Within one year, from January 1, 2020 to January 1, 2021, some Indigenous groups may have their own legislation, which will have the force of federal law after one year.²⁴ So far, no Indigenous laws have been developed under Bill C-92.

Since January 1, 2020, the national standards apply in all provinces. Child and Family Services, Designated First Nation Agencies (DFNAs), agencies, lawyers and courts must be aware of and comply with these national standards.

Where different, the Indigenous statutes and national standards will prevail over other federal laws (except the *Canadian Human Rights Act*) and all provincial laws. There are no regulations, policies, court interpretation or practice guides on Bill C-92 yet. The Yellow Head Institute provided an analysis of Bill-92 promises and pitfalls, as well as implementation strategies.²⁵

1.2.3 Provincial Laws

There are three main provincial laws governing the child welfare system in Alberta.²⁶

1.2.3.1 *Child, Youth and Family Enhancement Act*

The *Child, Youth and Family Enhancement Act (CYFEA)*:²⁷

- defines “child” as a person under the age of 18²⁸ and “youth” as a child who is 16 years or older;²⁹
- defines abuse and neglect as grounds for child intervention;³⁰
- provides guiding principles on how to support children and families;³¹
- outlines what caseworkers must consider when planning and making decisions;³²
- ensures the focus is on working with families to try to keep them together and healthy and how extended family and community will need to be part of plans;³³
- outlines what needs to be done if children or youth cannot remain with or return to their parents and how extended family and community will need to be part of plans;³⁴
- explains adoption³⁵ and private guardianship³⁶ for children or youth who need an alternative legal guardian, including exploring who in the parents extended family and network may be able to be a legal guardian.³⁷

1.2.3.2 *Protection of Sexually Exploited Children Act*

The *Protection of Sexually Exploited Children Act*:³⁸

- recognizes that children and youth involved in sexual exploitation are in need of protection and services;³⁹
- allows the police and child intervention caseworkers to remove sexually exploited children and youth from dangerous situations and place them in a safe-house for a set period of time to protect them;⁴⁰

²⁴ Bill C-92, *supra* note 6 at 21(1)

²⁵ Yellow Head Bill C-92 Analysis, *supra* note 23.

²⁶ Other relevant provincial child welfare legislation include *Protection Against Family Violence Act*, *Child and Youth Advocate Act*, *Fatalities Inquiries Act*, *Freedom of Information and Protection of Privacy Act*.

²⁷ *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12 [CYFEA].

²⁸ CYFEA s 1(1)(d)

²⁹ *Ibid* at s 1(1)(z)(cc)

³⁰ *Ibid* at s 1(2) to 1(3).

³¹ *Ibid* at s 1.1

³² *Ibid* at s 2(1)

³³ *Ibid*.

³⁴ *Ibid* at Part 1: Intervention Services

³⁵ *Ibid* at Part 2: Adoption

³⁶ *Ibid* at S 55

³⁷ Government of Alberta, *How Child Intervention Works*, online: <https://www.alberta.ca/how-child-intervention-works.aspx> [GOA]

³⁸ *Protection of Sexually Exploited Children Act*, RSA 2000, c P-30.3 [PSECA].

³⁹ PSECA s 1(2).

⁴⁰ *Ibid* at s 2(1).

- allows exploited children and their families or caregivers to receive services without having child intervention status.⁴¹

1.2.3.3 Drug-Endangered Children Act

The *Drug-Endangered Children Act*.⁴²

- allows police or child intervention caseworkers to remove children or youth from a home where parents or guardians are selling or making illegal street drugs;⁴³
- gives child intervention caseworkers 2 days to decide if children or youth can return to the home.⁴⁴

1.2.3.4 Other Provincial Laws

Other relevant provincial legislation includes *Protection Against Family Violence Act*, *Child and Youth Advocate Act*, *Fatalities Inquiries Act*, *Freedom of Information and Protection of Privacy Act*.

1.3 The Child Welfare System in Alberta

UNICEF defines child welfare systems as "the set of laws, policies, regulations, and services needed across all social sectors - especially social welfare, education, health, security, and justice - to support prevention and response to protection related risks."⁴⁵

A systems approach is important because it represents a move away from considering each child protection issue as a separate and siloed instance. Instead, a systems approach connects sectors and institutions and emphasizes the integrated coordination of services for children, focusing on prevention.⁴⁶

Primary components of child welfare systems include laws and policies, human and financial resources, governance, means of data collection and system monitoring, child protection and response services, and non-formal supports of families and communities.⁴⁷

Canada's child welfare system is decentralized:

"Some provinces and territories operate under a government-run child welfare system and others have models run by mandated non-government organizations. Some provinces and territories have different legal definitions of 'child' and the definitions of maltreatment vary. There is also differences between provinces and territories pertaining to children in the care of child welfare authorities and children placed with extended family and kin due to maltreatment."⁴⁸

In Alberta, the Ministry of Children's Services is responsible for Child Intervention and Child Care, Early Intervention Services for Children and Youth and Indigenous Community Connections:⁴⁹

"The Ministry is a decentralized system of child welfare. Children and families receive child intervention services from ten Child and Family Service Authorities (CFSAs), nine of which are

⁴¹ GOA, *supra* note 37.

⁴² *Drug-Endangered Children Act*, SA 2006, c D-17.

⁴³ *Ibid* s 2(1).

⁴⁴ *Ibid* at s 5. GOA, *supra* note 37.

⁴⁵ UNICEF, Child Protection Strategy (2008), online: [www.unicef.org/protection/CP_Strategy_English\(1\).pdf](http://www.unicef.org/protection/CP_Strategy_English(1).pdf).

⁴⁶ HarvardX online course on *Child Protection: Children's Rights in Theory and Practice* (Part 4: A Systems Approach to Child Protection), online: <online-learning.harvard.edu/course/child-protection-childrens-rights-theory-and-practice>.

⁴⁷ Michael Wessells, *Bottom-up Approaches to Strengthening Child Protection Systems: Placing Children, Families, and Communities at the Center*, Child Abuse & Neglect 43 (2015) 8–21, online: <reader.elsevier.com/reader/sd/pii/S0145213415001246?token=DFAF704E338E4D5738CC1BEBC9D93C14BEF1EB1E2C4A66ACDF80ADE0D926B23F63AAA9534949D87CE5F28863041369CD>.

⁴⁸ Canadian Association of Social Workers (CASW), *Understanding Social Work and Child Welfare: Canadian Survey And Interview with Child Welfare Experts* (2018), online: <www.casw-acts.ca/sites/default/files/documents/CASW_Child_Welfare_Report_-_2018.pdf> at page 17 [CASW Report]. For an overview and comparison of provincial and territorial child welfare laws in Canada, see: Public Health Agency of Canada, *Provincial and Territorial Child Protection Legislation and Policy 2018*, online: <www.canada.ca/content/dam/phac-aspc/documents/services/publications/health-risks-safety/provincial-territorial-child-protection-legislation-policy-2018/64-03-18-2245_Child-Protection_EN-FINAL02.pdf>

⁴⁹ CASW Report at 17-18.

geographically bound in regions across the province. The remaining CFSA serves Métis Albertans affiliated with one of the land-based Métis settlements in the province, wherever they may currently reside [...]. The provincial government has entered into agreements with 18 Designated First Nation Authorities (DFNAs) to provide services to First Nation children on 110 of the 126 reserves across the province. The funding for the DFNAs comes from the federal government.”⁵⁰

All child protection matters are dealt with in the Provincial Court (Family Judges).

1.4 The Child Welfare Data in Alberta: Overrepresentation of Indigenous Children in Care

Indigenous children are overrepresented at all points of child welfare decision-making. This overrepresentation increases as service decisions become more intrusive.

In 2018, there were 923,175 children in Alberta, 7,329 of which were in out-of-home care. Indigenous children make up approximately 11% of the child population in Alberta,⁵¹ but account for almost 70% of the children in care.⁵² In 2016, 30.1% of all initial assessments for Indigenous children resulted in permanent guardianships, compared to 4.6% for non-Indigenous children.⁵³

This severe disproportionality is a continuation of Canada’s colonial past:⁵⁴

“Canada’s history of assimilationist policies, including residential schools, resulted in Indigenous children being uprooted from their families and communities and being disconnected from loving child-rearing practices, parental role models, their cultures and identity.⁵⁵ These inequalities continued as residential schools began to close. Starting in the 1950s, child welfare authorities removed Indigenous children from their families and communities in great numbers. Known as the “Sixties Scoop,” children were sent to be fostered or placed for adoption in mostly non-Indigenous families.⁵⁶ Formal inquiries into these policies and practices have concluded that the residential school system and Sixties Scoop constituted forms of cultural genocide against Indigenous families and communities.⁵⁷

This history of oppression and the continued discrimination that Indigenous peoples face today has led to multiple negative social and economic disadvantages, such as low levels of education, high levels of unemployment, extreme levels of poverty, inadequate housing and health disparities.⁵⁸ Several studies using Canadian child welfare data over time have found that neglect⁵⁹ is reported as the main reason Indigenous children enter the child welfare system, which is associated with

⁵⁰ *Ibid.*

⁵¹ Census Profile, 2016 Census, online: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=48&Geo2=&Code2=&Data=Count&SearchText=Alberta&SearchType=Beginns&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=48>.

⁵² Government of Alberta, *Child Intervention Information and Statistics Summary*, online: <https://www.alberta.ca/assets/documents/cs-child-intervention-info-stats-summary-2019-20-q1.pdf>

⁵³ *Ibid.* Because child welfare services fall under the jurisdiction of provincial and territorial authorities, it is difficult to compile statistics at the national level.

⁵⁴ Ontario Human Rights Commission, *Interrupted Childhoods: Over-representation of Indigenous and Black Children in Ontario Child Welfare*, online: <http://www.ohrc.on.ca/en/interrupted-childhoods> [OHRC].

⁵⁵ *Looking Forward, Looking Back: Report of the Royal Commission on Aboriginal Peoples, Volume 1* (Ottawa: Canada Communication Group - Publishing, 1996) at 312, online: Government of Canada www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx ; Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 104-105 [TRC], online: www.trc.ca, in OHRC, *supra* note 54.

⁵⁶ See Cindy Blackstock, “The Occasional Evil of Angels: Learning from the Experiences of Aboriginal Peoples and Social Work” (2009) 4:1 *First Peoples Child & Family Rev* 28, in OHRC, *supra* note 54.

⁵⁷ TRC, *supra* note 55 at 1-3; Manitoba, Manitoba Review Committee on Indian and Metis Adoptions and Placements, *No Quiet Place* (Winnipeg: Manitoba Community Services, 1985) at 328-329, online: <http://digitalcollection.gov.mb.ca>, in OHRC, *supra* note 54.

⁵⁸ Melisa Brittain & Cindy Blackstock, *First Nations Child Poverty: A Literature Review and Analysis* (Ottawa: First Nations Children’s Action Research and Education Service, 2015), in OHRC, *supra* note 54.

⁵⁹ Neglect has been characterized as “often a failure to act in the child’s best interest, and carries a risk of cumulative harm over time.” In contrast, child abuse is often “a deliberate, harmful act that carries an immediate risk to the child’s well-being.” Aboriginal Children in Care Working Group, *Aboriginal Children in Care: Report to Canada’s Premiers July 2015* (Ottawa: Council of the Federation Secretariat, 2015) at 10, in OHRC, *supra* note 54.

household and caregiver risk factors that stem from chronic family concerns, such as poverty, poor and unsafe housing, substance use, mental health issues, and social isolation.⁶⁰ The rate of “neglect only” investigations for First Nations children is six times higher than that of non-Aboriginal children.^{61”62}

1.5 The Child Protection Process⁶³ in Alberta

The child welfare process in Alberta is primarily guided by *CYFEA*. Children’s Services conducts several safety assessments and safety judgments to determine the child’s need for intervention throughout the child protection process.

In 2014, Alberta started to implement the Signs of Safety (SOS) approach in the child welfare system:⁶⁴

“The [SOS] assessment and planning protocol maps the harm, danger, complicating factors, strengths, existing and required safety, and a safety judgment in situations where children are vulnerable or have been maltreated.

The [SOS] assessment and planning protocol, and the questioning processes and inquiring stance that underpins it, is designed to be the organizing map for child protection intervention from case commencement to closure.”⁶⁵

The child protection process in Alberta can be broken down into three main phases:

- Intake
- Investigation
- Intervention Services

1.4.1 Intake

Intake represents the first of a series of assessment activities. It provides a preliminary assessment of the child’s need for intervention, beginning with the receipt of a referral. Intake determines if the information received constitutes a report and if the report requires investigation.

There are two possible outcomes, if the referral constitutes a report:

- Investigation is required.

⁶⁰ Nico Trocmé, Della Knocke & Cindy Blackstock, “Pathways to the Over-representation of Aboriginal Children in Canada’s Child Welfare System” (2004) December Social Service Rev 577; Vandna Sinha, Stephen Ellenbogen & Nico Trocmé, “Substantiating Neglect of First Nations and Non-Aboriginal Children” (2013) 35:12 Children and Youth Services Rev 2080; Nico Trocmé et al, “Differentiating Between Child Protection and Family Support in the Canadian Child Welfare System’s Response to Intimate Partner Violence, Corporal Punishment, and Child Neglect” (2013) 48:2 Int J of Psychology 128; Cindy Blackstock, Nico Trocmé & Marilyn Bennet, “Child Maltreatment Investigations among Aboriginal and Non-Aboriginal Families in Canada” (2004) 10:8 Violence Against Women 901; Vandna Sinha et al, *Kiskisik Awasisak: Remember the Children. Understanding the Over-representation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2011) [Kiskisik Awasisak], in OHRC, supra note 54.

⁶¹ Kiskisik Awasisak, *ibid*.

⁶² OHRC, *supra* note 54.

⁶³ Also referred to as “child welfare process”.

⁶⁴ Signs of Safety, *Alberta, Canada: Signs of Safety Province-wide Implementation* (April 29, 2014), online: <https://www.signsofsafety.net/alberta-canada-signs-of-safety-province-wide-implementation/>

⁶⁵ “At its simplest this framework can be understood as containing four domains for inquiry:

1. What are we worried about? (Past harm, future danger and complicating factors)
2. What’s working well? (Existing strengths and safety)
3. What needs to happen? (Future safety)
4. Where are we on a scale of 0 to 10, where 10 means there is enough safety for child protection authorities to close the case, and 0 means it is certain that the child will be (re) abused (Judgment).”

Government of Western Australia, The Signs of safety Child Protection Framework (2011) at 14, online:

<https://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/SignsOfSafetyFramework2011.pdf>. For more information about the Signs of Safety, see Policy Wise for Children & Families, Alberta Signs of Safety Gathering, online: https://policywise.com/video_library/alberta-signs-of-safety-gathering-managing-uncertainty-with-drs-eileen-munro-andrew-turnell-and-terry-murphy/ and Eileen Munro, The Munro Review of Child Protection: Final Report, online: https://ix.iriss.org.uk/sites/default/files/resources/cm_8062.pdf

- Investigation is not required.

1.4.2 Investigation Phase

The investigation phase begins with the assessment of the child's safety and intervention needs, when intake has determined that there are reasonable and probable grounds to believe that the child may be in need of intervention.

There are two possible outcomes:

- The child is not in need of intervention.
- The child is in need of intervention.

Children's Services may determine that there are no safety concerns. In such cases, no intervention will be needed and the file will be closed. Children's Services may also determine that safety concerns can be addressed by developing and implementing a safety plan with the family. After the safety plan is completed, the file will be closed with no intervention services needed.

Child welfare service providers also point to instances in which Children's Services caseworkers tell parents that they must take significant family altering steps to avoid intervention, without court oversight and often off the record. Examples include placing the child in kinship care ("back door apprehension") or obtaining a Parenting Order to make sure the child does not come into contact with an at-risk parent. In such cases, if the conditions are met, no intervention services take place.

1.4.3 Intervention Services Phase

The intervention services phase constitutes the ongoing case and is entered when the investigation has determined that the child is in need of intervention. Services are provided to the child and family in line with the needs of the child, service plan and agreement or order. Assessment of need is ongoing throughout the period of involvement with the child.

There are three possible outcomes:

- Child is at risk but can stay with guardian:
 - Agreement with guardian
 - Family Enhancement Agreement (FEAG)
"The guardian may enter into a FEAG for a specified period of time. Under a FEAG, the Director works with the guardian to complete certain tasks. Should the guardian require more time to complete these tasks, the FEAG can be renewed for a further specified period. Should the Director take the position, upon successful completion of the terms, that the child is no longer in need of intervention, the file would then be closed. However, should further concerns arise, the Director may take more intrusive measures."⁶⁶
 - Court Order:
 - Supervision Order
"Mandatory supervision of the child and guardian(s) is required to adequately protect the child. In this case, the child will remain in the care of the guardian(s). The court may grant a Supervision Order for a maximum period of six months."⁶⁷
- Child is at risk and home is not safe:
 - Agreements with guardian for child removal:
 - Custody Agreement

⁶⁶ Amanda Baretta, A Brief Overview of Child Intervention Services in Alberta (Law Now: 2016), online: <https://www.lawnow.org/a-brief-overview-of-child-intervention-services-in-alberta/>

⁶⁷ *Ibid.*

“The guardian may enter into a Custody Agreement whereby the Director has custody of the child for a maximum period of six months. A Custody Agreement must outline the care plan for the child and access between the child and the guardian.”⁶⁸

- Permanent Guardianship Agreement.

“Where a child has been in the guardian’s care for less than six months, the guardian may enter into an agreement whereby the Director becomes the sole guardian of the child.”⁶⁹

- Court Orders:

- Apprehension Order

“The Director is permitted to make an application to the court, without notice to the guardian, for an Order authorizing its delegate and any peace officer to apprehend the child and, if necessary, to enter a named premise by force to do so.”⁷⁰

- Temporary Guardianship Order (TGO)

“Where the court is satisfied that the child’s needs cannot adequately be protected while in the guardian’s care, but it can be anticipated that the child may be returned to the guardian’s care within a reasonable time, the court may grant a Temporary Guardianship Order for a specified period of time. The total time in care cannot exceed nine months for a child under the age of six and 12 months for a child who is six or older. If a child reaches the maximum days in care, the Director must apply for a [Permanent Guardianship Order].”⁷¹

- Permanent Guardianship Order (PGO)

“If the court is satisfied that the child is in need of intervention and the child’s needs cannot adequately be protected while in the guardian’s care and it cannot be anticipated that the child could or should return to the guardian’s within a reasonable time, the Court may grant a Permanent Guardianship Order, whereby the Director becomes the sole guardian of the child.”⁷²

- Child is at great risk

- Apprehension without court order.

The Director or peace officer may apprehend a child without a court order if they believe the child’s life or health is seriously and imminently endangered.⁷³

1.4.4 Child Protection Process Flowchart

There are many assessment activities and decisions points in the child protection process. The following flowchart highlights the main ones.

The ability for parents to influence decision-making decreases as the child protection process escalates and service decisions become more intrusive. Even though there are some organizations providing limited scope legal advice and legal information prior to child apprehension in certain locations in Alberta (see Chapter 2), Legal Aid Alberta currently only provides legal services after child apprehension, once matters get to court (highlighted in yellow in the flowchart).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

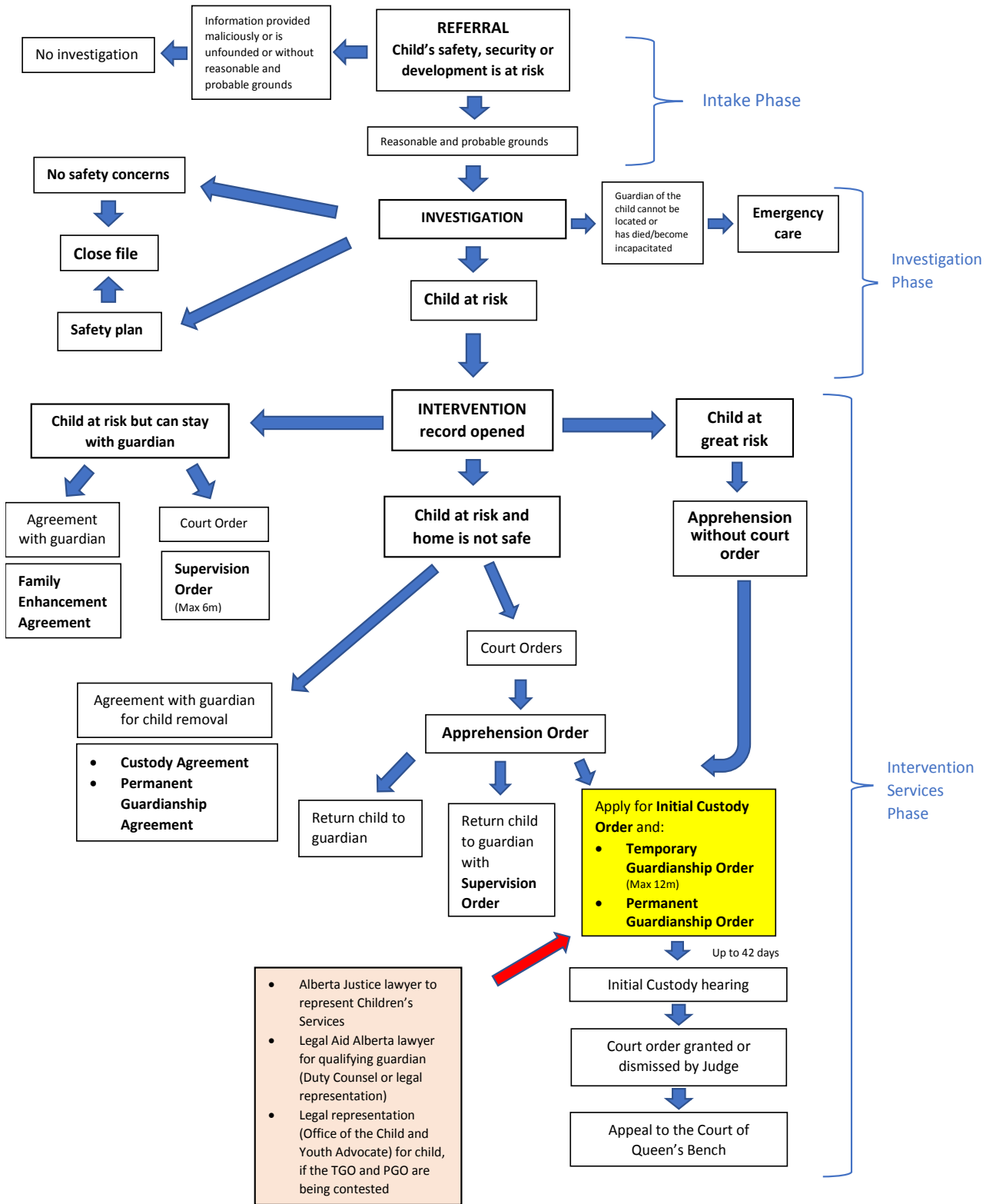
⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ CYFEA s 19(4) (12) (14)

Child Protection Process in Alberta (CYFEA)



2. Child Welfare Legal Services in Alberta

2.1 Legal Services Available to Parents

According to the *Matrix of Legal Services in Alberta – Version 3.0*⁷⁴, the following legal services are available in Alberta for parents involved with child welfare matters:

Legal Services from Lawyers

- Legal Representation:

Community Legal Clinic - Central Alberta	Central Alberta
Lethbridge Legal Guidance	Lethbridge
Legal Aid (after apprehension)	Alberta

- Summary legal advice (30min with volunteer lawyer) – before and after apprehension:

Calgary Legal Guidance	Calgary
Community Legal Clinic - Central Alberta	Central Alberta
Community Legal Clinic - Fort McMurray	Fort McMurray and area
Community Legal Clinic - Lloydminster	Lloydminster and area
Community Legal Clinic - Medicine Hat	Medicine Hat and area
Grande Prairie Legal Guidance	Grande Prairie
Lethbridge Legal Guidance	Lethbridge

- Follow-up legal advice (staff lawyer) – before and after apprehension:

Community Legal Clinic - Central Alberta	Central Alberta
Lethbridge Legal Guidance	Lethbridge

- Duty Counsel (legal advice at the courthouse - child welfare docket):

Legal Aid Alberta	Calgary
Legal Aid Alberta	Edmonton
Legal Aid Alberta	Fort McMurray
Legal Aid Alberta	Grande Prairie
Legal Aid Alberta	St. Paul
Legal Aid Alberta	Wetaskiwin
Legal Aid Alberta	Siksika
Legal Aid Alberta	Red Deer
Legal Aid Alberta	Medicine Hat

⁷⁴ The *Matrix of Legal Services in Alberta* is a database of public legal services provided in Alberta by 23 organizations participating in the Alberta Law Foundation *Bridging the Gaps* initiative.

Legal Services from Non-Lawyers

➤ Legal Information:

Alberta Civil Liberties Research Centre	Alberta
Alberta Law Libraries	Alberta
Calgary Legal Guidance	Calgary
Calgary Chinese Community Service Association	Calgary
Central Alberta Women's Outreach Society	Red Deer
Centre for Public Legal Education Alberta	Alberta
Community Legal Clinic - Central Alberta	Central Alberta
Community Legal Clinic - Fort McMurray	Fort McMurray and area
Community Legal Clinic - Lloydminster	Lloydminster and area
Community Legal Clinic - Medicine Hat	Medicine Hat and area
Crowsnest Pass Women's Resource & Crisis Centre	Crowsnest Pass
Elizabeth Fry Society of Calgary	Calgary
Grande Prairie Legal Guidance	Grande Prairie
Lethbridge Legal Guidance	Lethbridge
Native Counselling Services of Alberta	Alberta
Resolution and Court Administration Services (Alberta Justice)	Alberta
Student Legal Services of Edmonton	Edmonton
The Alex	Calgary

➤ Assistance Understanding Forms:

Calgary Legal Guidance	Calgary
Central Alberta Women's Outreach Society	Red Deer
Community Legal Clinic - Central Alberta	Central Alberta
Community Legal Clinic - Fort McMurray	Fort McMurray and area
Community Legal Clinic - Lloydminster	Lloydminster and Area
Community Legal Clinic - Medicine Hat	Medicine Hat and Area
Crowsnest Pass Women's Resource & Crisis Centre	Crowsnest Pass
Elizabeth Fry Society of Calgary	Calgary
Lethbridge Legal Guidance	Lethbridge
Native Counselling Services of Alberta	Alberta
Student Legal Assistance	Calgary

➤ Guidance for Court Appearance:

Calgary Legal Guidance	Calgary
Community Legal Clinic - Central Alberta	Central Alberta

Community Legal Clinic - Fort McMurray	Fort McMurray and area
Community Legal Clinic - Lloydminster	Lloydminster and Area
Community Legal Clinic - Medicine Hat	Medicine Hat and Area
Grande Prairie Legal Guidance	Grande Prairie
Lethbridge Legal Guidance	Lethbridge
Native Counselling Services of Alberta	Alberta
Resolution and Court Administration Services	Alberta

➤ Public Legal Education Sessions:

Native Counselling Services of Alberta	Alberta
Calgary Chinese Community Service Association	Calgary
Portage College	Lac La Biche
Portage College	Cold Lake
Portage College	St Paul

➤ Court Support:

Elizabeth Fry Society of Calgary	Calgary
Native Counselling Services of Alberta	Alberta

Social Services:

There are also organizations providing social services with elements of legal information, navigation or advocacy, such as Creating Hope Society, Pathways, Positive Choices, Bent Arrow, Native Counselling Services of Alberta (family services).

2.2 Legal Services Available to Children and Youth

Legal Services:

The Office of the Child and Youth Advocate (OCYA) is the main legal service provider for children and youth involved with child welfare matters. OCYA provides:

- Legal representation for children and youth in contested child intervention matters, such as TGOs and PGOs, across Alberta.
- Advocacy for children and youth involved with Children’s Services or in the youth justice system throughout the province.
- Legal education about children’s rights.

Social Services:

There are also other organizations providing social services with elements of justice navigation to children and youth involved with child welfare, such as Boys & Girls, Native Counselling Services of Alberta and The Alex.

3. Gaps in Child Welfare Legal Services in Alberta (Interview findings)

Twenty-six child welfare service providers across Alberta were interviewed to help identify existing services and gaps in child welfare services. Many comments were made about the child welfare system in Alberta. The most common ones include:

Parents⁷⁵ and Children's Services

1. There is a big power imbalance between Children's Services and parents involved with child welfare issues.
2. Most parents have a deep mistrust and fear of the child welfare system.
3. Most parents complain about lack of transparency when dealing with Children's Services. Many say they are not sure what direction Children's Services staff is taking with their family.
4. Parents see the child welfare system as adversarial.
5. Parents often don't know their rights and obligations.
6. Most parents involved with the child welfare system are low income and vulnerable due to trauma, mental health, addiction issues or FASD.
7. Indigenous children are overrepresented in the child welfare system.
8. Children's Services focuses on safety and risk, not on parents' needs.
9. There are inconsistencies in the way caseworkers apply the Signs of Safety (safety assessment and judgement).
10. Some caseworkers do not give enough weight to the profound negative effects of apprehension and parent-child separation on the child's wellbeing.

Legal Services

11. Most parents qualify for Legal Aid representation based on income level. Legal Aid child welfare services are only available after apprehension.
12. There are regional differences regarding child welfare services available and needs.
13. It takes a few weeks to a few months (depending on the location) to get a Legal Aid lawyer appointed.
14. There are locations in Alberta with no Legal Aid Duty Counsel at child welfare dockets.
15. The ability for parents to influence decision-making decreases as the child protection process escalates. Parents need to be supported to understand their rights and options prior to apprehension in order to maximize their influence in decision-making about their children.
16. Parents need help to build safety plans and need someone to follow up with them to make sure it gets done.
17. There is not a lot of information available to parents before an intervention record is open.
18. Pre-apprehension legal services would likely have to count on Children's Services caseworkers making referrals to such services.
19. Legal and social service providers need to work together to better support parents.
20. OCYA is covering the need for legal representation and advocacy for children and youth well. (Budget changes may affect their services)
21. Lawyers and law students need specialized training and mentoring to confidently practice Child Welfare Law. However, it is hard to find training and mentoring opportunities in this area. Child Welfare Law is often not part of the Family Law curriculum in law schools or LESA training programs.

Some of the **gaps in legal services** identified include:

Pre-apprehension

1. Legal advice from lawyers (i.e. summary legal advice)
2. Legal information, navigation and parent advocacy from non-lawyers
3. Legal advice for "back door apprehensions" (i.e. children are placed with individuals to avoid apprehension but not under any court scrutiny or process - minimal direction is given on what has to be done to reunify the child and parent)

⁷⁵ Or legal guardians.

4. Legal information and advice to pregnant mothers who might have their children apprehended right after birth (i.e. birth alert)
5. Culturally appropriate services to Indigenous people

After apprehension

6. Legal advice while waiting for a Legal Aid lawyer to be appointed
7. Legal advice and representation to parents who are low income but do not qualify for Legal Aid
8. Legal information, navigation and parent advocacy
9. Duty counsel services at child welfare dockets in certain locations in Alberta
10. Culturally appropriate services to Indigenous people

Post intervention (children and youth in care)

11. Independent legal information and advocacy to children and youth in care to help them understand and protect their rights
12. Legal information about benefits for children and youth in care
13. Independent legal services for parents and children/youth in care who want to take legal action against Children's Services
14. Legal information and support to parents, children/youth and Indigenous communities to help with family reunification
15. Culturally appropriate services to Indigenous people

Legal training

16. Legal training for law students on child welfare law (i.e. law school curriculum)
17. Legal training and mentoring for lawyers on child welfare law
18. Legal training for law students, lawyers, judges and Children's Services regarding Bill C-92 and Indigenous child welfare laws

4. Ideas to Bridge Gaps in Child Welfare Legal Services (Child Welfare Focus Group)

The Child Welfare Focus Group met on February 24th, 2020, to discuss the interview findings. The group agreed with the gaps listed above and offered some ideas to address such gaps:

1. Take a holistic approach to systemic advocacy to help change the many systems that come into contact with vulnerable families (e.g. Children's Services, police, the legal industry, schools, government)
2. Empower individuals with legal information (pocket size card) about the child welfare process with referral to legal services.
 - a. Build a list of places and organizations where vulnerable people go to in different cities in Alberta.
 - b. Create/review and print pocket size legal information material (see NCSA's material below).
 - c. Distribute materials directly to individuals
3. Educate service providers (intermediaries) working with families and vulnerable individuals about the child welfare process and where to go for legal services
4. Expand/enhance the provision of legal advice and representation to parents involved in child welfare matters.
 - a. Provide pre-apprehension legal advice for families involved with child welfare matters.
 - b. Provide legal advice and representation to parents who are low income but do not qualify for Legal Aid.
 - c. Create a Child Welfare Hotline, where parents can call to receive legal information (and maybe legal advice) about the child welfare process.
5. Develop a child protection case conference model for Alberta, with the support of a Case Management Judge

- a. Look into the England's model for child protection case conference (<https://learning.nspcc.org.uk/child-protection-system/child-protection-definitions/>)
 - b. Bring Children's Services into the conversation
 - c. Identify and connect with judges willing to case manage
 - d. Identify and connect with organizations that can be part of the child welfare case conference
 - e. Set up a pilot project
6. Offer training for lawyers, law students and judges on child welfare law and related issues
 7. Implement/expand alternative dispute resolution tailored to child welfare matters (considering the power imbalance between Children's Services and parents)
 8. Strengthen the relationship between caseworkers and the communities they serve
 9. Strengthen the relationship among all legal and social service providers helping families with child welfare issues in Alberta
 10. Include "Gladue Reports" (with a focus on resilience) in child welfare cases involving Indigenous families
 11. Expand the number of family reunification homes
 12. Create a place to smudge at courthouses across Alberta
 13. Develop a Family Treatment Court for Alberta

5. The COVID-19 Pandemic and Next Steps

The present report is based on information collected prior to the COVID-19 pandemic. The pandemic caused an unprecedented disruption in the courts system. All non-urgent family matters were adjourned until courts can reopen. Urgent child welfare matters (e.g. apprehension orders, Initial Custody Hearings) continue to be heard by courts.

All legal clinics and Legal Aid continue to provide legal services over the phone. They anticipate a flood of cases after courts reopen, especially for family matters, which may aggravate access to justice issues.

The Foundation hopes to reconnect with the Child Welfare Focus Group in the near future to hear their perspective of the impact of the COVID-19 pandemic on child welfare clients and service providers.