

Submission to the

Ministry of Social Development and Social Innovation
Family Maintenance Consultation

From



First Call: BC Child and Youth Advocacy Coalition



Single Mothers' Alliance of BC



Community Legal Assistance Society

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The rights of children should be paramount

Any policy regarding the treatment of child support for families on income or disability assistance should be based first and foremost on the rights of the child. BC's obligations to respect children's rights are enshrined in the United Nations Convention on the Rights of the Child (UNCRC), specifically,

- Article 3: The best interests of the child shall be a primary consideration
- Article 6: Children's right to the survival and development "to the maximum extent possible"
- Article 18: Children's right to the support of both parents
- Article 19: Children's right to protection from neglect or negligent treatment
- Article 24: Children's right to the enjoyment of the highest attainable standard of health
- Article 27: Children's right to a standard of living adequate for their physical, mental, spiritual, moral and social development including the right to financial maintenance from their parents
- Article 31: Children's right to full and equal participation in cultural, artistic, recreational and leisure activities

Many of these rights are already compromised for children living on income assistance because assistance rates are far below the poverty line.¹

Children's right to receive support from their non-custodial parents is also a fundamental principle of family law, affirmed in a Supreme Court of Canada decision (*D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 38).

¹ <http://still1in5.ca/wp-content/uploads/2014/11/FACTSHEET-6-First-Call-2014-BC-Child-Poverty-Report-Card.pdf>

Single parent families harmed by current policy

We also base this submission on the testimonials from many families, overwhelmingly mother-led, who have experienced the clawback of child support payments as injurious to their children's health and well-being, to their own health and well-being and to their relationships with their children's fathers. This policy is made even more egregious in the context of welfare benefit rates that put these families into very deep poverty, the disproportionate impacts on mother-led families, and the unavailability of affordable, quality child care that would allow those mothers who are able to work to do so. That these child support payments are taken and kept by the provincial government when a significant amount of the children's support is paid by federal benefits only compounds the unfairness.

Comments about the consultation process

We were disappointed to see that the Notice of Family Maintenance Consultation makes no reference to the best interests of children or other children's rights obligations as considerations for government to "ensure it has the right policies in place." Instead a false dichotomy is posed between "the interests of families and taxpayers," as if they are mutually exclusive categories of people unconnected by common interests in child rights and child well-being.

This language implies that families receiving assistance have never been taxpayers themselves contributing to the publicly-funded services they now need. It implies the 100% tax-back of child support payments by government from people who

find themselves in need of assistance to feed and house their children is justified because they are no longer defined as taxpayers. We find this attempt to diminish the citizenship rights of vulnerable children and families an unworthy argument for government to be making.

In addition, the Notice of Family Maintenance Consultation acknowledges that the government has already received “considerable feedback” asking the government to exempt all or some child support from income calculations, as is noted in *Disability Consultation Report: Moving Together Toward an Accessible B.C.*²

Many of the submissions made in the Disability White Paper Consultation, all available at www.gov.bc.ca/accessibility, recommended that child support payments be exempt for the calculation of monthly assistance. For example, see the submissions of the following organizations:

- British Columbia Public Interest Advocacy Centre at page 2;
- Canadian Mental Health Association (CMHA) BC Division and CMHA Vancouver-Burnaby at page 17;
- Disability Without Poverty Network at page 7;
- Inclusion BC at page 14;
- Together Against Poverty Society at page 13; and
- West Coast LEAF at page 2.

The recommendation was also reflected in the notes from consultations in the following communities:

- Courtney at page 3;
- Vancouver (afternoon) at page 5;
- Vancouver (evening) at page 23;
- Kelowna (evening) at page 8;
- Port Moody at page 7; and

² Ministry of Social Development, *Disability Consultation Report: Moving Together Toward an Accessible B.C.*, 2014 at pages 20 and 26.

- Victoria (evening) at page 8.

In addition, the recommendation was made at the Open Space stakeholder meeting (notes at pages 25 and 26) and the CMHA and Guests stakeholder meeting (notes page 6).

Finally, the recommendation was also reflected in the following Disability White Paper feedback:

- Compiled tweets at page 3; and
- Compiled email and mail submissions at pages 25, 27, 29, 75, 96, 152, 270, 271, and 289.

In addition, First Call, CLAS and a number of other service providers and organizations have also been in dialogue with the government for several years now about the urgent need to rectify this policy and its negative impacts on child and family well-being.

It is unclear to us why, given that the government has already received this feedback, it is now embarking on another consultation process at this time. We are concerned about further delay in making urgently needed policy reforms.

Response to consultation questions

Recommendation in response to question 1: Exempt all child support received by all families regardless of the type of assistance they receive

The government should exempt all child support received by all families regardless of the type of assistance they receive. Child support is the right of the child and that right should not be impacted by the type of assistance their parent receives or the government’s determination regarding their parent’s employability or ability.

Any policy implemented by the government should shift away from the current focus on resources or source of income of the custodial parent. Instead, it should focus solely on the rights and needs of the child.

Specifically, child support must be moved from the non-exempt category to the exempt category of income, allowing the children to benefit directly during their childhoods from the funds. Child support is not basic income 'earned' by a child towards their family's income, as it is now classified by the government; it is theirs to benefit from directly.

Furthermore, allowing children to benefit directly from these incoming funds in the exempt income category, such as with the Canada Child Tax Benefit and other exempt income, will not deter their parent on income assistance from developing job skills, gaining work experience, securing additional income to meet living costs, and participating more fully in the community, as the BC Employment and Assistance (BCEA) program allows.

On the contrary, the additional financial allowance for the child will allow single mothers and other single parents, who spend much time struggling to meet the basic necessities of life for their children by frequenting food banks, for example, more time and resources to devote to working or re-training.

All children should benefit from all child support paid on their behalf, and allowing children on social-assistance to benefit directly will not interfere in the BCEA mandate to encourage the development of job skills and work experience on the part of their parents.

Recommendation in response to question 2: Eliminate the mandatory assignment of family maintenance rights and maintain FMP and FMEP as free, voluntary services

Parents should not be required to assign their right to seek or enforce family maintenance to the government as a condition of eligibility for income or disability assistance. Decisions about whether to pursue family maintenance against a co-parent are incredibly personal, family and context specific, and have the potential to have serious impacts on the child, the parents, and their long-term relationships with each other.

We have heard the following from families directly impacted by the requirement to assign maintenance rights, and mandatory assignment and enforcement of those rights:

- It can put women and children who have fled domestic violence at further risk. While there are practices in place to provide risk assessments, this practice is far too precarious and dangerous considering the risk to vulnerable women and children. We are aware of many cases where women clearly communicated they were at risk, but the case managers did not deem them at great enough risk to hold back pursuing support from the other parent, at great harm and risk to the women and children.
- It can have significant negative consequences for the relationship between the parents as they try to continue to co-parent their child.
- It can also have negative impacts on the child's relationships with both paying and receiving parent.

- It undermines the autonomy of women to manage their personal relationships in their own and their children’s best interests.
- It can erode efforts made in the family law system to promote mediation and mutually agreeable legal resolutions, and particularly the terms of unique maintenance agreements created in court, mediation, or other legal contexts that have been designed to work for each specific family. This undermines a promoted ethic of collaborative divorce and out-of-court mediation, and plunges many broken families back into prolonged conflict.

These negative consequences of mandatory assignment of maintenance rights are even more concerning under the current policy of clawing back 100% of any maintenance actually received. Recipients are required to undertake these risks for no financial benefit for themselves or their children.

Seeking and enforcing maintenance rights should be a personal decision left to the individual family. However, for the families that do choose to seek maintenance, it can be an important means to improve the overall standard of living of the child and it can be an important tool that can provide additional supports for women fleeing violence. For these reasons, the government should continue to provide free legal services that allow families on income or disability assistance to both obtain and enforce family maintenance rights.

When making this recommendation, it is important to note that the government’s current services for enforcing family maintenance is not restricted to families on income or disability assistance. The Family Maintenance Enforcement Program (FMEP) provides enforcement of maintenance orders and agreements for anyone in BC, regardless of their

income level, at no cost to the payor³ or the recipient.

It is unjust to have a two-tiered system in BC where parents on social assistance are forcibly enrolled in the FMEP, while all others are free to choose whether or not they utilize this free service. We strongly believe that should their circumstances best allow, and because it is in the best interests of their already impoverished children, single parents on social assistance will voluntarily enroll in the FMEP to secure the benefit of child support for their children, as do thousands of single parents not in need of social-assistance.

Our strong recommendation is that the government maintain the FMEP service as a voluntary service for all families, regardless of their source of income. Because it is an important tool for supporting the wellbeing of children when it is appropriate for an individual family, we also recommend that the government maintain the Family Maintenance Program as a voluntary program for families on social assistance.

Recommendation in response to question 3: Exempt all child support received by families on income or disability assistance so that it does not cause their income to fluctuate

We have heard how difficult it is to synchronize the sometimes erratic payments and subsequent claw backs with income assistance benefit payment schedules, leaving these very poor families in periods of acute financial distress. We are aware of cases where the administration of the clawback has been the direct cause of homelessness or

³ Payors who miss or are late paying support may be charged a default fee up to \$400 per year.

unnecessary financial crisis for women and children, when their monthly income was reduced to as low as \$17, they were unable to cover rent, and eviction notices were served.

In our view, because this problem is created largely by the timing of the government's deduction of child support, it would be solved if the government exempted all child support received by a family on income or disability assistance. In that case, the family would get a consistent and reliable (although inadequate) monthly income from assistance and any child support received would be used as it should be: to improve the life of the child.

Recommendation in response to question 4: Exempt all child support received by families on income or disability assistance to eliminate existing disincentives to pay support.

While the framing of this question ignores the fact that many children on assistance do not receive child support because one parent is deceased, the non-custodial parent is on disability or income assistance or otherwise living in poverty themselves, or where a court has ordered no child support is to be paid, there are steps the government can take to encourage more parents to pay child support when it is appropriate.

The current treatment of child support creates a strong disincentive for parents to pay support for their children. We have heard from fathers who oppose child support orders and agreements solely because they are upset that their payments will not benefit their child.

Allowing children to benefit from their child support payments will create an increased incentive for more parents to provide child support because the paying parent will be paying the support to provide an improved standard of living for their child instead of the current policy, where the only incentive for a paying parent is to allow the government cost savings on income or disability assistance.

Conclusion

Putting our recommendations in a financial context, the annual amount of \$13.4 million in child support currently clawed back from families on income and disability assistance is a mere 0.03% of the current provincial budget. We also know that the consequences of maintaining families in deep poverty is actually very expensive, with higher costs in health care, education, the justice system, lost productivity and foregone economic activity across the lifespan of affected children.

However the primary reason for changing Ministry policy to fully exempt child support from the calculation of income assistance is because of our obligation to put the health and well-being of children first and make sure their human rights as referenced above are respected. Any policy adopted by the government must reflect the principle that child support is not owed to and does not belong to the government; instead, it is intended to support children and improve their standard of living during their childhood. Only then will government be able to say with pride that it has the "right" policies in place.



Provincial and Regional Partner Organizations

ACT - Autism Community Training
 Adoptive Families Association of BC
 Affiliation of Multicultural Societies & Service Agencies
 Alternate Shelter Society
 Association for Community Education BC
 Association of Neighbourhood Houses of British Columbia
 Autism Society of BC
 Baobab Inclusive Empowerment Society
 BC Aboriginal Child Care Society
 BC Association for Child Development & Intervention
 BC Association of Family Resource Programs
 BC Association of Pregnancy Outreach Programs
 BC Association of Social Workers
 BC Confederation of Parent Advisory Councils
 BC Council for Families
 BC Crime Prevention Association
 BC Federation of Foster Parents Association
 BC Government & Service Employees' Union
 BC Play Therapy Association
 BC Recreation and Parks Association
 BC Retired Teachers' Association
 BC Society for Public Education
 BC Society of Transition Houses
 BC Teachers' Federation
 Big Sisters of BC Lower Mainland
 Boys and Girls Clubs of BC
 Breakfast for Learning BC & Yukon
 Canadian Association for Young Children
 Canadian Federation of Students - BC
 Canadian Mental Health Association BC Division
 Canadian Red Cross – RespectEd
 Capilano Students' Union
 Caring for First Nations Children Society
 Centre for Israel and Jewish Affairs
 Cerebral Palsy Association of BC
 Children's and Women's Health Centre of BC
 Coalition of Child Care Advocates of BC
 Columbia/Kootenay Advocacy and Education Resource Society
 Communities that Care- Squamish
 Community Action Toward Children's Health
 Council of Parent Participation Preschools BC
 Court Appointed Special Advocates for Children (CASA) of Greater Victoria Society
 Deaf Children's Society of BC
 Developmental Disabilities Association
 Dietitians of Canada, BC Region
 Directorate of Agencies for School Health BC
 Early Childhood Educators of BC
 East Kootenay Childhood Coalition
 Elizabeth Fry Society of Greater Vancouver
 Family Services of Greater Vancouver
 Federation of BC Youth In Care Networks
 Federation of Community Social Services of BC
 Health Officers' Council of British Columbia
 Helping Spirit Lodge Society
 Hospital Employees' Union
 Immigrant Services Society of BC
 Infant Development Program of BC
 Inclusion BC
 Justice Institute of BC
 Kamloops and District Elizabeth Fry Society
 Learning Disabilities Association of BC
 Mary Manning Centre
 McCreary Centre Society
 Métis Commission for Children and Families of B.C.
 Mom to Mom Child Poverty Initiative
 MOSAIC
 National Council of Jewish Women of Canada- Vancouver Section
 Pacific Association of First Nations Women
 Pacific Community Resources Society
 Pacific Immigrant Resources Society
 Parent Support Services Society of BC
 PeerNetBC
 Penticton & District Community Resources Society
 Phoenix Human Services Association
 PLEA Community Services Society of BC
 Progressive Intercultural Community Services Society
 Provincial Association of Residential & Community Agencies
 Public Health Association of BC
 Single Mothers' Alliance of BC
 Social Planning & Research Council of BC
 Society for Children and Youth of BC
 S.U.C.C.E.S.S.
 Summit Negotiations Society
 Sunshine Coast Community Services Society
 Take a Hike Youth At Risk Foundation
 Toxic Free Canada
 UFV Centre for Safe Schools and Communities
 United Way of the Lower Mainland
 University Women's Club of Vancouver
 Vancouver Coastal Health Authority– Population Health
 West Coast Legal Education and Action Fund
 Westcoast Child Care Resource Centre
 Westcoast Family Centres Society
 Western Society for Children
 Women Against Violence Against Women
 YWCA Metro Vancouver